

# The Bat Crime Annual Report 2017



# The Bat Crime Annual Report 2017

## Contents

1. Introduction	2
2. Why are bats in need of protection?	2
3. About the Investigations Project	3
4. UK wildlife crime priorities and the National Wildlife Crime Unit	4
5. Legislation	5
6. Incidents notified to BCT in 2017	6
6.1. <i>Reporting of Incidents</i>	6
6.2. <i>Incidents by police area</i>	7
6.3. <i>International incidents</i>	7
6.4. <i>Incidents by month</i>	7
6.5. <i>Primary offences</i>	9
6.6. <i>Species subject of bat crime.</i>	9
7. How the police dealt with incidents in 2017	10
7.1 <i>Confirmed offences</i>	11
7.2 <i>Burden of proof</i>	11
7.3 <i>Evidence of roosts</i>	11
7.4 <i>Offenders acting on advice</i>	11
7.5 <i>Identification of offenders</i>	11
7.6 <i>Time limits</i>	12
7.7 <i>Police procedures</i>	12
7.8 <i>Completed, no further action</i>	13
7.9 <i>Ongoing</i>	14
7.10 <i>No police action</i>	14
7.11 <i>Insufficient evidence</i>	15
7.12 <i>Formal caution/Restorative Justice/Warnings</i>	15
7.13 <i>Prosecutions</i>	16
7.14 <i>Sentencing</i>	18
8. Future work	16
9. Bearing Witness for Wildlife	17

# 1. Introduction

This Bat Crime Annual Report 2017 outlines and analyses incidents and outcomes of the Bat Conservation Trust's Investigations Project over the 12 months from January 2017 – December 2017.

In 2017 165 allegations of bat crime were referred to the police. This continues the long-term increase in the number of cases referred to the police and is the highest number of referrals ever made in a calendar year<sup>1</sup>.

## 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 be breeding). 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 populations with potential loss of the whole of a breeding population.

Recent studies indicate that three species of bat found in the UK are now showing early signs of recovering from population declines. Whilst this must be taken as good news, the populations are still a long way from their historic population levels. For this reason it is important that all 18 species of wild bat 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 bats, anywhere, in a manner that threatens their ability to survive or in a manner that affect their local distribution.
- ★ 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 across the UK. In England and Wales the Conservation of Habitats and Species Regulations 2017, introduced in November 2017, apply. Elsewhere the protection is provided by the Conservation (Natural Habitats & Co) Regulations 1994 with numerous amendments.

An 8% increase from the previous year in the number of referrals made to the police 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 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.

<sup>1</sup> 2016-153, 2015-135, 2014-158.

## Working towards change in the built environment sector

Although development has been identified as a key component of many bat crimes, Bat Conservation Trust (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 two large developers who are not just providing financial support but also access to site data. BCT's Built Environment Officer was invited to speak at one of the company's environment days.

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 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 Investigations Project

The Investigations Project has been working to prevent bat crime since its inception in 2001 as a collaboration between RSPB and the Bat Conservation Trust (BCT). The Investigations Project was 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 Organisations (SNCO) 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 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 wildlife crime against 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 nature 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 2017 bat crime was once again identified as an area of concern.

During 2017, 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 latest National Wildlife Crime Strategic Threat Assessment identified that BCT was 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>

Currently the police do not record wildlife crime, unlike most other types of crime, in a formal manner. We believe that this situation must change and that the Home Office should require statistical returns in the same manner as they do other offences such as theft, criminal damage or assault. Unless wildlife crime is recorded in a consistent manner, it is impossible to identify crime trends and hotspots and develop strategies to address problems.

BCT with other members of the Wildlife and Countryside Link (WCL) have been working hard over a number of years to persuade the police, politicians and civil servants to record wildlife crime. In 2018 we contributed to the first annual wildlife crime report produced by WCL. (<https://www.wcl.org.uk/docs/LinkAnnualWildlifeCrimeReportApril18.pdf>)

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 continue to request that bat groups and other interested groups provide information about any offences or other suspicious behaviour which they become aware of. The 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 2017 the 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.

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.

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 believes on-going protection is necessary for bat population recovery and will monitor the situation very closely but at present understands that the level of protection provided to all species of bat found in the wild in the UK will be retained.

The Bat Habitats Regulation Bill is a private members bill of which the most recent version was introduced in the House of Lords in July 2017 and the House of Commons in September 2017 [http://www.bats.org.uk/news.php/398/bat\\_habitats\\_regulation\\_bill\\_hl\\_2017\\_19](http://www.bats.org.uk/news.php/398/bat_habitats_regulation_bill_hl_2017_19). The bill seeks to remove protection for bats in places used for public worship. BCT do not feel this is the best way to address any negative impacts where this is experienced. Please see here for partnership working across all stakeholders to find common solutions <https://www.batsandchurches.org.uk/>

## 6. Incidents notified to BCT in 2017

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 BCT's 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 2017 BCT recorded and researched 195 allegations of bat crime with 165 cases being referred to the police. This is an 8% increase over 2016. Since 2010 the number of cases referred to the police indicates an upward trend. Until 2010, all criminal offences relating to bats were investigated by the police and prosecuted by the CPS. Natural England now utilises 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. Whilst it is not possible to form decisive judgments as to whether the amount of crime is increasing, decreasing or holding steady as 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 under-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 National Wildlife Crime Unit suggests that BCT become 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 the 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 the 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 the 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 the BCT do not refer them.

Every call the BCT National Bat Helpline receives that identifies the possibility of an offence is screened to ensure that we do not refer inappropriate cases for investigation. Even though the 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 act on behalf of Natural England to provide both oral and written advice and it is often the case that the 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 165 incidents referred to the police last year, 127 were reported to English police forces, 27 to Police Scotland, and 11 to the Welsh forces. We are unaware of any investigations into bat crime undertaken by the Police Service of Northern Ireland during 2017.

It is worth highlighting the Scottish situation. In 2016 BCT were aware of Police Scotland investigating just seven complaints of bat crime. In 2017 that number almost quadrupled. This huge increase in the number of investigations into allegations of bat crime reflects the substantial effort being made by Police Scotland and BCT to accurately report on the number of such incidents.

The geographic spread of reported cases was wide, with incidents referred to 39 of the 42 police forces in the United Kingdom. Coincidentally, this is exactly the same number of forces who investigated bat offences in 2016. Therefore, on average each force was asked to investigate just over four bat crimes annually. In reality, the average is somewhat lower in that 64 referrals were made to just four different police forces. There were three forces that, as far as BCT are aware, undertook no investigations into bat crime during 2017. This serves to explain why investigative experience in this area is scarce, underlining 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 Police Scotland (27), Devon and Cornwall Police (21), Thames Valley Police (8), and West Mercia Police (7). Another seven 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, 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.

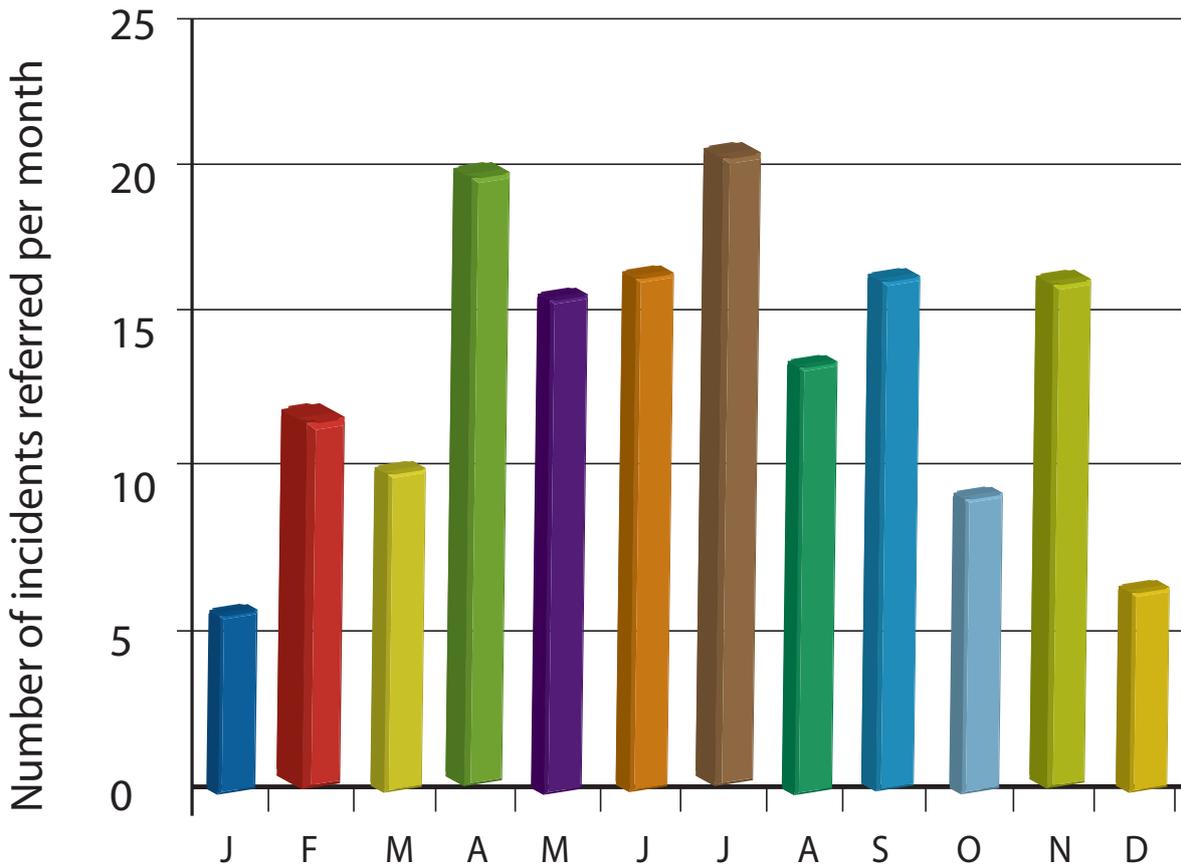
Trade in dead bats is one area that is often brought to our attention. Such trade may take place on internet auction sites or at markets and is usually (but not always) found to involve non-UK species that are not legally protected. Whilst many find such trade distasteful it is not illegal and therefore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

The advertisement of sonic 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 websites pointing out the protected status of bats in the UK.

## 6.4 Incidents by month

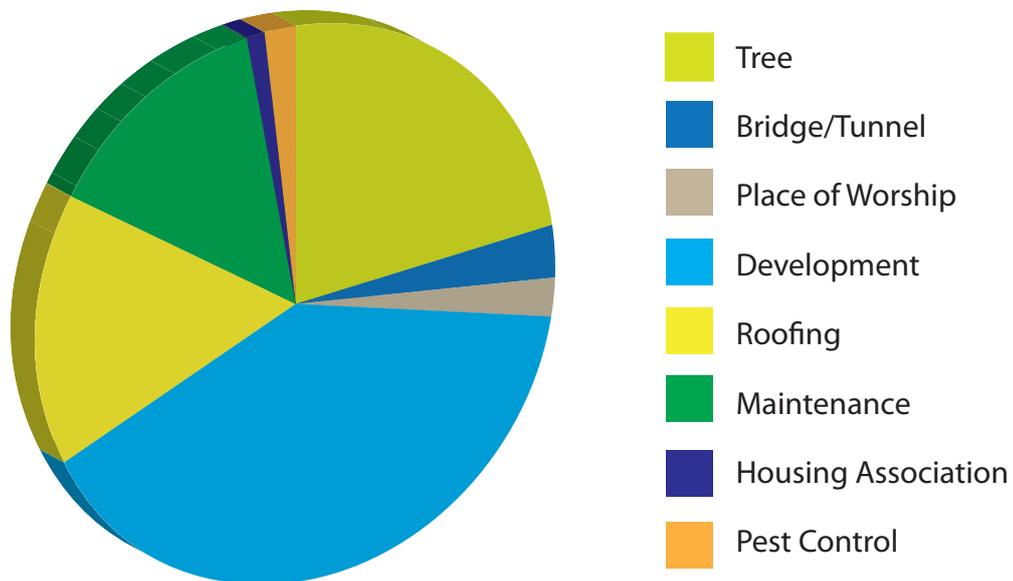
Incidents were reported throughout 2017; however, Figure 1 below shows that there are peak months for numbers of incidents being reported. Bats are most active between the months of March and October, which coincides with peak construction times. Therefore, it is of little surprise that most incidents of bat crime reported to the BCT take place during peak times of bat activity.

Figure 1. Incidents referred for investigation by month in 2017



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.

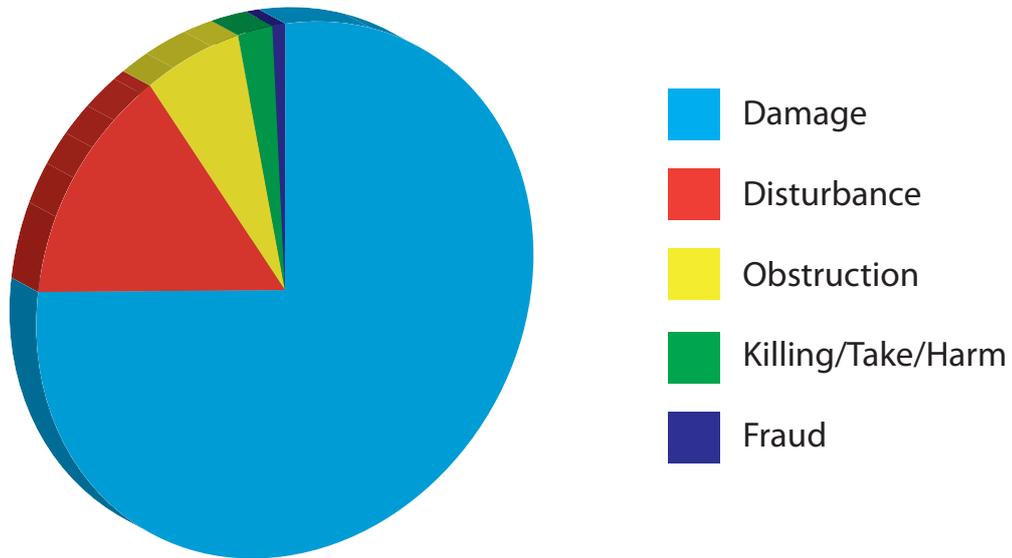
Figure 2. Comparison of incidents categorised by activity in 2017



## 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 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 2017 categorised by offence type**



## 6.6 Species subject of bat crime

All native 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.

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

Species	Number of referrals
Not identified	109
Pipistrelle spp	26
Mixed roosts	12
Brown long-eared bat	6
Lesser horseshoe bat	8
Greater horseshoe bat	1
Daubenton's bat	1
Natterer's bat	1
Noctule	1

# 7. How the police dealt with incidents in 2017

## 7.1 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 2017 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.

## 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 the BCT would suggest that surveys of roosts identified as being vulnerable to development should wherever possible be conducted on an annual basis.

## 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 with investigations being straightforward. Although the 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

## 7.7 Police procedures

This section outlines the outcome of cases reported to the police in 2017, also known as case disposal. Where the 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 the 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 are sent to the CPS in order for a decision on 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.

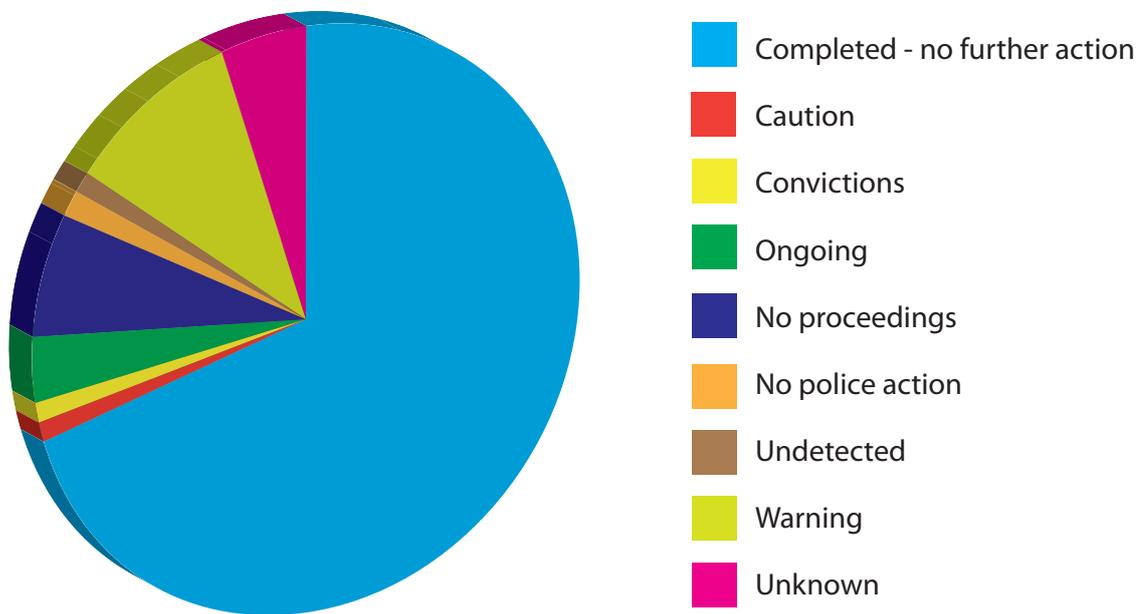
The Crown Prosecution Service (CPS) have, in recent years established a network of regional wildlife crime prosecutors. BCT have provided training to many of these lawyers with some of them having now built up considerable expertise in this area of the law. Investigating officers are encouraged to seek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

Unfortunately, as in previous years there have been a small number of cases that have been subject of inadequate investigations. In 2017 the most notable failure was a case where a builder received a police caution having destroyed a roost whilst developing a derelict building. The evidence available to BCT suggests that the case should have been prosecuted with an application for a Proceeds of Crime Act confiscation order following conviction. This case, once again, identified common features of failed investigations, the inexperience of investigating and supervising 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 NWCUC to address these concerns.

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



## 7.8 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. In 2017, 116 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, the 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 70 such cases. 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 2017, 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 the 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 investigations officer undertook research on 32 allegations of bat crime that, in the event, were not referred for police investigation.

## **7.9 On-going**

Bat crime 2016, revealed that there were a number of cases referred to the police that remained under investigation. Two of those cases resulted in prosecution and conviction during 2017.

At the time of writing (August 2018) there are six cases first identified in 2017 where investigations are incomplete. We are aware of one case due to be heard by the courts in August and another 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.

## **7.10 No police action**

In 2017 we made two 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.

## **7.11 Insufficient evidence**

CPS (or in Scotland the Crown Office Procurator Fiscal Service) prosecutors during 2017 examined a number of files relating to bat crime. In six 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 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 2017 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.

## 7.12 Formal caution/Restorative Justice/Warnings

In 2017 there were 18 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 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 2017 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 the BCT. Conditions proportionate to the level of offending can be imposed. Previously such conditions have included donations to local conservation organisations that have regard to the costs that would have been incurred had lawful process been followed. BCT because of involvement and influence in many of these cases will not accept donations arising from restorative justice disposals. In 2017 there were 16 cases that were dealt with through informal resolution or warnings.

### **Case study 1**

---

*In November 2017 BCT were contacted by the police in relation to a bat that had been brought into care having been injured during work on a tree in a private garden. The police investigation resulted in the case being dealt with through restorative justice. The police required the tree surgeon that had undertaken the work to attend a course on bats in trees whilst the homeowner was required to install a bat box.*

*The public interest in this case was considered to be such that a prosecution could not be progressed. Whilst it might be argued that the tree surgeon was reckless in undertaking work on a tree that hosted a bat roost it is also the case that having found a bat arrangements were made for it to be examined and taken into care. Had the plight of the animal been simply ignored nobody would have been any the wiser. A prosecution could not have been pursued where the only evidence of a roost being damaged was the admission of the persons responsible for the offending.*

---

## 7.13 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 2017 the courts heard three cases relating to bat crime; two of the cases related to investigations commenced in 2016. One of those cases involved the prosecution of two separate companies for offences committed in 2016. One company was convicted in 2017, the other in 2018. Only one case reported in 2017 resulted in a conviction in the same year.

In the first six months of 2018 there have been three cases of bat crime heard by the courts. Two of those cases were first reported in 2016, the other in 2017.

## Case study 2

---

*Developer Christopher Wilson of Avante Ltd appeared at Bournemouth Crown Court for sentencing on Friday 16 February 2018 after admitting two offences of damaging or destroying a breeding site or resting place of a European Protected Species of animal. He was sentenced to £2,500 Proceeds of Crime order plus a further £1,750 fine, Costs £500 and a Victim Surcharge of £170, meaning a total of £4,920.*

*David Stokes, Director of South Coast Demolition Ltd, had admitted the same offences and was sentenced at Poole Magistrates Court on Wednesday 13 December 2017, when he was fined £1,600, ordered to pay £400 in costs and a victim surcharge of £120.*

*In 2016 Wilson purchased the former Ickle Angels Nursery site in Carroll Avenue, Ferndown, which consisted of two buildings that were known to contain roosts for pipistrelle and long-eared bats. When he submitted a planning application to redevelop the site, Wilson included a Biodiversity Management Plan that had been commissioned by the previous owner of the site in October 2012 and had an expired date on it. He should have commissioned a new Biodiversity Management Plan but failed to do so. The original plan also advised that, due to the presence of bats, a licence from Natural England would be required before starting works on the site. Wilson never instructed an ecologist to carry out a survey and did not apply to Natural England for a licence. In the spring of 2016 Mr Wilson contracted Mr Stokes to start work on the buildings.*

*In October 2016 a local councillor contacted police to raise concerns that the demolition work that had been carried out on the site may have caused damage to the bat roosts.*

*A Dorset Police Wildlife Crime officer attended, along with the ecologist who had carried out the original Biodiversity Mitigation Plan in 2012. It appeared that bats were still present and, following consultation with Natural England and the Bat Conservation Trust, an email was sent to Wilson on 20 October 2016 giving him a formal warning of the requirement to apply to Natural England for a licence. However, an email was sent to South Coast Demolition by Mr Wilson on the 10 November, after police advice, asking when they could commence demolition. The police officer sent another warning email on 17 November 2016 but demolition had already begun. Upon receipt of the second police email Wilson sent an email to South Coast Demolition the same day telling them to stop the demolition immediately due to risk of prosecution but work had already progressed since the site visit and the roosts had been destroyed.*

*A different ecologist carried out a visit on 28 November 2016 and confirmed the roosts had been destroyed. The district judge at the sentencing of Stokes acknowledged he was acting under the direction of Wilson. At Crown Court the Judge stated "it is easy to obtain information from the Bat Conservation Trust that play an invaluable role in helping. There is no excuse for this situation that came about"*

*Police Constable Claire Dinsdale, of Dorset Police's Rural Crime Team, said:*

*"The developer contracted a demolition firm to carry out a 'soft strip' which went far too far. Despite ceilings, windows and even some tiles being ripped out, it was decided by police, the CPS and Natural England as bats appeared to still be present to send these warnings to the developer. However, despite receiving a reply to this email, an email was later sent by Mr Wilson to the demolition firm asking when they could demolish the site. No ecologist had been instructed, no bat surveys done and no licence to carry out such works had been applied for. In mitigation Mr Wilson had arranged for bat boxes to be put up at the site.'*

*What makes this case nationally important is that we applied for a Proceeds of Crime Act 2002 application, which is only the second time this has been done for bat crime in the UK. A 'POCA' is where if a defendant is shown to financially benefit from a crime. The order is to reclaim an amount. Mr Wilson was saved the costs of an ecologist survey and licence fee hence these costs were claimed for. We are pleased the court has reflected this in the result today."*

---

## Case study 3

---

*A complex investigation undertaken by Kent Police recently saw London based Knightspur Homes convicted at Sevenoaks Magistrates Court on three counts of roost destruction. Sentencing was adjourned for consideration of a Proceeds of Crime Act (POCA) confiscation order by the Crown Court.*

*On Tuesday 20 April Maidstone Crown Court ordered Knightspur Homes to pay a total of £20,321 to the court within seven days. On each charge the company was fined £4,000, with costs of £3,036. In addition an order was made requiring payment of £5,285 under POCA.*

*The investigating officer PC Wayne Wright said: 'In 2015 an ecology survey was commissioned at Eden Hall Estate, Edenbridge, to support a planning application for a proposed development. This was to build 20 new houses and convert the main building into flats. This survey revealed a number of species of bat throughout the site and recommendations were made to the company that a licence from Natural England would be required before any work was carried out on certain buildings.*

*'In August 2016 one of the buildings, identified in the survey as containing roosting bats, was seen to have been demolished even though no licence as required for this process had been applied for or issued.'*

---

## 7.14 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 £4000 for each of three charges of roost destruction. 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 POCA 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. But 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. But what is really needed is sentencing guidelines for wildlife crime. Over the past year BCT, as a member of Wildlife and Countryside Link (WCL), have been working in partnership lobbying for such guidance. The Sentencing Council, with whom we met in early 2018 have now launched a consultation on guidance for the sentencing of wildlife crime. BCT will respond to that consultation.

## Case study 4

---

*On Thursday 5 October 2017, Paul William Floyd and Ronald John Floyd of Havant, Hampshire pleaded guilty at Portsmouth Magistrates Court to a charge of illegally destroying a bat roost. Each was fined £200 and ordered to pay £35 costs and an £85 victim surcharge.*

*The Floyds are directors of a building company Havant Building Services Ltd. In February 2017 they were undertaking work on a house in Rowlands Castle, Hampshire, when a worker on site, stripping roof tiles, discovered a bat. The finding of the animal and sightings of others in the roof was reported to the Floyds who initially stopped work. However, some time later an employee reported that no more bats had been seen and the work recommenced. No ecological advice was at any time sought. During the course of the police investigation a bat worker visited the address but no evidence of a roost was found.*

*The sentences imposed accepted the suggestion put forward by the defence that a single animal had occupied the destroyed roost.*

---

## 8. Future work

- ★ The BCT will continue to 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 the BCT will look at the role of the organisation as a conduit for the submission of intelligence to NWCU.
- ★ The 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.
- ★ The BCT will continue to look for and take up opportunities to provide training on bat crime, in particular to enforcers and prosecutors.
- ★ The 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.
- ★ The BCT will continue to work with enforcers to ensure that wherever possible early action is taken to prevent offences against bats.
- ★ The 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.
- ★ The 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.
- ★ The 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 we have worked with police forces across the UK providing assistance and advice aimed at preventing bat crime. The effective investigation and prosecution of such offences has 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 were therefore delighted in 2016 to have gained support and funding from the Esmée Fairbairn Foundation for a three year Conservation Wildlife Crime Project.

During the funding period we are consolidating and expanding on the work we began fifteen years ago. However, we recognized 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 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 organizations 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 endeavor to ensure that penalties for this type of wildlife crime are dissuasive.

To achieve this, we are providing legislative and investigative advice to investigating officers. Importantly, we also work with relevant organizations to facilitate expert ecological evidence on the conservation impact of these crimes being available to investigating officers and prosecutors where needed.

**The Bat Conservation Trust,  
Quadrant House,  
250 Kennington Lane,  
London, SE11 5RD  
Telephone: 0345 1300 228  
Email: [enquiries@bats.org.uk](mailto:enquiries@bats.org.uk)  
[www.bats.org.uk](http://www.bats.org.uk)**

Registered charity number England and Wales 1012361, Scotland SC040116.  
Company limited by guarantee number 2712823.