

Stag Hunting - Legal Overview and Potential Challenges

Instructions

1. Action Against Fox Hunting (AAF) has instructed Advocates for Animals (AFA) to advise on the relevant legislation which surrounds stag hunting in England.
2. In particular, AAF has asked AFA to provide the following:
 - a. An overview on the relevant law
 - b. Potential next steps for challenge
 - c. A checklist points that can be used to send to the police

Executive Summary

3. Despite the Hunting Act 2004 (HA 2004) having been in force for almost 20 years, making it illegal to hunt wild mammals with dogs, hunting continues today. Despite it being welcomed and applauded as a great milestone in furthering animal welfare law, the reality of the Act and the continued resistance to it from pro hunt supporters has led to a web of complex case law and, often, apparent contradiction.
4. A number of exemptions within the HA 2004 have been (and continue to be) used which often allow stag hunts to effectively circumvent the legislation, often with little consequence, due to the far reaching nature and vagaries of the same.
5. Poor enforcement action from the police and limited success prosecuting cases by the CPS has only added to the poor adherence to the legislation.

6. With some exemptions seemingly preferred over others, it seems the landscape of stag hunting remains one which is proving difficult to curtail and stag hunts continue to regularly meet and hunt, with the end result being the loss of life for many stags.
7. Without more campaigns around this issue, seeking to raise public awareness of the reality of stag hunting, much improved enforcement action by the police/CPS and an increase in successful legal challenges being put forward, in an attempt to abolish hunt activities and challenge the legality of the exemptions they rely upon, it seems difficult to imagine how such hunts will cease with current legislative provisions.

Stag hunting

8. Red deer is Britain's largest native land mammal. Male red deer are known as stags; females as hinds. The hunting season for young stags is March through to the end of April (a month window) and for mature stags it runs from early August until the end of October (a three month window). In reality though, according to the Observed to Death Report (OTD Report), hunt groups go out for many more months each year.¹
9. The Masters of Deerhounds Association consists of three packs of staghounds. All three of these are registered stag hunting packs based in the south-west of England: the Devon & Somerset Staghounds that hunt the country within the Exmoor National Park; the Quantock Staghounds who hunt on the Quantock and Brendon Hills to the east of Exmoor and the Tiverton Staghounds who hunt the valleys of the Exe, Taw and Torridge.
10. The late Patrick Bateson, a professor of ethology and his assistant Elizabeth Bradshaw were commissioned by the National Trust to prepare a report back in the 1990s on the behaviour and physiological effects of culling red deer. This came about as a result of concerns that had been raised by National Trust members regarding stag hunting on National Trust land. The report concluded (emphasis added):

¹ Observed to Death Report - Report on how illegal stag hunts in England avoid prosecution, League Against Cruel Supports, By Jordi Casamitjana August (2017)
https://www.league.org.uk/media/filer_public/b6/a6/b6a6fdff-0bb7-41f7-97f4-cbfa3b4d1abd/observed_to_death_-_report_about_illegal_stag_hunting_2017.pdf

“The effects on deer of long hunts were (i) depletion of carbohydrate resources for powering muscles, (ii) disruption of muscle tissue, and (iii) elevated secretion of B-endorphin. High concentrations of cortisol, typically associated with extreme physiological and psychological stress, were found. Taken together, the evidence suggests that red deer are not well-adapted by their evolutionary or individual history to cope with the level of activity imposed on them when hunted with hounds. The exertion associated with hunting with hounds resulted in marked physiological disturbances of red deer, including muscle damage and pronounced intravascular haemolysis [rupture or destruction of red blood 64 <http://www.houndsoff.co.uk/archives/tag/bateson-report/> 30 cells]. We do not believe that these changes merely occurred at the end of the hunts. The evidence suggests that haemolysis occurred early in the hunt, resulting perhaps from upsets in ionic balance, extreme plasma acidity or hyperthermia”.

11. The report clearly identified correlation between the hunting of stags by stag hunts and the marked deterioration in the stags behaviour and physiology as a result of the same. As a result of the report the National Trust went on to ban stag hunting on its land.
12. Due to public support for a hunting ban to come into force the Bateson and Bradshaw report only added to the same and the government was pushed to act; in February 2005 the HA 2004 came into force.
13. Whilst this was much celebrated, as time has gone on flaws in the Act have continued to be highlighted. In addition, exemptions within the HA 2004 have been exploited by the hunters, which has allowed stag hunts to continue and whilst there have been some successful prosecutions, many hunts have continued under the radar or have successfully relied on exemptions or cases have not been pursued by the CPS, which has led to stag hunts continuing largely unimpeded.
14. It is our understanding that hunts meet regularly, usually several days a week in the hunting season and take place on private land with a large number of individuals involved. **Please let us know if you are aware of stag hunts taking place on public land or roads.**
15. Stag hunts can involve humans on foot and on horseback, hounds, cars that drive viewers and quad bikes to help stalk the stags. The number of vehicles and people involved lessens any chance of a stag escaping the area and often leads to an exhausting and traumatic chase for the stag which eventually leads to their death.

16. Usually there is a gun carrier (with a shotgun) who will shoot the deer. However, there can be others who carry pistols in case it is not possible to use the shotgun. If a hunt claims it is flushing deers to guns, there may also be marksmen who carry shotguns or rifles. As such, the amount of guns on any hunt can vary greatly.
17. The way a stag hunt works is as follows: members of a stag hunt gather; there are different roles within any hunt including a harbourer - this person often goes out the days/nights preceding the hunt and identifies a suitable stag and its location for the hunt to follow. There are also gun carriers (as above) and the field master who will guide and manage the hunt. Other roles include the hunt masters - who are responsible for the overall management and conduct of the hunt (often liaising with any relevant landowners) and the whipper-ins who are responsible for keeping the pack together. There is the huntsman - who directs the hunt and controls the pack and there is also "the field", a collective term for mounted followers of the hunt. Various supporters often follow the hunt too, on foot, in cars and on quad bikes.
18. The overall time of a hunt can last several hours on any given day and some hunts can go on for longer than one day and cover a huge distance. However, it is believed that the overall time of a hunt is around three hours over a distance of 18km². At the end of the hunt, the deer eventually becomes exhausted, which results in the deer being surrounded and "stands at bay" - the deer is then shot, usually at close range.
19. Flushing out is common in stag hunting. This term refers to a noise, movement or dogs being used to cause animals to feel nervous and subsequently leave their cover looking for alternative safety.
20. The exemptions that exist are outlined below and include 1) stalking and flushing out an animal in order to protect or reduce damage to either livestock, birds, timber that is being grown and fisheries (broadly speaking), (2) rescuing a wild mammal and finally (3) carrying out research and observation. The most common exemption is the latter - the research and observation exemption (discussed further below). One theory is that exemptions are chosen retrospectively when the stag is caught, to determine what is the best fit/line of defence for the hunt taking place.

² League Against Cruel Sports: <https://www.league.org.uk/what-we-do/hunting/deer-hunting/>

21. The low prosecution rate, despite a huge amount of footage being provided by stag monitors, can be seen to encourage stag hunts by increasing their confidence to continue the practice in the absence of any penalty.
22. It is also understood that stag hunts often claim hunt saboteurs are interfering with their activity claiming the deers pursued are the property of the hunt. We also discuss the property status of wild animals further below.

Relevant legislation

Hunting Act 2004

23. Under Section 1 a person commits an offence if they hunt a wild mammal with a dog unless the hunting is exempt, in accordance with Schedule 1 of the HA 2004.)
24. Under Section 11(1) a wild mammal includes:
- *A wild mammal which has been bred or tamed for any purpose*
 - *A wild animal which is in captivity or confinement*
 - *A wild animal which has escaped or released from either captivity or confinement,*
and
 - *Any mammal which is living wild*
25. Section 11(2) states:

A reference to a person who hunts a wild animal with a dog includes cases where:

- (a) person engages or participates in pursuit of a wild mammal and*
- (b) employs one or more dogs for that pursuit (whether or not by him and whether or not under his control/discretion*

26. Under Section 3, a person commits an offence if he knowingly permits land which belongs to him to be entered or used in the course of the commission of an offence under Section 1 and commits an offence if he knowingly permits a dog which belongs to him to be used in the

course of the commission of an offence under Section 1. As such, evidence of interests in land can sometimes be necessary.

27. There is a defence to hunting where it can be shown that a person *reasonably believed* the hunting to be exempt (under Section 4).
28. Exempt hunting is set out in Schedule 1. The first, eighth and ninth exemptions are the most relevant to wild stag hunting.
29. The first exemption is stalking or flushing out a wild mammal - *if* the following conditions are met:

First condition: it is undertaken for the following purpose:

- (a) to prevent or reduce serious damage which the wild mammal would otherwise cause to: livestock, game birds or wild birds, to food for livestock, to crops, growing timber, fisheries, other property or to biological diversity of an area*
- (b) Obtaining meat to be used for human or animal consumption or*
- (c) Participation in a field trial- a competition in which dogs flush animals out of cover or retrieve animals that have been shot (or both), and are assessed as to their likely usefulness in connection with shooting*

Second condition: it takes place on land:

- (a) which belongs to the person doing the stalking or flushing out, or*
- (b) which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs*

Third condition: it does not involve the use of more than two dogs

Fourth condition (though not relevant to stag hunting): it does not involve the use of a dog below ground (there is an exemption whereby one dog can be used in the course of stalking or flushing to protect birds for shooting)

Fifth condition: reasonable steps are taken for the purpose of ensuring that as soon as possible after being found or flushed out the wild mammal is shot dead by a competent person and in particular each dog used in stalking or flushing out is kept under sufficiently close control

30. The eighth exemption is the rescue of a wild mammal:

An injured wild mammal may be hunted for the purpose of relieving its suffering but by no more than one dog which is under sufficiently close control and appropriate action must be taken to relieve its suffering as soon as possible thereafter. The hunter must reasonably believe the wild mammal is injured or may be injured and a wild mammal cannot be harmed so that this exemption can be relied upon. Permission of the landowner is also required.

31. The ninth exemption is for research and observation:

If the hunting is undertaken for the purpose of or in connection with the observation or study of the wild mammal it is exempt. Again, no more than two dogs must be used and they must be kept under sufficiently close control to ensure they do not injure the wild mammal. The landowner's permission is needed.

32. Section 6 sets out the penalties for offences contrary to the HA 2004. All the offences under the HA 2004 are summary-only and the maximum penalty for these offences is a level 5 fine (unlimited).

Possible breaches and challenges under the HA 2004

33. There are a number of exemptions within the HA 2004, it would of course be useful if successful prosecutions could be brought, in respect of *each* of the exemptions.

34. There are a number of potential points we feel it useful to highlight in respect of the exemptions and possible challenges.

35. According to the CPS Guidance³ common lines of defence include:

³ The Hunting Act 2004, Legal Guidance, Updated August 2019 - <https://www.cps.gov.uk/legal-guidance/hunting-act-2004>

- a. No intent proven - *defendants claim that although their dogs may indeed have hunted a wild mammal, there has not been proof that they intended their dogs to do so, or that they could have done anything to stop them since they were far away from the dogs when the chase took place.*
- b. No connection with offenders - *defendants claim that they were not aware that someone else was committing an offence under the Hunting Act, and the fact they may have been recorded together with the offender is coincidental.*
- c. No specified mammal was hunted - *defendants may claim therefore that there is no evidence that their dogs were chasing a wild mammal.*
- d. Wrong identification- *defendants claim that they were not the offenders identified in video evidence.*
- e. Temporary lapse - *defendants claim that they were hunting legally all day (trail hunting) and for a moment they had a temporary lapse when they saw the hounds chasing a fox and they did not do as much as they could to stop them.*

36. In addition an exemption may be relied upon. As such it would be an important exercise to assess all the surrounding factors of the exemption relied on.

37. *For exemption 1 , this being the stalking or flushing out of a wild mammal, the stag hunt in question would be required to provide the reason for carrying out the hunt to the police to ensure it falls within the exemption, such as protecting livestock. As such steps should be taken to try to obtain as much evidence as possible to undermine the reliance of the exemption, for example, prior to the stag hunt it might be useful to understand if farmed animals are on the land in question and whether they could be said to be reasonably at risk, or what evidence exists of them consuming the animal or a competition existing, were the relevant permissions sought from the land owner. Any evidence that can be gathered to disprove this exemption would prevent the hunts being able to rely on it, should it fit with the events of the day.*

38. In addition, if there is reason to believe that stag hunting is taking place on land without the owner's permission the police should be called immediately.

39. The stag hunting news item - shown on Channel 4 news on 26 September 2023⁴ confirmed that a stag hunt took place on National Trust land and the National Trust later commented that this did appear to have been trespass. In addition to ruling out the ability for a stag hunt to rely on the exemptions, a possible trespass claim could also be pursued by the landowner. The National Trust may also consider requesting the police to bring charges under the HA 2004, or alternatively bring its own private prosecution. Campaigning and obtaining public support, in order to put pressure on the National Trust to respond to this issue could prove invaluable. The news story on Channel 4 suggested that this happened on 14 September 2023. The time limit for HA 2004 cases is six months from the date of the offence, this means there is still time for them to consider bringing an action.
40. The third condition of exemption 1 does not allow the use of more than the two dogs. In reality stag hunts try to evade this by using dogs in relay form, this being two being sent out, returning and then a different two dogs going out. In some cases, however, more than two dogs have been spotted at the same time. This would prevent the reliance on the first exemption.⁵ In the OTD report it also details a letter from DEFRA minister (at that time) Ben Bradshaw in 2005, published in the Western Daily Press, which stated that using two hounds in relay to chase, rather than flush, prey was illegal.
41. It would be useful for evidence to capture how many dogs are being used and in the case of relay hunting to capture any possible crossover of the pairs of dogs. To date, the relay aspect does not appear to have been tested in court.
42. In terms of condition five, many cases of stag hunting appear to show the stag being chased for a prolonged period of time (sometimes several hours) and, at times, in close enough proximity to the hunting party who could, arguably, shoot the stag. Video footage and stills (with time references on), could be very helpful in demonstrating to the police the failure of the stag party to shoot the deer as soon as practicable after they have been found and thus supporting the view that the animal is not shot as soon as possible, but effectively cornered

⁴ Channel 4 news: Hunters chase stag on quad bikes despite ban
<https://www.channel4.com/news/hunters-chase-stag-on-quad-bikes-despite-ban>

⁵ In the OTD report, it notes in "79% of the stag hunt monitoring operations conducted by a team of wildlife crime investigators over the last 10 years, investigators reported seeing more than two dogs being used in relays (note the report is dated 2017).

for long periods of time until its eventual death, either at the hands of the hunt group or the dogs.

43. The difference between flushing and chasing is important and a test case which delved into this further could prove helpful, particularly as once flushed out a deer, in theory, should be shot as soon as possible according to the wording of the exemptions. Chasing suggests a pursuit, which it could be argued is not the intention of spirit of the law under the HA 2004 and a case which could narrow definitions here could prove useful.
44. Stag Hunts may assert that it was not possible to shoot as soon as possible due to obstruction etc and therefore it was necessary for them to be able to get in position to shoot which may take time. Inevitably, this line of argument leads to animals being chased and potential illegal hunting taking place. Footage of animals being chased, when it is clear the animal could be shot would therefore be helpful.
45. Dogs also must be kept under sufficient control. Therefore evidence showing they are out of control, for example not near humans, on roads, acting aggressively would be helpful.
46. In the OTD report a number of case studies are detailed. In a case against the Quantock Stag Hounds (QS) in 2006/2007 the exemption of stalking and flushing out was used. The accused were convicted for breaches under the HA 2004 and lost subsequent appeals. District Judge Parsons described the defence under this exemption as disingenuous and fined both accused men £500 and ordered them to pay £1000 towards costs. District Judge Parsons concluded that the primary purpose of the hunt was “sport and recreation, preserving a way of life that the participants and the defendants are not prepared to give up” and stated that the pair were “disingenuous in attempting to deceive me into believing they were exempt hunting”. The Judge also stated “this was a continual act of hunting over a period of two and three quarter hours....some of the deer found in the first flush were present at the final flush... the dogs may well have been deployed in relay to use fresh dogs to chase the deer faster and harder, to tire them quicker and to compensate for having to hunt with only two dogs”.

47. From this case we see that a successful prosecution was brought under exemption one of the HA 2004. The judge appears acutely aware that the defence was essentially a smokescreen for what was actually happening on the ground by the hunt and it is reassuring to note the judicial attitude taken in this particular case. As detailed above the exemption of flushing out requires shooting as soon as possible, which did not happen in this case.
48. If it is suspected that an exemption is being used to mask an illegal hunt, this case highlights how helpful it is for any evidence regarding a disingenuous exemption being put forward. In particular, it could be very useful here if it is apparent that a hunt has retrospectively chosen an exemption to apply - to best “fit” the circumstances of their hunt that this is also explained and submitted (if possible) within the evidence. However, the concern of course is this is one isolated case amongst others, this case also took place in the Magistrates Court, which is not binding. There are also a range of less favourable cases, for example in 2018 the same hunt was cleared of illegal hunting claiming they had no intention to hunt and were instead following a trail.
49. *Under exemption 8 - rescue of a wild mammal*, it is a requirement that “the hunter must reasonably believe the wild mammal is injured or may be injured. Wild mammals cannot be harmed in order for this exemption to be relied upon”.
50. It would be useful to obtain evidence that shows the stag was or was not injured before the hunt began.
51. Further, unless an animal is obviously injured, it is questionable how stag hunters themselves (as opposed to veterinarians) can *reasonably* determine this.
52. A successful prosecution was brought against a hunter who tried to rely on this exemption whereby a huntsman claimed he was hunting an injured stag (an apparent broken hip) in order to relieve their suffering. Video footage by the LACS was used as evidence in this case which helpfully demonstrated that the stag was pursued over open land by three dogs and therefore the exemption being relied upon was not therefore valid. However, a fine of only £375 was imposed, with a victim surcharge of £15 and £2,530 payable in costs. District Judge

Martin Brown said the accused was in control of the dogs and could have called them back, but failed to do so.

53. Under **exemption 9**, research and observation allows hunting for the purpose of research but also allows the exemption to be applied “*in connection with the observation or study of the wild mammal*”. It is unclear exactly what this means and has certainly been used in practice to cover a wide array of matters including it being necessary to take blood samples, to obtain health, condition and behaviour data of deer.

54. It is difficult to find commentary on what was actually intended by the “research and observation” exemption within the HA 2004.

55. However, interestingly, the late Lord Soulsby in a Hunting Bill debate held on 16 September 2003 commented⁶ (emphasis added):

“I am particularly glad to see that the Bill contains one area with which I would agree; that is the use of dogs if hunting is to be pursued for research and observation. That is a very important undertaking. The welfare of quarry animals is little known. It is a point that was made in the Burns report. I declare that I was a member of that committee. The more information that we have about the physiology and the welfare of quarry animals the better we can understand the whole issue of welfare in hunted animals. At least it would avoid the application of anthropomorphism that has dominated misquotation and misinterpretation of the results laid out in the Burns report. I would hope of course that any requirement for this research would follow the Animals (Scientific Procedures) Act 1986.”

56. This is useful because it lays out the expectation that such research and observation would have some scientific basis surrounding it and, as such, would follow the Animals (Scientific Procedures) Act 1986. This would certainly seem a reasonable interpretation of the exemption as it currently stands and it adds weight to the idea of making further enquiries to the Home Office who are ultimately responsible for the enforcement of this Act.(see paragraph 73 below).

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<https://hansard.parliament.uk/Lords/2003-09-16/debates/1661cb3b-89e3-4963-8fb2-56db6dfca737/HuntingBill>

57. Ideally this definition would be tighter. If a test case could be brought, which could determine the exact scope of how connected to observations and research purposes stag hunts should be, this may tighten the exemption and make prosecutions more likely to succeed.

58. This is the category of exemption that has proved most difficult to challenge to date with the OTD report commenting:

“Unfortunately, the repeated failure of the CPS to prosecute hunts using this exemption has given more credence to the use of the ‘observation and research’ exemption as hunters can claim that they reasonably believe that what they did under this exemption was legal (on the basis that previous allegations against them failed to secure a prosecution). The response from the authorities to the use of this exemption as a false alibi is therefore serving to reinforce its continuing use, making it more difficult to prosecute future cases, and essentially creating a workable loophole which now may only be properly closed at a legislative level”

59. The OTD report details the case against Devon & Somerset Staghounds in 2015 whereby the group claimed the observation and research exemption. The police investigated but ultimately the CPS decided not to prosecute. In this case evidence from an agriculture, conservation and wildlife consultant was put forward to demonstrate that she was involved with the study of deer and information had been provided to her by the stag hunt. This was sufficient to satisfy the police/CPS that the exemption applied and the hunt could not be prosecuted.

60. An interesting overlap with this exemption lies in the Animals (Scientific Procedures) Act 1986 (discussed further below).

61. Based on the above, there is a concern that there is little stopping hunts from claiming this exemption applies to the hunting they are carrying out. In addition, given the wording of the exemption, there is no requirement for the stag to be killed as soon as possible, which can result in a long chase.

62. To push back against this exemption there is still a requirement of no more than two dogs and for the dogs to be kept under sufficient control so as not to injure the wild mammal, so any evidence to undermine this would be helpful. In addition, any evidence that reveals the animal has been injured could prevent the reliance on this exemption.

63. Looking at the study of Bateson and Bradshaw, it is arguable that psychological injury is caused to the deer during a hunt. Commissioning a report from an ethologist could be useful to explore this further. If a test case could put forward asserting that “injury” includes *both* psychological and physical injury then this could be very useful in preventing the broad reliance on this exemption and securing convictions.
64. If this were successful, it would mean that even without the stag incurring physical injuries, the mere fact of any form of chase or traumatic experience caused by the dogs to the stag could be sufficient to show injury and therefore it be argued that the exemption does not apply. This argument is unlikely to be sufficient for a minor chase, as quite clearly the exemption was intended to apply to something; however, the more onerous the chase, the stronger the argument will be.
65. It would also be useful if police were present at hunts for them to be actively stopping and searching (if necessary and possible under Section 8 of the HA 2004) as this may useful evidence, for example, if the vehicles were searched, they may be able to ascertain exactly how many dogs were being used that day etc.
66. We will now discuss such further relevant legislation.

Animal (Scientific Procedures) Act 1986 (ASPA 1986)

67. This piece of legislation is of particular importance in relation to the research and observation exemption of the HA 2004.
68. A deer would be a protected animal under section 1 ASPA 1986.
69. A regulated procedure is defined under section 2 as follows:
- (1) *Subject to the provision of this section, “a regulated procedure” for the purposes of this Act means any [procedure applied to a protected animal for a qualifying purpose which may have the effect of causing the animal a level of pain, suffering, distress or lasting harm equivalent to, or higher than, that caused by the introduction of a needle in accordance with good veterinary practice.*

(1A) A procedure is applied to an animal for “a qualifying purpose” if—

- (a) it is applied for an experimental or other scientific purpose (whether or not the outcome of the procedure is known); or
- (b) it is applied for an educational purpose.

(7) Killing a protected animal is a regulated procedure only if—

- (a) it is killed for experimental or other scientific use;
- (b) the place where it is killed is
 - (i) a place that is specified in a licence granted under section 2C, or
 - (ii) a place that is specified in a project licence by virtue of section 5(3), and
- (c) the method employed to kill the animal is not—
 - (i) a method that is appropriate to that description of animal under Schedule 1, or
 - (ii) in a case within paragraph (b)(i), a method that is specified as being appropriate to that description of animal in the licence granted under section 2C.

3 Prohibition of unlicensed procedures

No person shall personally apply a regulated procedure to an animal unless—

- (a) he holds a personal licence qualifying him to apply a regulated procedure of that description to an animal of that description;
- (b) the procedure is applied as part of a programme of work specified in a project licence authorising the application, as part of that programme, of a regulated procedure of that description to an animal of that description; and
- (c) the place where the procedure is carried out is a place specified in ... the project licence.

Possible challenges under the ASPA 1986

70. The biggest area of challenge here is to assess whether all the correct licences are in place, these being a personal licence for the individuals doing the 'regulated procedure', a project licence for the purpose of the 'regulated procedure' and an establishment licence for where it all takes place.

71. It is pertinent to note that the Animals in Science Regulation Unit (ASRU) is responsible for administering and enforcing ASPA 1986 in England, Scotland and Wales and is part of the

Home Office. As such it is the ASRU that could be sent Freedom of Information (FOI) requests as to any licences that have been granted in respect of stag hunts.

72. In the OTD report, a letter was sent to the ASRU in 2015 posing the following question:

'Could you please inform me about which type of licences would be required to undertake a research project involving lethal procedures on British wild mammals, which are captured from the wild and the procedures are applied on the field where they were found?'

73. The ASRU responded confirming that in order to undertake such work - establishment, project and personal licences would likely be required from the ASRU.

74. In the event they have all the licences, it would be useful to try to get hold of them either through FOI and/or a summary of the work through ASRUs annual report.

75. Finally, Section 22 of this Act notes penalties for contravention and these range from custodial sentences from 3 months to two years and/or fines.

Deer Act 1991 (DA 1991)

76. This is the primary piece of legislation specifically dealing with offences against deer.

77. Section 1 states it is an offence (without the consent of the occupier, owner or lawful authority) to:

- *Enter a land with the intention of taking, killing or injuring deer,*
- *Searching or pursuing a deer for the same intention,*
- *Intentionally take, kill/ injure or attempts to do so or remove the carcase of any deer would be guilty of an offence*

However, these activities would not constitute as offences if:

- *there is consent of the owner or occupier of the land if the owner/ occupier knows and the circumstances of it or,*
- *If there is lawful authority to do it*

78. Section 2 states it is an offence to take or intentionally kill any deer of a species specified in Schedule 1 of the DA 1991 in the prescribed close seasons (i.e. times of the year deer cannot be killed) unless by a person/servant/agent of that person by way of business has kept deer in enclosed land and they are marked to identify themselves to that person.
79. Section 3 states that it is an offence for a person to take or intentionally kill any deer between the expiry of the first hour after sunset and the beginning of the last hour before sunrise.
80. Section 4 lists prohibited weapons and articles, but the same can be permitted with the landowners consent.
81. Section 6 also lists general exemptions which can include killing and taking deer if, for example they are done in pursuance of a requirement by the Minister of Agriculture, Fisheries and Food, to prevent suffering of an injured or diseased deer or if the person believes the deer is without its mother on which it was dependent.
82. Where killing is permitted, reasonable means can be used which result in rapid loss of consciousness and death and which is appropriate and guns can be used so long as:
- *it is not less gauge than 12 bore;*
 - *has a barrel less than 24 inches (609.6 mm) in length; and*
 - *is loaded with a cartridge purporting to contain shot, none of which is less than .203 inches (5.16 mm) in diameter (Size AAA or larger).*

Different gun specifications are applicable to Chinese water deer and Muntjac deer.

83. An important consideration is where the hunt members are positioned and whether they have (on their persons) the required guns to shoot. Evidence that can show that they are actually some way away, or hunt members close by who appear to have guns (but not the required guns) would also be useful.
84. Section 7(3) also allows occupiers of land where there are deer to take or kill if they have reasonable grounds to believe that (i) the deer were causing or had already caused damage to crops or any other form of property, (ii) that further damage could be caused and it was likely to be serious and (iii) the action taken was necessary to prevent the damage.

85. Under Section 8 there are also exceptions for licenced persons, granted by either Natural England (English land) or Welsh Ministers (welsh land).
86. A licence may be granted to any person by [Natural England] exempting that person, and any persons acting with his written authority. A licence may be granted for the reasons outlined in section 8 of the DA 1991. It would be worth making a freedom of information request to Natural England to determine whether any licences have been granted.
87. To determine whether there is a prima facie offence, permission of the landowner is again key in the case of taking, killing or injuring deer and lawful authority is required. Stag hunts may well claim they have landowner permission and lawful authority under the HA 2004 to be carrying out a hunt. In the event a prosecution could not be brought under the HA 2004 (and no exemption is applicable), then there could be potential to assert there has been a violation of the DA 1991 as well, which carries tougher penalties.⁷
88. In the event that an exemption is being relied on it would be useful to gather as much information as possible. For example, it would be worth ascertaining any possible licence and considering whether it was lawfully granted by Natural England or whether there are grounds to challenge.
89. If you suspect some form of hunting is taking place, without the use of dogs (in which case the HA 2004 would not be applicable), whether by humans who are on foot, on horseback or using some form of vehicle, such as a quad bike, it may be possible to pursue a challenge under the DA 1991.
90. FOI requests could be made asking the police/CPS to confirm how many allegations of hunting stags (but without the use of dogs) have been made by the public and pursued with successful/unsuccessful convictions under the DA 1991. Such information could assist in determining the level of prosecutions in the DA 1991 compared to that under the HA 2004 (if a similar request was made under that Act), particularly as there appears to be many more vehicles involved in stag hunting now than ever before. This may be a useful campaign point, even if not a direct legal issue, to ascertain if the landscape of hunting is changing at all.

Animal Welfare Act 2006 (AWA)

91. The AWA 2006 applies to protected animals. Section 2 confirms which animals are protected under the Act. An animal is a “protected animal” for the purposes of this Act if—

⁷ Section 9 Deer Act 1991

- (a) it is of a kind which is commonly domesticated in the British Islands,*
- (b) it is under the control of man whether on a permanent or temporary basis, or*
- (c) it is not living in a wild state*

92. This would not likely cover wild deer that are subject to mere stalking in stag hunts, but could, potentially, apply to captured deer during hunts if it were possible to show that the deer were under the control of man on a temporary basis. If a deer is surrounded, with no realistic prospect of escape, even over a very large area, then it could be interesting to test this provision in court i.e. whether the deer could *become* a protected animal for the purpose of this Act. There are no certainties it would be successful, but it would be an interesting principle to establish. Video footage and photographic evidence would be very important in this scenario to evidence that the deer was captured and had no means of escape.
93. If the AWA 2006 could successfully cover such cases, this would mean the basic standards afforded by the AWA 2006 would be applicable to deer. Under the AWA 2006 it is an offence to cause unnecessary suffering⁸ to an animal or fail to provide for their basic needs.⁹
94. Whether or not an animal suffered would usually be determined by a veterinary expert. Reports such as the Bateson and Bradshaw report could prove useful in such legal arguments as well as any other expert reports available.
95. The offence of unnecessary suffering may be caused to stags in numerous circumstances. Each case would need to be considered on its own facts, but some examples could be:
- (a) destroying them in a manner which is not appropriate or humane;*
 - (b) keeping or handling them in a manner which causes unnecessary suffering;*
 - (c) failing to provide necessary veterinary treatment*
96. Whether that suffering was necessary or unnecessary would be determined by the court having regard to all the circumstances. In the event you were able to argue that the AWA 2006 applied, it is possible that the hunt could argue they had a lawful basis under HA 2004

⁸ Section 4 AWA 2006

⁹ Section 9 AWA 2006

or DA 1991 as the suffering was “necessary”. However, in the event they were found guilty under those Acts, then this may be an interesting additional charge.

97. Another potential angle under the AWA 2006 is the offence of animal fighting under Section 8. “Animal fights” are loosely defined as “an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting”. This could be considered if there is reason to suspect that dogs are being placed with wild mammals in order to fight. This may become relevant during or at the end of a stag hunt and is an issue to bear in mind, given the possible penalties and ought to be considered in its own right (if a successful prosecution under the HA 2004 cannot be made out) or alongside a possible prosecution under the HA 2004

98. The case of *Royal Society For The Prevention Of Cruelty To Animals v McCormick* (2016) [2016] EWHC 928 (Admin) contains some useful points in the judgment that could apply to dogs hunting stags, namely:

a) Paragraph 25 states:

Parliament's intention was to outlaw fights, wrestling or baiting which occur in a contrived and/or artificial setting as a consequence of the deliberate and intentional acts of a person placing them in that setting for entertainment and/or financial gain.

It could be argued that the spirit of the AWA 2006 was to ensure that animals were not placed in artificial environments, created by humans, in order to fight or be fought for the purpose of entertainment. Supposed “sports” such as hunting could arguably fall under the spirit of the AWA 2006, if it is accepted that the AWA 2006 is to prevent cruel offences against animals once under some form of human control (directly or indirectly).

b) Paragraph 32 states:

There are in my judgment two key elements by reference to the assumed facts in order for an animal to be “placed with” another animal “for the purpose of fighting”, namely physical proximity and control :

(a) Proximity in the sense that the other animal must be immediately present. There is no hunt or chase to find the other animal;

(b) Control in the sense that the other animal cannot escape. I accept that the fact that the paradigm example of an animal fight under section 8 may be one in a confined area does not itself determine that there is thus a requirement for confinement in all cases. But it seems to me that unless the other animal, say a deer, cannot escape, one is not “placing” the dog “with the deer”. Rather one is simply placing the dog in a field where there was a deer.

It would depend on the stag hunt whether a deer was immediately present for the dogs to see but even in the event it was not, there may be scope for a case to run, with a view to expanding and considering the “control” aspect of this further in the hope of further clarification. A deer may initially be free to escape, but as hunts continue, the deer is inevitably surrounded and any possibility of it seeking any form of refuge is taken away, solely due to the dogs and hunt members containing it little by little, until it is effectively a captured animal. This would be an interesting point to potentially test in the courts.

c) Paragraph 39 states:

As for the example advanced by the RSPCA, namely of two dogs bred for fighting being placed together in an open field to fight, quite different considerations arise. If the dogs were encircled by onlookers so as to prevent escape, there would be no reason why such activity could not fall within section 8 of the Act.

99. If it were a successful route to challenge, this may have implications for the applicability of other legislation, i.e. the Wild Mammals (Protection) Act 1996 (below). For example if it was accepted that a stag was no longer a wild animal under the AWA 2006, the interplay with arguing that Section 1 of the Wild Mammals (Protection) Act should still apply could prove difficult and it is this potential interplay of the legislation that would potentially need further consideration if a proposed prosecution case was identified.

100. A final point to consider is the welfare of the hunting dogs themselves. Any evidence that they are suffering or not having their needs met would be useful.

101. The maximum sentences under the AWA 2006 is five years' imprisonment and or an unlimited fine for the most serious offences (which include causing or permitting unnecessary suffering and fighting offences - see below).

Wildlife and Countryside Act 1981

102. The animals listed in schedule 5 and 6 receive some special protection under this Act. Deer are not included in either schedule. However, certain killing methods such as self locking snares are prohibited under section 11 for all wild animals.
103. This Act could be used if there is evidence obtained that shows practices under Section 11 are being carried out with no viable defence. We do not think this applies here, but have included it for completeness.

Wild Mammals (Protection) Act 1996 (WMPA 1996)

104. Section 1 states:

If, save as permitted by this Act, any person mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering he shall be guilty of an offence.

105. Section 2 states the exceptions:

A person shall not be guilty of an offence under this Act by reason of—

(a) the attempted killing of any such wild mammal as an act of mercy if he shows that the mammal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering;

(b) the killing in a reasonably swift and humane manner of any such wild mammal if he shows that the wild mammal had been injured or taken in the course of either lawful shooting, hunting, coursing or lawful pest control activity;

(c) doing anything which is authorised by or under any enactment;

*(d) any act made unlawful by section 1 if the act was done by means of any snare, trap, dog, or bird lawfully used for the purpose of killing or taking any wild mammal;
or*

(e) the lawful use of any poisonous or noxious substance on any wild mammal.

106. Section 5 sets out the penalties which are a fine not exceeding level 5 on the standard scale or a term of imprisonment not exceeding six months.

107. Potentially, the WMPA 1996 could be utilised if there was any indication of a Section 1 offence being committed. It is possible the hunt could argue they had lawful authority under the DA 1991 or the HA 2004; however, this offence could potentially run alongside a HA 2004 prosecution too. Video footage and or photographic evidence and any witness testimony, which supports a case that the wild mammal in question was not so seriously disabled and had no chance of recovering but for their act would likely be essential.

108. In addition, it could be very useful to try to pursue a prosecution under the WMPA 1996 if there is evidence from monitors that shows hunt members restraining a stag until such a time that a member of the hunt with the required gun attends in order to shoot it. It seems common knowledge amongst the anti hunt movement that injuries can be inflicted upon stags during this process and may well mean that a prosecution under the WMPA 1996 could be possible.

Firearms Act 1968

109. You must hold a licence for any firearm you are using. If you are borrowing a firearm three conditions must be met:

(a) the firearm must be borrowed from a person who is certified and licenced for that firearm and aged over 18

(b) used in the presence of the licensed holder

(c) use of private property with the landowners permission

110. Licences are issued by the police, as such it could prove useful to make a FOI to the relevant police force requesting details on any licences in the area and ideally the purpose of the licence and the type of gun. Under S6(5) of the DA 1991 a smooth bore gun of not less than 12 bore with a barrel length of less than 24 inches [609.6 mm] which is loaded with a cartridge containing no shot less than .203 in diameter, i.e. AAA or larger, may be used in order to kill deer.
111. A person must be able to show their firearm or shotgun certificate if asked by the police, as such this is a document stag hunt members should carry with them whilst out on hunts.
112. Section 21 places restrictions on the possession of firearms for persons who have previously been convicted of a crime. Importantly, a person who has received a sentence of 3 months or more is prohibited from possessing a firearm, shotgun, antique firearm, air weapon or ammunition for five years from the date of their release. Applying this in the hunting context, being able to bring prosecutions not only under the HA 2004 but also under any other relevant piece of legislation which carries a custodial sentence could be hugely significant if it could potentially curtail a hunt member's ability to own or borrow a shotgun.
113. Being able to identify stag hunters through video and photographic evidence can be hugely important here, so individuals can be brought to the attention of the authorities and, if charged, questions raised over whether they did indeed hold the relevant licence.

Other Relevant Legal Issues

Wild animal property cases

114. As mentioned in the introduction, hunt sabs are often accused of interfering with others property. We will now discuss whether we feel that this is a reasonable argument.
115. It is true that domesticated animals are treated as property under the law. However, wild animals have a slightly different status and so the question is when is an animal deemed wild?

116. At law, an individual is not able to own a wild animal absolutely while it is alive. An individual only has a qualified right of ownership over such animals. This occurs, for example, where a wild animal has been tamed and/or retained until it is released or escapes with no intention of returning.

117. The case of *Borwick Development Solutions Ltd v Clear Water Fisheries Ltd*¹⁰ involved the sale of land, which contained a fishery. Whilst it was held that whilst alive wild animals cannot be the subject of absolute ownership, this case held that wild animals could be the subject of qualified property rights. A qualified property right means ownership that is not absolute and complete; however, it does still provide certain rights over property, such as a licence to hunt and fish. In the case of *Borwick* it was noted at para 47 this is known as *ratione soli* (by reason of ownership of the soil), which gives landowners the ability to invite anglers to come and fish at the lake and pay for this and also gives them rights to prevent unauthorised persons from coming in to the land and taking the fish as well as the right to sue for loss of the wild animals or interference with them, along with suing for trespass, conversion or nuisance as the case may be. It would therefore stand to reason that anyone who has not been granted such rights may be liable to certain unlawful acts, such as interfering with property, trespass to chattels etc.

118. A dead wild animal can be owned absolutely and belongs to the landowner subject to any sporting rights that have been granted which have the effect of passing that ownership.

119. The relevant questions here are:

- a) *Does the landowner have qualified rights over the stags, the answer to this question is most likely. Following Borwick it would appear that they do; however, a huge space for stags compared to a much smaller fishing lake can be distinguished. It may also be possible to argue that the stags had no intention to return.*
- b) *If they do have qualified property rights, does that mean hunt sabs could be accused of interfering with their rights, the answer here is possibly, Borwick found that trespassers could not own the wild animals reduced into possession, but only the landowner could. It may follow that any interference would be deemed a civil wrong, such as trespass to chattel.*

120. In another case, *Kearry v Pattinson* [1939],¹¹ the plaintiff was a beekeeper. His bees had swarmed and settled in the Defendant's garden in which they later left (and did not return). The plaintiff made a claim for damages against the Defendant. However, it was held that the

¹⁰ *Borwick Development Solutions Ltd v Clear Water Fisheries Ltd* [2020] EWCA Civ 578

¹¹ *Kearry v Pattinson* [1939] 1 All ER 65

bees were the plaintiff's property whilst they were in his sight and he had the power to pursue them but this power ended when they left his property and flew to his neighbours, as they ceased to be "chattels" and reverted to being wild animals until such a time that he could reclaim any ownership.

121. This case could be useful if the stags travel across land into neighbouring land which has a different owner and have reverted back to wild animals. This case, however, can be differentiated from stags on land, due to the difference between how the bees live and how stags live. Bees are kept in one place, in a hive to which they would ordinarily return whereas wild stags roam freely and do not necessarily have fixed locations where they sleep, though they may have frequently visited locations they may not necessarily return to a previous resting place for some time (if at all). With this in mind, it may be more difficult for a landowner (where stags may have been sighted) to claim any ongoing rights to them, even if they later return to that land.

122. In the case of *Hamps v Darby* [1948]¹² the Defendant was a farmer who fired a gun and killed four of the Plaintiff's racing pigeons after they caused damage to his crop. The Plaintiff brought damages and was successful - the court held that the owner of tamed or reclaimed pigeons continues to have property in and possession of his birds after they have flown from his dovecote so long as they retained an intention to revert to his control, which racing pigeons are trained to do.

123. A comparison might be made by landowners claiming that they own the wild deer and whilst a deer may leave their usual land, this is only temporary and they have the intention to return to where they usually hide. However, the alternative argument would be that stags are not the same as trained racing pigeons, they are not domesticated and do not have the intention to return to a human's control, as is the case with the pigeons.

124. These issues naturally overlap with the law relating to trespass.

125. Trespass is a civil matter, so whilst the police have no right to arrest a person who is trespassing they can help the landowner remove trespassers and, if there is aggravated trespass, i.e. intentionally obstructing, disrupting, or intimidating others from carrying out 'lawful activities' then this is deemed a criminal offence and a person could be arrested.

126. Potentially, if a hunt has permission to be on private land and hunt saboteurs try to prevent it in this way, criminal charges may be considered. However, if the hunt could be

¹² *Hamps v Darby* [1948] 2 K.B. 311

shown *not* to be carrying out lawful activities - i.e. if the hunt did not fall within the remit of the HA 2004 this could be an interesting point to consider.

127. Under the Criminal Justice and Public Order Act 1994 it can be a defence to show that, in relation to trespass to land, a person had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

128. A defence of necessity to trespass also exists but this a difficult defence to succeed in.

Sporting Rights

129. Sporting rights are typically a right granted by a landowner to a third party, that entitles them to undertake activities on the land. Commonly, these activities include fishing, hunting and shooting. Such rights are characterised by the term 'profits à prendre'. However, sporting rights may not have been granted by the current landowner, but instead have been reserved previously.

130. Sporting rights can be highly valuable and it is becoming more common for sporting rights to be excluded from sales/lease of property. Unless explicitly excluded, when land is bought or leased, sporting rights can come with that property. Sporting rights are a complex area and legal cases are very rare. Sporting rights can be very difficult to terminate as they are very often created by deed. Once granted, there is an implied term that the grantor will not take any action that will limit or restrict such rights. Any such limitation or restriction is known as a "derogation from grant". The case of *Peech v Best*¹³ sets out what a derogation from grant is - an owner of 700 acres of land which was subject to shooting rights sold just 12 acres of land to a purchaser but even this was held to be an infringement of the sporting rights. It can be difficult to terminate such rights, without an express termination in the deed and in practice this is usually contingent on negotiating a release payment. There are other alternative methods of termination such as abandonment, whereby such rights may be implied to have been abandoned after a long period of non-use and exhaustion - if the beneficiary effectively uses up the subject matter of the right and there is nothing left.

131. Sporting rights can be created and granted in a number of ways. The landowner is able to:

¹³ *Peech v Best* [1931] 1 KB 1

(a) sell the sporting rights (but retain the land);

(b) sell or lease the land (but keep the sporting rights); or

(c) grant a licence to exercise sporting rights for a specified period of time, with the rights reverting back to the landowner at the end of the agreed period.

132. You mentioned the possibility that the Quantock Staghounds may not hold explicit consent to hunt on specified land, but rather that they have sporting rights. The two relevant questions are 1) does the stag hunt have a sporting right and if so 2) does that amount to permission for the purpose of a HA 2004 exemption.
133. Firstly, It is important to check land ownership if arguments are to be advanced over any allegation of illegal hunting taking place by virtue that no such sporting rights are held, it would be useful to discover if someone actually has sporting rights at all. Ascertaining if a person has sporting rights can be complex and whilst most modern sporting rights are created by way of deed, historical sporting rights can be harder to identify. Broadly speaking, even if land is registered at the Land Registry it is helpful to double check (particularly if it was registered prior to the Land Registration Act 1925) if any sporting rights have effectively been “divorced” from the land.
134. We would suggest that any possible sporting rights are thoroughly investigated through the relevant land searches and inspection of title deeds. This may involve detailed searches being carried out.
135. The second thing to consider is whether if they have sporting rights does this equate to permission to hunt on the land. The HA 2004 states that in order to fall under the exemption of “research and observation” (the example you provided us with in your email of 29 September 2023) the hunting must take place on land “which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs”. Therefore one argument in this case would be that they do not have specific permission for “the purpose” of research and observation. In addition, it is relevant whether the occupier or the owner of the land has given permission, rather than a historical right that was granted by neither current occupier or owner.
136. Whether sporting rights equate to permission to hunt on the land in relation to a HA 2004 exemption or not will largely turn on the facts of the case e.g. was the sporting right granted recently or is it historical, was it granted by the current occupier/owner or not and was it granted for the specific purpose of the exemption.

Other potential laws

Vicarious liability

137. If prosecutions are brought under the HA 2004 it is ordinarily the hunt members who are prosecuted as opposed to those who run the hunt and those who own the land. The LACS have put forward that the application of vicarious liability should apply in such circumstances so all involved in any hunt could be prosecuted.

138. Vicarious liability currently is largely an aspect of civil tort law and is sometimes called imputed liability. It is a concept that assigns liability to a person who, whilst they did not cause the particular harm in question, they have a superior relationship to the person who did and are therefore held liable. Vicarious liability is ordinarily used in civil law but in limited circumstances can be used in criminal law (although generally for regulatory offences). To include this in the HA 2004 it would require an amendment.

139. It is worth noting that under a new offence introduced under the Scottish Parliament's Wildlife and Natural Environment (Scotland) Act 2011, vicarious liability was introduced in relation to the mistreatment of wild birds. Something similar could be campaigned for with reference to the HA 2004. If successful, it could then lead to those who instigate and/or enable the illegal hunt to take place could be prosecuted.¹⁴

140. It is also an offence for any person to knowingly permit their land to be used or entered for illegal hunting wild mammals with dogs.

Potential avenues of challenge

Judicial review

141. Judicial review is the legal mechanism used to challenge the decisions, acts and sometimes failures to act of public bodies on the basis they have acted unlawfully. The

¹⁴ League Against Cruel Sports, The Hunting Act 2004:
<https://www.league.org.uk/what-we-do/hunting/hunting-act/#:~:text=The%20application%20of%20a%20Vicarious,place%20can%20also%20be%20prosecuted.>

mechanism seeks to challenge the decision making process used, rather than the decision itself.

142. Judicial review proceedings are brought in the Administrative Court (part of the High Court) and can only be pursued after other available/appropriate remedies have been exhausted. Judicial review is a remedy of “last resort”.
143. Public bodies relevant to possible stag hunting challenges may include the police, the CPS and, possibly, the Home Office (with reference to the ASRU - detailed above). It is important to appreciate that there is a legal mechanism to challenge such public bodies but proceedings can be costly in the High Court and given that it is a remedy of last resort all other steps, such as complaint routes, should be exhausted in the first instance.
144. There may be grounds to challenge various authorities for their respective roles in stag hunting. For example if there are grounds to believe the ASRU should not have granted a licence for a regulated procedure, or Natural England should not have granted a licence under the DA 1991 or the police under the Firearms Act. All of these will be fact specific. Gathering evidence remains essential in such cases, and the utilisation of FOI can prove very helpful, particularly if any broader strategic litigation is being considered.

Prosecution

145. A prosecution can be brought by a public body, such as the CPS, the local authority or Natural England. As such it would be a useful first step to identify the relevant offences and send the information to the relevant public body. However, it may be that in the event they are not interested in pursuing a prosecution, a private prosecution is an option, this being a prosecution carried out by a private party, such as Action Against Fox Hunting.
146. In order for the CPS to conduct a prosecution the Full Code Test should be satisfied. The Code for Crown Prosecutors¹⁵ sets out a Full Code Test under Section 4.1
- 4.1 Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test. The exception is when the Threshold Test may be applied (see section 5).*
- 4.2 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.*

¹⁵ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

147. The evidential stage is further detailed at Section 4.6:

4.6 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

4.7 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.8 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- *the likelihood of that evidence being held as inadmissible by the court; and*
- *the importance of that evidence in relation to the evidence as a whole.*

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

Is there any other material that might affect the sufficiency of evidence?

Prosecutors must consider at this stage and throughout the case whether there is any material that may affect the assessment of the sufficiency of evidence, including examined and unexamined material in the possession of the police, and material that may be obtained through further reasonable lines of inquiry.

148. The public interest stage needs to consider:

- (a) how serious is the offence committed*
- (b) the level of culpability of the suspect*
- (c) what are the circumstances of and the harm caused to the victim*
- (d) the suspect's age and maturity at the time of the offence*
- (e) impact on the community*
- (f) is prosecution a proportionate response and*
- (g) do any sources of information require protecting*

149. Timing is important because the offences under the HA 2004 are subject to the normal six month limitation period for commencement of such prosecutions. There is therefore a risk when cases are handed over to a public body to pursue. If there has been delay which has, arguably, prejudiced the chance of a case being taken forward, again, this could potentially open up a direct challenge with the police/CPS by way of, complaint whereby the Independent Office for Police Conduct may be involved but ultimately, could become challenged by way of judicial review proceedings.

Information gathering

150. The most common tool for information gathering from public sources is under the Freedom of Information Act 2000. Due to the various public bodies involved with stag hunting and the surrounding activities there are various requests that could be made to help paint the picture.

Police

151. It might be useful to know how many firearm licences are in place, for what purpose and for what guns.

152. Referring to stag hunting in particular, monitors (by the very nature of their role) often collate hours worth of video footage and photographic evidence and therefore it is certainly reasonable to suggest that the CPS should be consulted as early on as possible. As such, you might want to ask:

(a) how many allegations of offences under the Hunting Act 2004 have been referred to the police

(b) how many of these cases have been passed to the CPS

(c) and of those cases passed to the CPS, how soon after the offence was reported to the police force was the CPS notified

Natural England

153. You could ask how many licences have been granted under the DA 1991 in the South West and for what purpose. In addition, you could specifically ask for any licences granted to the specific hunt or individuals in the hunt, the issue is you might not know the names of the individuals they are granted to in the hunt.

ASRU

154. You could ask ASRU for all the licences it has granted in the last X amount of years in relation to stag hunting. They may not grant everything and what they do grant will be heavily redacted.

CPS

155. It might be useful to know the following:

(a) how many allegations of stag hunting have been referred to the CPS in the last [X] years

(b) how many such allegations have been taken forward by the CPS and led to successful prosecutions

(c) of the allegations not taken forward by the CPS, how many were due to a lack of sufficient evidence being provided AND how many were due to a defence being put forward by the staghunt

(d) how many times has the research and observation exemption been put forward by stag groups

(e) how many times has evidence from an expert/researcher been put forward in such cases and the types of expert/researcher

(f) how many times has such expert/researcher evidence resulted in cases being dropped by the police/CPS

(g) how many times have stag hunts submitted data from hunts to the police/CPS as evidence that such data has been submitted to the expert/researcher for the purpose of the observations or research

156. Making such FOI requests could build up a very useful picture of why the CPS are/are not prosecuting such cases. The CPS has published legal guidance¹⁶ - specifically in relation to hunting cases and this should be followed.¹⁷ Should such legal guidance not be followed, complaints could be made and ultimately judicial review proceedings brought. It may be that FOI requests could lead to identifying potential grounds of judicial review challenge, specifically against the CPS and their decisions not to prosecute in some cases.

¹⁶ The Hunting Act 2004, Legal Guidance, updated August 2019
<https://www.cps.gov.uk/legal-guidance/hunting-act-2004>

¹⁷ Paragraph 2.10 of the Code for Crown Prosecutors provides that prosecutors must comply “with the policies and guidance of the CPS issued on behalf of the DPP, unless it is determined that there are exceptional circumstances.”

157. In *R v A* (RJ) [2012] EWCA Crim 434 [84], the court held that it remains open to the prosecution in an individual case, for good reason, to disapply its own policy or guidance. What is important therefore is that any dis-application of guidance or policy should be explained in terms consistent with the Code and the law.

158. The Guidance notes that each CPS area has a crown prosecutor nominated to act as a Wildlife, Rural and Heritage Crime Coordinator. It is recognised that due to the complex nature of hunting cases, such cases should be allocated to the relevant coordinator who should possess detailed knowledge of the Hunting Act 2004. Prosecutors should “liaise closely with police investigators and the provision of early investigative advice is to be encouraged”¹⁸

159. Outside of freedom of information it might be useful to gather information to undermine any reliance on exemption 8 of the HA 2004 for example commissioning a report from an expert veterinarian, who specialises in wild mammals (ideally stags) to comment on the following:

(a) what types of injury are most common amongst stags and how are these diagnosed

(b) if it is possible for a person with no veterinary qualifications to determine that a stag is injured, or may be injured

(c) if it is, what types of injuries would you expect a person with no veterinary qualifications to be able to identify

(d) of those types of injury, what is the “typical” course of treatment and how would the same be administered to a wild mammal or, in the alternative, whether simply a period of rest and recuperation could be sufficient for its recovery

(e) would you expect a non-veterinarian to be able to determine if a wild mammal should be shot immediately due to a particular type of grave visible injury and, if so, what might that be?

(f) what steps would you expect a person to take should they identify a wild mammal with these types of injury

(g) what types of injury would you typically expect to see if a wild stag had been chased, with the use of dogs who may or may not have come in to contact with it

¹⁸

[https://www.cps.gov.uk/legal-guidance/hunting-act-2004#:~:text=Wildlife%2C%20Rural%20and%20Heritage%20Crime%20Coordinators,-Each%20CPS%20Area&text=Prosecutors%20should%20liaise%20closely%20with,Wil,dlife%20Crime%20Officer%20\(WCO\).](https://www.cps.gov.uk/legal-guidance/hunting-act-2004#:~:text=Wildlife%2C%20Rural%20and%20Heritage%20Crime%20Coordinators,-Each%20CPS%20Area&text=Prosecutors%20should%20liaise%20closely%20with,Wil,dlife%20Crime%20Officer%20(WCO).)

(h) the likely consequences of using dogs to flush out an injured deer, including both psychological and physical consequences

160. Such a report could be a useful source of information for prospective prosecutions, although of course each case will turn on its specific facts.
161. The National Trust could certainly be approached for comment, particularly referencing the news item (at paragraph 39 above) and asking that they confirm their stance on stag hunting, in writing and/or ask if they are able to make a public comment in light of the same, reiterating its position and agreeing to publish data which confirms how many (if relevant) stag hunts have taken place across National Trust land and, if so, on what basis.

Checklist document for police briefing

162. It could be useful to highlight the following issues to the relevant police force when asking them to investigate any potential stag hunts, or prior to the same (if they have advance notice)
- (a) Reason for the hunt - can/will the hunt provide reasoning for the same and or any exemption they feel is applicable *prior* to the hunt taking place?
 - (b) Gun licences - do the relevant hunt and individuals have the required gun licences?
 - (c) Other licences - do the relevant hunt have any other relevant licences (as necessary) e.g. if they are claiming research and observation do they have the relevant licences under the ASPA 1986 or if the shooting is taking place outside of a Hunting Act exemption, do they have the relevant authorisation under the DA 1991?
 - (d) Landowner permission - do they have the same in writing for all applicable land?
 - (e) Hounds - how many are being used/have been identified?
 - (f) Any indicators of animal cruelty/welfare offences other than under HA 2004?
163. The National Police Chiefs Council (NPCC) has Operational Advice on Responding to Hunting Incidents which sets out guidance (albeit fairly limited in detail) as to how the police should respond to reported hunting incidents. The NPCC's website no longer supports the document but it is available with comments from Foxhunting Evidence UK website on their website.¹⁹ Some examples under para 7.7 offer guidance on conducting an investigation, including:

¹⁹ Fox Hunting Evidence

UK:<https://foxhuntingevidenceuk.com/our-response/npcc-directive-and-operational-advice-on-responding-to-hunting-incidents/>



- (a) obtain advice from Wildlife Crime Officer / Co-ordinator / SPOC*
- (b) support from National Wildlife Crime Unit (NWCU)*
- (c) awareness of 6 month prosecution on wildlife offences.*

Conclusion

164. We hope the above has clarified matters for you in respect of the relevant legislation surrounding stag hunting and highlighted possible routes for legal challenge. Please take time to read and consider the same and let us know if you would like to discuss anything further, ask any questions or wish to pursue any of the legal avenues identified within this advice.

Liz Perry

Advocates for Animals

3 October 2023