

An Empirical Study of the Nature of Animal Abuse Cases in Hong Kong from 2013-2019

2013 至 2019 年間虐待動物案件性質之實證研究

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EXECUTIVE SUMMARY 行政摘要

Abstract of the Research We conducted a retrospective study of 335 suspected cruelty offences recorded by the Hong Kong Society for the Prevention of Cruelty to Animals (SPCA) between January 2013 and December 2019. Cases were categorised into six major types of abuse: active maltreatment, passive neglect, commercial exploitation, hoarding, poisoning and trapping. Attributes of defendants, relationship with the owner of the animal (where the owner was not the defendant) and the circumstances of the abuse (species of animal, number of animals involved, type of harm, need for medical care, number of animals seized) were recorded for each case. The majority of prosecuted cases involved traumatic physical injury to dogs, with 30% causing the death of animals. The second most common type of harm prosecuted was neglect, with 27% of cases causing death. The majority of neglect cases involved dogs abandoned inside private premises without food/water. The median number of animals hoarded was 47, with dogs the most common species. The majority of hoarders had collected their animals from strays. The largest hoarding cases (>100 animals) were operating as animal rescue shelters. We recommend new strategies to address cruelty to animals in Hong Kong including the introduction of a duty of care, a new offence to deter animal poisoning, improved controls on traps used for animals, a new offence of cruelty by falling from height, bans on unnecessary mutilations and mercy release and the licensing of all shelters, grooming parlours and dog trainers.

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研究摘要

我們對香港愛護動物協會 (SPCA) 於 2013 年 1 月至 2019 年 12 月期間記錄的 335 宗涉嫌殘酷對待動物的案件進行了回顧性研究。案件分為六種主要的虐待類型：主動式虐待、被動式疏忽、商業剝削、囤積、毒害及捕捉。每宗案件均紀錄了被告的特質、與動物主人的關係 (若主人不是被告) 和虐待情況 (動物種類、涉及的動物數量、傷害類型、醫療需求及被扣押的動物數量)。大多數被起訴的案件涉及對狗隻造成創傷性身體傷害，其中 30% 的案件導致動物死亡。第二類最

常導致檢控的傷害是疏忽，其中 27% 的案件導致死亡。大多數疏忽案件涉及狗隻在沒有食物/水的情況下被遺棄在私人處所內。被囤積的動物數量中位數為 47 隻，其中狗隻是最常見的物種。大多數囤積者都是收集流浪的動物。最大型的囤積案（多於 100 隻動物）涉及拯救動物收容所。我們建議採取新策略以應對香港的殘酷對待動物案包括推行謹慎責任、阻止毒害動物的新罪行、改善動物捕捉器的管制、高處墜下導致殘酷對待的新罪行、禁止不必要的殘割和慈悲放生及對所有收容所、美容院和狗隻訓練員的發牌管控。

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Layman Summary of Policy Implications and Recommendations

From 2020-2021, we analysed 335 cases involving animal abuse recorded in the SPCA's investigation database between January 2013 and December 2019. We found the largest category reported and investigated included 118 cases of active maltreatment (traumatic physical injury) to animals. 63 investigations into the 118 complaints resulted in a prosecution and 55 did not. The next largest category reported and investigated included 102 cases involving passive neglect or ignorance (including malnourishment and abandonment) of which 61 investigations resulted in prosecution and 41 did not. A further 23 investigations involved the commercial exploitation of the animals involved for profit with 16 cases resulting in prosecution. 12 cases were investigated related to the hoarding of animals of which 10 resulted in prosecution. 59 suspected poisonings were recorded during the period, but only 2 prosecutions were able to be pursued. 4 prosecutions for the trapping of animals proceeded of the 21 cases reported.

Dogs were the primary victims in all categories of abuse. In 75% of prosecutions for active maltreatment or neglect-related cruelty the defendant was male. The age of defendants varied widely across all categories of abuse.

In the majority of cases, animals were harmed by people who knew the animal prior to the offence. In 38% of cases involving traumatic physical injury, the owner/person in charge of the animal had inflicted the harm directly. Domestic violence against the pets of family members and neighbourhood disputes over dogs barking or not kept under control also featured prominently in this category. In 24% of cases involving traumatic physical injury, family members had targeted other family members' pets or neighbours had targeted animals in their village. Of the 63 cases of active maltreatment 19 involved animals that had been killed or had to be euthanized within 24 hours due to their trauma. The main reasons suspected cases of active maltreatment were not pursued to prosecution was that the offender could not be located by police or evidence of physical injury could not be detected at the time of examination.

In the neglect-related cases, abandonment of animals without food and water by persons in financial difficulties (often compounded by relationship and family problems) was a significant concern. In 17 of the 61 cases in this category, animals had already died when they were discovered or required euthanasia as they could not be humanely saved. In

41 of the 61 cases in this category, animals were found inside private premises without food/water (88% of the time inside village houses). 53% of cases involving the neglect of dogs and 80% of hoarding cases occurred in villages. Many defendants who abandoned animals avoided prosecution before the 6 month time bar as they could not be located in time by police. Other cases of neglect were not proceeded with on the basis that the animals concerned showed insufficient signs of harm to justify action. In the absence of a legal duty to provide animals with positive welfare, cases of neglect are more likely to be overlooked by authorities.

Most cases of neglect and hoarding of animals involved stray dogs which had been collected by persons without sufficient capacity to care for them adequately. In two cases the offenders had set up animal shelters and were also accepting animals from others in exchange for donations.

Breeders/traders of animals withholding vet care to save money, using drugs illegally to self-treat animals and keeping animals in unsuitable environments was common in commercial exploitation. However, positively, fewer cruelty prosecutions have occurred since the introduction of licensing controls on all dog traders in 2017. Incidents of cruelty by groomers, a boarding kennel operator and a dog trainer were detected and prosecuted during the study period.

59 suspected poisoning cases were recorded during the study period but only two proceeded to court (both in 2013). In many cases a suspect could not be identified but poisoned bait was found. Cap 169 is currently unable to address this problem as a defendant would need to be caught re-handed causing suffering, or to have admitted the offence, for a prosecution to be pursued. There were 21 cases during the study period in which animals were caught in traps and one in which a shock collar was being used by a man involved in a cruelty case. We recommend that electric shock collars and like devices should be prohibited from sale and possession. Further the sale and possession of cruel trapping devices, such as glue traps should be regulated to ensure their misuse does not result in animal cruelty.

Average sentences for serious cruelty have increased only marginally since the publication of *Review of Animal Welfare Legislation in Hong Kong* (Whitfort and Woodhouse, 2010). In our earlier study we reviewed sentences from 2006 to 2008. Of the convictions recorded in that period, only half of offenders received sentences of imprisonment. The average sentence imposed was then 2 months' imprisonment, with most offenders being ordered to serve 6 weeks or less. Our current review found that for serious animal cruelty cases less than half of convicted offenders were imprisoned (49 of the 143 persons convicted of animal abuse between 2013 and 2019). The average sentence for cases of serious animal cruelty in Hong Kong from 2013-2019 remained very close to the same level we reported in 2007-2008: 2.4 months' imprisonment. Fine levels have increased since our last review. The average fine imposed for cruelty in 2007-2008 was \$1200. The average fine during the current review period of 2013-2019 was \$2900.

In view of our findings we have made recommendations supporting significant reforms to current animal protection legislation including:

- (1) the introduction of a legislative duty of care for animals which would require owners to provide them with positive welfare;
- (2) new legislation to regulate animal shelters;

- (3) new legislation to regulate grooming parlours and animal trainers and increased regulation of animal boarding facilities;
- (4) new powers to release animals early and allow for costs for their care;
- (5) new offences to deter animal poisoning;
- (6) improved regulations to control the use of traps and cruel devices;
- (7) a new offence of allowing animals to fall from height;
- (8) new prohibitions on unnecessary mutilations of animals;
- (9) new prohibitions on mercy release of animals without a permit; and
- (10) new powers to authorize experienced persons to assist AFCD and the police in the enforcement of Cap 169: The Prevention of Cruelty to Animals Ordinance.

研究項目對政策影響和政策建議的摘要

於 2020 年至 2021 年，我們分析了 SPCA 調查數據庫中由 2013 年 1 月至 2019 年 12 月期間發生的 335 宗有關虐待動物的案件。我們發現其中 118 宗主動式虐待動物（創傷性身體傷害）的案件為接報並調查的案件的最大類別。118 宗投訴中，63 宗案件調查導致檢控，55 宗未檢控。接報並調查的第二大類別案件為 102 宗被動式忽視或無知（包括營養不良和遺棄）的案件，其中 61 宗案件調查導致檢控，41 宗未檢控。另有 23 宗調查涉及為謀取營利而對動物進行商業剝削，其中 16 宗案件有檢控。12 宗與囤積動物有關的案件調查中有 10 宗導致檢控。在此期間共記錄了 59 宗懷疑毒害案件，只有 2 宗有檢控。接報的 21 宗案件中，有 4 宗涉及捕捉動物的檢控。

狗隻是所有虐待類型的主要受害者。主動式虐待或與疏忽相關的虐待行為的檢控中，75%的被告是男性。在所有虐待類型中，被告的年齡差異很大。

在大部份案件中，傷害動物的人於犯案前已經認識該動物。在涉及創傷性身體傷害的案件中，有 38% 的案件的動物主人/負責人直接對動物造成傷害。針對家庭成員寵物的家庭暴力和因狗吠或其不受控制而引起的鄰里糾紛在這一類別中亦佔有重要地位。在涉及創傷性身體傷害的案件中，有 24% 的案件是家庭成員針對其他家庭成員的寵物或鄰居針對他們村里的動物。在主動式虐待的 63 宗案件中，有 19 宗涉及的動物因創傷而死亡或在 24 小時內必須被安樂死。涉嫌主動式虐待的案件未被檢控的主要原因是警方無法找到犯人或在檢查時無法發現身體受傷的證據。

在與疏忽有關的案件中，有經濟困難的人（通常伴隨著關係問題和家庭問題）在沒有食物和水的情況下遺棄動物是一個重大問題。在該類別的 61 宗案件中，其中 17 宗案件的動物在被發現時已經死亡或因無法被人道救治而需要安樂死。在該類別的 61 宗個案中，有 41 宗是在沒有食物或水的私人處所內發現動物（88%在村屋內）。53%的案件牽涉疏忽狗隻，80%牽涉發生於鄉村的囤積案。

許多遺棄動物的犯人因警方未能在 6 個月的檢控時限內及時找到他們而避免了檢控。其他的疏忽案件沒有被檢控因為有關動物沒有顯示出足夠可見的傷害以證明檢控的合理性。在缺乏為動物提供積極福利的法律義務的情況下，當局較有可能忽視疏忽的案件。

大多數疏忽和囤積動物的案件都涉及流浪狗，這些流浪狗是由沒有足夠能力充分照顧牠們的人所收集的。在兩宗案件中，犯人設立了動物收容所，並接收他人的動物以換取捐贈。

動物飼養者/商人為了省錢而不提供獸醫護理、使用非法藥物私下對動物進行治療以及將動物飼養在不合適的環境中，在商業剝削的案件中很常見。然而，樂觀的是，於 2017 年對所有販賣狗隻的商人實施發牌管控後，有關虐待的檢控有所減少。研究期間有涉及美容師、寄宿場所經營者及狗隻訓練員的虐待事件被發現並檢控。在研究的相關時期內記錄了 59 宗懷疑毒害案件，但只有兩宗被檢控（均在 2013 年）。在許多發現到毒餌的案件中無法確定嫌疑人。第 169 章目前無法解決這個問題，因為被告需要於造成動物的痛苦時被當場捕獲或承認罪行才能進行檢控。

在研究的相關時期內，有 21 宗動物被捕捉器捕捉的案件，另外有 1 宗虐待案件牽涉一名男子使用電擊頸圈。我們建議禁止銷售和擁有電擊頸圈和類似儀器。此外，應管制殘酷的捕捉器（例如老鼠膠）的銷售和擁有，以防止其濫用導致殘酷對待動物。

自《檢閱香港動物福利的法例》(Whitfort and Woodhouse, 2010) 發表以來，嚴重虐待的平均刑期僅略有增加。在當時的研究中，我們探討了 2006 年至 2008 年的判決。在此期間記錄的 3 宗獲定罪的案件中，只有一半的罪犯被判入獄。當時的平均刑期為 2 個月監禁，而大多數罪犯被判服刑 6 週或更短時間。我們這次的探討發現，在嚴重虐待動物的案件中，只有不到一半的罪犯被監禁（在 2013 年至 2019 年期間被定罪干犯殘酷對待動物罪的 143 人中，佔 49 人）。2013 年至 2019 年間香港的嚴重殘酷對待動物案件的平均刑期與我們在 2007 年至 2008 年報告的水平非常接近：2.4 個月的監禁。罰款水平自我們上次的探討後有所提高。2007 年至 2008 年期間，殘酷對待的平均罰款為 1200 元。當前探討的 2013 年至 2019 年間的罰款為 2900 元。

鑑於我們的調查結果，我們提出了支持對現行保護動物的法例進行重大改革的建議，包括：

- (1) 引入規管對動物履行謹慎責任的法例，要求動物主人為牠們提供積極福利；
- (2) 立法規管動物收容所；

- (3) 立法規管美容院和動物訓練員，並加強對動物寄養設施的監管；
- (4) 提前釋放動物並考慮到其護理費用的新權力；
- (5) 立法防止動物的毒害；
- (6) 完善管控使用動物捕捉器和殘酷裝置的規定；
- (7) 成立有關容許動物從高處墜下的法例；
- (8) 有關不必要地殘割動物的新禁令；
- (9) 有關無許可證進行慈悲放生動物的新禁令；及
- (10) 授權有經驗人士協助漁護署及警方執行第 169 章《防止殘酷對待動物條例》的新權力。

INTRODUCTION

This paper provides the findings of a study funded by the Policy Innovation and Co-ordination Office of the Hong Kong SAR. It was conducted by Associate Professor Amanda Whitfort of The University of Hong Kong, Dr Fiona Woodhouse (Deputy Director (Welfare)), Shuping Ho (Welfare, Research and Development Officer) and Marsha Chun (Investigator, Inspectorate) of the SPCA (Hong Kong). We wish to also acknowledge the extensive support provided by Yung Chi Hang, Chief Inspector of the SPCA (Hong Kong) in recording the original dataset we relied upon.

The study analysed 335 cases involving animal abuse recorded in the SPCA's investigation database from January 2013 to December 2019. The largest category reported and investigated included 118 cases of active maltreatment (traumatic physical injury) to animals. 63 investigations into the 118 complaints resulted in a prosecution and 55 did not. The next largest category reported and investigated included 102 cases involving passive neglect or ignorance (including malnourishment and abandonment) of which 61 investigations resulted in prosecution and 41 did not. A further 23 investigations involved the commercial exploitation of the animals involved for profit with 16 cases resulting in prosecution. 12 cases were investigated related to the hoarding of animals of which 10 resulted in prosecution. 59 suspected poisonings were recorded during the period, but only 2 prosecutions were able to be pursued. 4 prosecutions for the trapping of animals proceeded of the 21 cases reported. Dogs were the primary victims in all categories.

OBJECTIVES OF THE STUDY

The objectives of this study were to identify and analyse the circumstances in which different kinds of animal cruelty offences have occurred in Hong Kong from 2013 to 2019; determine any trends in offending and need for specific legislative reforms; determine the need for pre and post-conviction forfeiture and costs orders; assess the impact of the Animal Watch Scheme on cruelty investigations; investigate sentencing trends for cruelty cases; assess the need for shelter legislation to prevent hoarding and protect animal welfare and utilise the findings of the study to assist the Hong Kong government in their mission to reform Cap 169 and strengthen the protection of animals and increase public understanding of the circumstances in which animals are most likely to be at risk of cruelty and neglect and stimulate informed debate within society as to how to minimise the identified risks of animal harm.

Animal protection is a highly specialised area of law enforcement and we recognise that it presents many challenges to authorities. Our review provided us with a unique opportunity to assess those problems which are most critically in need of government's attention at this time in Hong Kong. We have sought to provide the most practical and constructive recommendations for improvement. We wish to record our sincere appreciation for the efforts already being made by all parties concerned.

RESEARCH METHODOLOGY

Each case analysed in our study had been classified by the police as involving suspected animal cruelty which resulted in the seizure of at least one animal or required SPCA assistance. It is important to remember that the SPCA database could not capture all cases of suspected cruelty where animals were seized or assessed in Hong Kong during the period of study. Cases where the police or the AFCD seized animals or they were assessed without involving the SPCA for investigation, veterinary care or to provide housing facilities were not recorded by the SPCA. However as the major partner to the police in animal cruelty investigative work, those cases recorded in the SPCA database reliably indicate the types of animal abuse which were investigated in Hong Kong between 2013 and 2019. We are confident that in limiting the study to only those cases in which police suspected cruelty and animals were seized/assessed, cases lacking prima facie evidence of cruelty were excluded from the study.

RESEARCH RESULTS

Typologies of Harm

Cases were classified into six typologies of harm which are discussed further below. These are: active maltreatment (traumatic physical injury); commercial exploitation; passive neglect/ignorance (including malnourishment, abandonment, starvation); hoarding and collecting; poisoning and use of traps and cruel devices. A breakdown of the number of defendants in prosecuted cases, their gender, age (where known), and whether they owned/were in charge of the animals concerned for each type of case is provided in Table 1. A breakdown of the charges used for each type of prosecuted case is provided at Table 2. Animal species for prosecuted cases, in the four major case typologies, is provided at Table 3.

Table 1: Cases and defendant profile by typology

	Hoarding	%	Active Maltreatment	%	Neglect	%	Commercial	%	Traps and cruel devices	%	Poisons	%
Total cases proceeded	10		63		61		16		4		2	
No. of defendants (D)	10		65		63		18		4		2	
Repeat offenders	0		0		2		1		0		0	
Repeat victim	0		0		1		0		0		0	
Male	5	50%	50	77%	43	68%	11	61%	3	75%	2	100%
Corporation	0		0		1	2%	0		0		0	
Owners/ person in charge of animals	10	100%	25	38%	63	100%	18	100%				
Avg age	50		43.3		38		40		51		64	
Oldest	62		82		68		61		71		64	
Youngest	21		19		19		18		30		64	

Table 2: Charges brought by type

Charges brought	Hoarding	Active Maltreatment	Neglect	Commercial	Traps	Poisons
Cap.169 s.3 (unspecified)	7	53	42	8	1	1
Cap.169 s.3(1)(a)	3	17	18	8		
Cap.169 s.3(1)(b)	1	1	10	2		
Cap.169 s.3(1)(c)			1			
Cap.169 s.3(1)(g)	2	2	5	4		1
Cap.169A s.2	2	1	1	1		
Cap.169A s.5		1	1			
Cap.169A s.6	1		2			
Cap.169A s.7	1	1	12	1		
Cap.169A s.8	1		1	2		
Cap. 421 s.24		1				
Cap.421A s.23			1			
Cap.421A s.20	15	3	26	17		
Cap.421A s.25			1			
Cap.132 s.83A		1				
Cap.137 s.5				1		
Cap.138 s.23(1)				5		

Cap.139B s.11				1		
Cap.139I s.4				1		
Cap.170 s.4		1				
Cap.170 s.7(1)		1			1	
Cap.170 s.7(2)					2	
Cap.170 s.8(1)(b)					1	
Cap.200 s.24		1				
Cap.200 s.60	1					
Cap.200 s.62						1
Cap.200 s.188L		1				
Cap.212		1				
Cap.212 s.39		1				
Cap.228 s.4B		3				
Cap.228 s.117		1				
Cap.232 s.63			1			
Cap.529 s.16(1)				1		
Total	34	91	122	52	5	3

Table 3: Animal species by case typology

	Dog	Cat	Others	Dog cat mix	Dog fish mix	Dog turtle mix	Dog rodent mix	Cat rodent mix	Turtle rabbit mix	Total
Active maltreatment	42	8	12					1		63
Passive neglect	49	4	1	4	1	1	1			61
Commercial exploitation	12		1	3						16
Hoarding	5	3		1					1	10
Total	108	15	14	8	1	1	1	1	1	150

Patterns of Offending:

Domestic violence against the pets of family members and neighbourhood disputes over dogs barking or not kept under control featured prominently in the active maltreatment category as reported triggers for the behaviour of offenders. In the neglect-related cases, persons being in financial difficulties (compounded by relationship and family problems) before abandoning their animals without food and water was reported as a significant contributing factor. Breeders/pet shop owners keeping animals in poor environments, withholding vet care and using drugs illegally to self-treat animals were common in cases involving commercial exploitation.

Number and types of cases involving negligence

A very large number of cases fell into the category where the introduction of a duty of care to compliment current cruelty law would assist with prosecutions. Dogs were the usual victim. High risk situations for neglect of these animals involved young persons (owners) who were living in rental properties, dogs tied in public places, not kept under control or confined in yards of homes and pedigree animals apparently used for breeding.

Background of Offenders.

In 75% of prosecutions for active maltreatment or neglect-related cruelty the defendant was male.

In 10% of cases involving active maltreatment, the defendants provided evidence of psychiatric illness in mitigation. In 30% of cases in this category defendants mitigated on the basis of illness/drug dependency.

Juveniles featured in seven active maltreatment cases. These were handled by the Superintendents' Supervision scheme or the child was given a warning.

The age range of defendants was wide across all categories with large sample sizes.

There was no gender bias in hoarding cases and the defendants ranged from 21 to 62 years of age. However where animals were also abandoned in cases where two or more animals were left behind after the defendant moved, the offender was more likely than not to be in their 20s.

Body corporates were very seldom prosecuted with only one case for cruelty recorded. With the proposed introduction of a duty of care under Cap 169, improved education as to the responsibility of companies working with animals (directly or indirectly) will become necessary. Government departments have a responsibility to ensure that those private companies they work with are instructed to obey the law. In one case reported, an LCSD contractor drained a pond despite being alerted beforehand that draining the pool would kill the fish. The pond was drained killing more than 20 koi. SPCA inspectors and police scooped up the remaining 81 fish. The contractor was not prosecuted as the investigators could not locate a suspect.

Motivations and reasons for offending

In 24% of cases involving traumatic physical injury, family members targeted other family members' pets or neighbours targeted animals in their village.

In many abandonment cases, circumstances suggested that the animals were abandoned because the owner was experiencing financial difficulties. Power and water supply were often turned off in the premises prior to the tenant stopping paying rent and the animals being left behind. In some cases tenants were reported to have returned under cover of darkness to

throw food in the window of houses to pets they had abandoned. The most commonly provided reasons given to the courts for neglect were financial difficulties, lack of time and family problems.

In cases linked to commercial gain (pet shops/suspected breeders) it appears from the court records that the primary motivation for offending was profit.

Active Maltreatment Proceeded (63 cases, 65 defendants)

Of the 63 cases involving cruelty which could be categorised as active maltreatment, 42 cases involved dogs, 8 involved cats, 5 involved wild birds, 3 involved turtles, 2 involved a hamster, 1 a rat, 1 a rabbit and 1 a wild pig.

A significant number (13% of cases) involved domestic disputes where family members or domestic partners deliberately attacked the pets of other family members. In view of this finding, Social Welfare Department (SWD) should take into account the presence of pets in domestic settings and develop a protocol to ensure signs of abuse or tensions over the keeping of animals are reported at an early stage to AFCD or the SPCA for education and support.

Seven cases involved neighbours attacking dogs kept by others for reportedly causing annoyance by barking or having had previous negative experiences with dogs that were permitted to roam by their owners. While violence towards animals is always an unacceptable response, responsible owners should take care to ensure that their animals do not become targets by being perceived as causing nuisance in their community. In four cases, defendants had urged dog owners to keep their dogs under control or manage their behaviour. In one case, a dim sum chef who had to wake up at 4am, had complained to the dog owner and the government regarding the dog's barking for almost 6 years prior to the offence.

In six cases involving active maltreatment, the defendants provided evidence of psychiatric illness in mitigation. In four cases the defendant received a hospital order from the court in place of punishment. Awareness within government departments of the potential risk to animals where mental health problems are impacting their care should be emphasized.

77% of defendants in this category for proceeded cases were male. While this could represent a bias to pursuing charges against men over women for animal cruelty and is an area for further research, it does suggest that men should be specifically targeted in educational programmes intended to reduce cruelty.

Five cases involved birds being hit with sticks or shot by catapults. However, despite the cases proceeding to charge, in only one case was the defendant convicted for cruelty. In two of the cases the convictions were for hunting wild animals and in two the defendants were given ONE (Offer No Evidence) bind overs. In one such case where an eye witness had seen the defendant attacking a pigeon, the magistrate commented that she did not understand why the prosecutor was willing to accept a bind over, and warned the defendant that he had committed a serious offence.



March 2019 Pigeon beaten to death. (SC 922)

In one case the inmates of a drug rehabilitation centre beat and tortured a dog that had been entrusted to their care under a foster programme. This case suggests the need for increased discrimination and supervision by those organisations fostering out animals. With the introduction of a duty of care for animals, there will be a need for organisations operating such programmes to provide greater oversight as part of their legal responsibility for their animals.

In one case the cruelty was inflicted by a dog trainer on a client's dog and in two cases animals were deliberately injured by groomers. Licensing of animal trainers and groomers is suggested to improve animal safety. Commercial gain to a defendant in his use of (or interaction with) animals should also be a recognised aggravating feature in sentencing.

Seven cases involved juvenile offenders inflicting very serious harm on animals. Under the proposed amendment to Cap 169 to introduce a duty of care for keepers of animals, adult guardians of children will also be responsible for the care of pets in their homes, regardless of whether they are the legal owner. This should improve care for animals. The cases examined show a clear need for parents to be held accountable for protecting household pets from children.

Active Maltreatment Not Proceeded (55 cases)

Three cases which could not be proceeded with, as the suspects could not be identified, involved animals shot with metal pellets from air pistols. Given the danger to society these weapons impose and the fact that persons in Hong Kong are not permitted to carry offensive weapons in public places without a reasonable excuse, consideration should be given to the banning of these pistols. In one case, a suspect admitted to teaching his child to use an airgun to frighten wild animals in a country park.



June 2017: Suspected pellet wound found by the dog owner after his dog returned from wandering nearby. (SC 752)

In one case, a dog which police witnessed being thrown on the ground repeatedly by its owner was returned without charge on the basis that the suspect appeared to be mentally ill. In such a case, there should be a protocol to ensure follow up social support ensuring the welfare of both the man and the dog.

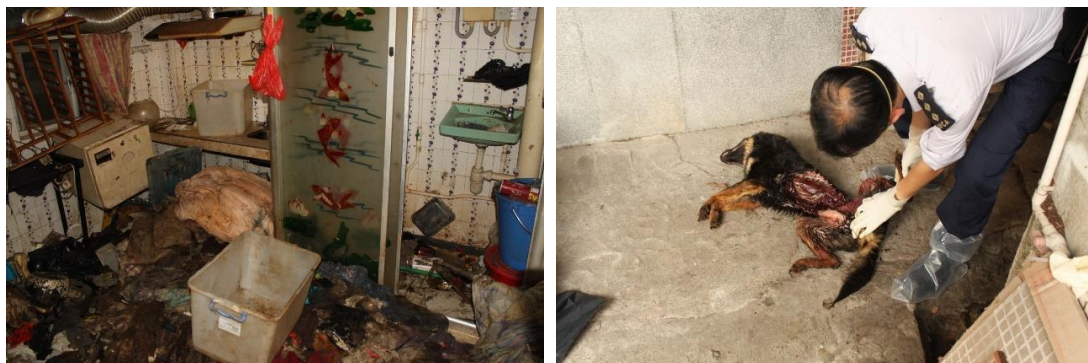
In another case, an owner who picked up his mongrel dog in the street then slammed it into the ground repeatedly was not arrested for cruelty, despite eye-witness accounts, and the dog was returned to him. In several cases (n =14), despite eye witnesses corroborating the beating of animals, cases were curtailed because evidence of physical injury was not detected at the time of the clinical examination. It is important for those determining whether to lay charges to read vet reports in context. Lack of physical evidence on a clinical examination of

an animal is not an indicator that physical harm and or cruelty has not occurred. It also is important for those investigating and advising on the law for prosecutions to recognise that cruelty *may* involve physical injury but that the legal test for cruelty under Cap 169 *does not require that it does*. Section 3(1) (a) provides that cruelty can be caused by psychological as well as physical harm. Terrifying or infuriating animals are specifically listed in the section as ways to establish cruelty. Where reliable eye witnesses are willing to give statements to this effect, cases should be pursued whether the vet report establishes evidence of physical injury or not. Investigators also have the opportunity to seek further clarification from witnesses (including experts) before determining whether to proceed.

In another case where the law was not applied correctly, charges were curtailed after the suspect stated the dog concerned had tried to bite him. Whether the allegation was true or not, this should not be impacting decisions to prosecute.

Neglect Proceeded (61 cases, 63 defendants)

In 41 cases in this category, animals were found inside private premises without food/water. In some cases their owners claimed they were planning to return and the animal had not been abandoned. Were the proposal to introduce a duty of care offence under Cap 169 adopted, then it would be easier for authorities to prosecute owners for failing to provide appropriate welfare standards. Under the proposed new duty of care offence, abandonment would constitute a failure to ensure that an animal's needs are adequately met. An owner could be liable for failing to meet an animal's needs, even in circumstances where those needs were not met for only a short period of time. Where the animal is found to have suffered, as well as failing to have its needs met, then cruelty could also be charged. However it is important to note that for any charge to proceed, the offender needs to be identified within the time allowed for prosecution. Many of those who left animals behind were in their 20's, and had multiple animals. Some of these defendants were able to avoid police detection for the 6 month period allowed for prosecutions to commence and thus take advantage of the time bar lapsing. These cases are described in the next category (**Neglect- not proceeded**).





May 2015: 12 dogs were abandoned in a village house. Four of the dogs had died and their bodies had already decomposed. Prior to this, the landlord had pursued the tenant for rent for over 5 months with no success. The case was curtailed as the tenant could not be located within the 6 month time bar. (SC 618)

Unfortunately, neither a cruelty nor a welfare charge can be used to prosecute unless the owner can be identified and no action to assist the animals can be taken until the animals are discovered. 17/61 cases involved animals which had died before discovery or required euthanasia due to their state. Introducing a welfare offence unfortunately cannot assist with this problem. Accordingly, it is necessary to also encourage action which supports the discovery of animals before they begin to suffer. This could include education to encourage anonymous reporting of animals at risk. In many cases where animals had been abandoned with no food or water, their rescue was made possible by the intervention of kind neighbours who fed the animals and reported the cases to authorities. SWD should also introduce a protocol requiring their officers to note homes where animals are being kept in poor conditions and alert AFCD to check the premises when problems are occurring at the location which may impact on the welfare of the pets kept.

The complicated problem of how to encourage owners to surrender animals rather than place their welfare at risk by leaving them behind also needs to be examined and addressed. Consideration must be given to the development of educational resources and practical mechanisms which would more effectively encourage owners to act responsibly and surrender their animals to SPCA, AFCD or another animal welfare organisation when they can no longer care for them adequately. If the duty of care is introduced, education of owners will be required to ensure they recognise their higher duties under the amended law. Within this framework, it is also necessary to increase awareness amongst struggling owners of the welfare benefits to their animals if they are surrendered early, enabling them to be cared for properly. Fear of prosecution under the proposed duty of care law should not be the only motivation owners have for surrendering animals they can no longer adequately provide for. Educational messaging should also ensure owners understand that timely surrender of at risk animals is an act of kindness for the animals concerned. The Animal Watch Scheme can assist with this in terms of education and awareness raising both in terms of educating on 'duty of care' requirements but also on the need to reach out for help where owners are struggling to cope and care for their animals.

Many animals clearly at risk of further neglect are being returned to inappropriate environments. In seven cases the animals concerned were returned to their owners by magistrates despite having been found living captive in excrement covered environments, without sufficient water or food. The current law permits the court to remove an animal from the care of the owner if it is shown, by evidence of previous conviction, or the character of the owner, that the animal is likely to be exposed to further cruelty. Whatever excuse is provided for the suffering caused, it is unacceptable that animals are being returned to owners on the basis that they are no longer at risk of cruelty after being left in excrement covered environments with their basic needs unmet. Only in the most exceptional cases should animals ever be returned to owners who have demonstrated, to the criminal standard, their inability to care for them properly. In such cases, where owners are permitted to have their animals back they should be required to submit to mandatory monitoring and to pay towards the costs for the care of their animals by the SPCA and AFCD during their detention. Those charged by the court with the duty to provide oversight of animals returned to owners must be provided with the financial resources to implement effective monitoring and, where an owner refuses to comply with directions, the law should provide that the owner can be returned to the court for breach of order, with a default mechanism for the mandatory forfeiture of his animals and other sanctions as appropriate (such as a ban on keeping animals).

The proposed amendments to Cap 169 include a recommendation that magistrates should have the power to forfeit/remove all animals from the care of convicted defendants, including those that are not the subject of charges. Some education of magistrates of the danger of returning animals to those who are incapable, whether due to economic problems, work commitments or mental health reasons, of caring adequately for their pets should be pursued. In one case, a dog that had been returned to its owner despite his conviction for cruelty in 2011 and two charges of failing to provide proper care, became a victim of cruelty again when the animal was abandoned with another dog in a small flat without food and water. In the earlier case, the dog had been found in a public housing estate unit. It is also unclear in this case why the magistrate returned the dog to the owner as dog ownership in public housing is only permitted with special permission from management.

Four of the cases of ‘neglect proceeded with’ involved animals that had died of starvation or suffered serious medical issues after having been tethered on private premises, without access to food or water. Currently section 3(1) (g) can be used to prosecute for an inappropriate tethering. The introduction of a welfare duty of care to provide an adequately safe environment should increase the likelihood of prosecution where tethering is inappropriate.

In several cases there were clearly serious misunderstandings by magistrates of the level of suffering which the animals must have been endured before their rescue. In one case, a dog was found hiding in a squat toilet in a premises being kept by the owner but at which no-one lived. The owner reportedly came every week or two to the premises and left food however the dog was not fed sufficiently. It was emaciated and suffering from severe skin disease. Its condition was so poor that the dog died the day after rescue. The magistrate was not convinced however that the animal’s death was the result of the cruelty it had endured. The defendant (a professional manager) was fined \$2000 for failing to seek vet advice. In another case the magistrate ignored a veterinary behaviourist’s report that the animal had suffered and applied his own test for suffering.

In ten cases, statements by their owners showed that the animals had died or suffered seriously as a result of the owner’s failure to seek appropriate vet treatment. Either no treatment was provided or clearly inadequate home-made treatments applied to save money. In several cases sick animals were placed in cages and left outside to die. While such cases are

currently prosecutable for animal cruelty and failure to provide necessary care under section 3(1) (g), attention should be given to the need to educate owners of the kindness in surrendering or euthanizing sick animals rather than leaving them to suffer prolonged and cruel deaths. Education as to the availability of treatment options for those who cannot afford private vets should also be heightened.

The choice of charges brought, and the use made by them at court, also showed a need for further training of prosecutors and police. As shown in Table 2, Section 3(1) (g) was rarely used despite being clearly required in many cases. In one case, two pedigree dogs had been left unattended inside a filthy village house without food and water. When police broke in, one dog ran away but the second dog was seized. The owner was charged only with the regulatory offence of failing to keep premises clean, for which the maximum penalty is a fine. The more appropriate and serious charges of cruelty or keeping animals in such a way that may cause them to suffer (section 3(1)(g)) were not pursued, either of which could have carried a maximum penalty of 3 years' imprisonment. The owner in this case was fined \$1000 and the dog that was seized was returned to him by the court as he had not been convicted of cruelty.

Case conferences are rarely held but would be of significant benefit in ensuring the correct charges are pursued, expert witnesses prepared to assist are appropriately briefed and the background to the offending, including the welfare implications and type and degree of suffering experienced by the animals, is properly understood by those prosecuting so that cases can be properly presented at court.

Neglect Not Proceeded (41 cases)

This category shows there is an urgent need for a duty of care offence in law. Some cases were not proceeded with as the police were concerned that, as the animals were underweight but not yet starved, the court would not uphold a conviction for cruelty. In such cases, the charge for keeping of animals in circumstances where they might suffer should have been utilised but was not (section 3(1)(g)). In some cases this appears to have been the result of police not sending cases for legal advice within sufficient time and the time bar was missed. In some cases advice may not have been sought at all. This should not be occurring. Cases should be routinely sent for legal advice at an early point. In other cases, where legal advice was sought, it appears prosecutors were not utilising the current law and not using section 3(1)(g) appropriately.



September 2017: A neighbour had reported to the police that a strong smell was coming from a flat in Tin Shui Wai for many days. The Fire Services Department entered the unit and found 22 live guinea pigs, 10 dead guinea pigs and 1 dead rabbit. Their owner had been unable to return home as she had been detained in a mental hospital by the court. (SC 774)

Attention should also be paid to the problem of owners being detained in custody leading to the death of their pets. In one case, an owned dog left alone for two weeks died of dehydration after its owner was arrested for drug related offences and detained in custody. In another case (not proceeded with) a large number of small animals starved to death after their owner was detained, by court order, in hospital for psychiatric treatment. A policy should be put in place whereby defendants/ patients should be routinely asked by police, judges,

hospitals or other custodial institutions or social workers if they have pets at home when they are detained to avoid this unnecessary suffering occurring. There should also be a mechanism to assign responsibility and compensation for the necessary provisions made to care for such animals provided under law.

If Cap 169 is amended to remove the time bar (by making it possible to charge the offence of cruelty on indictment) it would make prosecution of cases easier however training in appropriate charges should also be mandatory for any prosecutor giving advice on animal cruelty prosecutions. Further, it will be necessary to ensure that making the offences indictable does not inadvertently result in longer detention periods for animals seized. Improved case management controls will need to be introduced to ensure that this is not an unintended consequence.

In one case not proceeded with, two Malinois dogs were being kept on a roof. One of the dogs fell from the roof and the owner chained it. The dog then fell again to a ledge below the roof and the dogs were seized. At the time of seizure, they were found to be without water. The owner admitted the dog had fallen twice from the roof however the police determined there had been no offence of cruelty under section 3(1) (a) or even against section 3(1)(g) and the dogs were returned to the owner. In another case a dog was left unattended in a flat without food. The police curtailed the case for lack of direct evidence of cruelty and did not charge using section 3(1)(g) instead. In a third case, a husky was seized from a sub divided roof where it was being kept without shelter. The case was curtailed for lack of evidence of cruelty and section 3(1)(g) was not utilised. The same occurred in a hoarding case where 19 unneutered huskies were being kept together in a small space without adequate cooling and environmental hygiene. The owner was warned by police and the SPCA numerous times that the animals were being kept in an inappropriate environment. Eventually after the animals were left without water they were seized. The case was then curtailed on the basis that there was insufficient evidence to charge cruelty and section 3(1)(g) was not utilised nor were the regulations.

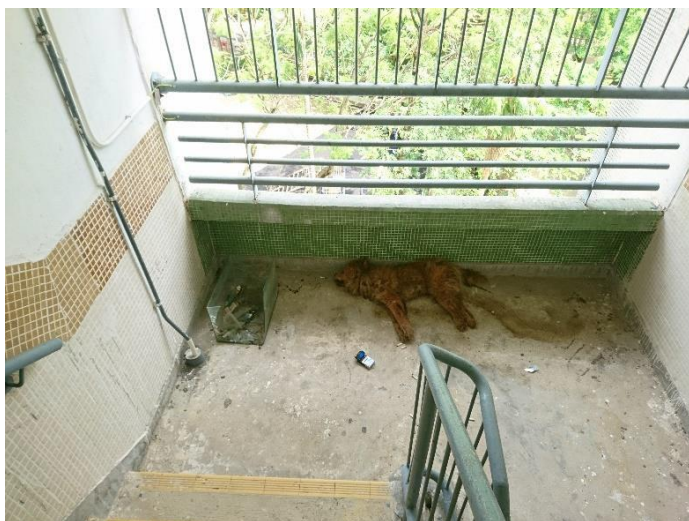
Problems with differing approaches amongst authorities to cases were also indicated. In one case, six highly endangered turtles were found stuffed inside luggage without water or ventilation at the airport. Police classified the case as cruelty and seized the turtles whilst trying to clarify and confirm their endangered status. While the police officers concerned should be commended for recognising the animals' suffering, it is disappointing to note that the cruelty charges were eventually not proceeded with, despite clear evidence of the crime. The case was transferred to AFCD for follow up however only a charge for export without a licence under Cap 586 proceeded to court. This case highlights the issue that animal welfare/animal cruelty offences are often overlooked when offences under other ordinances (in this case, Protection of Endangered Species of Animals and Plants) are being considered for prosecution.



Oct 2018: Six highly endangered Carolina Box Turtles were found in a man's suitcase without food or water. Airport police detained the suspect for cruelty, allowing them to seize the turtles. After the suspect was charged with the illegal export of endangered species, the cruelty charges were not pursued. (SC 889)

Several cases involved cruelty to animals after they had been entrusted to friends when their owners were detained in custody or no longer wished to keep them. Proper transfer of ownership procedures (such as transfer of dog licence) were inevitably not followed. In future, if the law is amended to introduce the duty of care, such cases could be considered as failures to meet a minimum acceptable standard of care by the primary owner where reasonable care is not taken to ensure their animals are provided with a suitable environment and care where the proper procedures for transfer of ownership are not followed.

In some cases the medical and legal conclusions reached appear irrational. A chow cross was heard to be vocalising in the internal stairwell of a housing block by neighbours. The police were called and the dog was found to have died. The animal was emaciated, its fur was covered in dried excrement and its nails were extremely long, indicating it had been caged for a long period. SPCA records showed that at the time of death it weighed less than half the weight it had been when it was found to have been hit by a car a few years earlier and had been returned to the owner. A post mortem was conducted but the cause of death was listed as 'unspecified' and the police did not charge the owner with any crime.



September 2017: The SPCA hotline received a report that a sick dog was reported crying in a stairwell since the night before. When SPCA inspectors arrived, the dog had already died. No charges were brought for cruelty or abandonment. (SC 775)

In another case, the police found insufficient evidence to proceed with a cruelty charge where a dog was found with an open wound exposing its intestines and the owners, who had tied it to their refrigerator inside their kitchen, could not explain the injury. In two other cases curtailed by police for lack of evidence of cruelty, four turtles starved to death inside a flat over a period of time after the tenant stopped paying his rent and moved away and eight groupers were left unattended for a week (one died) after a restaurant closed leaving the fish behind in a tank.

In such cases before the decision is made not to proceed a case conference should be held with different parties involved (e.g. police, SPCA, veterinary surgeons, expert witnesses and the DoJ etc.) or the expert witnesses consulted to ensure evidence has been properly and fully explored/interpreted.

In five very serious cases not proceeded with, prosecutions were not pursued after the police could not locate the owner within the 6 month time limit for commencing prosecution of a summary offence. In one case, a microchipped and starving husky was found on a refuse site. It had serious injuries to its legs suggesting cruelty and had to be euthanized 3 days later. As the owner named on the licence was not located within 6 months, the case was curtailed by police. In the second case, a dead dog and hedgehog were found to have died of dehydration and starvation after being abandoned inside a subdivided flat. Their bodies were discovered after the tenant, whose name was provided to police by the landlord, stopped

paying the rent for 3 months. The case was not prosecuted as the police could not locate the tenant within the 6 month period. In another case eight emaciated dogs and four dead dogs were found to have been abandoned in a village house after the tenant stopped paying rent. Those alive had started to eat the dead ones. The tenant was placed on a wanted list by police but the case was curtailed after the 6 month time bar lapsed.

It is important to recognise that where there is clear evidence of cruelty, the police need not wait to locate the owner to lay the information in the magistrates' court. Once the information is laid the criminal proceedings have formally commenced and the 6 month time bar falls away. Under Cap 169, cruelty is a summary offence therefore there is no need for an arrest and charge to commence proceedings. All that is required is that a summons is issued. This is done by the police laying an information before a magistrate and asking the magistrate to issue a summons to a named person under section 8 of the Magistrates Ordinance, Cap 227. The summons should then be served. If the defendant's whereabouts are unknown, this can be done by serving it on a third person at the suspect's last or most usual place of abode (such as the address where the animals were found). Once the summons has been issued, if the suspect fails to appear, a warrant can be issued for his arrest.

Responsibility also rests with government to improve procedures for ensuring the traceability of animals that are abandoned by their owners. Currently only dogs are required to be micro-chipped (and only at 5 months of age). With the proposed introduction of a duty of care under Cap 169, controls on microchipping should be strengthened and serious consideration given to imposing a system for licensing the ownership of other species to ensure that those responsible for them can be effectively traced, and held accountable, for their animals' welfare.

Sentencing trends across categories

We were disappointed to find that sentences for serious cruelty have increased only marginally since the publication of the *Review of Animal Welfare Legislation in Hong Kong* (Whitfort and Woodhouse, 2010). In our earlier study we reviewed sentences for the 18 month period following the increase in the maximum penalty for cruelty to animals, to 3 years, in 2006. Of the cruelty cases prosecuted by police in that period, only half received sentences of imprisonment. The average sentence imposed was 2 months' imprisonment with most offenders being ordered to serve 6 weeks or less. Our current review has found that for serious animal cruelty, in the four major typologies, less than half of the 143 defendants convicted between 2013 and 2019 were ordered to serve a sentence of imprisonment (Table 4). The average sentence imposed for the worst examples of animal cruelty in the magistracy from 2013-2019 remained very close to the 2007-2008 level, at 2.4 months' imprisonment. Further, if we removed those cases where related charges (such as possession of an offensive weapon) increased the final sentence, we found there had been no change to the average sentencing levels we reported in 2010. In other words, the average sentence for cases of serious animal cruelty in Hong Kong remains at the same level as in 2007-2008: 2 months' imprisonment.

Only fine levels have significantly increased since our last review. The average fine imposed for cruelty during the 18 months following the 2006 amendment to Cap 169 was \$1200. The average fine during our current review period was \$5800 (or \$2900 if limited to cruelty offences only).

A breakdown of these sentencing trends is depicted in the three tables below. Table 4 breaks down sentencing dispositions by the percentage of offenders in each of the four categories in which there were a significant number of convictions- i.e. active maltreatment; commercial exploitation; passive neglect/ignorance and hoarding and collecting. Table 5 shows the maximum and minimum sentences of imprisonment for all types of charges relating to animal abuse by year. Table 6 shows the number and types of charges laid in each year studied.

Table 4: Sentences imposed in four major typologies of cruelty

	Active Maltreatment		Neglect		Commercial		Hoarding	
Total Convictions & Bind overs	56		61		16		10	
Immediate Imprisonment	24 / 43 %	24 / 43%	11 / 18%	16 / 26%	1 / 6%	7 / 44%	1 / 10%	2 / 20%
Imm. Imp. w/ fine			5 / 8%		6 / 38%		1 / 10%	
Suspended Imprisonment	4 / 7%	9/ 16%	5 / 8%	9 / 15%	1 / 6%	3 / 18.5%		1 / 10%
Sus. Imp. w/ fine	5 / 9%		4 / 7%		2 / 13%		1 / 10%	
Community Service Order (CSO)	6 / 11%	7 / 13%	9 / 15%	17 / 28%	3 / 18.5%	3 / 18.5%	1 / 10%	3 / 30%
CSO w/ fine	1 / 2%		8 / 13%				2 / 20%	
Probation Order			1 / 2%					
Hospital Order	4 / 7%							

Drug Treatment		1 / 2%		
Fine Only	7 / 13%	14 / 23%	3/18.5%	4 / 40%
Bind over	5 / 9%	3 / 5%		

Table 5: Maximum and Minimum Penalties by Year

Year	Measure	Prison period	Typology	Brief case information	No of exhibits	Charges
2013	Max	7 m	Active maltreatment	A man strangled a stray cat to death while drunk.	1	1 x Cap. 169
	Min	6 d	Active maltreatment	A woman witnessed throwing her kitten into the sea was stopped from putting the cat in hot water and attempting to throw the cat into the sea again.	1	1 x Cap. 169
2014	Max	6 m	Active maltreatment	A man was caught on CCTV repeatedly hitting his neighbour's dog with a plastic pole	1	1 x Cap. 169
	Min	14 d	Active maltreatment	A man hit the left eye of an owned dog with a wooden baton.	1	1 x Cap. 169
			Trap	A stray cat was caught in multiple gin traps set by the defendant.	1	1 x Cap. 169
2015	Max	2 m	Active maltreatment	A domestic helper was witnessed hitting her employer's three dogs	3	3 x Cap. 169
			Active maltreatment	A man attacked his neighbour's dog with a scythe as he could not tolerate its barking anymore.	1	1 x Cap. 169
	Min	10 d	Active maltreatment	A dog owner was witnessed throwing his dog on the ground, resulting in a leg fracture.	1	3 x Cap. 169

2016	Max	12 m	Active maltreatment	A man was recorded torturing a cat for hours on a shop's CCTV.	1	1 x Cap. 169 1 x Cap. 228
	Min	14 d	Commercial	13 poodles were found in poor condition in a filthy environment.	13	1 x Cap. 169 1 x Cap. 421
			Neglect	Four dogs, some suffering from skin disease, were found without food and water in a dirty environment.	4	1 x Cap. 169 1 x Cap. 421
			Neglect	A small dog was found locked in a parked car for several hours.	1	1 x Cap. 169
2017	Max	12 m	Neglect	Eight live dogs and a cat were found abandoned in a squatter hut with ten dog carcasses.	9	1 x Cap.169 8 x Cap.421A
			Neglect	Six live dogs and five turtles were found abandoned in a squatter hut with six dog carcasses and two dog skulls.	11	1 x Cap.169 1 x Cap.421A
	Min	7 d	Active maltreatment	A man threw a turtle from a building during an argument with the turtle's owner.	1	1 x Cap. 169
2018	Max	6 m	Active maltreatment	A man was caught on CCTV repeatedly hitting a chained-up dog with a golf club for over a minute due to its barking. The defendant was initially sentenced to 18 months' probation. He breached the probation order and was re-sentenced.	1	1 x Cap. 169
	Min	7d	Active maltreatment	A man kicked and slapped an owned Pomeranian.	1	2 x Cap. 169
2019	Max	10 m	Hoarding	A shelter operator kept over a hundred animals in appalling conditions. 28 dogs and 8 cats were found dead.	146	2 x Cap. 169

	Min	14 d	Neglect	An owned dog was found unable to walk with maggot wounds. The owner claimed the dog was his brother's and had gone missing the day before.	1	1 x Cap. 169
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Table 6: Charges breakdown

Charges brought	2013	2014	2015	2016	2017	2018	2019
Cap.169 s.3 (unspecified)	19	15	15	19	28	9	7
Cap.169 s.3(1)(a)	10	2		5	8	12	9
Cap.169 s.3(1)(b)	3	2		1	2	5	1
Cap.169 s.3(1)(c)						1	
Cap.169 s.3(1)(g)	3	2		1	2	3	3
Cap.169A s.2	3	1		1			
Cap.169A s.5	1						1
Cap.169A s.6	2	1					
Cap.169A s.7	5	1		1		6	2
Cap.169A s.8	1	1		2			
Cap. 421 s.24	1						
Cap.421A s.23						1	
Cap.421A s.20	8	5	1	7	19	8	13
Cap.421A s.25							1
Cap.132 s.83A	1						

Cap.137 s.5	1						
Cap.138 s.23(1)	3				1	1	
Cap.139B s.11		1					
Cap.139I s.4					1		
Cap.170 s.4	1						
Cap.170 s.7(1)		1	1				
Cap.170 s.7(2)	1			1			
Cap.170 s.8(1)(b)				1			
Cap.200 s.24				1			
Cap.200 s.60							1
Cap.200 s.62	1						
Cap.200 s.188L					1		
Cap.212					1		
Cap.212 s.39					1		
Cap.228 s.4B		1			2		
Cap.228 s.117				1			
Cap.232 s.63					1		
Cap.529 s.16(1)						1	
Total	64	33	17	41	67	47	38

- Includes all typologies of offending.
- Includes acquittal cases and charged and bound over cases.

The highest penalty for cruelty related cases imposed during the period of review was 12 months' imprisonment to which three defendants were sentenced. The first case, SC 684, involved cruelty to a cat by a man who put it inside a carton and then, using a long nylon string, tied up the cat. He then dragged the cat around and subsequently threw the cat up and down in the air a number of times, allowing it to fall onto the ground. This was carried out over a couple of hours. The second case, SC 753, involved a man who left eighteen dogs and a cat inside a locked squatter's house without food and water for 2 weeks, ten dogs died. In the third case, SC 764, a man left twelve dogs and five turtles in a squatter's house, after losing his job and girlfriend. Six dogs starved to death (the remaining dogs were forced to eat the others who had died).

Below one year, the longest sentence of imprisonment in SC 929 was for 10 months' imprisonment for a man who was running a shelter filled with 146 starving and sick animals, 36 of which had died before volunteers raised the alarm. SC 399 involved a man who was sentenced to 7 months' imprisonment after strangling a cat by dragging it back and forth with a nylon string then beating it to death with a wooden stick. The magistrate sentenced him to 3 months' imprisonment, but after the Secretary for Justice sought self-review of the sentence, the magistrate admitted to overlooking the Court of Appeal precedent in *SJ v Iu* and raised the sentence to 7 months' imprisonment. In a case involving bestiality, the defendant was also sentenced to 7 months' imprisonment (SC 730).

In a case where the defendants were sentenced to prison of 6 months' imprisonment, two inmates in a drug addiction treatment centre beat and killed a dog that had been entrusted to their care (SC 700). In another case, a male was also sentenced to 6 months' imprisonment (after breaching an initial probation order) for hitting an owned dog with a golf club for almost a full minute outside a shop where the dog was tethered (SC 899). In two very serious cases involving the chopping of dogs with knives, one man (SC 741) was sentenced to 5 months' imprisonment after plea for chopping his mother's dog (which recovered), another was sentenced 2 months' imprisonment (SC 646) after plea for chopping his neighbour's dog with a scythe (the dog had to be euthanized).

Cases involving the prolonged beatings of dogs resulted in extremely varied sentences. A man who kicked a tethered dog in an alley was imprisoned for 10 weeks (SC 888) while another who had beaten a dog repeatedly with a plastic pipe for barking was sentenced to 160 hours CSO (SC 738) and a dog trainer who did the same thing whilst training a client's dog, to 120 hours CSO (SC 718). A man who hit his neighbour's tethered dog over the head with a shovel for barking was sentenced to 80 hours CSO (SC 716). Going forward, consideration should be given to the appropriateness of a CSO to deal with animal cruelty.

In cases involving active maltreatment of animals other than dogs and cats, sentences were significantly lower with the longest involving 4.5 months' imprisonment for pencil stabbings which resulted in the death of ten turtles (SC 777). Only three other cases for species other than dogs and cats involved a prison sentence: SC 931 which involved the scalding of a rabbit (4 weeks); SC 922 where the defendant beat a pigeon to death (6 weeks) and SC 766 where the defendant threw a terrapin, cracking its shell (one week). In a case where a rat was burned alive in a trap the defendant received an ONE bindover and his trap was returned to him, indicating the animal's suffering was not taken seriously by the court.

Of the 61 cases of prosecuted cruelty categorised as neglect, 41 involved animals being abandoned on private premises. In 17 cases animals had already died when they were discovered or required euthanasia on welfare grounds. However in only two of these cases were the defendants sentenced to 12 months' imprisonment. In the other cases, the sentences ranged from 120 hours CSO to 4 months' imprisonment.

It was observed that the sentences imposed for cruelty involving large numbers of animals apparently kept for commercial breeding are still extremely low despite the clear implication from the government's amendment to Cap 139B in March 2017 that animals kept for profit should receive stricter welfare protection. In a case in late 2017 in which over 100 pedigree dogs and puppies were found in cages inside metal container units in appalling conditions without food and water (some were also debarked) the defendant was sentenced to only 7 weeks' imprisonment for cruelty and keeping dogs without a licence and fined \$27,000 (SC 789). While charges under Cap 139B were not pursued in that case (presumably as there was no clear evidence of trade), the circumstances of the case suggest trade was most likely the motivation for the offending. In such cases the keeping of large numbers of animals for breeding should be considered an aggravating factor in the cruelty case and should result in more deterrent sentencing. By way of comparison, in a 2013 case (before the amendment to Cap 139B in 2017), a defendant who kept 101 pedigree dogs and 33 pedigree cats in squalid conditions for breeding, many without water, was sentenced to four months' imprisonment for cruelty, reduced to 3 months on appeal (SC 463). It is concerning to see a comparable case in 2017 being taken less seriously by the court.

During the period under review the Secretary for Justice sought review of the sentence of 6 months' imprisonment in SC 700, for a man who had beaten and killed a mongrel dog entrusted to him and another inmate in a drug rehabilitation centre for washing (SJ v Fung Chi Hoi [2019] 4 HKLRD 188). The Court of Appeal dismissed the review and stated it was inappropriate and impossible for the court to hand down sentencing guidelines for animal cruelty given that, in each case, the circumstances of the crime, the modus operandi, the motive, the type of victimised animal, the harm done to the animal and the background of the offender may be completely different. Our review has found animal cruelty cases in Hong Kong do show patterns in offending and particular typologies of harm. As such, the basis on which sentencing guidelines could be tailored to suit Hong Kong conditions has been made clearer.

Our review has also shown that sentences for the period of review, even for the most serious examples of cruelty remain low. Perhaps even more concerning is the disparate sentencing attitudes adopted by magistrates. There is an urgent need to develop consistency in sentencing. One way that this could be addressed is through amendments to Cap 169, not only to significantly increase maximum penalties for cruelty related offences, but to provide legislative guidance as to the considerations sentencing judges should take into account in sentencing cruelty cases.

To this end, we reviewed starting points and ranges for sentencing in the UK and Northern Ireland. In the UK, factors indicating high culpability include deliberate or gratuitous attempts to cause suffering, prolonged or deliberate ill treatment or neglect, ill treatment in a commercial context and playing a lead role in illegal activity. High culpability cases have a starting point set at 34% of the maximum sentence available under the legislation and a range length of between 23% and 50% of the maximum. In Northern Ireland, the starting point for a first time offender, where the animal has died or had to be euthanized, is 25% of the maximum sentence plus disqualification from keeping animals and the range for sentencing is

set at 12.5 % to 50% of the maximum sentence permitted plus disqualification. Were these standards applied to the current maximum of 3 years' imprisonment under Cap 169, the starting point for serious cruelty cases in Hong Kong would be set at 9 to 12 months' imprisonment.

One way to approach the current problem of low and disparate sentencing would be to provide guidance on appropriate starting points for categories of offending within Cap 169. Another method would be to provide a definition of aggravated cruelty warranting a higher penalty. For example, in Queensland, Australia, the Animal Care and Protection Act 2001 provides for a maximum penalty of 3 years' imprisonment for animal cruelty but the Act is supplemented by the Criminal Code Act of 1899 which provides that a person who, with the intention of inflicting severe pain or suffering, unlawfully kills, or causes serious injury or prolonged suffering to, an animal, commits a crime with a maximum penalty of 7 years' imprisonment. 'Serious injury' is defined in the Act as: (a) the loss of a distinct part or an organ of the body; or (b) a bodily injury of such a nature that, if left untreated, would: (i) endanger, or be likely to endanger, life; or (ii) cause, or be likely to cause, permanent injury to health.

We also suggest that to ensure that cases that should be appealed are quickly identified, the DoJ should routinely review the sentences in cases where they gave advice on prosecutions.

Financial and welfare implications of offending and case-related animal holding

The seizure of animals in animal cruelty investigations is significant on two fronts. From the prosecution perspective, it is important that the animals are seized and sent for veterinary examination to assist with evidence collection relating the animal's physical and health condition and to establish whether it has suffered and how it was impacted by any such suffering. From the abused animal's perspective it important that it receives appropriate medical treatment and changes in husbandry - improving its welfare, and that any other animals at risk of abuse and being made to suffer unnecessarily are also removed, for their own protection. However there are implications associated with animal seizure; both through financial cost and the potentially negative welfare impacts on animals from being held in a facility for unnecessarily long periods.

Length of Stay (LOS) analysis of cases assisted by the SPCA during the investigative process

The proportion of the 335 studied cases that involved live animals were analysed in terms of the length of time the animal concerned was held in relation to the investigation/court proceedings (LOS). Cases where the animals did not enter the SPCA or where information was lacking were not included and neither were cases where the death or euthanasia of an animal curtailed the case related holding period. Eventually 189 cases were reviewed.

The start of the period of holding for the case was the intake date of the animal(s) and the end of the holding period (case closure) was when the final instruction on the determination of the outcome of the animal(s) (disposition) was communicated to the SPCA in writing by the relevant authority (receipt of email/fax). It should be noted that a single case can involve many animals. The sample of cases was analyzed from several perspectives as follows:

Third party – owner not considered the suspect (includes unowned animals)

Owner – owner considered the suspect

Early release – pre-trial

Early release – early case curtailment (cases where the curtailment occurred after a longer investigation process i.e. close to, or after, the 6 month time bar for offences under Cap 169 were not included)

For the cases where a third party was the suspect then earlier release and much shorter holding periods were the norm, especially for owned animals. In such a case, where the animal is owned, it is usually retained by the owner during the examination and treatment or is returned to the owner after a short period of stay or after examination. Where an animal was presented just for an examination and forensic assessment and returned the same day, holding was recorded as 1 day.

In addition, in some instances, early release mechanisms were able to be applied and the above categories were also analysed to assess the impact of these measures. It should be noted that there is no standard mechanism to assist with promoting early release of animals held for their own protection/as exhibits and the use of any mechanism depends on willingness to take action by the investigative team and, in terms of owned animals, the cooperation of the owner or the support of a magistrate, should a legal application be made. It should be noted that all pre-trial early releases during this period occurred as a result of the police exploring this option with owners surrendering ownership of the animals and the police subsequently agreeing to their being released from holding in relation to the investigation (i.e. determining there was no longer a need for the animal to be detained on an evidentiary basis). No court applications were made for early release.

Table 7: Lengths of holding related to cases involving the SPCA initiated between Jan 2013 and Dec 2019 (up to case closure in 2020)

Outcomes	No. of cases	Shortest LOS (days)	Mean LOS (days)	Longest LOS (days)	Mode LOS (days)
Total number of cases analysed	189	1	105	443	1

Third party Suspect	74	1	21	220	-
(A) Third party (or unknown suspect) Returned to Owner (RTO)	64	1	8	141	1
(B) Third party Suspect (not owned)	10	16	100	220	-
(B1) Third party (not owned) Full investigation/court process (no early release/case closure)	4	133	176	220	-
(B2) Third party (not owned) Early release case closure (insufficient evidence /no suspect identified)	6	16	49	71	-
Owner the suspect	115	1	160	443	-
Owner the suspect Early release mechanism pre-trial	26	2	75	155	-

Owner the suspect Early case closure (insufficient evidence)	17	1	32	80	
Owner the suspect Full investigation/court process (no early release/case closure)	72	62	221	443	

As can be seen by the above analysis, it is possible by utilising an early pre-trial release mechanism where owners were the suspects to significantly shorten the period animals need to be held. The average holding period for cases where the owner was the suspect and the case proceeded through the full investigation/court process was 221 days. Where a pre-trial early release mechanism was able to be used, the average holding period was reduced to 75 days (a 66% reduction). The same is true for those cases involving unowned animals. Where early release was utilised the average holding period was reduced to 49 days (a 72% reduction) when compared to the average of 176 days holding for unowned animals where early release did not occur.

POLICY IMPLICATIONS AND RECOMMENDATIONS

In view of our findings we have made recommendations supporting significant reforms to current animal protection legislation including:

- the introduction of a legislative duty of care for animals which would require owners to provide them with positive welfare
- new legislation to regulate animal shelters;
- new legislation to regulate grooming parlours and animal trainers and increased regulation of animal boarding facilities;
- new powers to release animals early and allow for costs for their care:
- new offences to deter animal poisoning;
- improved regulations to control the use of traps and cruel devices;

- a new offence of allowing animals to fall from height;
- new prohibitions on unnecessary mutilations of animals;
- new prohibitions on mercy release of animals without a permit;
- new powers to authorize experienced persons to assist AFCD and the police in the enforcement of Cap 169: The Prevention of Cruelty to Animals Ordinance.

We also recommend that practices are updated to require prosecutors responsible for cruelty cases to have undergone specialized training and to participate in case conferences, for capacity and resources to be provided to allow for post-conviction monitoring of animals returned to their owners, to introduce a blanket protocol so that detainees are asked about any animals left without care and that steps are taken to explore the introduction of sentencing guidelines.

Details of specific crimes required and other changes in law/public education

(1) Hoarding and the need for shelter legislation

Hoarders are defined as persons keeping more animals (of any species) than they can care for adequately in circumstances in which the animals' most basic physical and social needs, including food, water, shelter, veterinary care and sanitary living conditions are unlikely to be met. Hoarding Disorder is recognised as a form of mental illness that is complex and, as a form of addiction, very difficult to treat. Hoarders commonly make excuses for their behaviour and deny that the animals they keep are suffering due to their environment. Seizure of animals from hoarding cases is costly and labour intensive, due to the large number of animals involved and the resources required to treat and house them until criminal justice responses have been resolved. Resources necessarily made available to meet the needs of the animals seized are consequently reduced for other animals. The impact of large scale seizures on resources are compounded when cases are contested at court (as they usually are in hoarding prosecutions). Animals detained as exhibits may spend months waiting for prosecutions to conclude, occupying space that may have permitted other animals to be taken in and assisted. The long term retention of seized animals as exhibits at trial is unwarranted as their evidentiary value to the court is lost once they begin to recover physically. Studies have shown that the psychological harm caused to animals in hoarding situations can have long term behavioural effects on animals after their rescue and long term holding before release from a case can also be problematic for some animals. When, as can occur in Hong Kong cases, animals are returned to their hoarders after trial, the risk to the welfare is extreme. Studies of hoarding cases report extremely high recidivism rates (almost 100%). Hoarders are known to resist change and avoid treatment for their disorder making attempts at intervention difficult to enforce. Research identifying effective legislative controls in other jurisdictions to reduce incidences of hoarding in Hong Kong is called for. In the interim, more must be done to trace and regulate persons keeping inappropriate numbers of animals. Regulations could be introduced to require those with large numbers of animals (regardless of species) to comply with additional measures such as registering them, paying higher licensing fees and re-registering their animals more often than the current 3 years (in the case of dogs).

In 10 cases during the period of study, large numbers of animals were seized from extremely poor living environments that had caused them to suffer or which put them at extreme risk of suffering. In many of these situations the defendant appeared to believe their poor treatment of the animals they kept was vindicated by the fact they had rescued them from the street. In one case, the defendant was keeping six dogs in a filthy structure filled with rubbish and full of excrement with very little food and water, all the dogs were below acceptable weight levels and suffered from skin diseases. He also had a further 60 mongrels being kept on wasteland and, in accordance with the classic hoarding addiction model, was of the view that their seizure was not in their best interests. The six mongrels that were seized were returned to the defendant on conviction as the magistrate did not believe they were at risk of further cruelty. The dogs had spent 12 months in holding before their return. In another case, the animals were locked in crates in an alley without food or fresh water. The defendant had collected animals from others living in the neighborhood and claimed the housing was ideal. The cages were dirty and filled with excrement. Two of the animals were observed to be suffering from obvious skin diseases caused by bacterial infection.



May 2018: Six dogs, some emaciated and suffering from skin disease, found living in filthy conditions. The owner was keeping over 60 dogs on another site, also in rent arrears. (SC 856)

The common justification by hoarders, that any form of shelter is better than being on the street or in another home, has resulted in serious neglect of animals in Hong Kong over the study period. Some of these hoarders have set up what they purport to be animal rescue shelters. In the worst cases animals have starved to death unable to escape and fend for themselves by their confinement in these so-called shelters. In a particularly horrific case (SC 929), the defendant was running a shelter with 102 dogs and 44 cats. When volunteers raised the alarm

with authorities the shelter was raided. 28 dead dogs and 8 cats were found across the facility with other starving and filthy animals rescued from confinement in cages and rooms without food and water or found roaming around the site. The owner of the shelter had been running shelters for 10 years and had been at the present site for one year. He generally received \$4,000-\$8,000 in donations each month. The rent on the shelter was \$8,000 per month and he could not afford to pay other bills. He was sentenced to 10 months' imprisonment.

To counter the risk to large numbers of animals in unregulated shelters, there is an urgent need to introduce shelter legislation in Hong Kong. In one case a woman running a shelter with volunteers had confined 95 dogs in a village house and yard. The dogs had not been fed for a very long period and 20 of them had died. Some of the bodies had been consumed by other starving dogs. The shelter was raising money from the public. The defendant, who initially tried to blame her domestic helper for the deaths of the animals and the filthy environment in the shelter (the dog excrement was 1 inch thick in places), was ordered to serve 160 hours CSO and fined only \$1000. In another case the defendant company controlled a temple inside of which had been built an artificial pond. The pond contained 43 terrapins, including some endangered species. The turtles were used to attract 'luck' donations from the public. On receiving a complaint, investigators found the pond water had been allowed to dry up, and five animals had died. The other 38 were found to be suffering from poor body condition and showed signs of neglect including starvation/decreased nutrition, failure to provide adequate care, and likely dehydration. In mitigation, the company directors stated that the temple was a charity organization, with 35 unpaid directors, all of whom were over 75 years of age. The company pleaded guilty to causing unnecessary suffering to 43 turtles and was fined \$50,000.

Another powerful reason for the need to regulate animal rescue shelters is lack of financial transparency as to how public donations are being used.

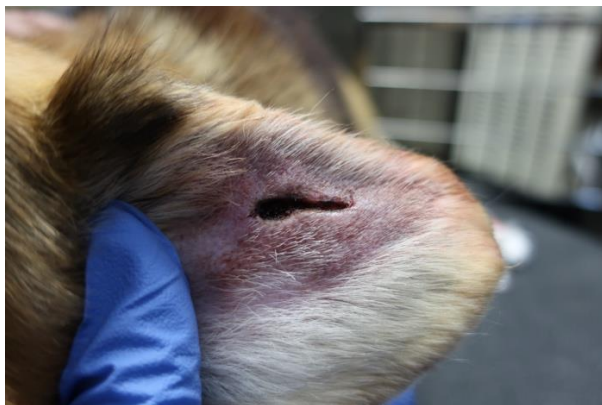


February 2014: 75 live dogs and 20 dog carcasses were found unattended in a Pat Heung village house. (SC 509)

(2) Grooming parlour and animal training legislation and stronger regulation and oversight of boarding establishments

In five cases animals were seriously injured by those entrusted to care for them in grooming parlours/pet boarding or training establishments. At least two of the injuries were inflicted deliberately. Consideration should be given to the need to licence grooming parlours and training establishments and to enforce stronger controls on boarding, including assessing the suitability of those who operate these establishments to have the care of animals. Establishments where animals are left unattended by their owners should be regulated to meet a minimum standard of care and those with convictions for animal cruelty should not be permitted to apply for boarding/grooming/training licences. Licencing conditions should provide that those working in the establishments with access to the animals should have basic training in animal care.

In a disturbing case, a member of the public brought his dog for ear surgery at a grooming parlour. The illegal operation was done by the business operator (who had previously been convicted of cruelty in relation to the keeping of pedigree dogs in a filthy environment and failing to treat a wounded dog). The defendant was convicted of performing illegal surgery and of possession of controlled drugs without a licence, it is unclear why he was not also charged with animal cruelty. The public should be better educated that allowing non-qualified persons to perform surgery on their animals is not only illegal (exposing not only the person doing the surgery but also the owner to criminal liability) but that to allow an unqualified person to perform surgery is an act of extreme cruelty and places the animal concerned at high risk of serious injury/death. It should be an offence to commission or permit a person to perform an illegal act of veterinary surgery or cause or inflict cruel and unnecessary procedures. It should also be an offence to possess an animal that has been subjected to a mutilation.



April 2018: Unqualified act of surgery on a corgi. (SC 845)

(3) Seizure related proposals to shorten animal holding period and allow for costs recovery

Early release from detention for seized animals would significantly improve their welfare, as long term confinement can have negative health and behaviour implications for victims. The length of stay for many of these animals could be shortened by two methods, the second of which would require legislative amendment but which we believe would simplify matters most succinctly.

Method A: Application for early forfeiture under Cap. 221. This method would require that prosecutors make early application for forfeiture under section 102 Criminal Procedure Ordinance, Cap 221. Section 102 allows the court to forfeit property that an offence has been committed in respect of or which was used in the commission of an offence; including live animals, before the case is tried. The use of the live animals at trial would, in nearly all cases, be of no evidentiary value. The prosecution would rely on vet reports and photos of the animals, *at the time of seizure*, not on the animals in the condition they are, at the date of trial. It should be noted that section 102 provides that an order made under the provision cannot be appealed. It appears that there has been some reluctance to use the power to seek forfeiture on the basis that there is a power under the current Cap 169 section 5 to forfeit animals. That power is only available, however, in limited circumstances, requiring a conviction and a finding that the animal forfeited is at risk of further cruelty. The application of section 102 to pre-trial forfeiture of animals is therefore not ousted by Cap 169 and should be being fully utilized in current prosecutions.

Method B: Amendment of Cap. 169 to allow pre-trial forfeiture and restitution for the costs of caring for the victims of animal cruelty. This method would require that pre-trial forfeiture is specifically included in the Cap 169 amendments. The drafting of the amendment could follow a similar mechanism provided under Cap 139 whereby a forfeiture order can be made if an owner of an animal, who is the defendant, has been identified and can be located. The owner would then have 14 days to appeal against such an order. In many cases owners of animals may not be identified or may not be able to be located and the provision of new Cap 169 forfeiture orders (with appropriate wording) should help to shorten the animals' holding periods. The inclusion of such a mechanism in the amendments to Cap 169 is important as it would formalize the process of being able to pursue the early release of animals from being held in relation to a case. Importantly the appeal process would still allow owners the option to object to relinquishing ownership. Final release of animals from being held in relation to a case would be dependent on the enforcement authorities being satisfied that their evidentiary value had been exhausted.

Costs Implications

Early release would also have a significant impact on costs. Costing the financial implications of detention of animals at a very conservative \$90 per day for dogs and \$46 per day for cats (as set out in the Cap 421A Rabies Regulation Schedule 1 - Fees) illustrates the costs to the SPCA (HK) in keeping animals while cases are proceeded with over months and, in some cases, years. It should be noted that these simple estimates are using costs that have not been adjusted since 2001.

We have calculated the number of care days that one large scale hoarding case cost the SPCA (HK). Care days are calculated by multiplying the number of animals held by each animal's LOS. For a large shelter cruelty case (SC 929) in 2019, the SPCA (HK) catered for 3524 dog care days and 7164 cat care days. The lowest estimated basic care cost to the Society

amounted to \$317,160 for the dogs and \$329,544 for the cats. These cost estimates only relate to basic animal care costs at the SPCA and exclude their medical rehabilitation and other costs and any additional costs incurred whilst some dogs were cared for by AFCD. The defendant in that case was ordered to compensate a reporter to the case for \$5000 for damage to his camera. There is no provision in the current law, however, for the SPCA (or any other party) to be routinely compensated for the significant costs involved in caring for animals during the investigation and hearing of cases. This significant omission must be remedied under the amended Cap 169.

(4) Poisoning- New offences required

59 suspected poisoning cases were recorded during the period but only two proceeded to court, both in 2013. In many cases a suspect could not be identified where poisoned bait was found. Cap 169 is currently unable to address this problem as a defendant would need to be caught re-handed causing suffering, or to have admitted the offence, for a prosecution to be pursued. We therefore recommend the introduction of a new offence of administering a poison to an animal (regardless of whether or not an animal can be shown to have suffered as a result) and possession of poisons in a public place, without reasonable excuse. Without the introduction of such new offences, poisoning cases will continue to be the most under prosecuted of all cruelty offences and it will remain possible for those who attempt to poison to escape liability where animals cannot be shown to have suffered as a result of their actions.



Poisoned bait with its characteristic blue tinge



Dead dogs found in the vicinity where poisoned baits were found

Amending Cap 169 to introduce these two new offences would also align Cap 169 with Cap 170 under which poisons are regarded, in law, as a form of hunting appliance and prohibited from use without authority. It would also align with the new philosophy under the proposed Cap 169 to allow for proactive early-stage interventions to prevent suffering before it occurs. It is also important to note that imposing a prohibition on persons from possessing poisons in a public place without reasonable excuse is an offence used effectively in other jurisdictions to prevent animal cruelty. There is no reason to assume that imposing a prohibition on carrying poisons without a legitimate reason would not be appropriate in Hong Kong where, for over 40 years the possession of an offensive weapon in a public place, without reasonable excuse, has been regarded as a serious crime, (carrying a mandatory custodial sentence), under Cap 245, Public Order Ordinance.

(5) Traps and other cruel devices- improved regulation

There were 21 cases during the period in which animals were caught in traps and one in which a shock collar was being used by a man involved in a cruelty case. We recommend that electric shock collars and like devices should be prohibited from sale and possession. Further the sale and possession of cruel trapping devices, such as glue traps should be regulated to ensure their misuse does not result in animal cruelty. The cases investigated found many animals including hamsters, cats, squirrels, and birds accidentally trapped by uncontrolled devices. Animals caught in traps are at risk of serious suffering. For example, animals caught in glue traps become extremely stressed and struggle, resulting in injury, including for birds, loss of feathers. Given that all birds are protected under Cap 170, the regulated use of these traps is particularly justified.



Glue traps are inhumane as animals may be left to starve to death or be disposed of whilst still alive.

Even where animals caught in traps do not die as a result of dehydration, starvation, injury or stress they may be killed inhumanely by inexperienced users. For animals lucky enough to be removed from the traps before they die, their bodies are still contaminated by glue which is not easy to remove. Birds are especially susceptible and may not survive the prolonged stress of being trapped, handled, cleaned and rehabilitated.



The use of gin traps continues to cause immense pain and suffering to its victims, sometimes resulting in death.

It should also be noted that the current controls and interpretation on the possession of traps under Cap170 has the limitation of being related only to 'hunting any wild animal', making an amendment to Cap 169 strictly necessary to protect dogs, cats and other domestic species.



Snare traps cause similar suffering to victims.

Cap 169 should therefore be amended to provide the Director of AFCD with the power to stipulate and to update a list of devices that are banned or subjected to licensing and regulation to limit misuse and suffering.

(6) New offence of falling from height in Cap 169

Along with a charge under section 3(1) (g) of Cap 169, the introduction of a new duty of care would, in many cases, allow for the prosecution of those who keep animals in unsuitable environments (such as on rooftops) when those animals are injured as the result of falling. However, in addition to these, for the purpose of improving the protection of animals, we also recommend a new specified offence of 'failing to prevent an animal from falling from height' be introduced. During the period examined there were nine cases in which animals were thrown or fell from height. Most were killed on impact. The introduction of a new offence would help to educate owners of the need to ensure a suitable and safe environment for their pets and the serious consequences of failing to do so. Of course, where there is evidence the animal was deliberately thrown, the current offence under Cap 169 would also be available.

(7) New offence prohibiting cruel practices including tail docking, ear cropping, declawing of new-born puppies and other unnecessary mutilations.

In two cases, surgeries were carried out by members of the public. One was to dock a poodle's tail. The owner and his friend tried to do it without a vet/pain relief. In that case admissions of guilt were made but as it is currently legal for a vet to dock a dog's tail then, unless a burden were placed on the owner to prove the act was carried out by a vet, prosecution for cruelty could be difficult. Prohibiting the practice and other unnecessary mutilations would overcome this problem. Further, in classifying such mutilations as a distinct

form of cruelty under Cap 169, owners would be educated as to the need to avoid unnecessary suffering to animals in situations where there is no legitimate reason for them to be subjected to painful mutilations. It should also be an offence to commission or permit such an unnecessary mutilation to be undertaken on an animal or to possess an animal which has been subjected to a mutilation.

(8) Abandonment, mercy release and issues with duty of care legislation

One of the overlooked categories of animal cruelty is commercial release activities (commonly known as mercy release), where animals are procured through food or pet markets for the sole purpose of their release into the natural environment. This practice is well known in Hong Kong and has been the subject of media attention and public concern.

One of the amendments to Cap. 169 proposed during the public consultation was to include, as an act of cruelty, the release of an animal into an unsuitable environment (abandonment), which causes it to suffer. Specifying that abandonment is cruel is a welcome step, however it is also necessary to define an ‘unsuitable environment’ to ensure that ‘mercy release’ is not exempted or even legitimised by the wording of the legislation. If an environment could be considered ‘suitable’ it does not mean that an animal (previously kept under human control) should be able to be released into it on the grounds of its own health and welfare and ability to cope, the potential impact on indigenous animal’s health and welfare and on the general environment. Even where it is unclear that the animal released has suffered it should still be possible to prosecute for its release on the basis of its abandonment and potential harm to other animals (e.g. invasive species harms). The intention to define abandonment (including mercy release) as an act of cruelty, as suggested during the public consultation on amending Cap 169, puts a heavy burden on the prosecution to prove what should be defined as an unsuitable environment for a species in each case and may have the unintentional effect of legitimising some acts of abandonment.

It is assumed that the intention of the proposal is, in part, to end the unnecessary suffering mercy release causes to thousands of animals every year in Hong Kong. To be effective against the type of abandonment and actions ‘mercy release’ involves, however, any new legislation will need to be carefully drafted and should specifically target the commercial businesses that enable the mercy release practice to continue. To be effective, the legislation needs to be broadened to include elements that mirror the prevention of other acts of animal cruelty (e.g. animal fighting) such as: publicising a proposed release; providing information about a proposed animal release (or any act of animal cruelty) with the intention of enabling or encouraging attendance; possessing anything designed or adapted for use in animal release and purchasing animals for the purposes of release. As it is currently worded, the proposed legislation presents significant challenges to enforcement officers in the field and places an unnecessary burden on the prosecution. It also does not target the main offenders facilitating this practice. If the legislation is only focused on the ‘releaser’, then enforcement officers will need to be present at the point of release to charge those caught in the act. The animals released will also need to be recovered and, under present practice, examined for signs of suffering, before being kept in holding until the court case is over. Such processes are costly and unnecessary when the practice could be better regulated through a regulatory system that makes the practice illegal without a permit. Guidance can be taken from Singapore where controls under the Wildlife Act were introduced in June 2020 providing that wild animal release is only permissible with written approval from the Director-General, Wildlife

Management. A similar permit system along with the other specific measures to tackle ‘mercy release’ could (and should) be regulated under Cap 170, The Wild Animals Protection Ordinance with the classification of animal abandonment in general being dealt with under an amended Cap 169.

(9) Allowing experienced persons to be authorized to assist in enforcement of Cap 169.

We note that if the proposed duty of care offence is included in Cap 169 this would require more active enforcement and resources may be insufficient to address the problem. We are aware that in other jurisdictions, when the duty of care legislation was introduced, powers were also granted to the government department to authorize suitable parties, such as SPCA inspectors, to assist with enforcement. In Scotland, Australia and New Zealand, senior SPCA inspectors, many of whom have police training, have been granted the power to assist animals in distress and issue improvement notices. The legislation in England and Wales also has the flexibility to allow the RSPCA Inspectors to take action but as the RSPCA currently acts as the prosecutor in most animal cruelty cases in England and Wales this is currently not utilised. In Hong Kong, the SPCA has, for decades, worked with the AFCD in promoting animal welfare and has an active role in advising the police on appropriate animal welfare standards, including when to intervene and how to best assist animals and support prosecutions under Cap 169. Empowering appropriate inspectors within the SPCA (HK) to enforce duty of care offences and enter premises to rescue and remove animals at risk of suffering and issue improvement notices is a natural extension of the work the SPCA inspectors already do and would assist in ensuring the new law is widely enforced. We therefore strongly recommend Cap 169 is amended to provide the Director of AFCD with the power, in appropriate cases to authorise suitable named persons to assist with various actions under the legislation

(10) The introduction of a duty of care

Early intervention/improvement notices are designed to allow authorities to improve welfare through education and in situ enforcement before issues progress to a point requiring animals to be seized for their own safety and protection. Use of early intervention mechanisms is known to result in fewer cases needing be brought to prosecution. Early interventions would also reduce the number of animals required to be seized for long periods as less prosecutions would need to be pursued. Introducing the pre-conviction forfeiture powers we have suggested would also assist in improving animal welfare and reduce the need for government/welfare organisations to reserve resources to house animals over long periods when cases must be prosecuted.

Shelter legislation and regular inspections of these facilities alongside duty of care/improvement notices is also likely to reduce the risk of future large seizures occurring. Were shelters licensed and inspected, welfare problems could be identified early and action taken to avoid the need for large scale seizures and prosecutions. While more resources would be required to implement new duty of care requirements, the knock on decrease in the number of prosecutions and seizures should balance these manpower increases.

Certain deficiencies in the current legislation could be further addressed by introducing new, specific offences. With promotion and education linked to the new legislation these would have both an educational and a deterrent effect and assist in enforcement. The Animal Watch Scheme can assist with promulgation both to the general public but also within the

different government departments where there may be an interface or interactions with animals in different contexts. We suggest that the opportunity to use the Animal Watch Scheme to focus parties on education should be explored further if the law is amended. In addition, including more parties in the Scheme's membership would provide opportunities for greater unity in approach and collaboration across governmental departments, something this study has highlighted as increasingly necessary. We recommend that representatives of the DoJ, AFCD Conservation and Fisheries Branches and the Customs and Excise Department be added to the membership of this body.

DETAILS OF PUBLIC DISSEMINATION

As requested by PICO we provided early dissemination of our findings to the Agriculture, Fisheries and Conservation Department. The first version of the report (19 pages) was provided to the Department in February 2021 and we conducted a follow up meeting to discuss our findings with AFCD staff in March 2021. At the same time we also shared a copy of the first version of the paper with the Acting Chief Superintendent of Police, Support Branch, responsible for the Animal Watch Scheme.

We published a paper outlining our initial findings in the international open access veterinary science and zoology journal *Animals* in June 2021.

In early August 2021, we shared a draft of the report with the AFCD, the Police and the (then) Acting Director of Public Prosecutions and received comments upon it.

In October 2021, we have scheduled two online public lectures to be offered through the University of Hong Kong's Centre for Comparative and Public Law (one in English and one in Cantonese) to disseminate the findings of the report to the public.

CONCLUSION

The purpose of this study was to provide robust insights into the scope of animal cruelty investigations in Hong Kong from 2013 to 2019, in order to assist the Hong Kong government in their mission to reform Cap 169 and strengthen the protection of animals and increase public understanding of the circumstances in which animals are most likely to be at risk of cruelty and neglect. We hope to stimulate informed debate within society as to how to minimise the identified risks of animal harm.

Our review of cases fully supports the need for the duty of care to supplement the current cruelty offences provided in Cap 169. We hope our other recommendations and suggestions will also be used to further increase protection for animals in Hong Kong. We thank the Policy Innovation and Co-ordination Office of the Hong Kong SAR Government for their support of our work.