



House of Commons  
Justice Committee

---

# Private prosecutions: safeguards

---

**Ninth Report of Session 2019–21**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 29 September 2020*

## Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

### Current membership

Sir Robert Neill MP (*Conservative, Bromley and Chislehurst*) (Chair)

Paula Barker MP (*Labour, Liverpool, Wavertree*)

Richard Burgon MP (*Labour, Leeds East*)

Rob Butler MP (*Conservative, Aylesbury*)

James Daly MP (*Conservative, Bury North*)

Sarah Dines MP (*Conservative, Derbyshire Dales*)

Maria Eagle MP (*Labour, Garston and Halewood*)

John Howell MP (*Conservative, Henley*)

Kenny MacAskill MP (*Scottish National Party, East Lothian*)

Kieran Mullan MP (*Conservative, Crewe and Nantwich*)

Andy Slaughter MP (*Labour, Hammersmith*)

The following were also Members of the Committee during this session.

Ellie Reeves MP (*Labour, Lewisham West and Penge*) and Ms Marie Rimmer MP (*Labour, St Helens South and Whiston*)

### Powers

© Parliamentary Copyright House of Commons 2020. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at [www.parliament.uk/copyright](http://www.parliament.uk/copyright).

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/justicecttee](http://www.parliament.uk/justicecttee) and in print by Order of the House.

### Committee staff

The current staff of the Committee are Nony Ardill (Legal Specialist), Chloë Cockett (Senior Specialist), Mark Doyle (Committee Media Officer), Seb Newman (Second Clerk), Su Panchanathan (Committee Operations Officer), Tracey Payne (Committee Specialist), Christine Randall (Committee Operations Manager), Jack Simson Caird (Assistant Counsel), Holly Tremain (Committee Specialist), and David Weir (Clerk).

### Contacts

All correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is **GRO**

**GRO** the Committee's email address is [justicecom](mailto:justicecom)

**GRO**

**GRO**

You can follow the Committee on Twitter using

**GRO**

# Contents

---

<b>Summary</b>	<b>3</b>
<b>1 The Post Office prosecutions</b>	<b>5</b>
The Horizon cases	5
The Criminal Cases Review Commission	6
The Post Office as a private prosecutor	7
Conclusion	8
<b>2 The state of private prosecutions</b>	<b>10</b>
Distinguishing private and public prosecutions	10
The increasing number of private prosecutions in England and Wales	13
The cost of private prosecutions	14
Conclusion	17
<b>3 The effectiveness of existing safeguards</b>	<b>18</b>
Applying to the magistrates' court for a summons	18
The Crown Prosecution Service's power to take over a private prosecution	19
Abuse of process	21
Disclosure	21
Consents	23
Conclusion	23
<b>4 Strengthening safeguards</b>	<b>25</b>
A central register of private prosecutions	25
The Crown Prosecution Service	26
Conclusion	28
<b>Conclusions and recommendations</b>	<b>30</b>
<b>Formal minutes</b>	<b>32</b>
<b>Witnesses</b>	<b>33</b>
<b>Published written evidence</b>	<b>34</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>36</b>

## Summary

On 3 June 2020 the Criminal Cases Review Commission (CCRC) announced that it had referred 8 further Post Office workers' convictions for appeal, bringing the total number to 47. On the same day, the Chair of the CCRC, Helen Pitcher, wrote to the Chair of the Justice Committee to ask if the Committee would undertake a formal review of the circumstances and safeguards where an organisation is allowed to act as a prosecutor when it is also the victim and the investigator of an alleged offence, as the Post Office was in these cases.

The Justice Committee decided to undertake an inquiry to examine the effectiveness of the safeguards in place to regulate private prosecutions in England and Wales. The Committee received evidence from a number of interested parties, including lawyers that specialise in private prosecutions, investigators, legal experts, the Crown Prosecution Service and the Criminal Cases Review Commission.

The Post Office is an organisation which is neither a typical private nor public prosecutor. We received detailed testimony from investigators into the Post Office who claimed that the organisation suffered from "institutional blindness" in its approach to investigations and prosecutions. We received no evidence to suggest that such an approach is commonly found in other public or private organisations that bring prosecutions. On the contrary, we received a number of submissions that large organisations that bring private prosecutions are typically especially eager to show that they are committed to upholding the highest possible standards of prosecutorial conduct.

However, the lack of internal or external oversight of the Post Office's approach to prosecutions is an issue which speaks to a broader concern over the growing numbers of private prosecutions in England and Wales. It appears that the only institution which was aware of the number of prosecutions being brought by the Post Office was, until recently, the Post Office itself. As part of this inquiry, we have sought to identify the number of prosecutions brought by private organisations. At present there is no reliable data that records who is prosecuting offences in the courts in England and Wales. Private prosecutions are reported to be increasing, but without access to official data it is difficult to assess to what extent this is the case or to identify which organisations could be behind any such increase. Examples of prosecutions brought by the Post Office and the RSPCA suggest that it is not sufficient to rely on the courts alone to identify and remedy problematic prosecutorial practices.

The existing safeguards in place to regulate private prosecutions are effective at filtering out weak claims. Furthermore, the judicial process that applies to all prosecutions ensures that private prosecutions are rigorously tested. Nevertheless, it is possible to identify simple measures that could enhance the effectiveness of existing safeguards and procedures. This review is limited in scope by both the terms of the CCRC's reference and the timescale of this inquiry. As such, this report identifies a number of reforms which could strengthen the regulation and oversight of private prosecutions without unduly restricting the right preserved by Parliament in section 6(1) of the Prosecution of Offences Act (POA) 1985.



Although the CPS plays a key role in overseeing the right to bring private prosecutions, in practice it cannot be expected to be a regulator as well as a private prosecutor. The limited resources of both the CPS and police are said to be behind an increase in private prosecutions, and so any changes to the way in which the CPS engages with private prosecutions should be carefully considered. Nevertheless, the CPS's role can and should be enhanced through incremental improvements to the current system.

Overall, it is difficult to escape the conclusion that the organisational structure of the prosecutorial system in England and Wales is rather haphazard. An increase in private prosecutions is likely to make that situation worse. Without effective oversight of the system as a whole, the Government is going to struggle to identify any reforms that could make the overall prosecutorial system work more effectively and deliver better outcomes for the public and for access to justice.

# 1 The Post Office prosecutions

---

1. Since 1991 the Post Office has successfully prosecuted more than 900 of its own workers for fraud and similar offences. A significant number of those cases have, however, been referred to the Court of Appeal after doubts were raised about whether the operation of the Post Office's Horizon IT system may have been responsible for financial discrepancies that gave rise to some prosecutions. The Criminal Cases Review Commission (CCRC) asked us to consider aspects of the private prosecution system in England and Wales in June, on the same day it referred new cases to the Court of Appeal for reconsideration.

2. The CCRC's referrals are yet to be heard and are *sub judice*. Our colleagues on the Business, Energy and Industrial Strategy Committee are conducting an inquiry into the Post Office and Horizon, and the Government has announced there is also going to be an independent review. Our role is to consider the safeguards available against misuse of prosecutions more generally and beyond the specific circumstances of the Post Office cases.

3. The CCRC specifically asked us to consider the circumstances and safeguards in which an organisation acts as both investigator and prosecutor in cases in which it is also the alleged victim. This report examines the safeguards that regulate the way in which organisations, other than the Crown Prosecution Service, bring prosecutions in England and Wales.

## The Horizon cases

4. In response to a freedom of information request dated 22 May 2020, the Post Office revealed that between 1991 and 2015 it brought 918 successful prosecutions against subpostmasters, subpostmistresses, their assistants and other employees.<sup>1</sup> During the most active period, between 1999–2012, the Post Office brought 735 successful prosecutions, an average of 52 a year.

5. The Post Office's approach to these prosecutions, and the reliability of the Horizon IT software upon which many of the convictions were based, has been queried by the Justice for Subpostmasters Alliance and investigative journalists. In 2012 the Post Office commissioned the accountancy company Second Sight to conduct an independent review of Horizon. In 2013, Second Sight published an interim report highlighting faults in the Horizon system. The Post Office established a Complaint Review and Mediation Scheme to examine cases raised in Second Sight's report, but the Scheme was disbanded in 2015.

6. The Justice for Subpostmasters Alliance argued that there had not been enough opportunity for sub-postmasters to enter the Complaint Review and Mediation Scheme and, on its closure, embarked on legal action against Post Office Ltd. In January 2017, a High Court Judge granted a Group Litigation Order for sub-postmasters to begin such action. In March 2017, a Group Litigation Order was brought by 550 sub-postmasters and two High Court cases took place in 2018 and 2019.

---

<sup>1</sup> The Post Office FOI response on the number of prosecutions (dated 22 May 2020) (last accessed 18 September 2020)

7. On 15th March 2019, Mr Justice Fraser ruled in favour of the sub-postmasters in the first case and stated that the Post Office showed “oppressive behaviour” in response to claimants who had been dismissed for accounting errors they blamed on the Horizon system.<sup>2</sup> He was also very critical of Post Office Ltd’s attitude and behaviour. He said that the submissions provided by Post Office Ltd paid “no attention to the actual evidence, and seem to have their origin in a parallel world” and that the Post Office “seemed to adopt an extraordinarily narrow approach to relevance, generally along the lines that any evidence that is unfavourable to the Post Office is not relevant”.<sup>3</sup> He also described the Post Office as fearing “objective scrutiny of its behaviour” and operating with a “culture of secrecy and excessive confidentiality”.<sup>4</sup>

8. Before handing down his judgment in the second case in the group litigation in December 2019, Mr Justice Fraser announced that he was referring information to the Director of Public Prosecutions (DPP) because he had concerns about the accuracy of evidence given in court by Fujitsu (the suppliers of the Horizon software) in previous trials of accused sub-postmasters:

Based on the knowledge that I have gained both from conducting the trial and writing the Horizon issues judgment, I have very grave concerns regarding the veracity of evidence given by Fujitsu employees to other courts in previous proceedings about the known existence of bugs, errors and defects in the Horizon system. These previous proceedings include the High Court in at least one civil case brought by the Post Office against a subpostmaster and the Crown Court in a greater number of criminal cases, also brought by the Post Office against subpostmasters and subpostmistresses.<sup>5</sup>

9. Mr Justice Fraser’s judgment in the second trial, delivered on 16 December 2019, stated that Horizon was not “remotely robust” which led to a “significant and material risk” of Post Office branch accounts suffering from “bugs, errors and defects”.<sup>6</sup>

## The Criminal Cases Review Commission

10. The CCRC has referred 47 Post Office cases to the courts for appeal on the basis of an abuse of process argument arising from those two High Court judgments.<sup>7</sup> The CCRC’s evidence states that “in broad terms the CCRC is saying the thing that went wrong in the legal process was that the defendants were unaware of significant problems with the Horizon computer system”.<sup>8</sup> The CCRC’s evidence to the Committee states that the Post Office’s status as victim, investigator and prosecutor of the offences “may have been at the root of what we believe went wrong in these cases”.<sup>9</sup> The CCRC’s statement of reasons for referring the Post Office cases for appeal explains that the High Court’s judgments raised “serious concerns as to whether POL carried out thorough and objective criminal investigations”.<sup>10</sup> CCRC’s statement of reasons explains as follows:

---

2 *Bates V Post Office Ltd* [2019] EWHC 606 (QB) (15 March 2019 - the “Common Issues” judgment) [222]

3 *Bates V Post Office Ltd* [2019] EWHC 606 (QB) [138] [34]

4 *Bates V Post Office Ltd* [2019] EWHC 606 (QB) [28] [36]

5 Extract from the full transcript of the final hearing of *Bates V Post Office Ltd* [2019] EWHC 3408 (QB)

6 *Bates V Post Office Ltd* [2019] EWHC 3408 (QB) (16 December 2019 – the “Horizon Issues” judgment)

7 Criminal Cases Review Commission (PP50026) para 4

8 Criminal Cases Review Commission (PP50026) para 5

9 Criminal Cases Review Commission (PP50026) para 6

10 Criminal Cases Review Commission (PP50026) para 10

The CCRC further considers that this concern applies to POL's approach throughout the period 2001 to 2013, that is, the timespan of the convictions which are considered in this Statement of Reasons. Although general awareness of problems with the Horizon system has undoubtedly increased in recent years, the CCRC considers that POL was on notice regarding alleged problems with Horizon throughout the period in question. Accordingly, POL was under a duty to make all reasonable inquiries into those alleged Horizon problems, in order to satisfy itself that it was bringing criminal prosecutions based upon sound evidence as to branch accounts.<sup>11</sup>

11. One of the CCRC's principal concerns is whether any organisation with the Post Office's combined status, as victim, investigator and prosecutor, would be able to take decisions on investigations and disclosure "appropriately free from conflict of interest and conscious or unconscious bias".<sup>12</sup> The CCRC suggested that the Committee look into the following areas as part of this inquiry:

- The desirability of a formal record of private prosecutions which could enable greater scrutiny of the absolute number of prosecutions; the number of prosecutions brought by a single entity, or in relation to a particular offence or issue; and the levels of sentences imposed;
- The duty of the prosecutor / investigator / victim to disclose material that might assist the defence or undermine the prosecution;
- The duty of the prosecutor / investigator / victim to ensure that all reasonable lines of inquiry are pursued; and
- How often and under what circumstances the Crown Prosecution Service (CPS) steps in to take over private prosecutions, and how often prosecutions are continued / discontinued.<sup>13</sup>

### **The Post Office as a private prosecutor**

12. The Post Office is not a typical private prosecutor. Many private organisations that bring private prosecutions engage external law firms and specialist investigators to conduct the prosecutions on their behalf. Conversely, the Post Office relied on its own internal investigators and lawyers to conduct the prosecution of its own workers. Edmonds Marshall McMahon, a law firm which specialise in private prosecutions, point out that the Post Office, due to historic origins as a public body that brought prosecutions, retained "its own team of (in-house) prosecution lawyers, which is atypical for a commercial organisation".<sup>14</sup> The Private Prosecutors' Association question whether the Post Office was conducting private prosecutions at all and was in fact a "publicly-owned entity and a public prosecutor" during the relevant period.<sup>15</sup> There is no clear legal definition of what counts as a "public prosecutor". For the purposes of this report, the Post Office is taken to have been operating as a private prosecutor. Nick Read, the Group Chief Executive Officer of Post Office, in a letter dated 16 June 2020 to the Chair of the Business, Energy and

---

11 Criminal Cases Review Commission (PP50026) para 14

12 Criminal Cases Review Commission (PP50026) para 6

13 Criminal Cases Review Commission (PP50026) para 27

14 Edmonds Marshall McMahon (PP50009) para 4

15 Private Prosecutors' Association (PP50021) para 1.4



Industrial Strategy Committee, has confirmed that the Post Office “no longer exercises a private prosecutorial function” and that as far as he is aware the last private prosecution by the Post Office took place in 2015.<sup>16</sup> Paula Vennells, the former CEO of the Post Office (2012–2019), in a letter to the committee dated 24 June 2020, explained that the Post Office decided to change its policy on private prosecutions in 2014 “to focus on the most egregious cases of wrongdoing” and that this effectively ceased all prosecutions of false accounting, inflating figures, or theft.<sup>17</sup>

13. Ian Henderson and Ron Warmington, the investigators for Second Sight who conducted a review of the Post Office in 2012, gave evidence to the Committee on 7 July. They emphasised the unusual nature of the Post Office’s approach to investigations and prosecutions. Ian Henderson set out that the Post Office used prosecutions to facilitate debt recovery and that defendants “were routinely threatened with the charge of theft, which would not be proceeded with, provided they pleaded guilty to false accounting, made good all losses and did not mention any problems with Horizon”.<sup>18</sup>

Ian Henderson told us that the investigations conducted by the Post Office were “extremely limited”.<sup>19</sup> The approach of the Post Office’s in-house investigations team was said to be flawed: “problems with Horizon were effectively off limits to investigators, who, as a matter of policy, were not allowed to consider Horizon as the cause of the reported shortfalls”.<sup>20</sup> Ian Henderson also noted that there was little external or internal oversight of either investigations or prosecutions conducted by the Post Office.<sup>21</sup>

## Conclusion

14. The Committee has received a number of submissions which argue that the issues raised by the Post Office’s prosecutions are not relevant to understanding the regulation of private prosecutions. Paul Marshall, a lawyer representing a number of sub-postmasters prosecuted by the Post Office, argues that the issues arising from the Post Office’s prosecutions will not be solved by restricting the right to bring private prosecutions.<sup>22</sup> Paul Marshall argues that the problems revealed by the High Court’s judgments are the result of a combination of factors, including a number of systemic and structural issues within the justice system and failings of corporate governance at the Post Office.<sup>23</sup>

15. The CCRC’s evidence to the Committee, by contrast, places emphasis on the Post Office’s institutional approach to investigations and prosecutions. The CCRC recognises that the concerns they raised with the Committee are based only on their experience with the Post Office and that they have not encountered similar issues with any other private prosecutions.<sup>24</sup> However, their evidence refers to reports that the number of private prosecutions are widely said to be increasing and argues that this justifies a proactive

---

<sup>16</sup> Letter from Nick Read on Post Office and Horizon to the Chair of the BEIS Committee question 6

<sup>17</sup> Letter from Paula Vennells on Post Office and Horizon to the Chair of the BEIS Committee paras 29–30; see also The Post Office FOI response on the number of prosecutions (dated 22 May 2020) (last accessed 18 September 2020)

<sup>18</sup> Q2 (Ian Henderson)

<sup>19</sup> Q2 (Ian Henderson)

<sup>20</sup> Q2 (Ian Henderson)

<sup>21</sup> Q3 (Ian Henderson)

<sup>22</sup> Paul Marshall (PPS0024) para 63

<sup>23</sup> Paul Marshall (PPS0024)

<sup>24</sup> Criminal Cases Review Commission (PPS0026) para 23

approach.<sup>25</sup> We agree. **The startling figures on the scale of the Post Office's prosecutions, together with concerns raised by the Environmental, Food and Rural Affairs Committee in relation to the RSPCA in 2016 and reports that the number of private prosecutions is rising, justify a proactive approach to examining the effectiveness of the regulation of this area of the criminal justice system.**<sup>26</sup>

---

25 Criminal Cases Review Commission (PP50026) para 23

26 House of Commons Environment, Food and Rural Affairs Committee Animal welfare in England: domestic pets (November 2016 HC 117) paras 163 -165



## 2 The state of private prosecutions

---

16. Private prosecutions play an important role in the justice system in England and Wales. Any organisation or individual in England and Wales may seek to bring a prosecution.<sup>27</sup>

### Distinguishing private and public prosecutions

17. The CPS defines a private prosecution as “a prosecution started by a private individual, or entity who/which is not acting on behalf of the police or other prosecuting authority”.<sup>28</sup>

18. There is no clear statutory or common law definition of what constitutes a ‘private’ or ‘public’ prosecution.<sup>29</sup> Kingsley Napley LLP, a law firm which conducts private prosecutions, argue that the term “private prosecution is a misnomer as prosecutions in the Crown Court are brought on behalf of the Crown”.<sup>30</sup> Once a prosecution reaches court, it is treated exactly the same whether brought by a public body or by a private organisation.<sup>31</sup> The legal situation is especially complex in the case of public bodies that bring prosecutions not directly related to their own statutory or public functions.<sup>32</sup>

19. The right of an individual to bring a private prosecution has often been defended as an important and historic constitutional right to safeguard “against the inaction of authorities”.<sup>33</sup> In reality an individual is poorly placed to bring a successful prosecution: the cost is prohibitive and legal aid is not available. The right is largely used by organisations that have the means to employ the necessary investigative and legal expertise.

20. The majority of prosecutions in England and Wales are brought by the CPS.<sup>34</sup> In 1981, the Royal Commission on Criminal Procedure, chaired by Sir Cyril Philips, recommended the creation of a prosecution agency which would enable the division of functions between the police and prosecutor.<sup>35</sup> This recommendation was implemented by the Prosecution of Offences Act 1985, which established the CPS. The then Home Secretary, Leon Brittan, explained that the creation of the CPS “reflects the principle that those responsible for the investigation of the offence should not also be responsible for the conduct of the prosecution”.<sup>36</sup> By contrast the Serious Fraud Office (SFO) is responsible for the detection, investigation and prosecution of serious fraud cases. In the case of the SFO “the complexity of the work involved” was cited as justification for the creation of a unified service where

---

27 Section 6(1) of the Prosecution of Offences Act (POA) 1985

28 CPS, [Private prosecutions legal guidance](#) (last accessed 22 September 2020)

29 Criminal Law Reform Now Network (PPS0022) para 7

30 Kingsley Napley LLP (PPS0011) para 3

31 Criminal Law Reform Now Network (PPS0022) para 33

32 The Supreme Court set out in *R v Rollins* [2010] UKSC 39 that a body which is given a statutory responsibility to prosecute for specified offences can still prosecute for other offences. However, the Court of Appeal in *R v AB* [2017] EWCA Crim 534 pointed out that local authorities “are entirely a statutory creation” and cannot bring private prosecutions in reliance on the common law right, and therefore their prosecutorial authority is limited to those areas that they are granted responsibility by statute.

33 HMSO, Report of the Royal Commission on Criminal Procedure (Cmnd 8092-I and II, 1981) para 7.47; There have been a number of high-profile examples of private prosecutions brought by private individuals: in September 1994, Stephen Lawrence’s parents, Doreen and Neville Lawrence launched a private prosecution against Gary Dobson, Luke Knight and Neil Acourt; and in 2019 Marcus Ball brought a private prosecution against Boris Johnson. However, it is relatively rare for such prosecutions to result in a conviction.

34 Crown Prosecution Service Annual Report and Accounts 2019–20, HC 558

35 HMSO, Report of the Royal Commission on Criminal Procedure (Cmnd 8092-I and II, 1981) para 7.5

36 [HC Hansard 16 April 1985 Vol 77 Col 150](#)

prosecutors and investigators work together from the start of a case.<sup>37</sup> The CPS and the SFO are both public bodies, created by statute, superintended by the Attorney General, subject to inspection, subject to judicial review and directly accountable to Parliament, and therefore indirectly to the public, for their performance. That accountability secures a degree of transparency in both the publication of their policies and information on their performance which can be scrutinised by parliamentarians, the media, civil society and the public.

21. Despite their distinct organisational structures, the CPS and SFO are both institutionally independent of the victim of the alleged offence. Crown prosecutors can pursue a prosecution only if it is in the public interest. The CPS outlines the importance of its institutional independence as follows:

CPS prosecutors are independent from the police and other investigators; they carry out their professional duties without political interference and are unaffected by improper or undue pressure or influence from any source. Private prosecutors are not so required.<sup>38</sup>

22. CPS prosecutors are guided by the Code for Crown Prosecutors, issued under section 10 of the Prosecution of Offences Act 1985. Public prosecutors are guided by the Code, which sets out principles that must inform prosecutorial decision making. These principles, including the independence of the prosecutor, aim to ensure that prosecutorial decisions are informed by a range of factors, such as “the circumstances of the harm and the impact on the community”.<sup>39</sup>

23. Private prosecutions are often instigated or carried out by the victim of the alleged offence or by a body that has a direct interest in pursuing the case. Legal academics Claire de Than and Jesse Elvin argue that private prosecutors “often have an inbuilt conflict of interest”.<sup>40</sup> That conflict is not necessarily problematic. A number of submissions to the Committee highlight the value of “victim-led” private prosecutions. Ari Alibhai, Counsel retained by the Premier League, SKY and FACT, points out that these organisations have been responsible for bringing a number of “complex and serious allegations of copyright infringement/intellectual property fraud before criminal courts”.<sup>41</sup> Alibhai argues that victim-led private prosecutions are particularly important for intellectual property crime, because the private sector is able to supply the necessary specialist expertise and resources that the CPS and the police cannot. Other organisations that bring significant numbers of private prosecutions also claim to have specialist expertise in the offences that they prosecute. The example of the RSPCA is set out in Box 1 below.

---

37 HMSO, Fraud Trials Committee Report (1986) para 2.46

38 Crown Prosecution Service (PPS0044) para 15

39 Crown Prosecution Service (PPS0044) para 13

40 Claire de Than and Jesse Elvin, Private prosecution: a useful constitutional safeguard or potentially dangerous historical anomaly? *Criminal Law Review*. 2019, 8, 656–683

41 The Football Association Premier League Limited, Sky UK Limited, FACT ( PPS0016) para 2

**Box 1: the RSPCA**

The RSPCA brings a significant number of prosecutions every year. In 2019, the RSPCA's private prosecutions resulted in 1,432 convictions being secured in the magistrates' and Crown courts.<sup>42</sup> The RSPCA justifies its prosecutorial activity on the basis that it fills a gap in the provision of public service, meets its charitable objectives and is an experienced prosecutor (it has been prosecuting since 1824).<sup>43</sup> The RSPCA is an unusual private prosecutor in that it is responsible for 85% of the enforcement of the Animal Welfare Act 2006. Although is not a victim of the offences it prosecutes, the RSPCA arguably has a direct interest in the enforcement of the animal welfare offences that it prosecutes.

Criticisms of the RSPCA's approach to prosecutions prompted the charity to commission an independent review of the manner in which it discharges its prosecution role. The outcome of that review, which was conducted by Stephen Wooler CB, was published in September 2014.<sup>44</sup> The Wooler report set out 33 recommendations many of which can serve as guidance for all private organisations that conduct prosecutions. In response to the report, the RSPCA committed to implementing a number of structural and cultural changes to its approach to prosecutions in 18 months.<sup>45</sup> It committed to becoming more transparent and accountable. The RSPCA now publishes a number of documents detailing its prosecutorial activities and outlining how they are overseen, including an annual prosecutions report and the reports of the RSPCA Prosecution Oversight Panel (which was established to implement a recommendation in the Wooler Report).

In 2016 the Environment, Food and Rural Affairs Committee criticised the RSPCA for failing to fully implement the recommendations of the Wooler review.<sup>46</sup> The Committee concluded that the RSPCA's combination of activities, namely its investigative, campaigning and fundraising functions, gave rise to "a conflict of interest". As a result, the Committee recommended that the RSPCA "withdraw from acting as a prosecutor of first resort where there are statutory bodies with a duty to carry out this role".<sup>47</sup>

The RSPCA has submitted evidence to this inquiry, which outlines how it approaches prosecutions and the measures it has put in place to improve its transparency and accountability.<sup>48</sup> The Committee has also received a number of submissions that are critical of the RSPCA's prosecutorial activities.<sup>49</sup> The Countryside Alliance suggest that it is inappropriate for the RSPCA to remain the principal prosecutor of animal welfare offences and that it should instead be the responsibility of public bodies.<sup>50</sup> John Goodwin, a solicitor for Cohen Cramer Solicitors who defends prosecutions brought by the RSPCA, highlights concerns over the way in which the RSPCA operates at the pre-trial stage, the issues surrounding the obtaining and execution of warrants, the approaches to the public interest, and to disclosure.<sup>51</sup>

42 [RSPCA Prosecutions Annual Report 2019 page 2](#) (last accessed 22 September 2020)

43 [RSPCA \(PPS0010\)](#)

44 [Stephen Wooler CB, The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals \(2014\)](#)

45 [RSPCA, RSPCA Response to the Wooler Review \(2014\)](#)

46 [House of Commons Environment, Food and Rural Affairs Committee Animal welfare in England: domestic pets \(November 2016 HC 117\) para 164](#)

47 [House of Commons Environment, Food and Rural Affairs Committee Animal welfare in England: domestic pets \(November 2016 HC 117\) paras 163 -165](#)

48 [RSPCA \(PPS0010\)](#)

49 [Ms Pat Wallwork \(PPS0058\)](#) [Goodwin \(PPS0060\)](#) [Countryside Alliance \(PPS0056\)](#)

50 [Countryside Alliance \(PPS0056\)](#)

51 [Goodwin \(PPS0060\)](#)

## The increasing number of private prosecutions in England and Wales

24. In 2014, the then Lord Chief Justice, Lord Thomas of Cwmgiedd, noted in *R (Virgin Media) v Zinga* that “there is an increase in private prosecutions at a time of retrenchment of state activity in many areas where the state had previously provided sufficient funds to enable state bodies to conduct such prosecutions”.<sup>52</sup>

25. The evidence of the Private Prosecutor’s Association (PPA), which was established in 2017, also highlights an increase in the number of private prosecutions:

The PPA was established at a time when the number of private prosecutions had been growing rapidly. It is our view (and that of others in the criminal justice system) that, in part, this growth reflects an inability of state bodies, as currently resourced, to meet demand. Many crimes which could be prosecuted are not. This, in many cases, leaves victims looking for alternative remedies, of which private prosecutions are one.<sup>53</sup>

26. TM Eye’s evidence to the Committee states that since 2014 it has brought over 500 criminal prosecutions as a private prosecutor with a 100% conviction rate and that 13% of those convicted receive custodial sentences.<sup>54</sup> TM Eye explains that its prosecutorial practice began “as a direct result of the Government austerity measures and reduction in law enforcement capabilities” and that it has diversified in recent years to include general offences.<sup>55</sup> Edmonds Marshall McMahon claim that “access to justice via the police for certain crimes is now the (rare) exception rather than the rule, particularly in relation to fraud”.<sup>56</sup>

27. The PPA highlight evidence of the ‘justice gap’ in “the number of reports of financial crime to Action Fraud and the number of such cases taken forward by the police for investigation and thereafter prosecuted by the Crown Prosecution Service”.<sup>57</sup> The PPA state that in its experience, the number of prosecutions brought by the Post Office is higher than for the typical private prosecutor.<sup>58</sup> The PPA cite the Security Industry Authority which is reported to have been responsible for 30 prosecutions in the 12 months to May 2020.<sup>59</sup> The PPA’s evidence stresses that in its experience large private organisations that regularly bring private prosecutions have shown to have an “organisational culture of respect for the criminal justice system and of a heightened desire not to do anything which would bring the process into disrepute”.<sup>60</sup>

**28. It is a strength of the current system that it enables corporate victims of crime to pursue justice when public authorities decline to intervene. The lack of a prosecution can represent injustice just as much as a prosecution wrongly brought. However, in a modern criminal justice system whether an offence is prosecuted or not should not depend on whether the victim has the financial resources to conduct a prosecution.**<sup>61</sup>

52 [2014] EWCA Crim 52

53 Private Prosecutors’ Association (PPS0021) para 3.1

54 TM EYE Ltd (PPS0028)

55 TM EYE Ltd (PPS0028)

56 Edmonds Marshall McMahon (PPS0009) para 4 c)

57 Private Prosecutors’ Association (PPS0021) para 3.2

58 Private Prosecutors’ Association (PPS0021) para 5.3

59 Private Prosecutors’ Association (PPS0021) para 5.3

60 Private Prosecutors’ Association (PPS0021) para 5.6

61 Finlay Stark, The demise of the private prosecution? Cambridge Law Journal 2013 72(1) 7–11



## The cost of private prosecutions

29. The cost of private prosecutions is controversial. Some private prosecutors claim that given the gap left by the limited resources of public bodies, private prosecutions provide the public benefit of “allowing law enforcement and state prosecution bodies to focus on other areas of crime, freeing up vital and stretched resources to focus on other priority crimes”.<sup>62</sup> Other submissions to the Committee suggest that a favourable costs regime is driving organisations to use private prosecutions instead of the civil courts, which is in turn resulting in unnecessary expense to the taxpayer.

30. Lord Thomas, the then Lord Chief Justice, highlighted in the 2014 case of *Zinga* that in practice private prosecutions are likely to cost the state more than an equivalent CPS prosecution:

The costs of a private prosecution, whether successful or unsuccessful, are recoverable from the taxpayer; the use of private prosecutors will almost inevitably cost the State much more than the use of a State prosecutor, such as the CPS.<sup>63</sup>

A private prosecutor can recover costs at rates that are not confined by prescribed amounts, which means that “private prosecutions are publicly funded at a higher cost than if the prosecution had been conducted by the CPS.<sup>64</sup> The CPS claim that its prosecutions provide the “most cost-effective use of the public purse, and therefore the growth in private prosecutions should be discouraged”.<sup>65</sup>

31. Jamas Hodiava QC, a barrister at Matrix Chambers, points out that there is inequality between the position of a prosecutor, who can recover costs if a prosecution is successful or unsuccessful (as provided for by section 17(1) of the Prosecution of Offences Act 1985), and the position of a defendant, which save for two limited exceptions is unable to recover any of its legal costs if it is acquitted of criminal charges.<sup>66</sup> Hodiava reports that, from personal discussions he has had with private prosecutors, “the low costs risk is viewed as an economic incentive to bring a private prosecution”.<sup>67</sup> The CPS’s submission also suggests that the “lack of financial consequences” for an unsuccessful private prosecutor may increase the likelihood that the system will be misused.<sup>68</sup>

32. Aliant Law’s evidence to the Committee stresses that a company that chooses to bring a private prosecution instead of a civil claim “avoids having to make payment of any court fees”.<sup>69</sup> More broadly, Aliant law submit that the low risk costs regime gives rise to a financial incentive that “can act as a real distortion on the motives and actions of a private prosecutor”.<sup>70</sup>

---

62 AnotherDay (PPS0005) para 5

63 *R. (Virgin Media Ltd) v Zinga* [2014] EWCA Crim 1823

64 Crown Prosecution Service (PPS0044) para 34

65 Crown Prosecution Service (PPS0044) page 11

66 Mr Jamas Hodiava QC (PPS0002) para 14

67 Mr Jamas Hodiava QC (PPS0002) para 18

68 Crown Prosecution Service (PPS0044) para 25

69 Aliant Law (PPS0037)

70 Aliant Law (PPS0037)

33. The Criminal Law Reform Now Network’s evidence draws attention to the fact that convicted defendants in private prosecutions are sometimes asked to pay more than if they were prosecuted by the CPS:

Whereas the CPS only asks for a relatively modest fixed sum in all cases, there is nothing to stop private prosecutors, who will engage their own legal teams and possibly more expensive counsel than would the CPS, from seeking considerably more from convicted defendants, and we gather that this is quite common.<sup>71</sup>

We agree with the CLRNN that this situation creates a risk that the higher costs could “be as coercive towards defendants who anticipate being convicted (whether guilty or not) as the threat of higher sentences if a trial is contested”.<sup>72</sup>

34. The Ministry of Justice’s legal aid statistics provides some insight into the number of private prosecutions and their costs. Of course, the number of costs orders granted from private prosecutions does not provide a complete picture of the number or the cost of private prosecutions in the courts. Nevertheless, the figures outlined below do appear to support the proposition that the number of private prosecution is increasing. In 2014/15 there were 32 costs orders awarded to private prosecutions (30 in the magistrates’ court and 2 in the Crown Court) which resulted in payments of £248,000 and £112,000 respectively from central funds.<sup>73</sup> In 2019/20, there were 276 cost order awarded to private prosecutions (219 in the magistrates’ court and 57 in the Crown Court) which resulted in payments of £1,169,000 and £11,118,000 respectively. Each private prosecution in the magistrate court cost an average of £5,338 and each private prosecution in the Crown Court cost an average of £195,053.

<b>Use of legal aid central funds for private prosecutions</b>						
England and Wales; completed claims						
Financial Year	Magistrates court		Crown court		Total	
	Volume	Value (£000)	Volume	Value (£000)	Volume	Value (£000)
2014-15	30	248	2	112	32	360
2015-16	70	637	21	3,626	91	4,263
2016-17	86	783	28	1,037	114	1,821
2017-18	117	822	44	2,852	161	3,674
2018-19	113	1,369	32	2,653	145	4,021
2019-20	219	1,169	57	11,118	276	12,287

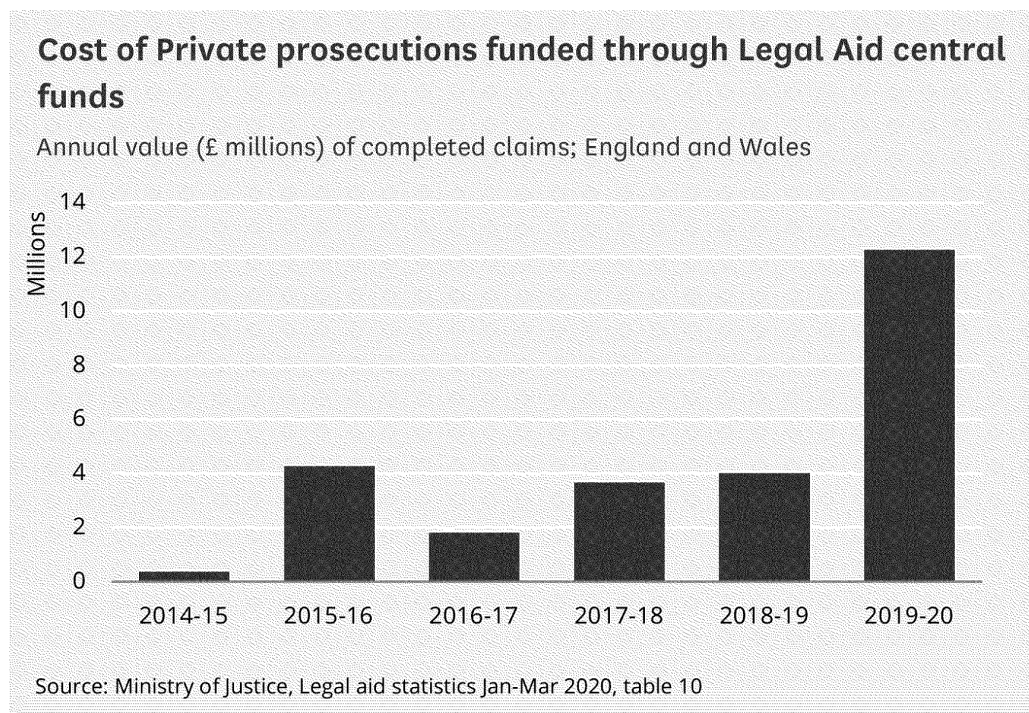
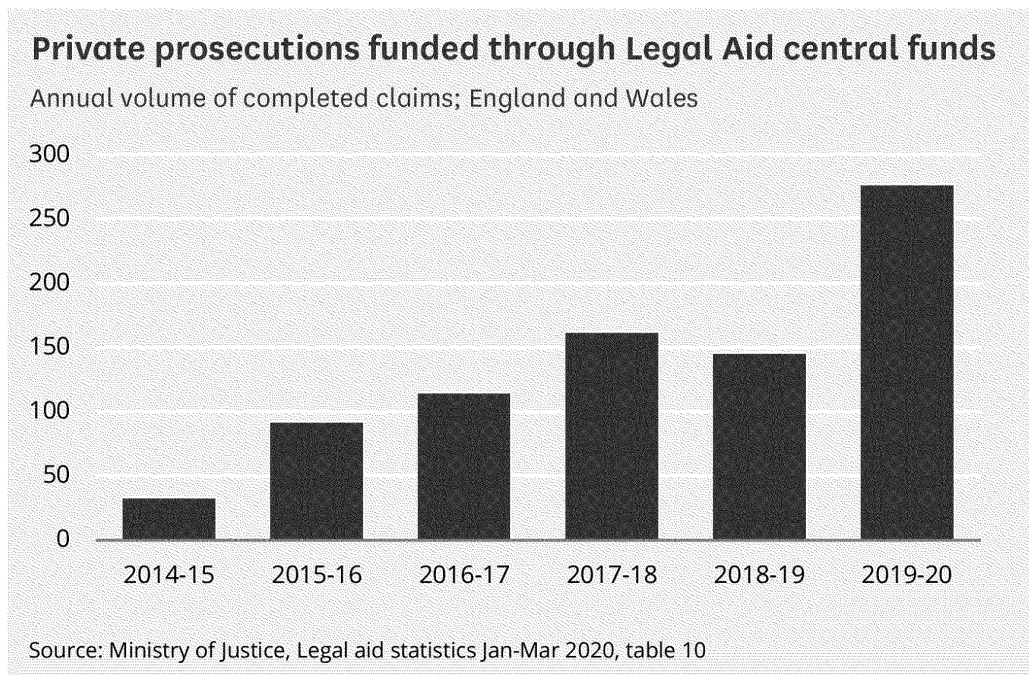
Source: Ministry of Justice, Legal aid statistics Jan-Mar 2020, table 10

71 Criminal Law Reform Now Network (PPS0022) para 55

72 Criminal Law Reform Now Network (PPS0022) para 55

73 Ministry of Justice, Legal aid statistics Jan-Mar 2020, table 10. Note: these are the earliest and only statistics available.





## Conclusion

35. The latest figures show that many private prosecutions cost the taxpayer more than CPS prosecutions. That may in part be explained by the complexity of the cases undertaken privately. Nevertheless, the public is unlikely to accept that the state can afford to pay for the prosecution of financial crimes against large organisations but is not prepared to ensure that the police and the CPS have enough resources to prosecute similar offences committed against ordinary citizens.

36. A rise in the number of private prosecutions risks the “prospect of a two-tier justice system”.<sup>74</sup> The gap in the enforcement of fraud means that at present, wealthy organisations can seek justice via a private prosecution, but elderly and vulnerable victims of fraud cannot. Private prosecutions should be available to all. Otherwise, the legal right to bring private prosecutions will serve to exacerbate existing inequalities rather than to act as a safeguard against state inaction and a viable alternative for seeking access to justice.

***37. The Committee agrees with the CPS that the Government should urgently review funding arrangements for private prosecutions in order to address the inequality of access to the right; to ensure a fair balance between the prosecutor and the defendant; and to ensure the most cost-effective use of public funds. We acknowledge the proposal made by the Centre for Women’s Justice that private prosecutors’ recoverable costs should be capped at legal aid rates.<sup>75</sup> We think there should be no disparity between the claims that can be made from central funds by prosecutors and defendants. We also support the proposal made by the CLRNN that defendants prosecuted by private prosecutors should pay no more than would be paid had they been prosecuted by the CPS.<sup>76</sup>***

38. At a time when the resources of the criminal justice system are under intense pressure, it is difficult to justify private prosecutors being able to access public funds at a higher rate than criminal legal aid practitioners. The CPS’s specialist fraud division will only be able to secure justice for victims of fraud if the police are given the resources to investigate what is now the most common form of offence.<sup>77</sup>

39. In 2017, the Court of Appeal warned that it would be “inimical to justice” to allow a parallel prosecution service to the CPS to develop in particular areas.<sup>78</sup> One of the advantages of the CPS is that it is able to adopt a consistent approach to prosecutorial decisions and for those decisions to be informed by public policy. While it might be arguable that private prosecutions are no more likely to fall into error than public prosecutions, increasing numbers of private prosecutions will only make the prosecution landscape more complex and fragmented.

---

74 Crown Prosecution Service (PPS0044) para 33

75 Centre for Women’s Justice (PPS0019) para 23 i)

76 Criminal Law Reform Now Network (PPS0022) para 57

77 Crown Prosecution Service (PPS0044) para 36

78 *R v AB* [2017] EWCA Crim 534 para [98]



### 3 The effectiveness of existing safeguards

---

40. The criminal justice system in England and Wales has a number of safeguards that regulate private prosecutions. This chapter examines the effectiveness of some of these safeguards.

#### Applying to the magistrates' court for a summons

41. The first step in bringing a private prosecution is an application for a summons to the magistrates' court. Changes in the CPR in 2018 strengthened this safeguard by requiring greater disclosure than had previously been provided.<sup>79</sup> The Criminal Procedure Rules stipulate that prosecutors which are not a public authority within the meaning of section 17 of the Prosecution of Offences Act 1985 must: concisely outline the grounds for asserting that the defendant has committed the alleged offence or offences, disclose details of previous relevant applications or proceedings and provide an affidavit. The Criminal Law Reform Now Network explain that these provisions “aim to preclude prosecutions where the legal basis has not been thought through or is very contentious, and/or where there are grounds to suppose that the prosecutor is engaging on a wider legal campaign against the defendant”.<sup>80</sup>

42. The magistrate must then decide whether to issue the summons to allow prosecution to proceed. The High Court has recently outlined, in *R (Kay) v Leeds Magistrates' Court*,<sup>81</sup> the basis upon which magistrates should exercise their discretion when considering whether to issue a summons:

(1) The magistrate must ascertain whether the allegation is an offence known to the law, and if so whether the essential ingredients of the offence are prima facie present; that the offence alleged is not time-barred; that the court has jurisdiction; and whether the informant has the necessary authority to prosecute.

(2) If so, generally the magistrate ought to issue the summons, unless there are compelling reasons not to do so—most obviously that the application is vexatious (which may involve the presence of an improper ulterior purpose and/or long delay); or is an abuse of process; or is otherwise improper.

43. The Court held that that “compliance with the duty of candour is the foundation stone” upon which decisions to issue a summons are taken and its “importance cannot be overstated”.<sup>82</sup> Stephen Colman, Senior Lecturer in Law at the University of Suffolk, points out that the High Court has “quashed decisions to issue summons for private prosecutions where there has been insufficient judicial consideration of whether the essential elements of the offence are present and whether or not the allegation is vexatious”.<sup>83</sup> The High Court has emphasised that the issuing magistrate must “be scrupulous to ensure all elements of

---

79 The Criminal Bar Association (PPS0012) para 7

80 Criminal Law Reform Now Network (PPS0022) para 18

81 *R (Kay) v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin) (at [22])

82 *R (Kay) v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin) (at [22])

83 *Mr Stephen Colman* (PPS0014)

the alleged offence are established”.<sup>84</sup> In the recent case of *Boris Johnson v Westminster Magistrates Court*, the High Court confirmed that the threshold for issuing a summons is a high one.<sup>85</sup>

44. In 2006, the High Court acknowledged that the criteria to be adopted by a magistrate “is much less onerous than the test which has to be applied by the Crown Prosecution Service in deciding whether to bring or to continue a prosecution”.<sup>86</sup> De Than and Elvin argue that in practice this process does not supply an effective safeguard: “obtaining a summons or a warrant from a magistrate is in effect largely just a matter of completing the paperwork correctly”.<sup>87</sup> The Centre for Women’s Justice also raise concerns that the discrepancy between the tests applied by the CPS and the Magistrates’ Court can lead to private prosecutions being commenced, which are not in the public interest, and cause serious harm to the accused.<sup>88</sup> The Centre for Women’s Justice argues that to prevent this there should be a public interest filter conducted by the trial judge in order to consider whether the Full Code test is satisfied in private prosecutions.<sup>89</sup>

45. The Committee recognises that the process of applying for a summons has been strengthened, but its effectiveness in a particular case will depend on the approach taken by the respective magistrate and the defendant’s legal team. Equally, there is a risk that defendants with limited means may be unable to afford to challenge the grant of a summons via judicial review or application to the High Court to quash a summons.<sup>90</sup>

### The Crown Prosecution Service’s power to take over a private prosecution

46. Section 6 (2) of the Prosecution of Offences Act 1985 provides that the Director of Private Prosecutions can take over the conduct of any criminal proceedings at any stage. The Crown Prosecution Service has published legal guidance which details its policy for deciding whether to take over a prosecution, and whether to continue or discontinue a prosecution.<sup>91</sup>

47. The CPS’s evidence to the Committee outlines that the CPS “is only made aware of a proportion of all private prosecution cases before the courts”.<sup>92</sup> The CPS website outlines a number of different ways that the CPS might be informed of a private prosecution referred for review. A private prosecutor, a defendant or a judge might refer a prosecution to the CPS for review. The CPS might learn of a private prosecution via a press report. However, the CPS’ legal guidance on private prosecutions explains that in such circumstances, in the absence of a specific request, “no action will generally be taken unless there are exceptional circumstances”.<sup>93</sup> The CPS explains that it would intervene “where a private prosecution was commenced for perverting the course of justice in relation to a rape allegation”.<sup>94</sup> The guidance indicates that the CPS does not take a proactive approach to reviewing private

84 *R (DPP) v Sunderland Magistrates’ Court* [2014] EWHC 613 (Admin) [23]

85 [2019] EWHC 1709 (Admin) [20]-[24]

86 *R. (on the application of Charlson) v Guilford Magistrates’ Court* [2006] EWHC 2318; [2006] 1 W.L.R. 3494 at [17].

87 Professor Claire de Than and Dr Jesse Elvin (PPS0025)

88 Centre for Women’s Justice (PPS0019)

89 Centre for Women’s Justice (PPS0019) para 23 f)

90 Crown Prosecution Service (PPS0044) para 35

91 CPS, *Private prosecutions legal guidance* (last accessed 22 September 2020)

92 Crown Prosecution Service (PPS0044) para 7

93 CPS, *Private prosecutions legal guidance* (last accessed 22 September 2020)

94 CPS, *Private prosecutions legal guidance* (last accessed 22 September 2020)

prosecutions, but if it is alerted to a prosecution which has circumstances that raise particular issues that are considered to be of public importance it may review a private prosecution without a referral.

48. The CPS does not keep an official record of the number of prosecutions which are referred to it.<sup>95</sup> However, in 2019, the Special Crime Division of the CPS started “keeping a manual record of private prosecution cases referred pursuant to its quality assurance function”.<sup>96</sup> The CPS have stressed to us that these are not official statistics, nonetheless we are grateful that they have been made available. The CPS’s evidence states:

A detailed manual check of these records shows that for the period April 2019 to March 2020, the Special Crime Division quality assured 49 private prosecution referrals. Of the 49 referrals:

- the CPS decided to take over 32 private prosecutions. Of these 32 cases, 29 were taken over and discontinued and three were taken over and continued;
- the CPS decided not to take over the private prosecution in 17 cases.<sup>97</sup>

49. The relatively high proportion of discontinuances, 29 out of the 49 referred, could suggest that a greater number would be discontinued if more were referred. The CPS will discontinue a prosecution if “upon review of the case papers, either the evidential sufficiency stage or the public interest stage of the Full Code Test is not met”.<sup>98</sup> The need to satisfy both elements of the test represents a relatively high threshold for a private prosecutor to meet and explains the proportion of referrals discontinued. If a private prosecution satisfies both elements of the test, the CPS will not necessarily decide to take over and continue the prosecution. It will only do so if “there is a particular need for the CPS to take over the prosecution”.<sup>99</sup> A private prosecution brought by an organisation with a long record of successful prosecutions of a particular offence (a specialist in a particular type of prosecutions) is unlikely to meet the requirement of a “particular need”.

50. The CPS’ power to take over a private prosecution is a legislative backstop against misuse; it is not designed to require or enable the CPS to review all private prosecutions. The CPS “is not a regulator, licensing or inspection body”.<sup>100</sup> The CPS’s evidence to the Committee argues that “taking on such a role would require it to act inappropriately as a gatekeeper”.<sup>101</sup> Such an approach would arguably run the risk of effectively draining the right to bring private prosecutions, as preserved by section 6 (1) of the Prosecution of Offences Act 1985, of its legal effect.<sup>102</sup> The Supreme Court’s majority decision in *Gujra* confirmed that the CPS’s current policy on when to discontinue a prosecution is compatible with section 6(1).<sup>103</sup> Nevertheless, if the CPS’s approach to private prosecutions were to be strengthened further, without any change to section 6(1), it is far from clear that the courts would arrive at the same conclusion as in *Gujra*.<sup>104</sup>

---

95 Crown Prosecution Service (PPS0044) paras 7–10

96 Crown Prosecution Service (PPS0044) paras 7–10

97 Crown Prosecution Service (PPS0044) paras 7–10

98 CPS, *Private prosecutions legal guidance* (last accessed 22 September 2020)

99 CPS, *Private prosecutions legal guidance* (last accessed 22 September 2020)

100 Crown Prosecution Service (PPS0044) para 29

101 Crown Prosecution Service (PPS0044) para 29

102 Crown Prosecution Service (PPS0044) para 29

103 *R (on the application of Gujra) (FC) v Crown Prosecution Service* [2012] UKSC 52.

104 *R (on the application of Gujra) (FC) v Crown Prosecution Service* [2012] UKSC 52.

## Abuse of process

51. After a magistrates' court grants a summons in a private prosecution, the defendant can at any stage apply to stay the proceedings as an abuse of process. This enables a court to stop a prosecution which is brought in "bad faith or due to overriding improper motive".<sup>105</sup> In *R (Dacre) v City of Westminster Magistrates' Court* the Divisional Court considered abuse in the context of private prosecutions and set out that "proceedings tainted by mala fides or spite or some other oblique motive" could qualify as an abuse.<sup>106</sup> However, the judgment of Latham LJ in that case also recognised that the presence of such a motive does not necessarily mean that the prosecution will meet the threshold required to qualify as an abuse of process.<sup>107</sup> The case of *R v Nightland Foundation* provides an example of the sort of motive that can amount to an abuse of process in a private prosecution. In that case the court held that the prospect of the prosecutor benefiting from a confiscation order is an improper consideration which may lead to a successful abuse of process application from the defendant. The ground of abuse of process applies in the same way to both private and public prosecutions.<sup>108</sup> Professor Peter Hungerford-Welch argues that the case law demonstrates that "a defendant to a private prosecution will rarely be able to have to case stayed as an abuse of process".<sup>109</sup> The Criminal Law Reform Now Network describe abuse of process as a remedy of "last resort".<sup>110</sup>

## Disclosure

52. The Criminal Bar Association's evidence outlines the way in which disclosure works:

There are two stages in any disclosure process—firstly the revelation of material to the attention of the "prosecutor" and secondly the decision of "the prosecutor" as to whether that material should be disclosed to the defendant. In public prosecutions there is usually a clear distinction between the "investigator" (typically the Police) and the "prosecutor" (typically the CPS).<sup>111</sup>

53. The Private Prosecutors' Association argue that in practice there is "very little difference" in the disclosure regimes that apply to private prosecutions and those that control public prosecutions.<sup>112</sup> The Criminal Bar Association states that "private prosecutors are bound by the statutory disclosure regime in exactly the same way as a public prosecutor".<sup>113</sup> The statutory disclosure regime is set out in the Criminal Procedure and Investigations Act 1996 (CPIA). Provisions on disclosure can also be found in the Criminal Procedure Rules, the Attorney General's Guidelines on Disclosure, and the Judicial Protocol on the Disclosure of Unused Material in Criminal Cases.<sup>114</sup> These rules apply equally to all prosecutions.

---

<sup>105</sup> Chambers of Jonathan Laidlaw QC, 2 Hare Court ([PP50013](#)) para 51

<sup>106</sup> [2008] EWHC 1667 (Admin) Latham LJ (at [26])

<sup>107</sup> *R (Dacre) v City of Westminster Magistrates' Court* [2008] EWHC 1667 (Admin)

<sup>108</sup> *D Ltd v A* [2017] EWCA Crim 1172, the Court reiterated (at [41]) that the "legal principles relating to stay on the ground of abuse apply in precisely the same way to private prosecutions as they do to public prosecutions".

<sup>109</sup> Professor Peter Hungerford-Welch ([PPS0006](#)) page 5

<sup>110</sup> Criminal Law Reform Now Network ([PPS0022](#)) para 29

<sup>111</sup> The Criminal Bar Association ([PPS0012](#)) para 14

<sup>112</sup> Private Prosecutors' Association ([PPS0021](#)) para 6.1

<sup>113</sup> The Criminal Bar Association ([PPS0012](#)) para 13

<sup>114</sup> Private Prosecutors' Association ([PPS0021](#)) para 6.5



54. The main difference in the disclosure safeguards is that the CPIA Code of Practice does not apply to all private prosecutions. Section 23 of the CPIA provides for the creation of a CPIA Code of Practice. The Code contains rules that govern how investigators contribute to the disclosure process. It is designed to ensure “that where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued”.<sup>115</sup> Section 26 of the CPIA provides that “a person other than a police officer” conducting an investigation into an alleged offence should “have regard” to the CPIA Code of Practice. The net effect of this is that “some, but not all, investigators conducting investigations that lead to private prosecutions will be governed by the CPIA Code”.<sup>116</sup>

55. In practice, the approach of an organisation to pursuing all lines of inquiry and following the requisite standards of disclosure will depend on the culture of the organisation in question. The PPA argue that the approach to disclosure depends on the culture and mind-set of the organisation in question, whether public or private.<sup>117</sup> The PPA reports that its own experience is that large organisations which regularly bring private prosecutions take the disclosure process extremely seriously. The PPA adds that it “would be wrong to conclude that all large organisations which bring private prosecutions are generically disrespectful of or careless about their disclosure obligations”.<sup>118</sup> A number of organisations that bring private prosecutions, including the RSPCA, have shown their commitment to upholding high standards of investigations and disclosure by joining the PPA and agreeing to follow the Code of Private Prosecutors. The PPA’s Code incorporates the CPIA code and extends beyond it, which Alison Levitt QC explained “is a way of trying to achieve parity and best practice in both kinds of prosecution”.<sup>119</sup> The CPS argue that the Code of Private Prosecutors, because it is not enforced, “does not amount to an effective regulatory safeguard”.<sup>120</sup> A code of a “more binding nature” would, in the view of the editor of the PPA’s code, Professor Hungerford-Welch, “emphasise the importance of evidence gathering and not doing that in a way that is blinkered”.<sup>121</sup>

56. If an organisation is responsible for investigations and prosecutions, and there is an absence of internal and external oversight, there is risk that flawed investigations will take place without errors being identified at a sufficiently early stage to prevent errors being made in the prosecution and disclosure process. Ron Warmington of Second Sight explained that an inadequate investigation can fatally undermine a prosecution:

More worryingly, organisations also conduct limited investigations based on assumptions that could be flawed or simply untested. The obvious suspect in the case is not necessarily the perpetrator of the crime, particularly in evidentially complex cases. A package of evidence, therefore, prepared on a false premise, or on the results of a flawed investigation, cannot be remedied at the prosecution stage unless the prosecutor is alert to the possibility that key lines of inquiry have not been pursued and then is prepared to challenge the investigator on that point.<sup>122</sup>

---

115 Section 23 1(a) Criminal Proceedings Investigations Act 1996

116 Private Prosecutors’ Association (PPS0021) para 6.11

117 Private Prosecutors’ Association (PPS0021) para 5.6

118 Private Prosecutors’ Association (PPS0021) para 5.6

119 Q25 (Alison Levitt QC)

120 Crown Prosecution Service (PPS0044) para 28

121 Q59 (Professor Hungerford-Welch)

122 Q12 (Ron Warmington)

57. A number of submissions to the Committee highlight the importance of the use of external organisations to conduct investigations and prosecutions: to, in effect, mirror the relationship between the police and the CPS. Another Day, an organisation that conducts investigations for private prosecutions, suggest that it is vital that private prosecutions use an independent investigations team, with an identified and trained disclosure officer.<sup>123</sup> TM Eye put forward that “the role of ‘Investigator’ and ‘Prosecutor’ need to be defined and remain strictly independent”.<sup>124</sup> The Chambers of Jonathan Laidlaw QC point out that the key to abiding by disclosure duties is for there to be a proper delineation of roles within the prosecution team.<sup>125</sup> They suggest that large organisations are better placed to achieve such delineation which can require significant resources. They recommend the separation of the investigation and prosecution team and the appointment of independent disclosure officers. In their view, the fact that an organisation is a victim of an alleged crime does not represent an interest which leads to any unwillingness to comply with disclosure rules.<sup>126</sup> Jeremy Asher, head of prosecutions at MSB Solicitors, told us that it is inappropriate for independent lawyers to employ in-house investigators “because of the obvious risk of conflict or criticism”.<sup>127</sup>

## Consents

58. A further legislative safeguard is that certain offences require the consent of the Attorney General or the DPP before a prosecution can be brought. For example, section 117 of the Terrorism Act 2000 requires the consent of the DPP before proceedings for specified offences can be instituted. Such consents effectively limit the right to bring a private prosecution for certain offences. In 1998, the Law Commission described the list of offences which contain a statutory consent requirement as “haphazard” and recommended a more consistent approach.<sup>128</sup> In Scotland the consent of the Lord Advocate is required to bring a private prosecution for any offence and, as a consequence, private prosecutions are exceptionally rare.<sup>129</sup>

## Conclusion

59. Alison Levitt QC set out that, in her experience, the existing safeguards are effective at weeding out weak and unmeritorious cases at an early stage.<sup>130</sup> We broadly agree that the existing safeguards enforced by the courts are effective. In particular, we accept the proposition made in a number of submissions that there does not appear to be a particular problem with private prosecutions in terms of upholding standards of disclosure.

60. Despite the impact of court procedures, private prosecutors are not regulated in the same way as public prosecutors. This regulatory gap is not necessarily problematic: many of the leading private prosecutors and investigators, some of which have given evidence to this inquiry, voluntarily operate to the same regulatory standards as public prosecutors. However, if private prosecutions increase this regulatory gap could become

---

123 AnotherDay (PPS0005) para 40

124 TM EYE Ltd (PPS0028)

125 Chambers of Jonathan Laidlaw QC, 2 Hare Court ( PPS0013) para 42

126 Chambers of Jonathan Laidlaw QC, 2 Hare Court ( PPS0013) para 44

127 Mr Jeremy Asher (PPS0007) para 11

128 Law Commission, Consents to Prosecution (Law Com No 255, 1998) [4.16]-[4.23]

129 Law Society of Scotland, Scottish Government Justice Committee: Petition PE 1633: Private Criminal Prosecution in Scotland 23 February 2018

130 Q29 (Alison Levitt QC)

more significant. **The Government should strengthen the safeguards that regulate private prosecutions to ensure that any organisation that conducts a substantial number of prosecutions is subject to the same regulatory standards and expectations of accountability and transparency as public prosecutors. We recommend that the Government should consider enacting a binding code of standards, enforced by a regulator, that applies to all private prosecutors and investigators.**

61. In order to achieve parity with public prosecutors, the duty to comply with the code should have legislative force.<sup>131</sup> The aim of the code would be to ensure that all organisations which bring prosecutions respect the need for “separation of investigation and prosecution and the need for objective and independent prosecution”.<sup>132</sup> As Wooler notes a legislative code will not “necessarily achieve the standards and consistency required”.<sup>133</sup> The code would need to be enforced by an institution or body with the requisite expertise and resources. The functions and the responsibilities of HM Crown Prosecution Service Inspectorate (HMCPSI) could be expanded to take on this role.

---

131 Mr Stephen Wooler (PPS0027)

132 Mr Stephen Wooler (PPS0027)

133 Mr Stephen Wooler (PPS0027)

## 4 Strengthening safeguards

---

62. This inquiry has identified a number of reforms that could strengthen existing safeguards and improve the regulation, accountability, and transparency of private prosecutions.

### A central register of private prosecutions

63. The CCRC suggested that the Committee look into the desirability of a register of private prosecutions.<sup>134</sup> We asked the Attorney General if she had any statistics on who was bringing prosecutions in the courts in England and Wales. She confirmed in writing that there was no official data available on the total number of private prosecutions.<sup>135</sup> The current available data, which relates to the number of prosecutions referred to the CPS and those that access central funds is inadequate and only represents a small proportion of the total number of private prosecutions initiated in England and Wales.

64. One of the lessons to emerge from the examination of the Post Office's prosecutions is that there was a dramatic and sustained increase in the number of prosecutions brought by the Post Office between 1999 and 2012. This increase in terms of the number of prosecutions brought by a particular body for particular offences could, and perhaps should, have triggered additional scrutiny. It is an unsustainable situation for the public to rely on individual organisation to publish information on the number of prosecutions. The public has a right to know which organisations are using the courts to bring private prosecutions.

65. There was a high degree of consensus among those that submitted evidence to this inquiry that HM Courts and Tribunals Service (HMCTS) "needs to start gathering information about private prosecutions".<sup>136</sup> The Private Prosecutors' Association point out that "at present there is no way of monitoring issues or causes for concern".<sup>137</sup> The PPA suggest that HMCTS should record the number and type of private prosecutions.<sup>138</sup> ***We recommend that HMCTS establish a central register of all private prosecutions in England and Wales.***

66. The creation of a central register could be administered by a requirement to submit a digital form when applying for a summons. The register should record, at a minimum, who is bringing the prosecution, the investigator responsible and the alleged offence. HMCTS would then have to track the progression of each prosecution so that the outcome could be recorded.

67. The application form used to create the register could require additional information from the prosecutor to strengthen the process. Gareth Minty, a lawyer from Mischon de Reya and member of the Private Prosecutors' Association, argued that when discharging their duty of candour private prosecutors should explain whether the matter has been brought to the attention of the law enforcement authorities.<sup>139</sup> As suggested by the CBA, the form could require the prosecutor to identify the "investigator" and "prosecutor" for the

---

134 Criminal Cases Review Commission (PPS0026) para 27

135 Letter from AG to the chair of the Justice Committee (dated 25 August)

136 Q26 (Alison Levitt)

137 Private Prosecutors' Association (PPS0021) para 8.2.2

138 Private Prosecutors' Association (PPS0021) para 8.2.2

139 Q42 (Gareth Minty)



purpose of the disclosure regime in the CPIA 1996.<sup>140</sup> These requirements would provide more information for defendants and the courts and would enhance the transparency of private prosecutions.

68. There is a case that the proposed central register should record all prosecutions, rather than just private prosecutions. A considerable number of public bodies and prosecuting authorities, other than the CPS and SFO, conduct prosecutions. There is also a risk that if the register was based on information required to apply for a summons some private prosecutions would be missed if the police were involved in the charging process. In 2009, the Justice Committee's report on the Crown Prosecution Service highlighted the diverse structure of prosecuting authorities and argued that the CPS should provide "leadership within the wider prosecutorial family".<sup>141</sup> Without a comprehensive register that records who is bringing prosecutions it is difficult for any Government department or body to have responsibility for overseeing the conduct of prosecutions. Stephen Wooler points out that there is no Minister with overall responsibility for or authority over all the prosecuting agencies within Government.<sup>142</sup> A central register of all prosecutions would facilitate more effective oversight over the prosecutorial landscape in England and Wales. Without that oversight, it is difficult for the Government to make informed judgments about the need for reform, the need for further resources, or to assess the impact of private prosecutions on organisations, individuals, and access to justice.

## The Crown Prosecution Service

69. The Crown Prosecution Service's power to take over private prosecutions is the most effective safeguard against the misuse of the right by organisations in England and Wales. The CPS's current role in private prosecutions is carefully calibrated. A number of witnesses emphasised that any changes that increased the burden on the CPS would be unwelcome, especially as the limited capacity of the CPS was one of factors driving the growth in the number of private prosecutions.

70. Claire de Than and Jesse Elvin recommend that Crown Prosecutors should be required to filter all private prosecutions by participating in a pre-trial review in a magistrates' court.<sup>143</sup> At the review, the Crown prosecutor would choose between three options: "proceeding with it as a public prosecution, disallowing it or allowing it to proceed as a private prosecution with monitoring and review".<sup>144</sup> Limiting the right through a mandatory review by the CPS would require an increase in resources. Such a proposal would provide stronger oversight but would also limit the availability of the right to bring a private prosecution. Automatic referral to the CPS was recommended by the Royal Commission on Criminal Procedure in 1981.<sup>145</sup> Alison Levitt QC argues that mandatory referrals would create "added bureaucracy, added delay and added cost".<sup>146</sup> The CPS's evidence firmly rejects any form of mandatory review, stating that it would be

---

140 The Criminal Bar Association (PPS0012) para 21

141 Justice Committee, *The Crown Prosecution Service: Gatekeeper of the Criminal Justice System*, Ninth Report of the Session 2008–09, HC 186 para 135

142 Mr Stephen Wooler (PPS0027)

143 Claire de Than and Jesse Elvin, 'Private Prosecution: A Useful Constitutional Safeguard or Potentially Dangerous Historical Anomaly?' [2019] *Criminal Law Review* 656, 679–680.

144 Claire de Than and Jesse Elvin, 'Private Prosecution: A Useful Constitutional Safeguard or Potentially Dangerous Historical Anomaly?' [2019] *Criminal Law Review* 656, 679–680.

145 HMSO, *Report of the Royal Commission on Criminal Procedure* (Cmdnd 8092-I and II, 1981) para 7.50

146 Q30 (Alison Levitt)

a significant drain on resources that would not be “proportionate or cost-effective”.<sup>147</sup> It would require the CPS to effectively act as a gatekeeper which arguably sits uneasily with its existing functions and is potentially incompatible with the right to bring a private prosecution as preserved by section 6(2) of the Prosecutions of Offences Act 1985.

71. An alternative to mandatory review to the CPS that is arguably more in line with its current role would be mandatory notification. Aliant Law propose that that “the CPS’ role in monitoring private prosecutions be made easier by way of mandatory reporting of the commencement of a private prosecution to the CPS”.<sup>148</sup> This would not necessarily trigger a review, and it would enhance the CPS’s existing role in private prosecutions. In 1998, the Law Commission proposed that the courts “should be required to notify the CPS of all private prosecutions except for those instituted by organisations licensed by the DPP”.<sup>149</sup> The Committee welcomed the information submitted by the CPS on the number of private prosecutions referred to it. The Committee is nevertheless concerned that the existing system for referring private prosecutions to the CPS, and for recording those referrals, is so haphazard. We appreciate that the small number of referrals at present does not necessarily warrant a more sophisticated system. However, it is surprising that when the CPS takes over and discontinues a prosecution, there is no system in place that enables Crown prosecutors to join the dots between different prosecutions and identify potential patterns of problematic prosecutions. If the CPS had reviewed a Post Office prosecution, even if it had decided not to take it over the review process would have been greatly enhanced if the CPS had been able to ascertain how many similar cases had already been prosecuted by the Post Office. ***The Committee recommends that HMCTS should ensure that the CPS is notified when a private prosecution is initiated. The notification process should be integrated into the structure of the central register of private prosecutions.***

72. We recognise that the CPS may argue that mandatory notification of private prosecutions may result in a significant addition to its workload. However, if there is a comprehensive central register of all private prosecutions, which records for example the number of other prosecutions started by each organisation and their outcome, as well as whether the prosecution used external investigators, then this could make the process of reviewing a prosecution more effective.

73. Professor Peter Hungerford-Welch explained to the Committee that there is a “real problem” with defendants being unaware that they are being prosecuted privately and that they can refer the matter to the DPP.<sup>150</sup> This is supported by the low numbers of referrals reported to us by the CPS. Professor Hungerford-Welch argued that there should be a mechanism which ensures that as soon as prosecution is commenced and granted a summons by the magistrates’ court, the defendant is informed of his or her right to refer the prosecution to the CPS.<sup>151</sup> ***We agree that every defendant who is privately prosecuted should be informed of his or her right to seek a review from the CPS. We recommend that this change be implemented by a change to the Criminal Procedure Rules. In situations where the police are involved in a private prosecution and the role of the magistrate is circumvented (which was drawn to our attention by the Criminal Law Reform Now Network) it will be especially important that the defendant is notified of his or her right***

---

147 Crown Prosecution Service (PP50044) para 31

148 Aliant Law (PP50037)

149 Law Commission, Consents to Prosecution (London: TSO, 1998), LC 255, para 7.9 (2)

150 Q58 (Professor Hungerford-Welch)

151 Q58 (Professor Hungerford-Welch)



*to request a review of the prosecution.*<sup>152</sup> *We recommend that in such a scenario there should be a duty upon the police to inform the defendant that they are to be prosecuted by a body other than the CPS and that they have a right to request a review.*<sup>153</sup>

74. The CPS argues that by requiring all defendants to be individually informed of the CPS's role in each case would "be almost analogous to inviting a mandatory referral process".<sup>154</sup> We recognise this concern and anticipate this argument being made in relation to mandatory notification. However, if the number of private prosecutions continues to rise, it will be very hard to justify that one of the primary safeguards against misuse is so rarely invoked, especially when the figures provided by the CPS show that a significant proportion of the prosecutions reviewed are discontinued. If the CPS does not have the resources or capacity to perform this role, then perhaps a suitable alternative should be found.

## Conclusion

75. The central register of private prosecutions should be the first step towards developing a system for monitoring the conduct of private prosecutors. The overwhelming majority of private prosecutors seek to uphold high standards and do not allow private interests to distort or influence their decisions. Many private prosecutors and private investigators have experience of public prosecutions from having worked for the CPS and the police.

76. The example of the Post Office litigation shows that some organisations can misuse the right to bring private prosecutions. We agree with Professor John Spencer, from the University of Cambridge, that "no private organisation should be permitted to threaten criminal proceedings to extract money that it believes that it is owed".<sup>155</sup> Private prosecutors are not subject to the same standards and oversight in relation to their pre-trial conduct and investigations. **There is a strong case that organisations which bring significant numbers of private prosecutions should be subject to inspections.** These inspections could be carried out by HMCPSI or an equivalent body. Any such monitoring should be accompanied by steps to ensure that investigators and prosecutions in private prosecutions are subject to the same standards as their public counterparts.<sup>156</sup> Inspections could form part of a system of accreditation, as proposed by Stephen Wooler CB, that could enable accredited organisations to have a "general right to bring criminal proceedings".<sup>157</sup> Non-accredited organisations could be subject to enhanced safeguards, which could require, for example, that the prosecutor shows that the prosecution is in the public interest before it is allowed to proceed. **If an organisation is found to be misusing the power to bring private prosecutions, then the body responsible for inspecting all prosecutors and enforcing the code, be it the CPS, HMCPSI or another public body, should be able to remove the right of an organisation to bring a prosecution, or to require them to obtain consent from the Attorney General or the DPP before they can initiate a prosecution.**

---

152 Criminal Law Reform Now Network ([PPS0022](#)) para 20

153 Criminal Law Reform Now Network ([PPS0022](#)) para 48

154 Crown Prosecution Service ([PPS0044](#)) para 31

155 Professor John Rason Spencer ([PPS0030](#))

156 Mr Stephen Wooler ([PPS0027](#))

157 Mr Stephen Wooler ([PPS0027](#))

77. The power to prosecute is one of the most intrusive powers of the state.<sup>158</sup> Prosecutions are carried out “for the benefit of society as a whole”.<sup>159</sup> In that context prosecutions should be exercised “either by the state with appropriate transparency, safeguards and accountability or within a framework established by the state which ensures those things”.<sup>160</sup> **It is incumbent on the Government to ensure that the rise in the number of private prosecutions does not result in the development of a parallel system where the public interest, accountability and transparency are secondary to private interests.**

---

158 Mr Stephen Wooler ([PPS0027](#))

159 HMSO, Report of the Royal Commission on Criminal Procedure (Cmnd 8092-I and II, 1981) para 7.50

160 Mr Stephen Wooler ([PPS0027](#))

## Conclusions and recommendations

---

### The Post Office prosecutions

1. The startling figures on the scale of the Post Office's prosecutions, together with concerns raised by the Environmental, Food and Rural Affairs Committee in relation to the RSPCA in 2016 and reports that the number of private prosecutions is rising, justify a proactive approach to examining the effectiveness of the regulation of this area of the criminal justice system. (Paragraph 15)

### The state of private prosecutions

2. It is a strength of the current system that it enables corporate victims of crime to pursue justice when public authorities decline to intervene. The lack of a prosecution can represent injustice just as much as a prosecution wrongly brought. However, in a modern criminal justice system whether an offence is prosecuted or not should not depend on whether the victim has the financial resources to conduct a prosecution. (Paragraph 28)
3. *The Committee agrees with the CPS that the Government should urgently review funding arrangements for private prosecutions in order to address the inequality of access to the right; to ensure a fair balance between the prosecutor and the defendant; and to ensure the most cost-effective use of public funds. We acknowledge the proposal made by the Centre for Women's Justice that private prosecutors' recoverable costs should be capped at legal aid rates. We think there should be no disparity between the claims that can be made from central funds by prosecutors and defendants. We also support the proposal made by the CLRNN that defendants prosecuted by private prosecutors should pay no more than would be paid had they been prosecuted by the CPS.* (Paragraph 37)

### The effectiveness of existing safeguards

4. The Government should strengthen the safeguards that regulate private prosecutions to ensure that any organisation that conducts a substantial number of prosecutions is subject to the same regulatory standards and expectations of accountability and transparency as public prosecutors. *We recommend that the Government should consider enacting a binding code of standards, enforced by a regulator, that applies to all private prosecutors and investigators.* (Paragraph 60)

### Strengthening safeguards

5. *We recommend that HMCTS establish a central register of all private prosecutions in England and Wales.* (Paragraph 65)
6. *The Committee recommends that HMCTS should ensure that the CPS is notified when a private prosecution is initiated. The notification process should be integrated into the structure of the central register of private prosecutions.* (Paragraph 71)

7. *We agree that every defendant who is privately prosecuted should be informed of his or her right to seek a review from the CPS. We recommend that this change be implemented by a change to the Criminal Procedure Rules. In situations where the police are involved in a private prosecution and the role of the magistrate is circumvented (which was drawn to our attention by the Criminal Law Reform Now Network) it will be especially important that the defendant is notified of his or her right to request a review of the prosecution. We recommend that in such a scenario there should be a duty upon the police to inform the defendant that they are to be prosecuted by a body other than the CPS and that they have a right to request a review. (Paragraph 73)*
8. There is a strong case that organisations which bring significant numbers of private prosecutions should be subject to inspections. If an organisation is found to be misusing the power to bring private prosecutions, then the body responsible for inspecting all prosecutors and enforcing the code, be it the CPS, HMCPSI or another public body, should be able to remove the right of an organisation to bring a prosecution, or to require them to obtain consent from the Attorney General or the DPP before they can initiate a prosecution. (Paragraph 76)
9. It is incumbent on the Government to ensure that the rise in the number of private prosecutions does not result in the development of a parallel system where the public interest, accountability and transparency are secondary to private interests. (Paragraph 77)



## Formal minutes

---

**Tuesday 29 September 2020**

Members present:

In the absence of the Chair, Maria Eagle was called to the chair.

Paula Barker	Maria Eagle
Rob Butler	John Howell
James Daly	Kenny MacAskill

Draft Report (*Private Prosecutions: Safeguards*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 77 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Ninth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 6 October at 1.45 pm]

## Witnesses

---

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

**Tuesday 7 July 2020**

**Mr Ron Warmington**, Managing Director, Second Sight Support Services Ltd; **Ian Henderson**, Director, Second Sight Support Services Ltd [Q1–21](#)

**Alison Levitt QC**, Barrister, 2 Hare Court, Private Prosecutors' Association; **Gareth Minty**, Legal Director (Barrister), **Mishcon de Reya LLP**, Private Prosecutors' Association; **Sandip Patel QC**, Managing Partner, Aliant Law [Q22– 43](#)

**Dr Jesse Elvin**, Senior Lecturer, City Law School, City University of London; **Professor Peter Hungerford-Welch**, City Law School, City University of London; **Dr Jonathan Rogers**, Co-Director, Criminal Law Reform Now Network; **Professor Claire de Than**, University of London and Jersey Law Commission [Q44–69](#)

## Published written evidence

---

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

PPS numbers are generated by the evidence processing system and so may not be complete.

- 1 Aliant Law ([PPS0037](#))
- 2 Alliance for Intellectual Property ([PPS0040](#))
- 3 AnotherDay ([PPS0005](#))
- 4 APPEAL ([PPS0045](#))
- 5 Cambridge University (Professor John Rason Spencer, retired - Professor Emeritus) ([PPS0030](#))
- 6 Campaign Against Antisemitism ([PPS0032](#))
- 7 Centre for Women's Justice ([PPS0019](#))
- 8 Chambers of Jonathan Laidlaw QC, 2 Hare Court ([PPS0013](#))
- 9 The City Law School, City, University of London (Professor Peter Hungerford-Welch, Associate Dean) ([PPS0006](#))
- 10 Claire de Than, Professor, and Dr Jesse Elvin ([PPS0025](#))
- 11 Communication Workers Union ([PPS0023](#))
- 12 Cornerstone Barristers Gray's Inn (Paul Marshall, Barrister) ([PPS0024](#))
- 13 Countryside Alliance ([PPS0056](#))
- 14 The Criminal Bar Association ([PPS0012](#))
- 15 Criminal Cases Review Commission ([PPS0026](#))
- 16 Criminal Law Reform Now Network ([PPS0022](#))
- 17 Crown Prosecution Service ([PPS0044](#))
- 18 Edmonds Marshall McMahan ([PPS0046](#))
- 19 Edmonds Marshall McMahan ([PPS0009](#))
- 20 FAIR ([PPS0049](#))
- 21 The Football Association Premier League Limited, Sky UK Limited, and FACT ([PPS0016](#))
- 22 Fraser Chambers (Dr Anton van Dellen, Barrister) ([PPS0004](#))
- 23 Goodwin, ([PPS0060](#))
- 24 JUSTICE ([PPS0031](#))
- 25 Kearns, Miss jennifer ([PPS0008](#))
- 26 Kingsley Napley LLP ([PPS0011](#))
- 27 Mason, Stephen ([PPS0001](#))
- 28 Matrix Chambers (Mr Jamas Hodivala QC, Barrister) ([PPS0002](#))
- 29 Mike Northern Legal ([PPS0018](#))
- 30 MSB Solicitors Ltd (Mr Jeremy Asher, Solicitor) ([PPS0007](#))
- 31 National Federation of SubPostmasters (NFSP) ([PPS0020](#))

- 32 Previously employed as a Sub Postmaster (Mr David Thomas Hedges, Retired) (PPS0029)
- 33 Private Prosecutors' Association (PPS0021)
- 34 RSPCA (PPS0010)
- 35 The Self Help Group for Farmers, Pet Owners and Others experiencing difficulties with the RSPCA (The SHG) (PPS0047)
- 36 Submitter, Anonymous (PPS0017)
- 37 TM EYE Ltd (PPS0036)
- 38 TM EYE Ltd (PPS0028)
- 39 Transform Justice (PPS0042)
- 40 University of Suffolk (Mr Stephen Colman, Senior Lecturer in Law) (PPS0014)
- 41 Wallwork, Ms Pat (PPS0058)
- 42 Wooler, Mr Stephen (PPS0027)



## List of Reports from the Committee during the current Parliament

---

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2019–21

First Report	Appointment of Chair of the Office for Legal Complaints	HC 224
Second Report	Sentencing Council consultation on changes to magistrates' court sentencing guidelines	HC 460
Third Report	Coronavirus (COVID-19): The impact on probation services	HC 461
Fourth Report	Coronavirus (COVID-19): The impact on prisons	HC 299
Fifth Report	Ageing prison population	HC 304
Sixth Report	Coronavirus (COVID-19): The impact on courts	HC 519
Seventh Report	Coronavirus (COVID-19): the impact on the legal professions in England and Wales	HC 520
Eighth Report	Appointment of HM Chief Inspector of Prisons	HC 750
First Special Report	Prison Governance: Government Response to the Committee's First Report of Session 2019	HC 150
Second Special Report	Court and Tribunal Reforms: Government Response to the Committee's Second Report of Session 2019	HC 151
Third Special Report	Transforming Rehabilitation: Follow-up: Government Response to the Committee's Nineteenth Report of Session 2017–19	HC 152
Fourth Special Report	Coronavirus (COVID-19): The impact on probation systems: Government Response to the Committee's Third Report of Session 2019-21	HC 826