



House of Commons  
Justice Committee

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**Private prosecutions:  
safeguards:  
Government Response  
to the Committee's  
Ninth Report**

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**Tenth Special Report of Session  
2019–21**

*Ordered by the House of Commons  
to be printed 2 March 2021*

## 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).

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Andy Slaughter MP (*Labour, Hammersmith*)

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

Richard Burgon MP (*Labour, Leeds East*), Ellie Reeves MP (*Labour, Lewisham West and Penze*) and Ms Marie Rimmer MP (*Labour, St Helens South and Whiston*)

### Powers

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### 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, Chloë Cockett (Senior Specialist), Mark Doyle (Committee Media Officer), Su Panchanathan (Committee Operations Officer), Tracey Payne (Committee Specialist), Christine Randall (Committee Operations Manager), Jack Simson Caird (Assistant Counsel), Holly Tremain (Committee Specialist), Ellen Watson (Second Clerk) and David Weir (Clerk).

### Contacts

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## Tenth Special Report

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On 2 October 2020 the Justice Committee published its Ninth Report of Session 2019–21, *Private prosecutions: safeguards* (HC 497).

The Government's Response was received on 16 February 2021. The response is appended to this Report.

## Appendix: Government Response

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The Government welcomes the Justice Committee's Ninth Report, *Private Prosecutions: Safeguards*. We are grateful for the time given and expertise shared by the Committee in producing and publishing the Report, and I would like to apologise for the delay in responding to it.

The Government welcomes the Committee's conclusion that 'existing safeguards in place to regulate private prosecutions are effective at filtering out weak claims', and that 'the judicial process that applies to all prosecutions ensures that private prosecutions are rigorously tested'. We have taken time to consider the conclusions and recommendations set out in the report, and have included our detailed responses in the annex.

**Rt Hon Robert Buckland QC MP**

## Annex – responses to recommendations

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### *Recommendation*

#### *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)

### *Response*

We share the Committee's concern about the rise in the number of private prosecutions and the resulting cost to the public purse; the increase in itself justifies the Committee's detailed examination of the effectiveness of the present arrangements. The prosecutions instituted by Post Office Ltd that were referred by the Criminal Cases Review Commission to the Court of Appeal are a distinct issue on which, since the appeals are still pending, it would not be appropriate for the government to comment at this stage. In any event we agree with the Committee that Post Office Ltd is not representative of private prosecutors.

The Royal Society for the Prevention of Cruelty to Animals (RSPCA) is likewise untypical: the 2014 review of the organisation observed that 'the scale of its enforcement role and its relationship with the police and other bodies mean that it is de facto a prosecuting authority'. At the RSPCA's own request, its role as prosecutor is now under discussion with the Attorney General's Office.

### ***Recommendation***

#### *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)**

### ***Response***

We agree that since not every offence worthy of prosecution can be prosecuted by the CPS, SFO or other appropriate public authority, there are circumstances where prosecutions brought by victims of crime themselves (whether corporate or individual) still have a valuable part to play.

### ***Recommendation***

**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)**

### ***Response***

We agree with the Committee that the present arrangements for funding private prosecutions are inequitable as between prosecutors and defendants, and do not always represent a cost-effective use of public money. We agree, in particular, that the costs recoverable from central funds by a private prosecutor should be limited in the same way that costs so recoverable by an acquitted defendant already are, by being capped at legal aid rates. This will require an amendment of the existing legislation. We are also minded to agree that costs recoverable by a private prosecutor from a convicted defendant should be limited, either by being capped at legal aid rates or by reference to what the CPS would

have sought, but we wish to consult further on this. We also intend to reflect further, and if appropriate consult, on whether there should be a wider discretion to reduce or withhold payment of costs from central funds in the event of an acquittal.

### ***Recommendation***

#### *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)**

### ***Response***

It is important that any proposed changes to private prosecutions must consider the system as a whole, as changes made to one part of the system could have a major impact on the right to bring a private prosecution itself. Specific issues should not be examined in isolation and any changes must consider the principles and objectives that underpin private prosecutions and how they operate in a range of circumstances. We recognise that there are shortcomings in the conduct of some private prosecutions, but bearing in mind the Committee's conclusion that 'existing safeguards in place to regulate private prosecutions are effective at filtering out weak claims', and that 'the judicial process that applies to all prosecutions ensures that private prosecutions are rigorously tested', we are not persuaded that introducing a binding and enforceable code of standards (or the inspection regime proposed in recommendation 8 below) would be a proportionate response. We shall continue to consider whether there is action that could be taken, short of that, to improve accountability, transparency and compliance with disclosure obligations.

### ***Recommendation***

#### *Strengthening safeguards*

**5. We recommend that HMCTS establish a central register of all private prosecutions in England and Wales. (Paragraph 65)**

### ***Response***

We agree with the Committee that the scarcity of information about private prosecutions is unsatisfactory, and that a central register would go some way towards putting this right. The establishment of such a register is in hand and will be completed by the end of this year. It will include the names of the prosecutor and defendant, the offence in question, and whether the summons application was granted. The register will provide useful information about the number of private prosecutions, by whom they are brought, and with what success. Where the person applying for a summons has a history of making unsuccessful applications, it will alert the court to the fact; this would assist the court although the application would still have to be determined on its merits.

### ***Recommendations***

**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)**

### ***Response***

A proposal to require notice of a private prosecution to be given to the CPS was considered and rejected when the bill that became the Prosecution of Offences Act 1985 was before Parliament; a Law Commission recommendation to similar effect in 1998 was also not accepted. The Law Commission's view was that notifying the CPS about a prosecution would not impose a duty on the DPP to take it over, but it is by no means clear that being notified of a case would not imply a duty to review it. The CPS consider that once they had been notified of a private prosecution, they would be obliged to conduct an initial review, to make a proper assessment, and call for evidence from the prosecutor and the defendant. This would impose a significant burden on resources even if it did not lead to greater CPS involvement and a fuller review in due course. Simply ignoring a case or not considering it properly could lead to a judicial review.

The proposal that defendants should be informed as a matter of course of their right to seek a review from the CPS is open to the same objection. It was considered in November 2020 by the Criminal Procedure Rule Committee, which declined to do as recommended for the same reasons as given above. The Rule Committee observed that such a requirement would apply to many private prosecutions brought by responsible quasi-public bodies, every one of which then would require review by the CPS.

It has not been possible to identify any circumstances in which the police would be involved in a private prosecution.

### ***Recommendation***

**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)**

***Response***

See the response to recommendation 4 above.

***Recommendation***

**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)**

***Response***

We agree that there should be no disparity between the standard of justice in private and public prosecutions. The same evidential and legal standards apply to both, and we are confident that reforms such as those made in Criminal Procedure Rules in 2019, and those now proposed to the costs regime, will help to avoid any such disparity.