

# Consultation on the oversight and regulation of private prosecutors in the criminal justice system

## Ministry of Justice

### Submission

15 May 2025

### Introduction

1. JUSTICE recognises the important role that private prosecutions have to play in the criminal justice system. In some cases, the lack of a prosecution brought by, for example, the Crown Prosecution Service (“CPS”) may constitute an injustice. The private prosecution brought by the family of Stephen Lawrence against Neil Acourt, Luke Knight and Gary Dobson (whilst ultimately unsuccessful and followed by a CPS-led prosecution after a change in the law on double jeopardy)<sup>1</sup> provides an illustration of the sorts of circumstances in which the right to bring a private prosecution can be of value. Private prosecutions may also be important where the prosecutor has specialist expertise, knowledge or resources that the CPS and/or police do not possess, for example where there are allegations of intellectual property crime in prosecutions brought or led by corporate victims.<sup>2</sup>
2. However, it is absolutely vital that private prosecutors act in a manner which is fair, upholds the highest standards of integrity and reflects the prosecutor’s role in criminal proceedings as a minister of justice.<sup>3</sup> Private prosecutors must be under – and must adhere to – rigorous disclosure obligations. The grave miscarriages of justice that occurred in the context of the Post Office prosecutions provide a stark example of why there must be adequate oversight and monitoring of private prosecutions.
3. JUSTICE’s response sets out our position in relation, first, to the recommendations made by the House of Commons Justice Committee in its report *Private prosecutions: safeguards*<sup>4</sup> and, second, with respect to the Single Justice Procedure.

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<sup>1</sup> The Guardian, [Stephen Lawrence: a timeline of events since the teenager’s murder](#), 11 August 2020

<sup>2</sup> See, e.g., House of Commons Justice Committee, [Private prosecutions: safeguards](#), Ninth Report of Session 2019-21, p. 11

<sup>3</sup> See, e.g., *R v Belmarsh Magistrates’ Court* [1992] 2 Cr. App. R 188 (p. 200); *R (on the application of Virgin Media) v Zingo* [2014] EWCA Crim 52, paragraph 61.

<sup>4</sup> House of Commons Justice Committee, [Private prosecutions: safeguards](#), Ninth Report of Session 2019-21

## Private Prosecutions

4. JUSTICE agrees with the following recommendations made by the House of Commons Justice Committee in its report *Private prosecutions: safeguards*.<sup>5</sup>
5. First, the Government should consider enacting a binding code of standards, enforced by a regulator, that applies to all private prosecutors and investigators.<sup>6</sup>
6. JUSTICE considers that a code of standards, binding on all private prosecutors, is essential in order to ensure that private prosecutors conduct themselves fairly and in accordance with their role as minister of justice. Adherence to the Code for Private Prosecutors<sup>7</sup> produced by the Private Prosecutors' Association ("PPA") is voluntary (although members of the PPA undertake to abide by it) and as such is insufficient to ensure best practice is followed.
7. JUSTICE considers that this code of standards ought to include guidance on areas such as:
8. We therefore urge the Government to undertake a fundamental review of the SJP. This review should consider:
  - (a) The respective roles of investigators and prosecutors;
  - (b) The respective roles of those who review the case and decide whether a prosecution should be brought and those who carry out the prosecution;
  - (c) The evidential standard required in order for a prosecution to be brought;
  - (d) The public interest factors which must be satisfied before a prosecution can be brought;
  - (e) The need to keep the evidential and public interest thresholds continuously under review throughout proceedings;
  - (f) Disclosure obligations, including the statutory test for disclosure under section 3 of the Criminal Procedure and Investigations Act 1996 ("CPIA") and the broader disclosure regime contained in, for example, the CPIA, Criminal Procedure Rules, the Attorney General's Guidelines on Disclosure and the Judicial Protocol on the Disclosure of Unused Material in Criminal Cases. Whilst the CPIA Code does not apply in the same way to investigations conducted by persons other than police

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, paragraph 60

<sup>7</sup> Private Prosecutors' Association, [\*Code for Private Prosecutors\*](#)

officers as it does to those conducted by police officers,<sup>8</sup> the code of standards ought to contain analogous provisions applicable to all investigations which may lead to private prosecutions.

9. Second, JUSTICE also agrees with the Justice Committee's view that: *"organisations which bring significant numbers of private prosecutions should be subject to inspections"*.<sup>9</sup> This recommendation is essential to ensure that private prosecutions are conducted with integrity, fairness, and in accordance with the public interest. Unlike prosecutions brought by the CPS or SFO, which are both *"institutionally independent of the victim of the alleged offence"*<sup>10</sup> and are both *"public bodies, created by statute, superintended by the Attorney General, subject to inspection, subject to judicial review and directly accountable to Parliament"*<sup>11</sup>
10. Private prosecutions currently operate with minimal external scrutiny. Where organisations, particularly large commercial entities or regulatory bodies, routinely bring private prosecutions, there is a heightened risk that prosecutorial discretion may be exercised in ways that are inconsistent, disproportionate, or influenced by improper motives, such as financial recovery or reputational management.
11. Regular inspections would provide a mechanism for independent oversight, helping to ensure that such organisations apply consistent standards, adhere to disclosure obligations, and properly assess the evidential and public interest thresholds before initiating proceedings. This is particularly important in light of recent high-profile failures in private prosecutions, which have revealed systemic issues in case preparation, disclosure, and the treatment of vulnerable defendants. Inspections would also promote public confidence in the justice system by ensuring that private prosecutions are not being used as a tool of coercion or punishment without accountability and are being conducted in accordance with fair trial principles. In our view, these recommendations represent a proportionate and necessary safeguard to uphold the rule of law and protect the rights of defendants:
  - (a) HMCTS should establish a central register of all private prosecutions in England and Wales.<sup>12</sup>

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<sup>8</sup> House of Commons Justice Committee, *Private prosecutions: safeguards*, Ninth Report of Session 2019-21, paragraph 76

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, paragraph 21

<sup>11</sup> *Ibid.*, paragraph 20

<sup>12</sup> *Ibid.*, paragraph 65

- (b) 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.<sup>13</sup>
  - (c) Every defendant who is privately prosecuted should be informed of their right to seek a review from the CPS. This change should be implemented by means of a change to the Criminal Procedure Rules.<sup>14</sup>
12. In sum, JUSTICE considers each of the above recommendations to be sensible and practicable means of ensuring that private prosecutions are monitored, kept abreast of and, where appropriate, reviewed. The right of defendants being privately prosecuted to seek a review from the CPS is of little value unless they are informed of that right.

## The Single Justice Procedure

13. The Single Justice Procedure (“SJP”), introduced by the Criminal Justice and Courts Act 2015, was designed to streamline the handling of high-volume, low-level, non-imprisonable offences. While it has achieved administrative efficiency, it has, in our view, done so at the expense of transparency, fairness, and access to justice; core tenets of the rule of law. This has thereby created the intolerable risk of miscarriages of justice and improper prosecutions without adequate safeguards.

### Rule of Law Concerns

#### Lack of Clarity

14. The current framework governing the use of the SJP suffers from a severe lack of clarity. There is no exhaustive list of offences eligible for prosecution under the SJP, and little public analysis of what prosecutions are brought, by whom, and with what result. This opacity undermines legal certainty and accountability.
15. The consequences of this lack of clarity are not hypothetical. In *Northern Trains Ltd v Ballington & Ors*,<sup>15</sup> the High Court found that rail operators had improperly used the SJP to prosecute offences under section 5(1) and 5(3) of the Regulation of Railways Act 1889, which were not eligible for disposal under the

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<sup>13</sup> *Ibid.*, paragraph 71

<sup>14</sup> *Ibid.*, paragraph 73

<sup>15</sup> *Northern Trains Ltd v Ballington & Ors* [2024] EWHC 1043 (Admin).

procedure. This led to thousands of unlawful convictions being quashed, with significant implications for the individuals affected, public confidence in the justice system, and all the associated financial costs.

16. The SJP is now used to process 64% of all defendants dealt with in the magistrates' court (excluding those sent to the Crown Court).<sup>16</sup> Yet there is no routine publication of data on conviction rates, plea rates, or the demographic characteristics of defendants. This lack of transparency inhibits scrutiny and increases the risk of miscarriages of justice. As such, the status quo is clearly unsatisfactory, particularly when considering the vast volume of cases which use the SJP.

#### Access to Justice

17. Under the current framework, neither private prosecutors nor magistrates are responsible for ensuring that vulnerable defendants are able to effectively challenge the charges against them. The SJP lacks adequate safeguards for individuals with mental health conditions or cognitive impairments.
18. A 2024 review by ITV News and the Evening Standard of 50 SJP cases involving defendants with strong extenuating circumstances found that 74% of the prosecutions were not in the public interest, and that 58% would likely have resulted in a different outcome had the defendant had access to legal representation in open court.<sup>17</sup>
19. For example, in February 2024, a 93 year old pensioner with severe dementia was convicted under the SJP for failing to insure his car, despite having had his licence revoked two years earlier.<sup>18</sup> In another case, a 69-year-old man from Hull was convicted over a £3.34 unpaid DVLA bill, despite informing the court that he had Alzheimer's disease.<sup>19</sup>
20. These cases illustrate the systemic failure of the SJP to accommodate vulnerable individuals. The absence of a duty on prosecutors or magistrates to screen for vulnerability or to consider whether prosecution is appropriate in light of the defendant's circumstances is a serious breach of the principle of access to justice.

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<sup>16</sup> Ministry of Justice, '[Criminal Court Statistics Quarterly: July to September 2024](#)' (2024).

<sup>17</sup> ITV News, '[The Single Justice Procedure: What is it and why are there calls for reform?](#)', (18 September 2024)

<sup>18</sup> The Standard '[Pensioner, 93, with dementia convicted in fast-track SJP courts for not having car insurance](#)' (7 March 2025)

<sup>19</sup> The Standard, '[Single Justice Procedure 'needs reform', magistrates say](#)' (25 March 2025)

### Public Confidence in the Justice System

21. The SJP's lack of transparency, its disproportionate impact on vulnerable individuals, and its role in high-profile miscarriages of justice all contribute to a perception that the system prioritises efficiency over fairness.
22. Although court lists are published, the proceedings themselves are not open to the public or the press. Accredited journalists cannot observe SJP hearings, and there is no requirement for magistrates to provide reasons for their decisions. This undermines public confidence in the justice system and violates the principle of open justice.
23. The Magistrates' Association has called for reforms to address these concerns, including requiring prosecutors to review mitigation, improving training for magistrates, and enhancing transparency by allowing press access and publishing sentencing reasons.<sup>20</sup> **These recommendations should be adopted in full.**

### Comparative Jurisdictions

24. We understand that the SJP as a mechanism is unusual when compared to similar jurisdictions. In Scotland, for example, there is no equivalent to the SJP. Minor offences are prosecuted in the Justice of the Peace Court, where lay justices sit with legally qualified clerks, and all proceedings are conducted in open court.<sup>21</sup> Prosecutorial discretion is exercised by the Procurator Fiscal, who may issue warnings, fiscal fines, or diversion orders as alternatives to prosecution.<sup>22</sup>
25. Similarly, in jurisdictions such as New Zealand and Australia, we understand that minor offences are typically handled through infringement notice regimes or diversion schemes. These systems are designed to avoid criminal convictions and court appearances altogether, particularly for first-time or low-level offenders. In New Zealand, for example, the infringement regime includes statutory safeguards such as the ability to apply to the court to correct procedural irregularities, and the discretion to waive penalties in cases of hardship.<sup>23</sup>

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<sup>20</sup> Magistrates' Association, '[Single Justice Procedure: Position Statement](#)' (March 2024)

<sup>21</sup> Scottish Courts and Tribunals Service, '[Justice of the Peace Courts](#)'

<sup>22</sup> Crown Office and Procurator Fiscal Service, '[Decisions by the Prosecutor in Criminal Cases](#)'

<sup>23</sup> Summary Proceedings Act 1957 (NZ), s 78B.

26. These international comparisons demonstrate that it is possible to design systems that are both efficient and fair, and that the SJP, in its current form, risks falling short of standards set in comparative jurisdictions.

#### Recommendations

27. We therefore urge the Government to undertake a fundamental review of the SJP. This review should consider:
- (d) Introducing a statutory requirement for prosecutors to assess vulnerability and public interest before proceeding under the SJP;
  - (e) Ensuring the development of a comprehensive and continually updated list of offences which are eligible for prosecution under the SJP;
  - (f) Publishing regular, disaggregated data on SJP outcomes to enable public and parliamentary scrutiny; and
  - (g) Exploring alternatives to the current model, including hybrid hearings or opt-in procedures that preserve the right to a fair and open trial.
28. The SJP may have been conceived as a pragmatic solution to court delays, but it must not become a permanent fixture without proper safeguards. Justice must be efficient, but it must also be just.

#### **For more information, please contact:**

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