



Justice Committee

House of Commons London SW1A 0AA
Tel 020 7219 8196/8198 Email justicecom@parliament.uk
Website www.parliament.uk/justicecttee

The Right Honourable
Dominic Raab MP
Deputy Prime Minister
Lord Chancellor & Secretary of State for Justice
102 Petty France,
London SW1H 9AJ

By email only

25 November

Dear Dominic,

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

I write to raise some points arising from the Government's response to the Committee's report *Private prosecutions: safeguards*, which was published in March this year.¹ Since the Government's response was published there have been a number of important developments relevant to the Committee's original inquiry on private prosecutions, in particular the Court of Appeal's judgment in *Hamilton* and the subsequent changes to the powers and scope of the Post Office Horizon IT inquiry.² As a result, we are writing to ask the Government to provide an update on its response to our report.

Hamilton and private prosecutions

In response to our conclusion that the Post Office's prosecutions "justify a proactive approach to examining the effectiveness of the regulation of this area of the criminal justice system",³ the Government stated that "it would not be appropriate for the government to comment at this stage".⁴ We would ask if the Government could indicate whether, following the Court of Appeal's judgment in *Hamilton*, to provide an update on its approach to regulating private prosecutions.

We welcome the Government's decision, following *Hamilton*, to convert the Post Office Horizon Inquiry into a statutory inquiry under the Inquiries Act 2005 and to expand the terms of reference to include the matters covered by *Hamilton* and the Post Office's approach to private prosecutions. Nevertheless, it is beyond the scope of the Post Office Horizon inquiry to recommend changes to the criminal justice system that could stop an organisation like the Post Office wrongly bringing criminal prosecutions against hundreds of innocent individuals. It is vital that the inquiry gets to the bottom of what happened within the Post Office, but we must not lose sight of the fact that the criminal justice

¹ Justice Committee, [Private prosecutions: safeguards Ninth Report of Session 2019–21](#), HC 497, Published on 2 October 2020; Justice Committee, [Private prosecutions: safeguards: Government Response to the Committee's Ninth Report, Tenth Special Report of Session 2019–21](#), HC 1238, Published on 4 March 2021

² *Hamilton And Others V Post Office Limited* [2021] EWCA Crim 577; [The Post Office Horizon IT Inquiry: September 2021 Progress Update from the Chair](#)

³ Justice Committee, [Private prosecutions: safeguards Ninth Report of Session 2019–21](#), HC 497, Published on 2 October 2020 para 15

⁴ Justice Committee, [Private prosecutions: safeguards: Government Response to the Committee's Ninth Report, Tenth Special Report of Session 2019–21](#), HC 1238, Published on 4 March 2021 para 1

system facilitate a miscarriage of justice on an unprecedented scale. We must ensure that the opportunity to learn lessons from *Hamilton* is not lost. As a result, the Committee would like to know if the Government is actively reviewing the implications of *Hamilton* for the criminal justice system? If so could the Government outline which elements of the criminal justice system may need to be reformed to ensure that an organisation cannot wrongly secure criminal convictions against so many innocent people ever again?

Costs

In response to our conclusion on costs (paragraph 37), the Government said “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”. The response then gave the following undertakings:

- 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 Government Response to the Committee’s Ninth Report 5 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.

The Committee would like to know whether the Government is still planning to legislate to limit what the costs can be recovered by a private prosecutor from central funds. The Committee would also like to know whether the Government is still intending to consult on what a private prosecutor can recover from a convicted defendant and whether there should be a wider discretion to reduce or without payment of costs in the event of an acquittal.

On 25 May 2021, the Committee held an evidence session on private prosecutions, to follow up on the case of *Hamilton*, and three of the witnesses, Stephen Wooler CB, Paul Jarvis (Barrister, 6KBW College Hill,) and Committee Member, Criminal Law and Andrew Marshall (Partner, Edmonds Marshall McMahon) addressed the issue of costs in some detail. We would note the recent judgment of HHJ Nicholas Dean Q.C. in *Animal Protection Services v Alex-Kaye Carrigan and Elisha Brown on 2 November 2021*,⁵ which raises a number of important issues relating to the conduct and cost of private prosecutions which were covered in our report. The Committee’s report on the future of legal aid also raised the issue of whether the current costs regime strikes the right balance between what a prosecutor and a defendant can recover from central funds.⁶ As a consequence, we would ask the government to take urgent action to review whether the existing framework can be improved.

A central register of private prosecutions

The Government’s response stated that establishment of a central register of private prosecutions is “in hand and will be completed by the end of the year”. The Committee would like to have an update on the establishment of the register.

⁵ [Animal Protection Services v Alex-Kaye Carrigan and Elisha Brown](#) (2021)

⁶ Justice Committee, [The Future of Legal Aid](#), Third Report of Session 2021–22 (HC 70) 27 July 2021 para 69

One of the most striking elements of the Post Office prosecutions was that it took so long for anyone within the criminal justice system to identify the pattern of activity. The *Animal Protection Services* case above raises similar concerns and it is clearly vital that those working in the criminal justice system are able to know who is bringing prosecutions and on what scale. We would also like to know who will have access to the register.

Information for defendants

The Government's response did not accept our recommendation that all defendants that are privately prosecuted should be informed of his or her right to seek a review from the CPS. We acknowledge the concerns that this would lead to a significant number of referrals to the CPS. However, in our view it is still the right thing to do to ensure that defendants are aware of their right to refer their prosecution to the CPS. At the evidence session on 25 May 2021 it was suggested to us that defendants should be informed of their right to ask the CPS to review a private prosecution through the summons issued by the magistrate's court. We would like to know if the Government would support that proposal.

We look forward to your response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Neill', with a large, stylized initial 'R'.

Sir Robert Neill MP

Chair
Justice Committee