



Ministry
of Justice

James Cartlidge MP
Parliamentary Under-Secretary
of State for Justice

Sir Robert Neill MP
Chair, Justice Select Committee
House of Commons
London
SW1A 0AA

MoJ ref: SUB93832

13 January 2022

Dear Sir Bob,

**PRIVATE PROSECUTIONS: SAFEGUARDS – GOVERNMENT RESPONSE
TO THE COMMITTEE'S NINTH REPORT**

Thank you for your letter of 25 November in which you asked for an update on our response to your committee's Ninth Report.

The main development since our response was published in March is the judgment of the Court of Appeal in the *Hamilton* case. The many convictions quashed by that decision amount to what you rightly describe as a miscarriage of justice on an unprecedented scale, and we are determined to do all we can to prevent a repetition. It is not clear, however, how far what went wrong in these cases is attributable to their being private prosecutions, rather than to egregious failures to comply with obligations to which any prosecutor would have been subject. It is noteworthy, too, that the Post Office is by no means typical of private prosecutors, a point that emerged clearly from some of the evidence you heard in May. We have also read with interest a paper on the implications of the *Hamilton* case, which Dr Jonathan Rogers of the Criminal Law Reform Now Network kindly supplied to us. I have asked my officials to take up his suggestion that we should engage with CLRNN in an effort to agree on what ought to be done. Their proposal for ad hoc inspections is one that we think might be worth pursuing.

It remains our intention that the costs recoverable from central funds by a private prosecutor should be limited as the costs recoverable by an acquitted defendant already are. This will require an amendment to the Prosecution of Offences Act 1985, and we intend to bring forward primary legislation when Parliamentary time allows to amend the Act to allow the Lord Chancellor to prescribe rates payable to private prosecutors. Our proposed reforms will be subject to consultation, including on any rates that might be prescribed for the costs of a private prosecution, if the Act is amended to allow the Lord Chancellor to prescribe rates. We shall also consult on the limitation of costs recoverable by a private prosecutor from a convicted defendant, and possibly on a wider discretion to reduce or withhold payment of costs from central funds in the event of an acquittal.

We are aware of the case of *Animal Protection Services v Alex-Kaye Carrigan and Elisha Brown* and of *TM Eye Ltd v Southampton CC*, and we are considering both judgments.

I am delighted to confirm that the register of private prosecutions has been established and became operational last month. It will be accessible to justices' legal advisers, district judges (magistrates' courts), court associates, and HMCTS administrative staff in magistrates' courts. It will be accessible on request by other staff working for the Ministry of Justice and by members of the judiciary, and in reply to requests in Parliamentary Questions or from a defendant or other member of the public under the Criminal Procedure Rules.

Finally, you asked whether the summons issued by a magistrates' court could be used to notify defendants of their right to ask the CPS to review a private prosecution. As noted in the Government's response to your report, a proposal for automatically notifying the Director of Public Prosecutions of all private prosecutions was considered and rejected by the Criminal Procedure Rule Committee in November 2020. Last month the Rule Committee looked at the matter again and, whilst maintaining its reservations about automatic notification, it agreed to consider circumstances in which it might be appropriate for a court to alert a defendant to the Director's power to intervene. A working group has been set up for this purpose and will meet later in January.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Cartlidge', written in a cursive style.

JAMES CARTLIDGE MP