

Written evidence from TM Eye Ltd (PPS0028)

I apologise for the late submission of this letter, but we were not made aware of the Committee's interest in private prosecutions until today.

I am the managing director of TM Eye Ltd. TM Eye is the UK's leading company involved in private criminal prosecutions. TM Eye has since 2014, brought over 500 criminal prosecutions as a private prosecutor with a 100% conviction rate, 13% of those convicted receive custodial sentences.

TM Eye consists of a team of retired police detectives and trading standards officers who use the skills and knowledge gained from long careers within law enforcement to gather evidence to the criminal standard. That evidence is then reviewed by independent solicitors using the Code for Crown Prosecutors to establish whether there is sufficiency of evidence and that the prosecution is in the public interest. Effectively this process mirrors the police / CPS process. As detailed the systems in place ensure that the prosecution is properly brought. The conviction rate highlights the success.

TM Eye commenced private prosecutions in 2013, as a direct result of the Government austerity measures and reduction in law enforcement capabilities. TM Eye initially focussed on intellectual property offences, primarily Trademark Act offences (illicit goods) but now prosecutes more general offences such as Theft Shoplifting and Theft Person matters. This is a direct result of police failing to arrest or prosecute offenders leading to prolific offenders being allowed to commit offences at will.

TM Eye has access to the Police National Computer (PNC) to allow the courts to be made aware of the criminal histories of those being prosecuted. It also ensures that all TM Eye convictions are correctly recorded on the PNC. A robust system has been introduced to ensure correct use of the PNC and the data supplied by the Association of Chief Police Officers Criminal Records Office (ACRO). This is supported by a strict Information Sharing Agreement (ISA).

TM Eye also has Information Sharing Agreements with various police services and the Intellectual Property Office (IPO) Intelligence Hub. TM Eye works in partnership with police to gather evidence against those involved in criminality. This is generally for offences where the police / CPS would not ordinarily investigate or prosecute. This partnership approach is highly successful. An example is the work undertaken with Greater Manchester Police in the area known as 'Counterfeit Street' in Strangeways, Manchester, where over 100 criminals have been prosecuted by TM Eye as a private prosecutor. This has reduced open offending and changed the entire demographic of the area.

TM Eye has a surveillance capability and the only dedicated undercover unit outside of law enforcement. Both comply strictly with RIPA and Human Rights legislation. It is a fact that policing has reduced these specialist capabilities. Evidence from this type of proactive evidence gathering has been essential in securing overwhelming evidence of an offence.

TM Eye and its solicitors adhere strictly to the disclosure rules and have experienced highly trained Disclosure Officers who have attended the Advanced Disclosure Course. Unlike public prosecutions TM Eye have never encountered disclosure issues or problems. Disclosure is considered at the investigation stage, during the review stage pre summons and

throughout the legal process post summons. It is an ongoing process. It is essential that those involved in the investigation and prosecution are experienced and have a thorough and complete understanding of the law.

The most significant problem for the private prosecutor is the recovery of the reasonable costs. The Ministry of Justice (MOJ) has within recent years withdrawn the ability for investigators to recover reasonable costs of the investigation and have significantly reduced costs in the proceedings.

Another area of concern is that the private prosecutor has no ability to investigate the financial standing of a defendant. There would be an advantage to the private prosecutor being able to identify criminal proceeds. Any confiscation would still go to the Treasury but would make an effective deterrent to those who make large profits from their crimes.

Private prosecutions are absolutely essential. Without them victims would be left struggling to obtain justice. Often law enforcement will not investigate or prosecute certain crime types. In many cases they will not even record those crimes on police systems as offences.

As an example, TM Eye is currently prosecuting two substantial conspiracy cases involving the manufacture, distribution and sale of vast amounts of fake tobacco products. These cases are being heard at Sheffield and Birmingham Crown Courts. The loss to the Revenue would be well in excess of £20 million. In both cases HMRC were fully informed and all intelligence and evidence passed to them. HMRC declined to act and as a result TM Eye were forced to prosecute the offences as private prosecutions. In every case that TM Eye brings the police, trading standards or HMRC are made aware and given the opportunity to investigate and prosecute. The CPS are sometimes asked to review a case. In all cases with the exception of one the CPS have declined to take over. The CPS have been happy to allow the private prosecutions to continue and each has resulted in convictions.

TM Eye work at the 'coal face' gathering evidence of criminality in the same way as police and law enforcement. That evidence is substantial, and a prosecution would not be brought if it were not in the public interest.

Private prosecutions have grown in recent years with solicitors becoming involved in both the investigation and prosecution phase. Our only comment would be that the two roles are not compatible and that the solicitor reviewing the case should always be independent and never involved in both roles.

July 2020