

## **Written evidence from Campaign Against Antisemitism (PPS0032)**

### **BACKGROUND**

Campaign Against Antisemitism (CAA) is a registered charity dedicated to exposing and countering antisemitism through education and enforcement of the law. CAA operates nationally.

The House of Commons Home Affairs Justice Committee (the Committee) has sought submissions on the regulation of private prosecutions, including “the role of the Crown Prosecution Service in taking over private prosecutions”, which is the focus of our submission.

CAA assists the victims of antisemitic hate crime in securing justice, and thus has direct experience of the performance of the criminal justice system in securing — or failing to secure — justice for victims.

It is difficult for an organisation like CAA to privately prosecute because of the strain it places on our resources and because we lack the investigatory powers of police forces. On occasions where the Crown Prosecution Service (CPS) has failed to prosecute a matter, where possible, CAA has privately prosecuted. However, when CAA has done so, we have seen the CPS compound its refusal to prosecute both in the first instance and on Victims 'Right to Review (VRR), by taking over and discontinuing the private prosecution.

CAA is aware of the terrible injustice suffered by postmasters at the hands of the Post Office and the need for safeguards to ensure that such a travesty is not repeated. We have also had sight of the Criminal Bar Association's written submission to the Committee, with which we broadly agree.

We are providing this submission out of concern that the Committee may suggest safeguards which do not take into account the difficulties faced by private prosecutors like CAA.

Our concerns are twofold: firstly, the CPS is able to refuse to prosecute and then to prevent a private prosecutor from prosecuting; and secondly, a challenge to such intervention by the CPS is judged against an almost impossibly high bar.

### **THE CPS SHOULD NOT SELF-REGULATE IN PRIVATE PROSECUTIONS**

A decision by the CPS not to prosecute can be a decision to deny justice. Private prosecution exists as a check on that power, to enable individuals and organisations, like CAA, to pursue justice when the state does not.

It is proper that the power to privately prosecute is regulated, however one of the principal means of regulation is that a defendant may apply to the Director of Public Prosecutions to ask that the CPS take over and discontinue a case.

This means that a crime may be committed, the CPS may decline to prosecute it, the CPS may decide that it acted properly when VRR is sought, and when a private prosecution is instigated, the CPS may once again deny justice by taking over and discontinuing the private prosecution, leaving the private prosecutor with only the difficult and costly option of seeking judicial review of that decision. We speak from experience, as CAA has on occasion been through precisely this process.

The CPS should not be permitted to regulate itself in this manner. Whilst it should be at liberty to take over private prosecutions in order to continue them, any decision to discontinue a private prosecution should be made by an independent party. We submit that the independent party should be a senior barrister acting as a reviewer of private prosecutions.

#### THE BAR SHOULD BE LOWERED FOR JUDICIAL REVIEW OF THE CPS

A decision by the CPS not to prosecute or to discontinue a private prosecution is subject to judicial review, however the courts have interpreted their discretion very narrowly. CAA has sought judicial reviews and both succeeded and failed, however there are many occasions when we have not sought judicial review because we know the bar to be set almost impossibly high.

One such case is that of an individual who issued a call online for the death of all Jews. For example, he had posted online: “If all Jews died today I’d be happy. Would I do it? No. Would I applaud? Yes” and “To dislike Jews is no worse than hating muggers or murderers”. Our VRR submission was denied on the grounds that he was merely trying to start a debate and there was no evidence that anybody had attempted to act on his comments. We felt confident that the VRR decision was wrong and that a private prosecution would be successful, but that if we brought a private prosecution and the CPS took it over and then discontinued it, we were concerned that we would not succeed in an action for judicial review of the CPS discontinuing the case because of the burden placed upon us as the applicant in judicial review.

When seeking judicial review of a decision not to prosecute or to discontinue a private prosecution, we must demonstrate that the CPS was not just wrong, but that its decision was so irrational that no reasonable prosecutor would have reached the same conclusion based on the same facts.

We have seen the CPS abuse the protection afforded by such an extremely high threshold to prevent the prosecution of crimes.

We submit that judicial review of a decision not to prosecute or to discontinue a private prosecution should be judged on the balance of probabilities and not on the existing threshold. This would force the CPS to consider decisions to prosecute or to discontinue private prosecutions more carefully, and would ensure that more crimes are heard by the criminal courts and not written off by the CPS with almost no accountability.

#### ADDITIONAL INFORMATION

We understand that the Committee does not wish to examine individual cases, but should it be helpful to do so in this instance, we would be pleased to provide case studies, or any other additional information that the Committee may find helpful.

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