



MAY 2025

RESPONSE TO CONSULTATION ON THE OVERSIGHT AND REGULATION OF PRIVATE PROSECUTORS IN THE CRIMINAL JUSTICE SYSTEM

CONTACT:

TOM FRANKLIN, CHIEF EXECUTIVE tom.franklin@magistrates-association.org.uk

May 2025





ABOUT THE MAGISTRATES' ASSOCIATION

The Magistrates' Association (MA) is an independent charity and the membership body for the magistracy.

We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With 12,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.



SUMMARY

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

The Magistrates' Association (MA) welcomes the invitation to respond to this consultation. We are particularly pleased to input into Chapter 2: Improving safeguards in the single justice procedure (SJP). Twenty-six per cent of cases heard in the magistrates' court are SJP, and we continue to support the use of SJP for the lowest level offences. The SJP delivers efficient, speedy justice by reducing backlogs and minimising delays for victims, witnesses and defendants – as such, it contributes hugely to the efficiency of the court system.

Feedback from our members about their experiences of sitting in SJP courts informs our current view that, while remaining supportive of the principle of SJP, we believe that there is room for improvement in the way it operates. There is scope to make the procedure fairer and, by doing so, improve public confidence in the process.

THE MAGISTRATES' ASSOCIATION CALLS FOR:

- Reform of the oversight and regulations of private prosecutors to improve transparency, accountability, and public confidence in the SJP.
- A statutory code of conduct for private prosecutors, overseen by an independent regulator invested with powers to suspend or withdraw private prosecutor's licenses if they contravene the code.
- A separation of function between those who investigate cases and those who make the decision to prosecute and undertake the prosecution. This mirrors public prosecution procedures.
- All private prosecution cases should be subjected to an evidential test and public interest test before a decision to prosecute is made. There should be a mandatory requirement for prosecutors to read all pleas and mitigations to assess whether the prosecution is in the public interest before the case comes before magistrates.

ABOUT YOU

Question 1

Are you responding on behalf of an organisation that brings private prosecutions?

No.

CHAPTER 1: CONSISTENCY OF STANDARDS AND ACCOUNTABILITY CODE OF PRACTICE

Question 5

Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be bound by a mandatory code of practice?

Yes.

A mandatory code of practice will provide a framework and structure to underpin prosecutor's decision-making about progressing individual cases. A mandatory code will provide an overarching structure that separates the process of investigation and the decision to prosecute, as the Code for Crown Prosecution does for the Crown Prosecution Service (CPS). It should also provide a mechanism to review mitigation received from defendants.

Question 6

If you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be bound by a mandatory code of practice, do you think this code should apply to:

All private prosecutors that bring prosecutions.

A mandatory code should apply to all private prosecutors to ensure consistency and accountability. The decision to instigate a prosecution should lay with an independent lawyer and not the investigator. When individuals bring a private prosecution, defendants should be able to apply for legal aid to fund a lawyer to review the case against the mandatory code prior to the matter going to court.

Question 7

If you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be bound by a mandatory code of practice, please provide your opinions on requirements that could be included in the code (select all that apply):

1. A requirement for the separation of functions between investigators and prosecutors.

It is fundamental to separate an investigative function from the decision to prosecute. This judicial principle led to the Crown Prosecution Service (CPS) being set up in 1986. It follows that a mandatory code to apply the same standards to private prosecution should be introduced.

2. A requirement for the separation of functions between those who decide whether to commence a prosecution, and those who carry out the prosecution.

We consider that this may not be practical and is of less importance than a separation of function between investigators and the decision to prosecute. As the decision to prosecute needs to be reviewed as new information, for example, mitigation is received, it makes sense that the person or department that decides to proceed with prosecution will also carry it out.

3. A requirement to consider whether there is sufficient evidence to secure a conviction.

This safeguard should be part of the duty of an independent lawyer. It is consistent with the first step of the Full Code Test (FCT) used by the CPS for over 30 years.

4. A requirement to review the public interest test before commencing the prosecution, and to keep it under review throughout proceedings.

Like the evidential test, the public interest test should apply throughout the life of the case. Prosecutors should read and take account of pleas and mitigations before deciding to progress a case. When a prosecutor decides to proceed, an independent lawyer should assess each case with regard to the evidential and public interest tests. This is consistent with the CPS's FCT.

5. Any other requirements that should be in the code.

Decision-making should be properly recorded and auditable. The mandatory code should require organisations to have clear and transparent reporting lines to ensure proper accountability. An organisation's priorities and requirements should in no way influence the independent lawyer's decision to prosecute if it is in the public interest to do so.

Question 12

If you have any other thoughts about a code for private prosecutors which have not been captured in the questions above, please provide these.

We believe that the voluntary Code for Private Prosecutors devised by the Private Prosecutors' Association (PPA) in 2017 is a sound starting point for a mandatory code to govern private prosecutions. It reflects key areas of the Code for Crown Prosecutors, which has been tried and tested before the courts many times over nearly 30 years and has proven a robust framework to fairly and equitably govern prosecutions brought.

Any code should be compatible with professional codes. It should also address the rights of victims, and cross reference to the Victim Code of Conduct and Witness Code, both of which should be followed where applicable.

INSPECTORATE

Question 13

Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be subject to inspections from an inspectorate?

Yes.

We support an independent inspectorate being established. This inspectorate should oversee the code and conduct regular inspections to ensure robust accountability for decisions to prosecute. Such a body might be an extension of HMCPSI, which would be logical, or a new entity.

Question 14

If you agree that some or all private prosecutions should be subject to inspections from an inspectorate, should this requirement apply to (please select one):

All organisations that bring private prosecutions.

For the purposes of consistency and accountability, all organisations that bring private prosecutions should be accountable to an inspectorate. Inspectorate duties should be confined to the organisation's investigative role and prosecution decision making. Wider concerns about an organisation should be reported to the appropriate body.

Inspectorate reports should be published online with no charge for public access.

Question 15

If you agree that private prosecutors should be subject to inspections from an inspectorate, what would be a suitable consequence if a prosecutor fails an inspection?

If an inspection report reveals serious issues, then the right to use SJP should be removed from the private prosecutor.

If an inspection report reveals less serious issues, then the status as 'relevant prosecutor' should be removed from the private prosecutor, and they should be required to produce an action plan to address the identified issues. Until the issues are satisfactorily addressed, they should be required to apply to the magistrates' court for a summons if they wish to commence prosecutions.

If an inspection report identifies areas for improvement that include the private prosecutor's responsibilities to the court, we suggest that the inspectorate be vested with the authority to suspend the organisation from bringing cases before the court or through the SJP procedure. This would depend on the nature of the findings. It may be something akin to special measures used by other government inspectors, whereby prosecutions may still take place but under closer scrutiny.

Question 16

If you have any other thoughts about an inspectorate for private prosecutors which have not been captured in the questions above, please provide these.

In introducing an inspectorate regime, it will be important to ensure that there are no gaps in responsibility and accountability between the inspectorate and other trade bodies that have oversight responsibility for an organisation within the sector.

Complications may arise where an organisation outsources its prosecution function to a private firm of solicitors who are already subject to regulation.

ACCREDITATION

Question 17

Do you think there should be a system of accreditation for private prosecutors? If so, please specify whether you think this should be mandatory or voluntary.

Yes, mandatory.

There should be mandatory regulation and accreditation hand in hand with the establishment of an inspectorial function. These will provide a set of standards for

organisations to use when developing protocols and policies, and for an inspectorate to measure against.

There is precedent for accredited bodies in the legal sphere, such as the BARMARK and the Solicitors' Quality Mark. Many organisations who undertake private prosecutions will be ISO1701 accredited and subject to ISO inspections. It follows that the establishment of private prosecution accreditation and inspection should consider organisations already well established in this space.

Question 18

If you think there should be a voluntary system of accreditation, please provide detail of what the incentive should be for acquiring accreditation or the consequences for not being accredited.

We do not believe that a system of accreditation should be voluntary, but would suggest that if it is, only accredited bodies should be able to access the SJP portal. Other private prosecutions would need to be instigated through proceedings before a court with the scrutiny and delay that brings.

Question 19

If you think there should be a system of accreditation for private prosecutors, do you think this should be required at an organisational level or should it be a personal professional requirement for all individuals involved in bringing a prosecution?

At an organisational level.

Accreditation should be at an organisational level to ensure proper scrutiny of the prosecution process. Each organisation should be required to publish on its website the name of the person who is responsible for overseeing its accreditation compliance.

Question 20

If you have any other thoughts about accreditation for private prosecutors which have not been captured in the questions above, please provide these.

While we submit that accreditation should be mandatory, we do envisage a period of transition whereby voluntary accreditation may be necessary to avoid disrupting prosecutions. However, that period should be as short as possible and a timeframe for mandatory accreditation be clearly defined.

CHAPTER 2: IMPROVING SAFEGUARDS IN THE SINGLE JUSTICE PROCEDURE

Question 21

Do you think that Single Justice Procedure prosecutors should be required to take steps to engage with the defendant before commencing a prosecution, to understand their personal situation (mitigating circumstances) and assess whether the prosecution is in the public interest?

Yes.

A prosecution that takes the SJP route should be subject to review and the Full Code Test as with any other prosecution that is put before a court. The process for fulfilling the public interest part of the Full Code Test should be the responsibility of the prosecutor. Actions should include taking steps to engage with the defendant and/or redesigning relevant forms that provide requisite information.

In the case of transport prosecutions, the revenue officer involved could supply the person with information (via a leaflet, QR code or similar) that outlines what will happen next, for example, they will be issued with a fixed penalty notice (FPN) and if they don't respond, the company will commence prosecution proceedings. The revenue officer could also take the person's email or SMS number to facilitate quick, efficient communication.

It is imperative that steps to engage the defendant should accommodate the needs of individuals with learning difficulties, communication challenges, and any groups who may be less able to engage with the process.

Question 22

Do you think the prosecutor should be able to view the mitigating circumstances submitted to the court by a defendant before the case is reviewed by a magistrate?

Yes.

The first recommendation in our Single Justice Procedure position statement published in March 2025 is that prosecutors should read all pleas and mitigations before they decide to progress a case to prosecution. This will give the prosecutor the opportunity to withdraw the case if they then believe it is no longer in the public interest to pursue it.

Review is a continuing process and should be an integral part of any new code. Mitigation is part of the public interest consideration of a review, and prosecutors need to read mitigation so that they can make an informed decision about prosecution.

Question 23

If you agree that the prosecutor should be able to review the mitigating circumstances before the magistrate reviews the case, do you think there should be a statutory requirement for them to review this in all cases, and conduct a further assessment of whether it is in the public interest to continue the prosecution, then confirm to the court that they have done this?

Yes.

As stated at question 22, we agree that the prosecutor should be responsible for keeping any case under review until conclusion before the court. Where any new Code for Private Prosecutions is statutory then yes, the prosecutor should have a statutory role to keep any case under review. The case should only proceed to the magistrates' court where the prosecutor deems that all mitigation has been considered and that the review is complete.

The court should receive confirmation that the prosecutor has reviewed all mitigating circumstances before the case is heard.

Question 24

Should there be a requirement for prosecutors to allow a certain period of time for people to respond to an initial notification in order to provide details of any their circumstances prior to issuing a SJP Notice?

Yes.

The prosecutor should allow sufficient time and be satisfied that their review is completed before issuing an SJP notice. This time period should be mandated in the code and a check that it has been properly applied should form part of the decision to prosecute that magistrates will be informed about.

Question 25

Should there be a requirement to send a certain number of written notifications before issuing a Single Justice Procedure Notice?

Yes.

There should be at least two written reminders – case dependent – before issuing an SJP Notice. The SJP Notice should require the accused to indicate if they wish to put forward mitigation and, if not, mandate that they declare that they do not. This could be a tick box.

Each private prosecutor should have a mechanism for handling returned postal requisitions. This will allow for a review and withdrawal of the case if the SJP Notice has not been properly served. The prosecutor may then decide to apply for a court summons to prosecute, rather than use SJP.

Prosecutors should make use of other channels of communication that the individual has given them permission to use, including email and SMS. Consideration should be given to a link between HMRC payroll or benefits data and SJP removing the need for a 'Means Form' to be submitted by the defendant.

We believe that HMCTS should work with prosecuting agencies to review the paperwork sent to defendants, to make it simpler and easier to understand. It should seek a Crystal Mark from the Plain English Campaign for the documents.

We would also like to see a concerted effort to publicise the importance of responding to official court letters. This publicity should include making the rights of the defendant clear, for example, that they can opt out of the SJP and ask for their case to be heard in open court.

Question 27

If you have any other thoughts about the SJP which have not been captured in the questions above, please provide these.

We wish to emphasise that the prosecutor should have a continuing duty to review cases, including all mitigation, and that cases should only progress to the magistrates' court once review is complete and the prosecutor is able to confirm this to the court.

Where information is already held about defendants, it may be possible to reduce the requirements for form-filling—for example, by linking with information held by HMRC or benefits agencies about a defendant's income.

CHAPTER 3: IMPROVING TRANSPARENCY

Question 28

Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be required to register with HMCTS prior to bringing a prosecution?

Yes.

This should be part of the accreditation process, and a public register should be created. The requirement to register with HM Courts and Tribunal Service (HMCTS) should include private practices undertaking prosecutions on behalf of another organisation.

Question 29

If you agree that some or all private prosecutions should be required to register with HMCTS prior to bringing a prosecution, should this requirement apply to (please select one):

All organisations that bring private prosecutions.

This will ensure consistency of prosecution and hence accountability.

Question 30

Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be required to publish their own data on the prosecutions they bring?

Yes.

It is a key principle of open justice that data is made available for public and independent scrutiny. Private prosecutors should be issued with a standard format and prescribed time periods, so that performance between private prosecutors can be compared, and so that the data can be combined at a national level.

We suggest that organisations should report quarterly to the Ministry of Justice (MOJ), who should publish quantitative and qualitative data. Organisations should also be required to include prosecution statistics and more in-depth information as part of their annual report.

Question 31

If you think some or all private prosecutors should publish data, what data should they be required to publish?

We suggest:

- Number of prosecutions brought each year
- Offence type of prosecutions brought
- Resulting number of convictions
- Number of defendants who pled guilty
- Equalities data
- Number of defendants responding to the SJP Notice
- Number of defendants where the case is discontinued by the prosecutor either before or after proceedings commence
- Number of defendants who contest a decision via a statutory declaration of a reopening application

Private prosecutions consultation response

- Breakdown of the prosecutor's cost calculation
- Conviction rates by court
- Any complaints received about their use of SJP

Broad spectrum data as suggested in the first five bullet points above should be published quarterly by MOJ. We believe that the MOJ and HMCTS should also publish national and regional data on:

- Number of defendants who do not plead
- Number of defendants who ask to go to court
- Number of defendants who attend court

This data will provide an indirect measure of defendant engagement with the process and be subject to scrutiny by the media and public. It could form part of the Crime Survey for England and Wales.

All data should be published in a format that can be downloaded and manipulated freely by users, in line with Open Data requirements.

Question 32

Do you agree that private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be required to assess their performance and/or regularly audit their own prosecutions?

Yes.

It is good practice for organisations to have internal mechanisms to monitor performance across a wide range of prosecution-related functions including results. Such a mechanism would form the basis of inspections.

Question 33

If you agree that private prosecutors should be required to assess their performance and/or regularly audit their own prosecutions, do you think this information should be published?

Yes.

Performance-related information should be part of each organisation's annual report published in the public domain.

Question 35

If you have any other thoughts about transparency in private prosecutions which have not been captured in the questions above, please provide these.

Inspectorate findings should be published online in the public domain. Where such findings give rise to concern, then the findings should be published, in context, in advance of the full inspectorate report. This mirrors the approach taken by Accident Investigation Branches where they have public safety concerns.

Equalities Analysis Questions

Question 38

From your experience are there any groups with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in Chapter 2 of this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.

We believe that individuals with protected characteristics, including physical or mental disability, age and pregnancy status, are particularly vulnerable to the effects of private prosecution, especially when this involves household utilities. We believe that reasonable adjustments should be provided throughout the private prosecution process, including support about how to best manage proceedings.

It should be mandatory for private prosecutors to assess individual's vulnerability as part of their engagement with the defendant. This information should inform the public interest decision.

©The Magistrates' Association / May 2025.

Unless indicated otherwise, this publication may be reproduced in whole or in part for non-profit or educational purposes without permission from the copyright holder. Please clearly acknowledge the source and send a copy or link of the reprinted material to the Magistrates' Association. No images from this publication may be used without prior permission from the Magistrates' Association.

020 7387 2353
info@magistrates-association
@MagsAssoc
magistrates-association.org.u
UK registered charity number: 21

