Written evidence submitted by Edmonds Marshall McMahon (VCB05)

Introduction

The following submission represents the views of Edmonds Marshall McMahon ("**EMM**") to clause 10 of the Victims and Courts Bill (introduced May 2025) (the "**Bill**"). EMM is this country's leading law firm specialising in privately prosecuting fraud, charity fraud and general crime in the UK. EMM is the only firm ranked as "Tier 1" in the specialist field of Private Prosecutions in both of the UK's major legal directories – the Legal500 and Chambers and Partners. As a leader in the private prosecution sector, EMM is well-positioned to respond to this inquiry and to scrutinise Clause 10 of the Bill. Clause 10 seeks to amend sections 17 and 20 of the *Prosecution of Offences Act 1985* (the "**Act**"), to extend the Lord Chancellor's power to limit the amount of costs that a private prosecutor may claim from Central Funds, through regulations.

A. Executive Summary

1. EMM recommends that Clause 10 of the Bill **not be enacted**.

2. The Bill's express intention is to better protect victims of crime and to promote access to justice – *i.e.* to put the needs of victims first.

3. Clause 10 of the Bill stands in **stark contrast to this objective of the Bill**. Private prosecutions by their very nature are cases brought by victims of crime. Necessary costs are incurred by these victims in order to properly conduct an investigation and prosecution. Clause 10 will not prevent the costs from being incurred. It will place the victim at a disadvantage as they will not receive the full extent (or even near the full extent) of the costs of bringing the prosecution, whilst also not having the benefit of state action in conducting these prosecutions on their behalf.

4. By enabling regulations to be made which will limit the amount of costs that a private prosecutor may claim from central funds, the Clause will almost certainly **act as a deterrent to victims of crime seeking the justice they deserve through private prosecutions**. Regrettably, justice through private prosecutions is, in many cases, the only justice victims are able to obtain. Limiting the amount of costs that a private prosecutor can recover through a private prosecution will act as a deterrent to this valuable avenue of justice being viable for many victims of crime, particularly the **most vulnerable victims of crime –** those who are impecunious (including as a result of the crimes committed against them) or charitable organisations. Limiting the costs recoverable to private prosecutors would therefore *diminish* access to justice, not promote it. More specifically, a direct consequence of Clause 10 will be that **charities**, for whom private prosecutions are often the only viable route to justice, **would be effectively prevented from pursuing such action**. Over time, this

could lead to a significant erosion of public trust in the charitable sector, as donors become disillusioned by the perception that charity fraud and theft go unpunished, ultimately discouraging future charitable giving.

5. **Clause 10 is at odds with previous statements of the Lord Chancellor**. The Lord Chancellor has previously made clear, in stark contrast to Clause 10, that imposing a cap on recoverable costs in private prosecutions, or equating costs recoverable from central funds to victims of crime (private prosecutors) with defendants, would not serve the public interest. Clause 10 of the Bill represents an inexplicable reversing of that position and is not in the public interest.

6. The Government's **concerns regarding increasing costs to the taxpayer through private prosecutors are misplaced**.

   6.1. In the Impact Assessment supporting the reasoning behind Clause 10 (defined below), it is stated that Measure 6 will "*mitigate the incentive of pursuing a private prosecution for commercial reasons rather than in the public interest*". There is no evidence of private prosecutions being used in this way. Furthermore, private prosecutions that are not pursued for the public interest (in accordance with the Code for Crown Prosecutors) risk being taking over and discontinued by the Crown Prosecution Service ("**CPS**"). It is EMM's practice to always apply the Code for Crown Prosecutors in any private prosecution.

   6.2. More costly private prosecutions of complex fraud, which are rare large claims by private prosecutors, are a natural consequence of investigating and prosecuting complex cases. Private prosecutions conducted by EMM which attracted large costs were significant (and importantly, successful) prosecutions of large scale multi-million pound frauds that should otherwise have been conducted by the Serious Fraud Office ("**SFO**"). As evidenced by recent increases in Government payments to the SFO in 2024, combatting major fraud and the fraud epidemic remain a priority for this Government. Support for private prosecutors will necessarily support this aim.

   6.3. Concerns regarding the costs of private prosecutions have often been overstated, particularly in matters of fraud. Private prosecutions conducted by this firm on behalf of victims operate within a very reasonable scope of costs. While costs for private prosecutions are higher than those of the CPS (for obvious reasons), the Lord Chancellor has very recently taken the position that the fees requested by EMM, a benchmarking firm in the sector, are reasonable

and market-standard.[1] Private prosecuting firms would not be able to perform their role in delivering justice to everyday citizens on CPS rates. Further, publicly available data from the Ministry of Justice shows that the cost of private prosecutions is not sharply increasing, but rather more recent data suggests that Ministry of Justice figures are often distorted by large claims for rare cases of complex fraud, and on the whole are level to previous years.

6.4. Private prosecutions permit the ordinary individual or charity to obtain justice in cases in which the State has failed to act. Allegations that private prosecutions have created a "two-tiered" justice system that would be resolved by capping recoverable costs, fail to recognise that by limiting recoverable costs, private prosecutions would, conversely, become a tool primarily for the wealthy, who will be in a position to incur the financial burden of the proceedings without recourse to being recompensed by the State for fulfilling what should have been a State function.

7. Clause 10 is **out of step with victim-focused legislative trends.** Victim-focused provisions in recent and proposed legislation evidence a clear trend of putting the needs of victims first and properly compensating victims for losses incurred. The enactment of Clause 10 would be a legislative outlier and an example of putting victims in a worse position than they currently are and reducing access to justice, in stark contrast to the existing and proposed legislative landscape, and the goals of the Government.

B. Policy objectives of the Bill

8. The Bill's express intention is to better protect victims of crime and to promote access to justice. On its website for the Bill, the Government states:

> *"Victims will be better protected than ever following the introduction of the Victims and Courts Bill. The Bill, delivered as part of the government's Plan for Change, will help victims get the justice they deserve."*

9. In the Ministry of Justice's "*Victims and Courts Bill: Overarching Impact Assessment (May 2025)*" (the "**Impact Assessment**"), the legislative measures in the Bill are explained to be designed to deliver on four key objectives, all centred around access to justice for victims, including:

9.1. "*Victims should get the opportunity to see justice done …*"; and

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[1] *R (Allseas Group SA) v Paul Sultana [2023] EWHC 2731 (SCCO),* at [99]. See also Costs in Private Prosecutions: The Touchstone for Reasonableness – R (Allseas Group SA) v Paul Sultana [2023] EWHC 2731 (SCCO) | Edmonds Marshall McMahon

9.2. "*Address the barriers to faster, fairer justice to allow victims to move on with their lives*".

10. Clause 10 of the Bill must be closely scrutinised against these objectives. Indeed, the Lord Chancellor has previously made clear, in stark contrast to Clause 10, that imposing a cap on recoverable costs in private prosecutions, or equating costs recoverable from central funds to victims of crime (private prosecutors) with defendants, would not serve the public interest. In *The Law Society of England and Wales v the Lord Chancellor [2010] EWHC 1406*, the Lord Chancellor took the view that:[2]

> *"[…] it [capping the costs of private prosecutions] might deter private prosecutions if the claimants were to be so limited and that it would be* ***against the public interest. Some private prosecutors conduct prosecutions on a fairly regular basis. This will include a number of charities … They will need to recover expenditure closer to actual levels, otherwise they would be out of pocket, and that in turn would deter them from bringing such prosecutions.*** *[…]*
>
> ***[The Lord Chancellor] has chosen to discriminate [between defendants and prosecutors] here because he thinks it is desirable to promote private prosecutions in the public interest. There is not the same public benefit to be derived from recompensing successful defendants in the same way****."*

11. The view that private prosecutions' recoverable costs should not be capped like those of defendants has been upheld in more recent judgments, such as in *FAPL v Lord Chancellor [2021] EWCH 755 (QB*), where a specially constituted three-judge bench held that:

> *"[…] there are* ***policy reasons*** *why provisions governing payment to a private prosecutor may be more favourable than those applying to a defendant: namely,* ***a desire not to deter private prosecutions****."*

12. Against this background, the suggestion in the Impact Assessment that Clause 10 would "*enable rates to be set to reduce the disparity between private prosecution costs and legally aided cases*" is striking – it represents a reversal of what has been considered clearly in the public interest for over a decade, and fails to reflect the obvious policy reasons that justify private prosecutors recovering a greater proportion of their costs than defendants in legal aid cases.

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[2] *The Law Society of England and Wales v the Lord Chancellor [2010] EWHC 1406*, at [65] and [67] (accessible via Bailii here).

13. For the reasons that follow, it is apparent that limiting the amount of costs that victims can recover through private prosecutions runs directly contrary to these public policy considerations, and the express objectives of the Bill.

C. Private Prosecutions: a valuable tool for promoting victims' access to justice

14. In their current capacity, private prosecutions are an effective and functioning tool for the prosecution of complex fraud, which remains a current priority of the Government.

15. In the Government's 2021 Response to the Justice Committee's Ninth Report, *Private Prosecutions: Safeguards*, it acknowledged that:[3]

> *"… [N]ot every offence worthy of prosecution can be prosecuted by the CPS, SFO or other appropriate public authority, there are circumstances where prosecutions brought by victims of crime themselves (whether corporate or individual) still have a valuable part to play."*

16. Indeed, the role of private prosecutions is increasingly significant amongst individuals, companies and charities alike, as reports of fraud rise exponentially while dedicated state resources to investigate and prosecute offences of fraud are at an all-time low - the impact of COVID-19 having afforded an even lower prioritisation of fraud offences.

17. Traditionally, when a person or a company is accused of fraud, criminal proceedings are usually brought as a result of a successful police investigation and prosecution by the CPS or the SFO. However, budget cuts to the police and CPS in recent times has limited the prioritisation of fraud investigations and prosecutions as reports continue to rise. A private prosecution can allow an individual access to justice that is otherwise inaccessible through traditional state law enforcement avenues.

18. Indeed, EMM's work in private prosecutions is testament to the vital way in which private prosecutions can increase access to justice for individuals, organisations and charities, often as a "last resort" where state law enforcement avenues have failed.

19. EMM regularly represents charities that have fallen victim to fraud. For example, in 2024, EMM, acting on behalf of Macmillan Cancer Support, was successful in the prosecution and sentencing of four individuals in a large-scale fraud and money laundering operation. In the scheme, the five individuals opened over 117 bank accounts to defraud Macmillan's grant system, targeting a charity protecting those suffering from cancer. The Defendants used hundreds of aliases,

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[3] Private prosecutions: safeguards: Government Response to the Committee's Ninth Report - Justice Committee - House of Commons

telephone numbers, and addresses to launder the proceeds of the fraud, having purported to be genuine applicants suffering from terminal cancer. Action Fraud took no action and this fraudulent scheme would have otherwise gone unchecked had Macmillan not taken action.

20. Furthermore, EMM's work in private prosecutions has been recognised as providing access to justice to individuals who have been unable to seek justice through the State and CPS. In *Fuseon Ltd v Senior Courts Costs Office [2020] EWHC*, a private prosecution conducted by EMM was recognised as being the "*last resort"* for the victim, who had sought and failed to seek justice through the state. Within the judgment, it was stated:[4]

> *"The state was unable to bring a prosecution of Mr Shinners; not because the police and the CPS lacked in-house expertise to do so, but because of a lack of resources at a time of "austerity". As the evidence shows, Mr Laycock tried his best to get the police to the case. His decision to institute the private prosecution was a last resort."*

21. The effect of limiting the costs recoverable by private prosecutors must be assessed in the context of a regime that has proved essential in ensuring that justice remains available to victims where the State has been unable to act on their behalf.

D. The Private Prosecution costs regime is vital to their efficacy

22. The jurisdiction to make an order for costs under section 17 of the Act (as currently drafted) allows prosecutors to recover from central funds such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in proceedings.

23. In reality, the private prosecutor is never awarded 100% of his/her costs but rather a percentage of costs incurred to bring the prosecution further to rigorous assessment by the Criminal Cases Unit ("**CCU**"). Thus, a private prosecutor's ability to recover costs is not limitless. The CCU has the means to disallow costs that are considered unwarranted or excessive. There are, therefore, safeguards to ensure against excessive costs recovery by a private prosecutor.

24. The recovery of costs in this (already limited) capacity is, however, vital to the efficacy of private prosecutions as an effective avenue of justice for victims of crimes. As stated by the Court of Appeal, remarking on the public interest served by private prosecutions: "*where practicable victims should be compensated for the fraud (or other related criminality) inflicted on them*" and

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4 *Fuseon Ltd v Senior Courts Costs Office [2020] EWHC* (accessible here).

that the public interest in private prosecutions "*would stand to be undermined if the prosecutor is not able to recover costs*."[5]

25. Further limiting the ability for prosecutors to be compensated for being forced to privately fund prosecutions themselves, or to equate victims/Private Prosecutors' ability to recover costs from central funds with that of defendants, would deter private prosecutions and impede access to justice. As stated by the Court of Appeal in *Mirchandani*:[6]

> "*there are policy reasons why provisions governing payment to a private prosecutor may be more favourable than those applying to a defendant: namely,* ***a desire not to deter private prosecutions***."

26. Critically, this deterrent effect on access to justice would impact vulnerable victims of crime most significantly. Victims who are impecunious, or who have been deprived of significant sums of money as a direct result of criminal offending, will be least able to conduct private prosecutions if they cannot recover a significant portion of their costs from central funds. Similarly, charitable organisations, who do not operate for profit (but who have been effectively able to combat fraud through the vehicle of private prosecutions) would be heavily discouraged from pursuing private prosecutions if their costs were limited in the way proposed by Clause 10. In this way, Clause 10, avowedly in support of victims and in pursuit of greater access to justice, impedes the most vulnerable victims of crime from accessing justice. Furthermore, and over time, Clause 10 risks eroding public trust in the charitable sector, as donors become disillusioned by the perception that charity fraud and theft go unpunished, ultimately discouraging future charitable giving.

E. Clause 10 of the Bill is contrary to its objectives and does not address the Government's concerns

Generally

27. Private prosecutions serve the public interest in the enforcement of the criminal law and provide access to justice. Curtailing the rights of victims of crime (including charities) from being compensated for their legal costs from central funds would be a very grave step with huge implications for private prosecutions, most of which are carried out by such groups. More often than not, those who embark on private prosecutions have been the victims of heinous frauds and other crimes, and as a result, have limited resources (if any) left. To suggest that they should shoulder the financial burden of investigating and prosecuting the perpetrator, where the State

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5 *Mirchandani v Lord Chancellor* [2020] EWCA Civ 1260, per Davis LJ at [80].

6 *Ibid*, at [81].

has decided not to do so, is a betrayal to those victims of crime, and runs rough shod over the legislative intention and policy reasons behind the Bill.

28. Clause 10 of the Bill is in sheer contrast to the objective of the Bill which is to put the needs of victims first. Private prosecutions by their very nature are cases brought by victims of crime. Necessary costs are incurred by these victims in order to properly conduct an investigation and prosecution. Clause 10 will not prevent the costs from being incurred. It will place the victim at a disadvantage as they will not receive the full extent of the costs of bringing the prosecution.

29. The Government's specific concerns underlying Clause 10 are misplaced.

"Inequality of access" and a "two-tiered justice system"

30. The Second Reading raises concerns regarding an "inequality of access" to justice through private prosecutions. During the debate in the Second Reading of the proposed bill, Andy Slaughter introduced a report by the Justice Committee, "*Private Prosecutions: Safeguards"* ("**the 2020 Report**"). The 2020 Report states that the purported increase in private prosecutions risks the creation of a "two-tiered" justice system:

> *"A rise in the number of private prosecutions risks the prospect of a two-tier justice system. The gap in the enforcement of fraud means that at present, wealthy organizations can seek justice via a private prosecution, but elderly and vulnerable victims of fraud cannot."*

31. Any increase in the number of prosecutions brought privately should not be considered as reflective of a "two-tier" justice system, but rather, caused by any number of factors, such as an increase in the amount of fraud being perpetrated against charities and individuals alike within the UK in our current fraud epidemic.

32. Furthermore, despite this concern for a "two-tiered" justice system caused by an increase in private prosecutions, clause 10 of the Bill would have the exact opposite effect - whilst large corporations and high net worth individuals could shoulder the difference between what it actually costs to prosecute a case, compared to what would be recoverable by way of compensation, the elderly, charities, small companies and/or vulnerable victims of heinous frauds would not.

Costs of private prosecutions to the taxpayer

33. The 2020 Report recommended that the Government should "*urgently review funding arrangements for private prosecutions".* In the same report, it is stated that *"many private prosecutions cost the taxpayer more than CPS prosecutions*", but acknowledged that this "*may in*

part be explained by the complexity of the cases undertaken privately." Nevertheless, during the second reading of the Bill, Shabana Mahmood stated that the Bill would:

> *"[…] ensure the best use of public funds and reduce the incentive for private prosecutors to prioritise profit when considering bringing criminal proceedings."*

34. Firstly, the 2020 Report had raised concerns about the growing costs of private prosecutions to the taxpayer, which averaged £4.4M per year between 2014 and 2020. To put that figure into context:

    34.1. When criminalising the infringement of registered designs in 2014,[7] the Government estimated a spend of £8.18 million to enforce just one offence;[8] this was to protect UK designers that contribute £15.5 billion worth of investment to the UK each year, with an infringement cost of £0.775 billion (5% of investment). Despite this, following a Freedom of Information Request, EMM discovered that nearly four years on, in 2018, it appeared that not a single case had been prosecuted or investigated. (i.e. £0.775 billion worth of infringement had gone by unchecked by the State, despite the Government introducing new powers to deal with it). Accordingly, it was left to the victims to investigate and prosecute cases themselves. In our experience, where private prosecutors do take an active role to prosecute perpetrators, there is often a commensurate decrease in the level of infringement in that area.

    34.2. The costs of compensating private prosecutors must also be measured against the vast numbers of confiscation orders obtained, payable to the State, the hundreds of thousands of unpaid work hours ordered, the victim surcharges paid, the rehabilitation and community orders made, and the custodial sentences imposed against dangerous criminals and conniving fraudsters.

35. Secondly, EMM is not aware of any evidence of "*private prosecutors prioritising profit when considering bringing criminal proceedings*", nor is any referred to in the 2020 Report. There has been a relatively flat trend in sought costs from central funds since 2020. In any event, any increase does not automatically lead to the conclusion that private prosecutors are seeking to unjustly profit by requesting increasing payments from the State over this period. Instead, private prosecutions are filling a gap, particularly in cases of fraud offences, the majority of which are not investigated or prosecuted by the state. This results in more victims having to turn to private prosecutions in order to get justice. The large and complex fraud investigations and criminal prosecutions conducted by this firm where larger costs are incurred, are often the size and

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7 The *Intellectual Property Act 2014*.

8 How to Protect my Registered Design Rights from Infringement? - Lexology.

complexity that would otherwise be conducted by the SFO. There is a public interest in prosecuting such offences and victims should not be out of pocket for ensuring these cases are prosecuted.

36. Combatting large-scale fraud, such as in the private prosecutions mentioned above, is a priority of the current government. In late 2024, the UK government provided the SFO with an extra £9.3 million to improve its ability to tackle complex fraud.[9] This is parallel to an epidemic of fraud which is increasing in the UK. In 2024, the Crime Survey for England and Wales measured a 33% increase in the number of reported fraud incidents within the UK.[10] Only 1% of reported fraud cases are prosecuted by the State.

37. Larger payments made to compensate private prosecutors are commensurate with the costs incurred in investigating and prosecuting particularly heinous and complex cases of fraud. Costs recovered in private prosecutions have otherwise remained reasonable and have not increased by any significant amount over the period of the last five years. Private prosecutors are, evidently, not seeking to prioritise profit when undertaking such prosecutions; they are seeking justice and compensation as victims of crime where public channels are unavailable or have failed. In this way, the private sector is assisting the public sector, who would not otherwise have the resources to conduct such matters, and filling an all-important gap in access to justice.

38. The Second Reading debate specifically raises questions of the costs of private prosecutions to Central Funds, in which Shabana Mahmood stated that:

> "*Costs in private prosecutions can be more than five times higher than in cases where both defence and prosecution are funded via fees that are set out in regulations.*"

39. The 2020 Report goes further to suggest that there is a seemingly upward curve in the number and cost of private prosecutions in the UK, which must be curbed. Regrettably the data in the 2020 Report was inaccurate, which was brought to the Lord Chancellors attention at the time. The 2020 Report included a graph (see **Appendix A**) based on publicly available data from the Ministry of Justice, in which the costs of private prosecutions in 2019-20 appear to far exceed the costs in financial years between 2014-15 and 2018-2019, which purportedly indicated an increase in costs.

40. Using the same public data sets provided by the Ministry of Justice as those used in the 2020 Report, a longer view on the costs to Central Funds, set out in **Appendix B**, shows that an increase in cost year-on-year is not so pronounced as data suggested in 2020. A quarterly, rather than yearly, analysis of the same data with a trendline, set out in **Appendix C**, demonstrates how limited

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9 Accessible here.

10 Accessible here.

the upward trajectory of costs is, and the importance of considering outliers in data (as earlier, attributed to cases of major fraud), and what they represent, when considering the cost of private prosecutions to the State.

F. Clause 10 of the Bill is at odds with recent legislative trends

41. Clause 10 of the Bill is an outlier when compared with victim-focused provisions in recent and proposed legislation which, whilst not directly dealing with costs from central funds, evidence a trend of putting the needs of victims first and properly compensating victims for losses incurred. In particular:

    41.1. Compensation Orders under section 133 of the *Sentencing Act 2020* and section 130 *Powers of Criminal Courts (Sentencing Act) 2000* allow for an order to be made for any personal injury, loss or damage resulting from an offence. Clause 10 stands in stark contrast to the principle of allowing a victim to receive compensation for resulting losses - such as costs - incurred as a result of a criminal offence.

    41.2. The *Crime and Policing Bill 2025* proposes to overhaul many aspects of the confiscation regime under the *Proceeds of Crime Act 2002*, including reforms to improve the recovery rate of assets in order to have more funds successfully returned to victims. This Bill also contains a measure to redirect funds to victims who have an outstanding compensation order following an uplift of a confiscation order to remedy their outstanding losses. Again, Clause 10 of the Bill runs counter to the thrust of this proposed legislation.

    41.3. Section 281 of the *Proceeds of Crime Act 2002* already contains a mechanism to allow victims to prevent law enforcement agencies to recover criminal property if they can establish that the property belonged to them immediately before it was stolen.

    41.4. The *Economic Crime and Corporate Transparency Act* 2023 incorporated similar provisions to section 281 Proceeds of Crime Act 2002 when it added section 303Z17A and other related provisions to non-conviction based seizure powers. These provisions go further than section 281 in so far that they provide a mechanism for the Magistrates Court to release frozen funds back to victims.

42. The above legislative provisions are all examples of prioritising returning losses incurred by victims over retrieving funds to be paid back to the public purse. The enactment of Clause 10 would be an example of putting victims in a worse position than they currently are and reducing access to justice, in stark contrast to the existing and proposed legislative landscape, and the goals of the Government.

G. Enclosures and Further reading

43. **Enclosed** with this submission is a Briefing Note reflecting the views of the judiciary at all levels on private prosecutions, which has also been provided to the Lord Chancellor.

44. In The Law Society of England and Wales, R (on the application of) v The Lord Chancellor [2010] EWHC 1406 (Admin) (15 June 2010), at §63-68, the Lord Chancellor argued forcefully against capping private prosecutor's costs in the same way that defence costs were being capped, for clear and obvious public policy reasons. The Lord Chancellor's position, advanced by James Eadie QC, (at §65 and 66) was recited by the Court:

> "65. *Furthermore, Parliament has not chosen to empower the Lord Chancellor simply to introduce one set of rates and scales to apply identically to both sets of costs orders. He also points out that* ***Ms Albon*** *in her witness statement has identified* ***a number of reasons why the Secretary of State has chosen not to cap private prosecutor costs in the same way as defendants costs***. *The Lord Chancellor took the view that it might deter private prosecutions if the claimants were to be so limited and that would be against the public interest. Some private prosecutors conduct prosecutions on a fairly regular basis. This will include a number of charities, such as the RSPCA. They will need to recover expenditure close to actual levels, otherwise they would be out of pocket, and that in turn would deter them from bringing such prosecutions. By contrast, defendants are not typically involved in a range of cases in this way. A further distinction is that private prosecutors have no access to an alternative funding mechanism, such as insurance or legal aid.*
>
> *66 Finally, there are pressures which will cause private prosecutors to keep costs down, specifically because they cannot recover the majority of their costs even if successful. It is the Lord Chancellor's opinion, which is challenged by the Law Society, that the pressure is not felt to the same extent on individual defendants since they are generally involved in a one-off event.*
>
> *67 In my judgment, there is nothing which requires the Lord Chancellor to treat both situations the same, …."*

45. We have requested a copy of the witness statement of Ms Sarah Albon from the Lord Chancellor's Central Legal Team, as we believe it would be of assistance to the Committee. While we have not yet received it, we would recommend that the Committee obtain a copy, as it is directly relevant to the decisions under consideration.

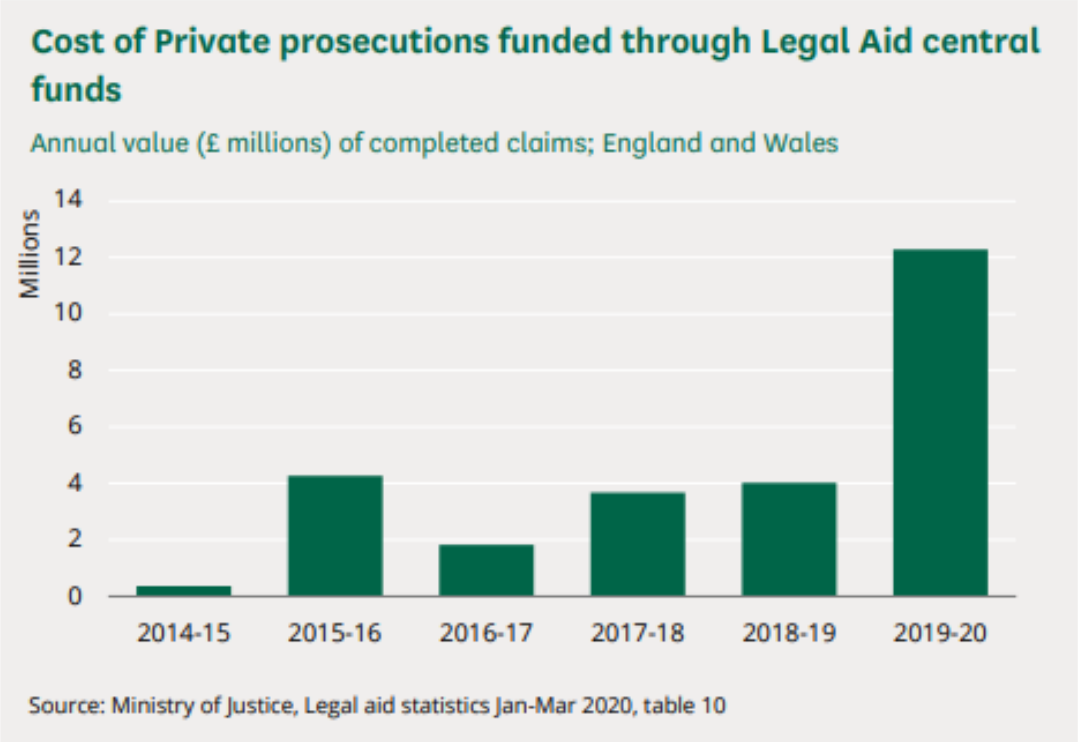
H. Recommendation

46. For the reasons set out above, EMM recommends that Clause 10 of the Bill **not be enacted.**

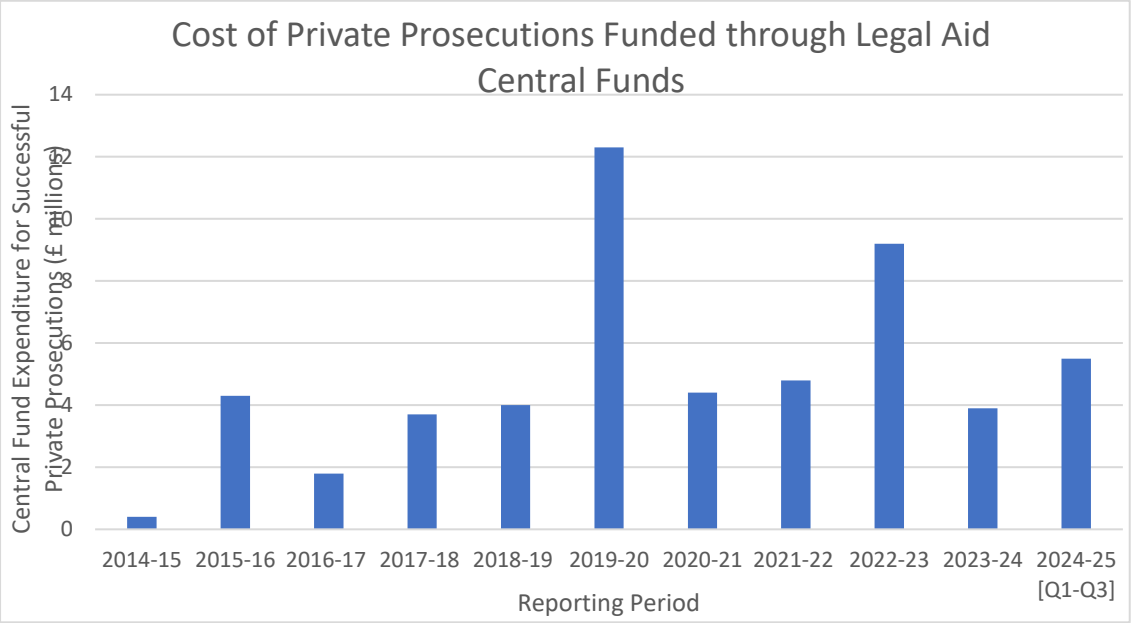
47. Private prosecutors should be able to continue to request reasonable use of Central Funds to compensate those victims of crime (including charities) who seek criminal justice when public avenues are not available or effective, in line with the Government's objectives, and not be capped in a manner that would deter victims from obtaining justice in circumstances where law enforcement agencies will not act.

APPENDICES

Appendix A

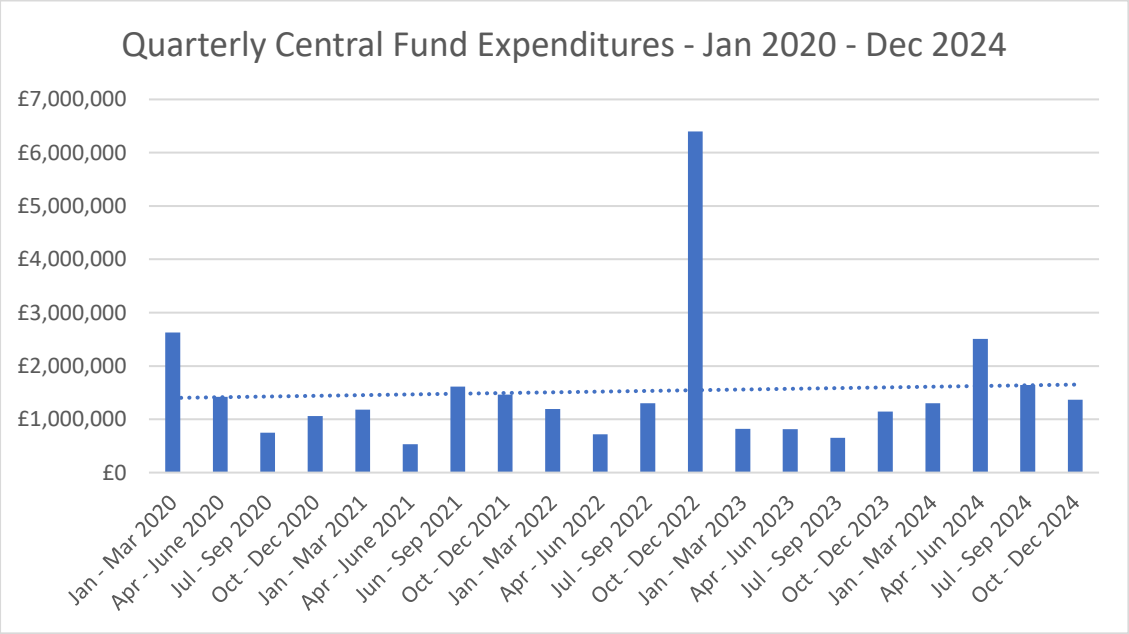


Appendix B



Source: Ministry of Justice, Legal Aid Statistics, Legal Aid Statistics Dashboards

Appendix C



Source: Ministry of Justice, Legal Aid Statistics, Legal Aid Statistics Dashboards

Edmonds Marshall McMahon

Combatting Charity Fraud and Financial Crime Through Private Prosecutions

'If we have any serious prospect of combatting fraud in the UK, our legal system needs to capitalise on all of its strengths.'

– Bob Browell (Macmillan Cancer Support)

What is the issue? The Victims and Courts Bill

The Victims and Courts Bill, introduced in May 2025, is designed to play an invaluable role in reforming the protection of victims within the UK. Clause 10 of the Bill (the "Proposal"), sponsored by the Ministry of Justice, will extend the Lord Chancellor's power in section 20(1A) of the Prosecution of Offences Act 1985, to enable regulations to be made which will limit the amount of costs that a private prosecutor may claim from central funds.

On its website for the Bill , the Government says:

"Victims will be better protected than ever following the introduction of the Victims and Courts Bill. The Bill, delivered as part of the government's Plan for Change, will help victims get the justice they deserve."

Yet Clause 10 of the Bill runs directly contrary to that statement of principle and will almost certainly act as a disincentive for victims to get the justice they deserve – which in many cases is the only justice they can get – through a private prosecution.

The Propsoal will serve only to prevent charities, companies and other victims from seeking justice, and play into the hands of fraudsters, who operate in defrauding charities and others without fear of retribution in this country due to State inertia.

Private prosecutions play an important role in the legal system. Lord Wilberforce stressed the importance of the right to bring private prosecutions succinctly:

> "*The individual, in such situations, who wishes to see the law enforced has a remedy of his own: he can bring a private prosecution. This historical right which goes right back to the earliest days of our legal system, though rarely exercised in relation to indictable offences… remains a valuable constitutional safeguard against inertia or partiality on the part of authority."*

In a sector that is suffering increasing and significant levels of fraud, , Edmonds Marshall McMahon ("**EMM**") and the Macmillan Counter Fraud Team, developed a unique and innovative approach to the fight against fraud. This has resulted in:

- 30 concluded criminal investigations, which has resulted in 25 criminal prosecutions;
- 23 convictions;

- 1 year and 10 months of custodial prison sentences;
- 5 years and 8.5 months suspended prison sentences;
- 1470 unpaid work hours;
- 150 rehabilitation activity days;
- 67.5 months of community orders;
- Numerous fines; and
- £21,076.22 compensation recovered

Each case was reported to Action Fraud and no action was taken by the State. Only then did the charity commence a private prosecution in order to get justice. EMM prosecute on behalf of a range of victims, including individuals, corporates, and charities; Macmillan Cancer Support, the Football Foundation, Help for Heroes and Royal British Legion, are notable examples.

Types of fraud charities fall victim to

It would occupy too many pages to detail all of the fraud that Charities fall victim to. To give you an insight into some recent particularly egregious cases:

The Times | Pastors who stole from cancer charity 'forgot Ten Commandments'

The Sun | Fraudster conned football charity out of £200K and used the cash to fly to Qatar for World Cup

Typical Fraud Response

Both of the incidents referenced above were formally reported to the police. No action was taken.

One case involves the Football Foundation, the UK's largest sports charity, jointly funded by the FA, the Premier League, and the Government. Upon discovering fraud, the charity's forensic accountants, BDO, reported the matter to the Police. When no progress was made, they sought to escalate the issue through professional contacts within law enforcement, to no avail.

The case was then submitted to Action Fraud. Initially, there was no acknowledgment or response. Following a complaint lodged by the charity's Chief Financial Officer regarding the handling of the case by Action Fraud, still no response was received. Eventually, many months later, a response was received that:

"On this occasion, based on the information available, it has not been possible to identify a line of enquiry which a law enforcement organisation in the United Kingdom could pursue."

The Charity then had to make the very difficult decision to either (i) allocate charity resources and finances to investigate the case and prosecute Mr White, or (ii) to not pursue him. The Board agreed that the right thing to do was to move forward with a private prosecution. EMM were instructed on

5 April 2023, a criminal investigation was conducted with the assistance of the High Court, and criminal proceedings commenced on 19 June. Mr White was convicted on 30 June 2023. He was jailed for 32 months in September 2023.

This is a typical example of an Action Fraud response, and how private prosecutions of Fraud cases are often the only route to justice.

Private prosecutions in context

There is no central registry which publishes the number of private prosecutions. However, in 2019/2020, there were in fact approximately 150.

According to the Impact Assessment to the Bill, in 2023/24, only 79 cases at the Magistrates' court, and 38 cases at the Crown Court resulted in costs being reimbursed from Central Funds. This is a tiny fraction of cases when considered against the number of cases of cases that pass through the criminal courts. The Proposal is therefore completely disproportionate and does not address the crucial role that private prosecutions play in combatting fraud. The proposed cap represents an impediment to the right of access to the Court that may well be incompatible with English law. That is so particularly for individuals, charities and for those persons, individual or not, who do not have the resources to fund a private prosecution without the confidence that the substantial part of their costs will be recoverable from central funds.

It is worth noting that private prosecutions generate for the public purse confiscation orders and fines from offenders and save public prosecution authorities the cost of bringing prosecutions. The cost to the public purse of orders for costs from central funds under s.17 POA was only £3.9m in the year 2023/24; this is relatively modest. The cost to the economy of financial crime in particular, some of which may go unprosecuted if the s.17 POA cap is implemented, is far greater.

Speed of private prosecutions

A private prosecution can be a more realistic route in cases involving complex financial crime, where state enforcement agencies may lack the knowledge, willingness, expertise and resources to make it a high priority and bring a successful prosecution.

For example, in relation to IP crime:

- The Police Intellectual Property Crime Unit spent £2 million for 8 investigations in 2020/21 in which eight resulted in a charge and seven resulted in a caution (i.e. this spend did not include the legal costs of the CPS and Counsel of the subsequent 8 prosecutions);

- By contrast, the spend on cases conducted by EMM was £1.1 million (which included the investigation costs as well as legal costs of counsel and solicitors at EMM. However, this resulted in 101 criminal investigations and 101 prosecutions in which:

- 106 Persons and companies were prosecuted and convicted;
- 2900 of unpaid work hours ordered; and
- £79,843.09 in fines and costs ordered.

Awards

In February 2023, Macmillan Cancer Support and EMM were awarded the Public/Private Partnership Excellence Award at the inaugural Public Sector Counter Fraud Awards. This was in recognition of our collaboration being a hallmark example of what effective public/private partnerships can achieve. Our approach was recognised by Baroness Neville-Rolfe, the Cabinet Office Minister who oversees the PSFA.

How can you help?

- We welcome the Government's strong initiatives for combatting fraud, and wish to work with you to ensure your mission is realised.

- Private prosecutions are a vehicle of redress for charities and other victims, and are working.

- Introducing a Bill that curtails or effectively prevents the right of private prosecution, does not help victims. It serves only fraudsters and will make the fraud epidemic this Country is facing only worse.

The courts of this country at every level, including the Supreme Court, have expressed support for the current system of compensation for private prosecutors who shoulder the burden of prosecuting defendants, as explained in Appendix 1.

Given your role as Lord Chancellor, we would welcome your support in ensuring that Clause 10 is subject to a thorough review and full consultation with the sector, so that no further steps are taken until a detailed assessment has been completed.

In every constituency, there is a veteran or a cancer patient, and we believe that supporting the charities which advocate on their behalf is a matter of national importance. Likewise, across the country, countless victims of fraud have been unable to secure the State's support in bringing offenders to justice. We would welcome the opportunity to meet with you to discuss how we can work together to raise awareness of the vital role that private prosecutions play in delivering justice for victims and in upholding the rule of law more broadly.

Appendix 1 – the Court's View

The Supreme Court: - R (Gujra) v Crown Prosecution Service [2012] UKSC 52,-

> "*There is no doubt that the right to bring private prosecutions is still firmly part of English law, and that the right can fairly be seen as* ***a valuable protection against an oversight (or worse) on the part of the public prosecution authorities****, as Lord Wilson JSC acknowledges at paras. 28 and 29, and Lord Mance JSC says at para. 115.*"

The Court of Appeal: - Mirchandani v Lord Chancellor [2020] EWCA Civ 1260 -

Davis LJ at ¶79 endorsed a "*purposive interpretation*" of s.17 POA 1985. He did so because "*Parliament has decided that, in appropriate cases, private prosecutions serve a public interest*" such that a construction of s.17 POA 1985 which acts as a "*deterrent*" to the commencement of a private prosecution is one which would not "*accord with the presumed Parliamentary intention*".

Remarking on that public interest he noted that "***victims should be compensated for the fraud (or other related criminality) inflicted on them***" and that that public interest "*would stand to be undermined if the prosecutor is not able to recover costs*" (¶80).

Further, as noted by Davis LJ:

> "*The circumstances in which a defendant can recover costs out of central funds have, generally speaking, in criminal cases always tended to be more circumscribed than those applicable to a prosecutor. The* ***policy and pragmatic considerations for this differentiation in the present situation are not difficult to discern****. As pointed out by a constitution of this court in the subsequent costs decision in the Zinga litigation, and after reference to the decision of the Divisional Court in R (Law Society) v Lord Chancellor [2010] EWHC 1406 (Admin), [2011] 1 WLR 234, there are* ***policy reasons why provisions governing payment to a private prosecutor may be more favourable than those applying to a defendant:*** *namely,* ***a desire not to deter private prosecutions****: see R (Virgin Media Ltd) v Zinga [2014] EWCA Crim 1823, [2014] 5 Costs L. R. 879 at paragraph 20 of the judgment*" (¶81).

The Divisional Court: - Fuseon v Lord Chancellor [2020] EWHC 126 (Admin) –

Lane LJ held that :

> "*the Secretary of State has chosen not to cap private prosecutors' costs in the same way as defendants' costs. The Lord Chancellor took the view that it might deter private prosecutions if the claimants were to be so limited and that would be against the public interest.* ***Some private prosecutors conduct prosecutions on a fairly regular basis.***

> ***This will include a number of charities, such as the RSPCA. They will need to recover expenditure close to actual levels, otherwise they would be out of pocket, and that in turn would deter them from bringing such prosecutions****. By contrast, defendants are not typically involved in a range of cases in this way. A further distinction is that private prosecutors have no access to an alternative funding mechanism, such as insurance or legal aid."*

The High Court: - FAPL v Lord Chancellor – [2021] EWHC 755 (QB)

An especially constituted three judge bench (Dingemans LJ, Nicol J, and Farrel J) held that at [42(iv), 43 and 44], that **"*there are policy reasons why provisions governing payment to a private prosecutor may be more favourable than those applying to a defendant: namely a desire not to deter private prosecutions*."**

The Crown Court: - Regina (Macmillan Cancer Support) v Toogood [2022] EWHC 1129

The Recorder at the Crown Court at Winchester said the following when granting a cost order pursuant to s.17 POA 1985:

> *"[19] The message has to go out to people who are involved in safeguarding charity money that these offences are serious and that the consequences are serious. Many people give their time and money to raise money for good causes. Macmillan is probably one of the best causes you could imagine…It was collected and entrusted to you. There is a breach of trust…"*
>
> *20. On making an order for Macmillan's prosecution costs to be paid from central funds under section 17(1) of the Prosecution of Offences Act 1985, he observed:*
>
> *"I do not want Macmillan to be out of pocket in any way."*