

The Rt Hon. Shabana Mahmood MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

By email: scrutiny@parliament.uk

16 June 2025

Dear Lord Chancellor,

Re: Submissions – Charity reliance upon private prosecutions

We, Macmillan Cancer Support, write further to your [Call for Evidence](#) relating to the proposed implementation of the *Victims and Courts Bill*, which recently passed its second reading and moved toward Committee stage.

1. This letter seeks to set out our concerns as to the foreseeable impact upon access to justice for Macmillan Cancer Support and the charity sector in combatting fraud, should a cap be placed on the recoverable costs in private prosecutions, pursuant to ‘Clause 10’ of the Bill.
2. Charities are, unfortunately, vulnerable to a wide variety of frauds including by abuse of position or abuse of trust by individuals. We spend significant resources identifying and trying to stop such fraud, but due to the nature of that offending, it is impossible to entirely stop it occurring. A report by BDO detailed that 84% of charities suffered a financial loss due to fraud in 2024.¹
3. Macmillan provides specialist health care, physical, financial and emotional support to people affected by cancer to find their best way through it, encapsulated in Macmillan’s tagline ‘*whatever cancer throws your way, we’re right there with you.*’
4. As well as helping with the medical needs of people affected by cancer, Macmillan also looks at the social, emotional and practical impact cancer can have and campaigns for better cancer care and it aims to reach and improve the lives of everyone living with cancer in the UK.
5. It is estimated 2 million people receive personal, high-impact support from Macmillan professionals or services each year. The support of the charity is invaluable to each of those 1.6m people.

The Impact of Fraud

6. We **enclose** two witness statements given by Bob Browell, the Counter Fraud Manager, and Lee Duddridge, Fraud investigator, in recent cases explaining (i) the difficulties in engaging the Police to investigate charity fraud, and (ii) the impact that fraud has on Macmillan Cancer Support and the charity sector.

¹ www.bdo.co.uk/en-gb/insights/advisory/forensic-services/charity-fraud

7. Macmillan relies on donations from supporters for 99% of its funding. Without those donations Macmillan would not be able to offer services providing support, energy and inspiration to people facing cancer and to put them back in control of their lives.
8. Charitable fundraising is based upon trust and honesty. Frauds and thefts against charities abuse the trust of altruistic persons who offer donations with the expectation that they are assisting those in need. If the public cannot be sure that their donations are being safely transferred to the charity, people will be understandably less likely to donate.
9. Every penny given to Macmillan has far reaching effects for those people that need Macmillan's support. For example, £34 could pay for a Macmillan nurse for an hour, helping people living with cancer and their families receive essential medical, practical and emotional support.
10. Accordingly, is a real significance to what might otherwise be considered small amounts of money given that:
 - a. As a charity, much of our income originates from such small donations;
 - b. Small amounts make a meaningful contribution to the work of Macmillan; and
 - c. Small amounts may represent a number of, perhaps many, donations from separate givers.

Law enforcement response

11. When a fraud occurs, we first of all report the crime to the Police and/or Action Fraud. Sadly, the uniform response by *Action Fraud* (or the NFIB on their behalf) in each case has been a letter in the negative, and a stock phrase setting out, for example 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.”

12. Sadly, this is a very typical response. We note that a 2022 report by the Justice Committee found that Action Fraud was “*unfit for purpose*”. Regrettably, that aligns with our experience. We are not confident that this will change in the near future, as that same report revealed that only 2% of police funding was dedicated to combatting fraud, despite fraud accounting for 40% of reported crime.²

The role of private prosecutions

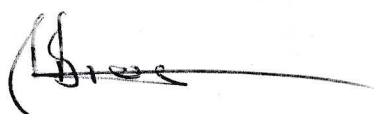
13. As a result of this state of affairs, Macmillan has been forced to turn to private prosecutions as the only avenue to justice for our supporters and those we help. The charity has achieved justice for its supporters and those it supports in around 50 private prosecutions, resulting in criminal convictions against those responsible for the frauds/thefts.
14. Such has been the success of the private prosecutions we have conducted that, in February 2023, Macmillan were awarded the Public/Private Partnership Excellence Award at the inaugural Public Sector Counter Fraud Awards, considered a hallmark example of what effective public/private

² <https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/12/report.html>.

partnerships can achieve, awarded by Baroness Neville-Rolfe, the Cabinet Office Minister who oversees the PSFA.³

15. Typically, the cases we bring are against individuals who have defrauded or stolen from Macmillan and have already spent the proceeds on their criminal lifestyle. This lack of funds means, in practical terms, that an inter-parties costs order is not a realistic outcome.
16. If Macmillan were unable to claim back the costs reasonably incurred during these prosecution (or indeed, anything close to it) from the public purse, the charity would be substantially left out of pocket and would simply not be able to sustain cases in future. If we are no longer able to bring these prosecutions, it will send a clear and dangerous message: that those who steal from charities can do so without consequence. This would hand fraudsters a free pass and severely undermine public confidence in the charitable sector, which depends entirely on trust, integrity, and goodwill. In our experience, where there trust in this sector is eroded, the damage done is profound and lasting.
17. Prosecutions and sentencing play a critical role in deterring crimes against charities. However, this deterrent effect is only achievable if charities are able to recover their reasonable legal costs. If cost recovery is capped, or reduced to nominal legal aid or CPS rates, charities would be unable to instruct the solicitors necessary to bring private prosecutions against those who have stolen from the charity. The Government would, in effect, be signalling to charities that they are on their own. We would be unable to sustain the financial burden of bringing cases, leaving serious wrongdoing unchallenged and public trust in charities dangerously eroded.
18. The undersigned parties urge the Lord Chancellor and Courts Minister to reconsider and indeed abandon the approach being pursued by Clause 10 of the bill.

Yours Sincerely,



Bob Browell CFE
Counter Fraud Manager
Finance and Operations
Macmillan Cancer Support
3rd Floor
The Forge
105 Sumner Street
London
SE1 9HZ

WITNESS STATEMENT

(Criminal Justice Act 1967, s.9; Part 16 Criminal Procedure Rules)

Statement of: Robert Browell

Age if under 18: OVER 18 (if over 18 insert 'over 18')

Occupation: Counter Fraud Manager, Macmillan Cancer Support

This statement (consisting of 7 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signed: 

Date: 6 February 2022

1. I am employed by Macmillan Cancer Support ('**Macmillan**') based at 89 Albert Embankment, London, SE1 7UQ.
2. My role at Macmillan is Counter Fraud Manager within the Finance, Legal and Audit Directorate team)
3. I am authorised by Macmillan to make this statement on its behalf.

Personal Background

4. In my role, I am responsible for managing and leading on all fraud related matters affecting Macmillan; I carry out fraud investigations in cases of suspected internal and external fraud.
5. I have been working in my current role for 7 years, having previously worked in counter fraud for the previous 35 years.
6. Before joining Macmillan, I was with the Hertfordshire Police for 18 months and prior to that I had several positions fighting fraud in the public sector with:
 - a) The Department for Employment;
 - b) The Export Credit Guarantee Department;
 - c) The Prison Service;
 - d) The Learning & Skills Council; and
 - e) The Skills Funding Agency.

During this time, I worked on many criminal cases and internal investigations often working with the police and other agencies.

Signed: 

Date: 6 February 2022

History of Reports to Police

7. When I was first appointed as the Counter Fraud Manager for Macmillan, part of my role was to investigate reported instances of potential financial irregularities. Due to the considerable emotional sentiment that is attached to donating money to charity, when those who have donated money to charity become suspicious that the charitable proceeds have not in fact been paid over to the charity, they are particularly aggrieved. As a result, we receive a number of referrals of suspected frauds each year from concerned supporters, who are members of the public.
8. In the first five years of my role with Macmillan, when instances of potential financial irregularities were reported to me, I would carry out a thorough investigation and, where necessary, prepare a witness statement and obtain statements from others. When I was of the view that a fraud had occurred, I would then take steps to report the matter to the police and provide my investigation file. However, I found that I regularly faced resistance and was told that because I was looking to report a fraud, the police could not take the allegation from me and I would need to report the case online with Action Fraud.
9. I would then proceed to report the fraud on the Action Fraud data base, but I would not hear back. It was as if the case had been lost in the ether and that would be the end of the matter.
10. I then realised that if I reported the case as a theft, instead of a fraud, I would not be referred to Action Fraud and the police would be compelled to take my report forward. However, even in those circumstances, I would find that, except for a few cases, the police were unwilling or lacked any enthusiasm to take any action. I found that they were reluctant to accept the report and would send me to different constabularies and ultimately it was very difficult to get a crime number at all. To best demonstrate this point, I will set out below three of many examples of where suspected frauds have been reported to the police and the experiences encountered.

Case 1 – CL

11. On 22 April 2017, I reported a fraud against Macmillan to the police, involving a suspect who had raised £1,000 from a local social club following a Brave-the-Shave event, but had only paid £20 to Macmillan. It was a very straight forward matter.
12. I chased the police in June, Sept and Nov 2017, and Jan 2018 but was told that their enquiries were still ongoing.
13. I then received a response in Jan 2020 to say a file had been given to the CPS and they wanted to know if I was willing to give evidence in court if they decided to

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charge the defendant. I thought this was absurd, since (i) I had been clear to the officer that I was a fraud investigator, which carries with it the clear expectation of giving evidence (ii) I had made the report and given a witness statement and (iii) I was familiar with giving evidence and there was no reason to think I would be anything other than willing – it is my job. Nevertheless, I responded the following day to say I was happy to give evidence in court. I heard nothing in response.

14. I chased the police again in July 2020, but I did not receive a response.
15. I chased the police again in January 2021 – approaching four years after the report. I finally received a response in February 2021 saying simply: *“The case is closed as there was insufficient evidence against [CL] from the evidence gathered.”*
16. I asked for some further information and was told that they had interviewed the defendant and she had said that someone had stolen the money from her house.

Case 2 – PS

17. In 2017, PS, a pub landlord, held a charitable fundraising event and recorded that he had raised over £2,000. However, no charitable proceeds were received by Macmillan.
18. I investigated and, in the summer of 2019, I reported a case of suspected theft to the police. The police eventually interviewed the suspect over a year later, on 27 July 2020, and then, on the same day and without consulting me beforehand, he was released without charge.
19. I was later told that the suspect was interviewed and admitted to raising the money and paying it into his account, but accidentally used this money to pay his bills which came out of his account by direct debit. On that basis, the police took the view that there was no ‘dishonesty’.
20. I was later told that the Evidential Review Officer’s (“ERO”) decision was that:

“At present we have no evidence to prove that the suspect has DISHONESTLY appropriated the money. Nor can we prove his intention to permanently deprive the charity of the money. Whilst his refusal/failure to respond to correspondence supports this may be the case, it is not conclusive evidence of his intentions. It would appear [t]he suspect was in unmanageable debt and perhaps should have foreseen that paying money owed to charity into his bank would result in it being used to cover outgoings, this does not prove dishonesty.”

21. I was of the view that this decision – by no means untypical of police decisions to our cases – was applying legal tests to circumstances in a way that were so far

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removed from normal thinking that they would be rejected by the vast majority of society.

22. Further, such decisions are also completely at odds with the police's approach to similar/identical circumstances up until about ten years ago. I did not understand how someone who had used £2,000 of charitable monies – (i.e. money given by others to support cancer sufferers) – as their own (paid into their own bank account) and then used to pay his bills was not dishonest. Furthermore, the police appear to be applying a test of absolute certainty and thus a higher test than required even for conviction by a court. It also appeared that the officer had applied some form of contrived application of the old *Ghosh* test of dishonesty (*R v Ghosh* [1982] EWCA Crim 2), rather than the test provided for by the Supreme Court decision in *Ivey v Genting Casinos* [2017] UKSC 67, in which the court must:

- a) First ascertain the actual state of the individual's knowledge or belief as to the facts and once that had been established; (in this instance the ERO accepted that the defendant must have known that once he put charity money into his bank account, he would then spend it on his debt);
- b) Then the court must determine whether his conduct was dishonest by applying the objective standards of ordinary decent people. Accordingly, it is not necessary for the individual to appreciate what he has done is by those standards dishonest.

23. I formed the view that this was not a proper or reasonable decision and return to this in more general terms below.

24. Given these concerns, I referred this matter to specialist private prosecution solicitors, Edmonds Marshall McMahon ("EMM"), and thereafter Macmillan commenced a private prosecution in July 2020. PS was convicted only three months later on 9 September 2020. The District Judge remarked on conviction:

"You should be under no illusion that your liberty is at jeopardy in this case. This is a particularly serious offence involving a deserving charity. There is every prospect you will go to prison. I am asking for an all options report, but I do not rule out the possibility that this case may still be sent to the Crown Court for sentence."

25. PS was later sentenced to a 26-week custodial sentence suspended for two years and ordered to do 200 hours of unpaid work.

Case 3- MA

26. A fraud on Macmillan was reported to my team in July 2020 by staff at a factory in Norfolk.

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27. I spoke to the manager at the factory on 20 July 2020 and discovered that he had reported one of his ex-employees, MA, to the police for fraud eight months earlier in November 2019, but little or no action had been taken. He explained that MA had (i) allegedly stolen money from her employer, through the unauthorised use of the company credit card for personal use, and (ii) had also stolen money raised by staff for Macmillan.
28. I spoke with Officer in Charge ("OIC") of the case and was told that the Defendant was to be charged on 10 August 2020. I enquired with the OIC how the police were able to charge the suspect for a theft/fraud on Macmillan without first having obtained a witness statement from Macmillan to confirm that the charitable donations had not been paid to us. The officer responded that *"he was not intending to prosecute the charity fraud aspect of this case and had focused solely on the employee theft."* When I probed further, I was informed by the OIC that he *"wasn't intending to prosecute the charity fraud aspect as he felt this was unnecessary for the purposes of his case."* I expressed my dissatisfaction at this decision.
29. As a result, I attended the factory offices in Norfolk to explain the police would not be prosecuting the charity fraud. The staff expressed their considerable grievance and anger at the police decision not to prosecute the charity fraud, since they were more concerned by that aspect of the case than with the fraud on the company, since nearly the entire factory had shaved their hair off to raise money and some of their employees' families had been affected by cancer.
30. Given the sentiment expressed by the staff and the clear grievance by Macmillan supporters, I decided to take witness statements myself from the staff on that occasion and to commence a private prosecution against the suspect.
31. On Macmillan's application, the magistrates court issued a summons a few weeks later on 7 August 2020 and a first hearing was listed on 29 September 2020. The PTPH was listed on 27 October when directions were set for a trial at Norwich Crown Court on 29 March 2021.
32. By January 2021, the police had still not charged the suspect for the company fraud or any offence.
33. After the private prosecution had been commenced, the CPS then offered to include the charity fraud within a CPS prosecution. Notably, it was only as a result of the private prosecution being commenced that the CPS – and not the police – offered to prosecute the case. To put it another way, had it not been for the instigation of Macmillan's investigation and this private prosecution, the fraud would not have been prosecuted at all.
34. Shortly before trial, the defendant pleaded guilty to both offences.

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Date:

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35. I have regrettably come to the conclusion that the police are not, when considering our cases, applying the objective standards of ordinary decent people when considering whether an allegation of dishonesty can be made out, even to the standard necessary to be referred to the Crown Prosecution Service.
36. I am fortified in my view, not simply by the response of the courts (Magistrates Court and Crown Courts – judges and jury) to our cases but also by the response of defendants, who often plead guilty when presented with the evidence.
37. I can recount numerous other experiences of having reported cases to the police and receiving inadequate responses – both the very significant delay and the quality of the decision itself.
38. Our experience with the police – mirrored by a number of other mainstream charities that I am in close touch with – has forced us to adopt an alternative approach.
39. As a result, Macmillan now decide to investigate and privately prosecute instances of fraud itself, which we have found is far quicker and more effective than referring cases to the police, which could take years to hear back from.
40. Leaving matters with the police has been shown to be entirely ineffective – not just in one or two isolated locations but across the country. That represents a very serious risk to the reputation of Macmillan as a responsible charity which safeguards the donations people who are kind enough to support us with.
41. I meet many such people in my job - ordinary decent people – and they have a clear expectation that we will do something about circumstances that reveal charitable donations ‘going missing’; they expect people who steal donations to be brought before the courts and they place their trust in the courts.

Effect of Fraud on the Charity Sector

42. Alleged or suspected frauds in the charity sector have a particularly pernicious effect on society. This is because frauds against charities abuse the trust of altruistic persons who offer donations with the expectation that they are assisting those in need.
43. Charity fraud can result in a lasting backlash because those responsible have manipulated the emotions and generosity of donors in order to elicit a donation, leading to anger and disillusionment if it is revealed that the charity and philanthropic promises were invalid. Disillusionment and suspicion caused by fraudulent charitable solicitation or misappropriation of funds has the additional

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effect of tainting the fund-raising appeals of legitimate charities, which suffer by association with those who defraud donors. Macmillan provide vital support to those diagnosed or suffering from cancer, principally from the money received through fundraisers, who collect money from the general public. As a result, individual donations are significant; whilst they will often be for relatively small amounts, there is a heightened importance on individual donations since most of charitable income is an accumulation of these small amounts. A considerable amount of trust is placed upon the integrity of the fundraiser by both Macmillan and the general public.

44. It is for this reason that Macmillan takes a robust stance to investigating reported instances of fraud.

Macmillan's policy on prosecuting cases

45. Macmillan do not take the decision to prosecute cases lightly.

- a) Macmillan have robust internal auditing procedures which firstly gives the discretion and power to its Relationship Fundraising Team ("RFT") to liaise with fundraisers to collect donations. It is only after communications between the RFT and the fundraiser have broken down to cause them sufficient suspicion that they consider it necessary to make an Internal Audit Referral to the Counter Fraud Team.
- b) Once it is established that the RFT are not able to recover the charitable donations, the Counter Fraud team have a policy of investigating the issues directly and seeking to liaise with the fundraiser on a more formal basis, usually in the form of emails and by sending letters by recorded post. It is only once those efforts have failed to produce a satisfactory outcome that Macmillan then decide whether to consult their solicitors, Edmonds Marshall McMahon ("EMM") for advice.
- c) EMM are a firm of specialist private prosecution solicitors, who in turn instruct experienced prosecution counsel. The Full Code Test in the Code for Crown Prosecutors is applied, a Full Code Advice drafted, and advice is given to Macmillan in each case to determine whether a prosecution is appropriate and decision is made.

Signed:



Date:

6 February 2022