

PRIVATE PROSECUTIONS Getting Started

About Private Prosecutions

Traditional prosecution agencies are increasingly unable to dedicate the time or resources required to adequately investigate and commence criminal proceedings. Where such a hurdle is encountered, private prosecutions provide an attractive alternative means to achieve efficient and effective justice.

Private prosecutions involve a degree of complexity that are not found in public prosecutions. For that reason, it is very important that those interested in bringing a private prosecution appreciate their legal and ethical obligations before they commence criminal proceedings.

This factsheet is designed to help you understand those responsibilities and appreciate how we conduct private prosecutions at Kingsley Napley.

Who can bring private prosecutions?

Any individual, victim, interested party, organisation, or company can start a private prosecution. The right to bring a private prosecution is provided in section 6(1) of the Prosecution of Offences Act 1985. Anyone has the right to bring a private prosecution, unless the offence is one that requires the consent of the Director of Public Prosecutions (DPP) or the Attorney-General.

What cases are most suitable for a private prosecution?

- a crime has been committed in the UK
- the offender is identifiable and s/he is resident in the UK or the company is registered in the UK
- evidence has been obtained or is known to be available, in order to prove the crime
- the traditional prosecuting agencies have been approached but have decided not to commence a public prosecution or there is a justifiable reason as to why the traditional prosecuting agencies have not been approached (e.g. because of the complexity of the offence or amount of money involved the prosecution would not be prioritised or tackled by the traditional prosecuting agencies)
- the prosecutor can demonstrate that there is a proper motive to bringing the prosecution (e.g. to bring the offender to justice) rather than motivated purely by self-interest (e.g. to use the prosecution as leverage to recover a debt or to intimidate or threaten the offender)

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Why bring a private prosecution rather than a civil action or a public prosecution?

- where the traditional prosecuting authorities have been approached but have failed to act
- where deterrence and/or bringing an offender to justice are the primary motives for commencing proceedings
- when it is no longer practicable to bring civil proceedings (i.e. due to passage of time and/or the offender's lack of assets) then criminal proceedings provide a route by which victim may recover their losses through compensation/confiscation proceedings
- where the victim wishes to have greater control over the speed and resourcing of the prosecution (e.g.) by choosing their own lawyers and deciding what charges to prosecute

Why should you instruct a lawyer before you start a private prosecution?

Private prosecutions involve a complexity not found in public prosecutions. Lawyers who are expert in this field can help you to decide whether to commence a prosecution after they have advised whether there is sufficient evidence to provide a realistic prospect of conviction and whether the prosecution is in the public interest.

A person bringing a private prosecution is required to comply with a statutory disclosure regime, which is complicated and onerous. Lawyers can assist you to manage that process to ensure you meet your legal obligations. There are certain circumstances where it may be necessary to instruct a lawyer; these include prosecutions brought by commercial organisations, and Crown Court trials.

What degree of control do you have over your private prosecution?

You will have some control over a private prosecution but not to the same degree as you would in civil proceedings. The lawyers who have conduct of a private prosecution have a duty to act as ministers of justice and must therefore must act to the same high standard expected of a public prosecutor. In practice that means that you will be obliged to hand over all material obtained in the course of the investigation to the lawyer to review and they will be obliged to disclose to the offender material that might reasonably be considered capable of assisting the defence case or undermining the prosecution case, even in situations where you do not want them to.

There are also limitations as to what information and documents the lawyer can provide to you throughout proceedings. For example, if you are going to be a prosecution witness (which is usually the case) you will not be entitled to see the evidence of the other prosecution witnesses, and will usually not be entitled to attend the court hearings until after you have given evidence at trial.

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What are the likely costs involved in bringing a private prosecution?

Unlike public prosecutions, legal aid is not available to those who bring a private prosecution. Accordingly, if you intend to bring a private prosecution you need sufficient funds available at the outset, in order to conduct the case from beginning to end. Unlike civil proceedings, it is not generally permitted to settle the case once the prosecution has commenced.

Lawyers acting on your behalf in a private prosecution will undertake a number of tasks, including:

- conducting an initial review on the suitability of your case for a private prosecution
- conducting a full review of all evidence obtained
- advising on further lines of investigation and instructing private investigators and experts to provide evidence not yet obtained
- preparing evidence in a form suitable to commence criminal proceedings
- interviewing witnesses and drafting witness statements
- Managing your disclosure obligations to ensure that all material obtained in the course of the investigation is disclosed as required by law
- Preparing the charges and liaising with the courts to commence proceedings
- Instructing counsel and managing the smooth conduct of the case from the first appearance to trial, as well as sentencing and any associated hearings required to bring the proceedings to conclusion.

The cost of bringing a private prosecution will differ according to a number of factors including; the complexity of the case, the number and nature of the charges brought and the way in which the offender responds to the proceedings.

In our experience, the cost of conducting a private prosecution from beginning to end is unlikely to be less than £70,000 and in many cases it will be significantly more. Accordingly, commencing and seeing through a private prosecution is not to be undertaken lightly as there will always be significant cost implications involved.

One of the most important considerations before commencing a private prosecution is whether the cost of commencing a private prosecution would be significantly higher than the loss suffered. The private prosecutor must have sufficient finances to fund the prosecution from beginning to end, and there is no guarantee at the conclusion of the prosecution that the private prosecutor will recover all of their legal costs.

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How do we work?

One of our solicitors will provide a free 30-minute consultation by phone to advise whether your case appears, at first sight, suitable for a private prosecution.

Should we consider your case to be suitable for a private prosecution, we would require an initial payment of £7,500 before we take you on as a client and conduct a more detailed analysis of your case. This fee would cover:

- initial face-to-face meeting
- preliminary assessment of the evidence and advice on issues which may result as a result of the private prosecutors' more limited powers to obtain evidence pre-charge
- advice on the merits of success

If we consider your case has a low chance of success then at that stage we will decline to act on your behalf.

Should we be willing to take on your case we would then provide you with a cost estimate for the conduct of your case from beginning to end.

The fee for this stage would cover our costs in respect of the following tasks:

- obtaining evidence
- preparation of witness statements and exhibits
- instruction of Counsel
- review of sufficiency of evidence and public interest in commencing a prosecution
- preparing the information and charge
- first appearance
- discharge of disclosure obligations
- pre-trial hearing(s)
- service of prosecution case
- trial
- sentencing
- confiscation and compensation applications
- costs applications

We only take on a limited number of private prosecution cases each year, which are invariably those that we consider to have the strongest chance of success. Please note, we do not prosecute cases where the defendant is a public body (the Police, local authorities etc.) or a public figure (Local Councillors, MPs etc.). We do not prosecute cases involving historical sexual offending, where that conduct has not previously been reported to the Police. Because of the significant costs involved in bringing a private prosecution we generally do not take on cases involving a financial loss of less than £100,000. We only take on cases that we are instructed to conduct from beginning to end.

Accordingly, we do not provide advice on private prosecutions that are already in process nor do we advise on the drafting of charges where we are not instructed to act on the conduct of the private prosecution itself.

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Are costs recoverable at the conclusion of the prosecution?

It is possible for the private prosecutor to recover the costs of bringing a private prosecution for some but not all offences at the conclusion of proceedings. You should take advice from a lawyer as to whether any offences committed against you may be eligible for costs recovery.

If you are eligible, then costs will normally be awarded from central funds and accordingly the prosecutor is not dependant on the offender having the financial means to pay their costs. The court can also make an order awarding the private prosecutor costs irrespective of the result. In principle that means if the defendant is acquitted costs can be awarded to the prosecutor. Importantly, the private prosecutor is generally not required to pay the defendant's costs in the event that they are acquitted, provided the prosecutor can demonstrate that they brought the prosecution in good faith and the proceedings were not improper. This is an area of significant complexity and for that reason is one, which again, you will benefit from the advice of a lawyer who has expertise in this area.

Please note, if you are wishing to seek recovery of your costs then the Court may consider what efforts have been made by the private prosecutor to examine competition in the market, test it and seek tenders or quotations before selecting the solicitor and advocate instructed when determining the amount of costs that might be payable. Accordingly, it is appropriate to seek quotes from several firms before determining which lawyers you want to act on your behalf.

What are the risks involved in bringing a private prosecution?

The DPP can take over a private prosecution with a view to continuing the proceedings as a public prosecution or to discontinue it. A private prosecution can also be 'stayed' (stopped) by the courts where it is found that to continue the prosecution would amount to an abuse of process. Prosecutions which fall into this category may not only lead to a costs award against the prosecutor but may also prevent the prosecutor recovering their costs as well as incurring negative publicity and reputational impact. The likelihood of these risks occurring can be minimised by instructing a lawyer who understands and can manage the risks involved.



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The Private Prosecutions team is led by Melinka Berridge, Partner in the Regulatory team. Melinka leads the team at Kingsley Napley responsible for bringing regulatory and private prosecutions. She works with individuals, businesses, charities and public bodies helping them to understand whether a case is suitable for criminal prosecution. Where a case is suitable she helps her clients navigate the complex criminal justice system to ensure their rights are protected and advanced. Melinka is a founding member and the Executive Secretary of the Private Prosecutors' Association. She is also a member of the Advisory Board to the Victims of Crime Association of Lawyers.