

What you need to know when considering bringing a private prosecution

22 Jul 2020 Nicola Sharp.

Nicola Sharp of Rahman Ravelli outlines the procedure for bringing a private prosecution and the issues that have to be considered before going ahead.

For many, a private prosecution can be the most suitable course of action. It gives the person bringing the prosecution the scope to control both the speed of proceedings and the direction the prosecution takes. A private prosecution can be a quicker solution than relying on the police or other enforcement agencies, all of whom have a heavy caseload and huge demand on their resources. It is also an important option if the authorities have decided not to investigate or their investigation has failed.

Under section 6(1) Prosecution of Offences Act 1985 (POA), private prosecutions can be brought by any individual or company.

The Crown Prosecution Service (CPS) may learn of a private prosecution via a defendant, the prosecutor or the court. A request to intervene can be made at any stage by any of these parties. But there is no obligation on someone bringing a private prosecution to notify the CPS, the Director of Public Prosecutions (DPP) or any state agency; although certain offences do require the consent to prosecute of the DPP or the Attorney General. If in such a case the DPP gives consent to prosecute then the CPS will take over and conduct the prosecution. The DPP does have the power, under section 6(2) POA, to take over private prosecutions but is not obliged to do so.

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Although brought by a person or organisation rather than a state agency, a private prosecution will proceed as any prosecution does that is brought by the Crown (known as a public prosecution).

Anyone considering a private prosecution needs to determine whether it is more appropriate to pursue a private prosecution rather than rely on the state agencies. They should also assess whether bringing a private prosecution may be a cheaper, more effective and / or quicker way of reaching a financial settlement than would be the case under civil proceedings.

The Private Prosecution Procedure

A private prosecution is begun in the same way as a public prosecution, with a charge sheet (an information) laid into magistrates court. The magistrate or a clerk will check it is in the correct form. If it is, they then issue a warrant or summons so the defendant has to attend court on a certain date.

R v West London Justices ex parte Klahn [1979] is the leading case on this aspect of a private prosecution. It held that when considering whether to issue a warrant or summons, the court must consider whether:

- the ingredients of an offence known to the law are prima facie present
- the offence is 'out of time'
- the court has jurisdiction
- the informant has the necessary authority to prosecute
- the allegation is vexatious.

But as the court often has only limited information on which to make this assessment, these issues are commonly considered once the prosecution has begun. The magistrates court is not obliged to make enquiries into these issues before issuing a summons, although it should not issue one if there is material before the court that persuades a magistrate that it would be wrong to do so.

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Obtaining Evidence

Those considering bringing a private prosecution will require legal advice when it comes to deciding whether to commence one.

When the CPS considers bringing a prosecution it assesses whether the Full Code Test is satisfied: whether there is sufficient evidence against the accused and whether it is in the public interest to bring the case to court. A private prosecution does not have to satisfy the Full Code Test but it is unlikely that a solicitor or barrister will advise bringing a private prosecution if the Test is not met.

As with the CPS, anyone considering bringing a private prosecution has to assess the strength of the evidence they believe they can assemble to support their case. At this stage, expertise in identifying the important evidence, obtaining it and analysing it is so important.

Once proceedings have been issued, there are a number of methods for obtaining material for evidential purposes, these can include:

- Bankers Books Evidence Act 1879, which covers the use of bank statements and records as evidence.
- A witness summons under Criminal Procedure (Attendance of Witnesses) Act 1965, s.97 Magistrates' Courts Act 1980 or para 4, Schedule 3 to the Crime and Disorder Act 1998. In order to obtain information from a potential witness or for them to provide a witness statement and attend court to give live evidence.
- Case management directions.

Such matters should be managed by those with the relevant experience, who can utilise the options available to obtain the material necessary to support a case.

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The Cost of Bringing a Private Prosecution

Private prosecutions are seen as an efficient and cost-effective way of obtaining justice. Generally, someone bringing a private prosecution will be able to recover the reasonable costs of their investigation and prosecution from central funds. This can be the case even if the prosecution was unsuccessful. Under section 17 POA, the court can order payment from central funds “of such amount that the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings”. If the court considers it inappropriate for the prosecution to recover the full amount it can order payment from central funds “of such lesser amount as the court considers just and reasonable”. Section 18 enables a private prosecutor to recover costs from the convicted defendant.

Due to this, a private prosecution can be seen as a more attractive option than civil litigation. In a civil litigation case, the person bringing the claim may well be successful but will be left out of pocket if the defendant does not have the ability to pay the costs that he has been ordered to pay. What should also be remembered is that in a private prosecution the prosecutor is rarely made to pay the defendant’s costs; even if the prosecution is unsuccessful. Section 19 POA allows a defendant to claim for costs if they have been caused financial loss due to an unnecessary or improper act or omission by a private prosecutor. But if a case has been built and managed properly this is unlikely to be an issue.

Private prosecutions are recognised by both the law and the courts as a vital option for those seeking justice. As a result, the system has been developed in a way that ensures that justifiable costs can be recovered by those bringing such prosecutions.

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