



The Chartered Institute of Legal Executives (CILEX) –
Consultation Response:

Oversight and Regulation of Private Prosecutors in the
Criminal Justice System

May 2025

About you

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

No

Chapter 1: Consistency of Standards and Accountability

Code of Practice

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

Please provide reasons for your answer.

- It is crucial that convictions are safe, and those that prosecute do so with probative evidence and credible cases. As a result, CILEX supports a mandatory code of practice for private prosecutors. CILEX believes that a mandatory code of practice ensures that all private prosecutors are bound by the same expectations and the same rulebook. CILEX believes that private prosecutions which are not regulated can be subject to misuse and abuse.
- CILEX recognises that varying classifications of lawyer undertake private prosecutions – be that barrister, solicitor, or CILEX members. However, a mandatory code of practice can act as a unifying tie for all lawyer classifications to ensure that private prosecutions are fair.
- CILEX believes that both the Full Code Test as created by the Crown Prosecution Service, as well as the Code for Private Prosecutors as created by the Private Prosecution Association, serve as useful starting points for any code of practice.

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 bringing prosecutions

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):

- A requirement for the separation of functions between investigators and prosecutors

- A requirement for the separation of functions between those who decide whether to commence a prosecution, and those who carry out the prosecution
- A requirement to consider whether there is sufficient evidence to secure a conviction
- A requirement to review the public interest test before commencing the prosecution, and keep it under review throughout proceedings

11. Please provide any examples of best practice ensuring consistency of standards in private prosecutions (either used by you or your organisation, or that you know of).

- CILEX is aware that the TV Licensing have made public documents which set out their policy in relation to prosecutions, and this includes discussion on the public interest and the evidential test. Notably, TV Licensing also considers vulnerability considerations. CILEX welcomes this transparency and also the consideration of vulnerable individuals. It is submitted that this reduces the number of vulnerable individuals prosecuted for breaches which, on balance, are not reasonable.
- CILEX does not have knowledge of private prosecutions outside of the jurisdiction. As a result, CILEX cannot answer to best practice.

Inspectorate

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

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 bringing private prosecutions

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?
- Requirement to declare to the magistrates' court any previous negative reports/failure to meet the required standards when applying for summons to commence a prosecution.

- Removal of status as 'relevant prosecutor' if applicable, meaning a requirement to apply to the magistrates' court for a summons to commence future prosecutions.

Accreditation

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

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?

- Organisational level

Chapter 2: Improving Safeguards to Justice in the Single Justice Procedure

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

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

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

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 an SJP Notice?

- Yes – please provide the period of time you think appropriate
- 28 days

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

- No
- 2 written notifications

Chapter 3: Improving Transparency

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

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 bringing private prosecutions

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

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

- Number of prosecutions brought per year
- Offence types of prosecutions brought
- Resulting number of convictions
- Number of defendants who pleaded guilty
- Equalities data

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

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