



Ministry  
of Justice

# Equality Statement

## Consultation on the oversight and regulation of private prosecutors in the criminal justice system

### Policy Summary

1. This Equality Statement accompanies the March 2025 consultation on the oversight and regulation of private prosecutors in the criminal justice system. It addresses the impacts of the proposals on which we are consulting on people with protected characteristics.
2. For the purposes of this consultation, the following definitions are used:

**Criminal justice agencies:** organisations who have the primary purpose of investigating or prosecuting criminal offences, on behalf of the Crown. Within this we include Crown Prosecution Service (CPS), police forces (including the British Transport Police), the Serious Fraud Office (SFO) and the National Crime Agency (NCA). These organisations are subject to statutory inspection by either His Majesty's Crown Prosecution Service Inspectorate (HMCPPI) or His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and apply the Code for Crown Prosecutors in bringing prosecutions.

**Private prosecutors:** all other bodies who bring criminal prosecutions other than those categorised above. This covers organisations who bring prosecutions in the following ways:

- a) Using common law powers which are preserved under section 6(1) of the Prosecution of Offences Act 1985 (the power to bring private prosecutions);

- b) As “relevant prosecutors” authorised to bring prosecutions (either in general or for specific offences) through the Single Justice Procedure, in a 2016 Order made under the Criminal Justice Act 2003; or
- c) As authorised for specific offences under specific legislation, such as the Office of Gas and Electricity Markets (Ofgem), who have powers to prosecute certain offences under the Gas Act 1986 the Electricity Act 1989 and the Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015.

## **Equality Duty**

- 3. Section 149 of the Equality Act 2010 (‘the 2010 Act’) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:
  - eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act;
  - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
- 4. Paying ‘due regard’ needs to be considered against the nine ‘protected characteristics’ under the 2010 Act – namely race, sex, disability, sexual orientation, religion and belief, age, gender reassignment, marriage and civil partnership (in respect of the first limb above) and pregnancy and maternity.

## **Methodology to determine discrimination potential**

- 5. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for disadvantage resulting from the measures has been to identify the individuals whom the changes will impact (the ‘pool’), and then where possible draw comparisons between the potential impacts of the changes on those who share protected characteristics, with those who do not share those characteristics.
- 6. Guidance from the EHRC states that the pool to be considered at risk of potential indirect discrimination should be defined as those people who may be affected by the measures (adversely or otherwise) and that this pool should not be defined too widely.

## **The pool of affected individuals**

### **Prosecutors**

- 7. As the proposals discussed apply to organisations that bring private prosecutions and prosecutors that use the Single Justice Procedure, the primary affected pool will be these organisations and agencies.

8. There is limited available data on private prosecutions outside of the SJP, and the organisations that bring them. The proposals discussed in Chapter 3 of the consultation document seek to address this sparseness of data.
9. Within internal management data there is available data on the prosecutors who bring prosecutions using the Single Justice Procedure, and the volume of prosecutions each year. However, there are limitations with the administrative data system meaning many of the prosecutor types appear as 'Other' or 'Not Assessed', giving an incomplete picture of prosecutors. Furthermore, data relevant to assessing equalities impacts is not available.
10. As such, we have not identified any equalities impacts in relation to prosecutors.

## Defendants

11. The other affected pool is those who are prosecuted by organisations that bring prosecutions – be they private prosecutions or police prosecutors using the SJP. In this statement we use the terms 'defendants' and 'individuals potentially subject to a private prosecution' when referring to this group.
12. The following data is a count of defendants disposed of in the Magistrates' Court in 2023 by prosecutor type. It is a subset of published Accredited Official Statistics series *Criminal Court Statistics Quarterly (CCSQ)*.<sup>1</sup> The data is unpublished management information and has not been quality assured to the same standards as the wider CCSQ release but is provided here as a first release of this data as it is important to the background of the consultation.

Prosecutor type	2023 (count of defendants dealt with in the magistrates' court <sup>2</sup> )	% of total defendants dealt with in the magistrates' court <sup>3</sup>
Police, Crown Prosecution Service & British Transport Police	832,865	66%
Private Prosecutors	325,256	26%
Other & Not Assessed	107,873	9%

<sup>1</sup> <https://www.gov.uk/government/collections/criminal-court-statistics>

<sup>2</sup> Data from September 2020 includes cases recorded on both LIBRA and Common Platform.

<sup>3</sup> Note: Figures may not sum due to rounding

13. As outlined above, in 2023, 26% of the total defendants dealt with in the magistrates' court were prosecuted by private prosecutors. This includes cases concluded via the SJP, cases heard in court and cases that were later committed to the Crown Court. Of the non-SJP defendants whose private prosecutions were disposed of in the magistrates' court, 3% were then committed to the Crown Court. However, it is not known whether these cases remained with a private prosecutor or were taken over by the CPS, and further data on private prosecutions in the Crown Court is not available.
14. Data is available on the number of defendants prosecuted by private prosecutors and by criminal justice agencies each year and set out above for 2023. However, data on defendants' protected characteristics is self-reported by defendants and is very limited. There is some limited data on gender published by MOJ as experimental statistics within the Women and the Criminal Justice System 2021 publication<sup>4</sup>. This shows that across all prosecutor types in 2021, women accounted for 21% of defendants dealt with by the magistrates' court<sup>5</sup>. When breaking down for prosecutor type there is significant variance between criminal justice agency prosecutions and private prosecutors, particularly the TV Licence Enforcement Office, where 71% of defendants dealt with were female (where data on sex was available). To a lesser extent, the proportion of defendants who were female prosecuted by the Local Authority and DVLA also showed significant variance to police and overall volumes, at 42% and 32%, respectively.
15. Some organisations that bring private prosecutions publish their own data, including protected characteristics of those they prosecute, though most do not do this routinely. For example, the British Broadcasting Corporation (BBC) conducted and published a review of TV Licencing prosecutions for TV Licence fee evasion due to around 75% of the convictions being of women<sup>6</sup> (in line with the MoJ statistics outlined above). The Environment Agency also publish some details of the individual prosecutions they bring though this does not include data on pleas or protected characteristics where individuals are prosecuted (this would not be possible where the defendant is a company or organisation).<sup>7</sup>
16. Data on defendants' pleas is very limited and data on whether defendants are legally represented is not available.

## Monitoring and evaluation

17. Through the questions in Chapter 3 of this consultation we aim to identify the appropriate data private prosecutors should collect and publish on the prosecutions that they bring, including the protected characteristics of those they prosecute where possible, to enable us to better monitor the equality impacts of private prosecutions.
18. We have also included questions in the Equalities Analysis chapter of the consultation for respondents to provide any insight they have on the potential impact of the

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<sup>4</sup> <https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2021/women-and-the-criminal-justice-system-2021#defendants>

<sup>5</sup> Proportions are calculated excluding volumes where sex is unknown.

<sup>6</sup> <https://www.bbc.co.uk/aboutthebbc/documents/gender-disparity-review.pdf>, p1

proposals discussed in each chapter on equality considerations. We will review responses to these questions and ensure they are considered in the Government response to the consultation.

19. As the data currently available is limited, so too will be our ability to monitor the equality impacts of any other proposals, if implemented, in comparison to the current position.
20. However, if the proposals discussed in Chapter 3 (Improving Transparency) of the consultation are implemented, we would better be able to assess the impact of all private prosecutions and the SJP on the defendant pool in future.

## **Eliminating unlawful discrimination, harassment and victimisation**

### **Direct discrimination**

21. Our assessment is that each of the proposals discussed in the consultation are not directly discriminatory within the meaning of the Equality Act. We do not consider that the proposals would result in people being treated less favourably because of any protected characteristic.

### **Indirect discrimination**

22. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. Our initial assessment is that these changes are not indirectly discriminatory within the meaning of the Equalities Act 2010 as explained below.
23. Indeed, we consider that the proposals, if implemented, would have a protective impact on those from vulnerable groups.
24. For example, implementing a code of practice for private prosecutors which requires them to consider the public interest test would mean that private prosecutors consider the prosecution in the light of the defendant's circumstances, including any vulnerabilities.
25. The proposals on reforming the Single Justice Procedure discussed in Chapter 2 of the consultation would ensure SJP prosecutors take steps to identify the personal circumstances of the individuals potentially subject to prosecution *before* commencing the prosecution. This would enable them to better understand and consider whether the prosecution is in the public interest in the light of any vulnerabilities of the individual that may relate to their protected characteristics.
26. Further, the proposals discussed would ensure the prosecutor has sight of the defendant's mitigating circumstances if submitted after commencing a prosecution and could withdraw the prosecution if the defendant's circumstances are such that the prosecution is not in the public interest.

27. The proposals discussed in Chapter 3 of the consultation would ensure private prosecutors collect and publish data on the prosecutions they bring. This would enable private prosecutors themselves to review the data on their own prosecutions. If they were to collect data on the protected characteristics of those they prosecute, they would better be able to review the impacts of their prosecutions on equalities, and if this data were published it would enable the public and Government to do the same.
28. The key principle underpinning the changes is ensuring that those subject to prosecution by a private prosecutor and/or prosecuted through the SJP are treated consistently regardless of who is prosecuting them, and that the prosecutor has had due regard to their individual and personal circumstances. We believe the proposals mentioned as part of the consultation will help take steps towards this, as outlined above.
29. Whilst we do not currently have available data on protected characteristics of those subject to private prosecutions or prosecuted through the SJP, we do know that prosecutions through the SJP for some specific offences disproportionately affect some groups. For example, convictions for TV Licence fee evasion disproportionately affect women. However, as we consider the proposals discussed would have a positive impact on those affected by ensuring prosecutors scrutinise their decision to prosecute in each individual case, and are transparent in their practices, we do not consider this impact to constitute indirect discrimination.
30. We recognise that we do not have data on prosecutors' protected characteristics. Therefore, we cannot comprehensively comment on whether any groups of prosecutors with protected characteristics could be disadvantaged.
31. Individuals bringing private prosecutions on their own behalf are not in scope of the proposals discussed in the consultation. We do not currently have any available data on individuals who bring private prosecutions so cannot assess whether any protected groups are disproportionately affected in this cohort. It is right we consider the equalities impact of the decision to exclude specific cohorts from the scope of proposals in the consultation. However, given the lack of data, we are unable to make an assessment as to whether excluding this cohort from the scope of the proposals in the consultation directly discriminates against any particular group. Regardless, we do not consider that excluding these individuals from the scope of the consultation would have a negative impact on equality.
32. Furthermore, given we do not have data on individuals who bring private prosecutions on their own behalf, we also do not have available data on the individuals that they prosecute. We are therefore unable to assess whether the decision to exclude this cohort from the proposals in the consultation indirectly discriminates against any particular groups - and if they are disproportionately represented within the defendant pool of individual private prosecutors. Finally, the safeguards to justice discussed in the consultation would not affect the defendants who are the subject of prosecutions brought by individuals.
33. Overall, we expect that the reforms discussed in this consultation, if implemented, would improve oversight of the impacts of prosecutions on individuals subject to private prosecutions and/or prosecutions initiated through the SJP. The reforms would improve the consideration of any protected characteristics and personal circumstances by prosecutors prior to their commencing a prosecution, by ensuring private prosecutors

fully assess the public interest of bringing each prosecution considering the individual's personal circumstances including any protected characteristics.

## **Harassment and victimisation**

34. We do not consider there to be a risk of harassment or victimisation as a result of the measures discussed in the consultation.

## **Advancing equality of opportunity**

35. Consideration has been given to how these measures will impact on the duty to advance equality of opportunity.

36. Prosecutors taking action which can result in a criminal conviction against individuals without having due regard to their personal circumstances, including protected characteristics, can impact those individuals' opportunities as a result of the impact of a criminal record on opportunities to qualify for certain jobs and professions. The proposals in the consultation seek to ensure prosecutors assess the circumstances of those they intend to prosecute and assess whether the prosecution is in the public interest before initiating the prosecution. In our view, if implemented, this would better ensure that those individuals' opportunities are not unduly curtailed if a conviction results from the prosecution. If the public interest is met by the individual being prosecuted for a suspected criminal offence, this serves the interests of justice for the wider population and does not unduly impact others' equality of opportunity (e.g. those who do not commit criminal offences are not impacted by the fact that those who do are not prosecuted and convicted for those offences).

37. Overall, we assess that the reforms discussed in the consultation may enhance equality of opportunity for vulnerable groups.

## **Fostering good relations**

38. Consideration has been given to how the measures discussed in the consultation impact on the duty to foster good relations between people with different protected characteristics. We do not consider that there is anything within these measures that will have a negative impact regarding this objective.