

Justice Committee

Petition PE1633: Private Criminal Prosecution in Scotland

Written submission from the Scottish Trades Union Congress (STUC)

The STUC agrees overall with the submission by the Scottish Hazards campaign.

In the first instance, the STUC is concerned that a funding cut to the Health and Safety Executive (HSE) has resulted in less health and safety inspectors who are able to effectively carry out investigations in a timeous manner. The STUC understands that HSE has had its budget cut by 35% over the last five years leading to fewer investigations. In Scotland, HSE inspectors must prepare a report to go to the Crown Office and Procurator Fiscal Service in order for them to determine whether there is enough evidence to proceed with prosecution. As such, the HSE report requires to be extremely thorough as Crown agents rely heavily on these reports. Without staff and resources to complete these reports in a robust manner, COPFS can feel ill equipped in prosecuting. Out with Scotland it is the HSE Inspector who prosecutes rather than simply appearing as a professional witness.

As the coalition Government attacked health and safety legislation including excluding civil liability from health and safety litigation, this means that there is currently no efficient and effective court procedure for enforcing health and safety legislation, perhaps one of the most powerful levers to encourage employers to manage health and safety effectively. The STUC agrees with the Scottish Hazards Campaign that all legislative powers over health and safety should be devolved to the Scottish Parliament. It would then be for the Scottish Parliament to legislate to give their law officer powers to direct the HSE to carry out investigations in a specific Scottish context.

The STUC agrees with Scottish Hazards that the situation created by the Lord Advocate having to provide permission to bring a private prosecution reduces the chances of the prosecution taking place given that the Lord Advocate oversees the COPFS which originally decided there were no grounds for prosecution. This anomalous situation in Scotland creates a conflict of interest which requires to be statutorily rectified.

The STUC agrees with the submission by the Scottish Hazards Campaign that any individual or organisation wishing to ensure justice is served through bringing a private prosecution should be allowed to do so. For example, the STUC understands that no Scottish prosecutions have taken place under the Corporate Manslaughter and Homicide Act 2007 as yet. If private prosecutions were allowed in instances where corporations had breached health and safety legislation, this could potentially ensure that the legislation is effective and that families and individuals are no longer ceding their authority to Crown agents to prosecute when those Crown agents can only do so based on HSE reports, which are not as forthcoming due to budget cuts.

Nonetheless, the STUC would be very concerned if private prosecutions were to be used as a way of transferring the onus of bringing corporations or employers to justice from the public to the private realm; or from the public purse to the individual. The STUC, ultimately, believes that HSE's budget should be reinstated to allow

inspectors to carry out their duties; and for COPFS personnel to be sufficiently trained in dealing with health and safety cases.

Nonetheless, with increased expenditure required as part of the criminal litigation process, and cuts to the Scottish Legal Aid budget, the potential for justice to be denied still exists. For this reason, coupled with the fact that often health and safety cases require limited time scales, even when coupled with civil remedies (e.g. petitioning for specific implement as well as bringing a case for private prosecution of a breach), the STUC believe that if some form of simplified criminal procedure may be required. If the normal criminal procedure is followed then this would take precedence in terms of evidential preference which would put the civil remedy requested, which is potentially the avenue for enforcing the fastest action, to take a back seat. Out with the workplace, where no civil litigation is ongoing, and the prosecution takes place after the fact, then this will not be an issue.

As such, people, including workers and their trade union representative organisations, should still be able to petition court for civil remedies - to force employers to stop certain conduct (eg unsafe practices) via interdict or force them to take certain action (eg carry out a risk assessment) via specific implement. However, in the workplace, workers and health and safety representatives must be empowered to ensure that health and safety legislation is complied with prior to breaches occurring. The HSE has powers to put employers on notice. With the cuts to the HSE budget, it would be interesting to explore potential options which allow trained and accredited health and safety representatives to enforce this power as well as HSE inspectors.

Ensuring that all of these powers are in place will enable health and safety legislation to be more effectively enforced.

STUC
16 February 2018