



CROWN OFFICE  
25 CHAMBERS STREET  
EDINBURGH EH1 1LA

Telephone: 0300 020 3000

Margaret Mitchell, MSP  
Convener  
Justice Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

By Email: [Margaret.Mitchell.msp@parliament.scot](mailto:Margaret.Mitchell.msp@parliament.scot)

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I refer to a request received on the 21 January 2019 asking for a response to the submission made by Mr Bill Alexander on the 21 September 2018 and the points made by Rona MacKay MSP on the 25 September 2018 in relation to the Public Petition from Mr Alexander on Private Criminal Prosecutions (PE 1633).

The points raised by Mr Alexander in his submission, supplemented by Rona MacKay MSP, appear to focus on a different issue to that raised in the initial petition. The submission questions the capacity of organisations and individuals to report a case directly to the Crown Office and Procurator Fiscal Service (COPFS) in order for COPFS to make a decision on whether a prosecution should commence. This is a distinct issue to the authority of an individual to instigate a private prosecution, which was the focus of the original petition.

Organisations, designed as Specialist Reporting Agencies, are authorised to report cases to COPFS on the basis that there are legislative provisions that designate them as an appropriate enforcement, investigative or regulatory body or where Ministers have appointed the organisation to investigate or enforce legislation. Any such organisation must also meet certain technical requirements in order to submit cases to COPFS.

It is the role of a Specialist Reporting Agency to investigate any initial report made to them and decide whether or not to report a case to COPFS.

Mr Alexander appears to suggest that individuals should be able to report cases directly to COPFS and suggests that there is a gap in the law. It is entirely appropriate that the power to investigate and/or enforce the law is restricted to certain organisations, as set out in legislation and that the existence of those powers then informs which organisations can report a case to COPFS. It would not be appropriate for individuals to be given powers of investigation or enforcement or to report cases directly to COPFS.



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Specialist bodies which are given regulatory responsibilities in relation to a particular field of activity, such as the HSE, typically have a discretion in relation to the use of their powers with a view to effective regulation. If there are issues identified in terms of the use of powers by a specific organisation then those should be addressed directly with that organisation.

**W. JAMES WOLFFE QC**

