

In the Crown Court at Manchester (Crown Square)

Animal Protection Services (a private prosecutor) v Alex-Kaye Carrigan (T20210341)

Animal Protection Services (a private prosecutor) v Elisha Brown (T20210342)

Judgment regarding Abuse of Process, Dismissal and Costs

1. Introduction

The prosecutions of Ms Carrigan and Ms Brown are quite separate cases, but it is accepted that identical issues arise as between the two cases and in this Court the cases have been heard together. Where any issue or matter is individual to one of the cases, such will be set out in this judgment. Earlier hearings at this Court led to both cases being listed before me on Monday 18 October 2021 when I heard lengthy and wide ranging submissions from all parties, including too from Mr James Parry of Messrs Parry and Welch, Solicitors, which firm was until recently instructed by Animal Protection Services (APS) to conduct, on behalf of APS, the prosecutions of Ms Carrigan and Ms Brown. More will be said in due course about the status, role and activities of Messrs Parry and Welch in these proceedings. By the time of the hearing on 18 October, a significant amount of documentation had been served in the form of statements and written representations concerning the issues of dismissal, abuse of process and costs. More written material was provided to me on 18 October, some of which APS and Messrs Parry and Welch had not had the chance to consider. Whilst concluding the oral hearing on 18 October, I gave permission for further written material to be provided so that no party should be disadvantaged by having received documents on, or shortly before, 18 October. Messrs Parry and Welch have provided further written representations as regards cost in a document dated 21 October (and have provided a s.9 statement dated 22 October in Ms Welch's name, a statement that deals with matters not directly relevant to the issues in Ms Brown's and Ms Carrigan's cases).

Animal Protection Services have provided a comprehensive skeleton argument, drafted by counsel and dated 22 October. Attached to the skeleton argument are statements from Jacob Lloyd (dated 12th and 19th October) as well as other witness statements and documentary material dealing with the activities of APS. I note as well that at paragraphs 24 and 25 of his statement of 19 October, Mr Lloyd makes serious allegations about the behaviour and activities of Messrs Parry and Welch, but then at paragraph 26 he states “...*(APS) does not waive legal professional privilege in these proceedings*”. Since Mr Lloyd makes significant criticisms of Messrs Parry and Welch in their conduct of the proceedings against Ms Carrigan and Ms Brown, it seems to me that had the statement of 19 October been before me when I heard submissions on 18 October, I would certainly have heard evidence as to whether Mr

Lloyd had waived privilege, which, although no doubt unintended, on the face of it he clearly had.

I have considered all of the written material provided to me, and I will refer to some of that material in the course of this judgment, but it quickly became clear on 18 October that the activities of APS and Messrs Parry and Welch, required broader scrutiny and inquiry, scrutiny and inquiry of a type this Court is neither equipped nor jurisdictionally able to perform. I deal with the further scrutiny and inquiry I believe is required in this judgment, but that part of the judgment is obiter to the judgment concerning Ms Carrigan and Ms Brown. Because, as I have said, scrutiny and inquiry of the broader activities of APS and Messrs Parry and Welch is required and can't be carried out by this Court, I have reached no conclusions relevant to Ms Carrigan's and Ms Brown's cases other than on the basis of the written material and oral representations directly connected with their cases, where I have taken other material in to account it is information of a general and undisputed kind. In other words, I ignore material that might be considered to be prejudicial to APS and Messrs Parry and Welch, except where such material arises directly in and from the cases before me, and I have only taken in to account material the parties, particularly APS and Messrs Parry and Welch, have been able to respond to.

2. Private Prosecutions

APS is a charity whose objectives are said to be to promote humane behaviour towards animals and to prevent and suppress cruelty to animals, "*...in particular by investigating allegations of animal cruelty and bringing prosecutions*", and in the first half of 2021 it was highly active in bringing prosecutions, mostly in the Magistrates' Court, for offences relating, broadly, to animal (principally, dog) welfare. Messrs Parry and Welch are solicitors operating as an LLP, the principals being James Parry and Kate Welch. Parry and Welch style themselves as "PAWS" with the imprint of an animal paw featuring as the firm's logo. Parry and Welch advertise themselves as a not for profit firm specialising in dangerous dog legislation and animal welfare. On the face of it, Messrs Parry and Welch closely identify in their outlook with the objectives of APS.

Relatively little emerged in the course of the proceedings about APS. It was registered at a charity "recently". Jacob Lloyd is named as a "*Senior Prosecutor (Prosecutor Paralegal) A Inst PA admitted 16 March 2021*" for APS, and for all intents and purposes Mr Lloyd appears to be APS. Open source material indicates that Mr Lloyd can fairly be said to be a prominent animal rights activist. One Serena James appears to be an employee of APS, and she is described as a "*Prosecutor not admitted*" and sometimes as an "*Investigations Officer*" for APS. It was suggested before me, and not denied on behalf of APS, that Mr Lloyd and, possibly, Ms James were (and remain) trustees of APS. No other individuals were identified before me as being associated with APS, whose trustees are permitted to remain anonymous by the Charity Commission. I was told that Mr Lloyd and Ms James were at court on 18 October, but they were not called upon by APS (or Mr Parry) to testify, despite being

given every opportunity to so testify. In APS's skeleton argument dated 12 October, it is said that; "9. APS has 3 salaried employees, including Mr Jacob Lloyd and Ms Serena James".

The evidence put before me also demonstrated that James Parry, Kate Welch and Jacob Lloyd were equal (and the only) shareholders in a limited company Private Prosecution Services Limited (PPSL), a company incorporated in early 2021. I was told, although this was not substantiated by any evidence from Mr Lloyd and was denied by Mr Parry (who was unable to say more on the issue because he was, he considered, bound by legal professional privilege not to reveal or discuss the nature of his instructions from and advice to Mr Lloyd), that Mr Lloyd had been made a shareholder in PPSL by Mr Parry without being informed of that by Mr Parry. At the very least, the incorporation and shareholding of PPSL demonstrates links between James Parry, Kate Welch and Jacob Lloyd going beyond the arms' length professional relationship of solicitor and client and supports the contention that they share an ideological mindset and outlook when dealing with prosecutions connected with animal welfare.

A private prosecution is a prosecution started by a private individual, or entity who/which is not acting on behalf of the police or other prosecuting authority. A 'prosecuting authority' includes, but is not limited to, an entity which has a statutory power to prosecute.

There are a number of organisations that regularly prosecute cases before the courts of England and Wales, but they do so as private individuals, using the right of any individual to bring a private prosecution. One example is the RSPCA, another Trading Standards departments of local authorities.

The right to bring private prosecutions is preserved by section 6(1) of the Prosecution of Offences Act 1985. There are, however, some limitations:

- the Director of Public Prosecutions (DPP) has power under section 6(2) POA 1985 to take over private prosecutions;
- in some cases, the private prosecutor must seek the consent of the Attorney General or of the DPP before the commencement of proceedings.

In this regard it should be noted that in the cases of Ms Carrigan and Ms Brown no approach was made by APS and/or Messrs Parry and Welch to the CPS either for advice, or for the CPS to take over the cases (and nor was any approach made to any other body, such as Trading Standards or the RSPCA, for advice). The alleged offences APS chose to charge Ms Carrigan and Ms Welch with did not require the consent of the Attorney General or the DPP.

3. Standards in bringing and conducting private prosecutions.

In *R (Holloway) v Harrow Crown Court [2019] EWHC 1731 (Admin)* the High Court considered position of private prosecutors and concluded that private prosecutors, in their role as "ministers of justice", have a duty to undertake an independent and objective analysis of the evidence before commencing proceedings to establish whether that evidence is

sufficient to provide a realistic prospect of conviction, and to consider whether the evidence is reliable and credible.

Although there is clearly no compulsion on those who bring and conduct private prosecutions to be members of the Private Prosecutors Association, that association publishes guidelines for those who do engage in private prosecutions. The guidelines are accessible on line, as is the CPS's Code for Crown Prosecutors. Regardless of the availability of guidelines and the Code, and whether those who choose to bring and conduct private prosecutions know it or not, the Courts will always expect the highest standards of integrity and of conduct by those who are involved in private prosecutions. These standards are evident in the guidelines for private prosecutors as published by the Private Prosecutors Association:

- "a. A private prosecutor is subject to the same Minister of Justice obligations as a public prosecuting authority.*
- b. Advocates and solicitors who have conduct of private prosecutions must observe the highest standards of integrity and of regard for the public interest. They have a duty to act as Ministers of Justice in preference to the interests of the client who has instructed them to bring the prosecution. They owe a duty to the Court to ensure that the proceedings are fair and that the case is dealt with justly.*
- c. The criminal justice system cannot be used solely or primarily to achieve a purpose for which it is not designed.*
- d. Those acting on behalf of a private prosecutor must withdraw or refuse to act if they consider the conduct of the private prosecutor to be improper or vexatious.*
- e. Whilst a private prosecution does not have to satisfy the test in the Code for Crown Prosecutors, in practice, a solicitor or barrister is likely to advise against bringing a private prosecution if the Full Code Test is not met.*
- f. The difficulties that are likely to arise where defendants or material are located outside England and Wales, which will include requirements to comply with applicable local law.*
- g. Information about the investigative process may need to be withheld from witnesses to avoid tainting their evidence.*
- h. The role and obligations of any potential expert witnesses.*
- i. The possibility that a private prosecution will be referred to the Director of Public Prosecutions ("the DPP") (or otherwise come to their attention) and the process that will be followed by the Crown Prosecution Service(CPS) thereafter.*
- j. The CPS Legal Guidance on Private Prosecutions provides that a private prosecution should be taken over and stopped if, upon review of the case papers, either the evidential sufficiency stage or the public interest stage of the Full Code Test is not met."*

The guidance provided by the Private Prosecutors Association also assists those bringing and conducting private prosecutions to understand circumstances in which their actions may come under greater scrutiny than would be the case with a public prosecution and where the private prosecutor may be at risk of abusing process:

“Abuse of process

7.1 General principles

7.1.1 Because private interests are, to some degree, almost invariably inherent in the bringing and conduct of private prosecutions, there is more scope for scrutiny of private prosecutors than public prosecutors. Private prosecutors should be made aware that, realistically, there will likely be more room for questioning the initiation and conduct of a private prosecution than a public prosecution.

(In this regard see *David Haigh v City of Westminster Magistrates’ Court* [2017] EWHC 232 (Admin)).

7.1.2 However, the legal principles relating to the abuse of process jurisdiction apply in the same way to private prosecutions as they do to public prosecutions. This chapter therefore does no more than identify some areas which those acting on behalf of a private prosecutor should consider.

7.2 Motive

7.2.1 Many private prosecutions will be brought with mixed motives, most obviously where the prosecutor claims to be the direct victim of the alleged misconduct. Mixed motives may result in heightened scrutiny of the process, to ensure that the case is conducted fairly.

7.2.2 Where the primary motive for the prosecution is unrelated to the proceedings, it is likely to render the prosecution a misuse or an abuse of the Court’s process. A useful touchstone for consideration of the issue may be to ask whether the criminal legal process is being used against another primarily to accomplish a purpose for which it is not designed.”

These principles, derived as they are from legislation, from caselaw and from the guarding by the courts of the integrity of criminal process, cannot be controversial. Nor is it credible that APS and Messrs Parry and Welch are ignorant of the standards of conduct and integrity expected of those who bring and conduct private prosecutions. Mr Lloyd is a member of the Executive Committee of the Private Prosecutors Association (as he accepts in his statement of 12 October), and Messrs Parry and Welch, whether they have ties to the Private Prosecutors Association or not, are both experienced solicitors with extensive direct experience in the conduct of litigation, including criminal litigation. Ignorance of the standards of integrity, conduct and professionalism to be expected of private prosecutors and their advisors would not excuse misconduct, but misconduct, and particularly egregious misconduct, by those who are fully aware of the standards to be observed may be more likely to be, and to be interpreted as, deliberate manipulation of process and indicative of the

criminal justice system being used inappropriately and for collateral purposes than otherwise might be so.

4. The prosecutions of Ms Carrigan and of Ms Brown.

Although, as stated above, the wider activities of APS and Messrs Parry and Welch cannot fully or fairly be investigated in the context of the applications before me and must therefore largely be set aside in these proceedings, there is no dispute about certain basic information. APS accept that somewhere between 80 and 100 private prosecutions have been brought by them in 2021, many of those case, but not all, involved charges identical to those made against Ms Carrigan and Ms Brown. Messrs Parry and Welch accepted that they had acted for APS in many of the prosecutions. Most of the cases brought have remained in the Magistrates' Court. Mr Parry was unable to tell me whether any cases had gone to trial in the Magistrates' Court and nor was he able to say whether any defendant who might have pleaded guilty was actually legally represented. Mr Parry was able to confirm that no trials had taken place in the Crown Court; hardly surprisingly, since Mr Parry also confirmed that without exception when defendants elected trial in the Crown Court, Messrs Parry and Welch were instructed by APS to withdraw proceedings.

Such is what was attempted in the prosecutions of Ms Carrigan and Ms Brown – this Court however, on the application of Ms Carrigan and Ms Brown, declined to allow the prosecutions to be withdrawn. The reason given for the application to withdraw each prosecution was that although there was evidential sufficiency and public interest in the prosecutions “...it is not in the public interest to use valuable court time at this time of public emergency when the courts are overstretched, in continuing this matter”. Each of the letters seeking to withdraw the proceedings against Ms Carrigan and Ms Brown, letters written to this Court by Messrs Parry and Welch, went on to say that “As this prosecution was based on cogent evidence ... we are instructed to seek recovery of the prosecutor’s costs (from central funds).” Costs applications under s.17 Prosecution of Offences Act 1985 were attached to the withdrawal letters and appended to each of these applications were schedules of prosecutor’s and litigator’s costs totalling £6878.96 in Ms Carrigan’s case, and £5890.32 in Ms Brown’s case. More will be said concerning these schedules in due course, but I must determine the costs applications made by Messrs Parry and Welch on behalf of APS – in his witness statement of 19 October Mr Lloyd indicates that APS had not provided “...its costings” in relation to Ms Carrigan and Ms Brown to Messrs Parry and Welch, and had not “...authorised” the applications for costs to be made. At paragraph 28 of his statement of 19 October Mr Lloyd indicates that he had “...instructed counsel not to seek an application for prosecution costs...” in respect of Ms Carrigan and Ms Brown, although as a matter of fact the costs applications were not withdrawn before me on 18 October.

It is to be noted that the withdrawal letters indicate that APS “...will continue to monitor the defendant’s behaviour and will investigate any further suspicions...”.

The charges against Ms Carrigan and Ms Brown although quite separate are identical and they made their way into identically framed indictments. Messrs Parry and Welch served

bundles in each case consisting of the indictment, a witness statement made by Serena James and documentary exhibits (downloaded and printed material from internet, or internet type, searches). In each case the matter triable in the Crown Court was a count alleging the unlawful sale of pets contrary to Regulations 12 and 13 and Schedule 1, paragraph 9 of the Consumer Protection from Unfair Trading Regulations 2008. The only breach of the Regulations alleged was under paragraph 9, and in each case the breach was particularised by alleging that the defendant had carried on a business selling animals as pets and had “...*falsely stated or otherwise (given) the false impression that the sale of those products...was lawful, whereas such sales were prohibited in the absence of a licence being issued to permit the sale of those animals as pets.*”

Each defendant also faced a summary only matter alleging carrying on an unlicensed business selling pets.

Each charge was based entirely on the individual witness statements of Serena James and the material she exhibited.

Each schedule of costs contained a breakdown of work done and included claims from the prosecutor (against the initials of Mr Lloyd) of 1.25 hours for a conference with the litigator to consider “...*full code test*” (a claim for £245), and a similar claim from the litigator (against the initials of Ms Welch) for 2.5 hours to “*Review evidence apply full code test decide on charges*” (a claim for £502.50).

Of course, the references to “*full code*” are to the Code for Crown Prosecutors and to the requirements that the evidence in a case gives rise to realistic prospects for conviction and that it is in the public interest that there should be a prosecution. It is to be noted that an earlier item of costs claimed in each case against Mr Lloyd’s initials claimed 1.25 hours (£245) for “*Case review line manager*” this coming after claims made relating to an “*Initial Conference*” apparently, again in each case, between Serena James and Ms Welch and lasting for one hour (total billing £290). No explanation was provided to me as to why APS’s claim for costs was based on hourly billing rates rather than on re-imburement of Mr Lloyd’s and Ms James’ salaries. It is inconceivable that Mr Lloyd was earning a salary of £196 per hour or that Ms James’ salary was paid by APS at the rate of £89 per hour (their hourly billing rates as claimed in the schedules of costs).

I re-iterate that each case was based on a less than two page statement from Serena James and upon exhibits that take a few minutes to read and contain almost nothing that adds to what Serena James says. The statements made by Serena James as regards Ms Carrigan and Ms Brown are in near identical terms and must have been copied and pasted from other statements with minimal changes being made to individualise the statements.

Given that all of those involved at APS and Messrs Parry and Welch are very familiar with the applicable law, given too that by the time of the prosecutions of Ms Carrigan and Ms Brown APS and Messrs Parry and Welch had conducted many similar investigations and commenced many similar prosecutions and that the investigatory and litigation work was

almost exclusively desktop conducted work and work identical, save for the individual being investigated and prosecuted, to earlier cases, the schedules of costs submitted for APS and Messrs Parry and Welch in both the prosecutions before me must be works of almost pure fiction. If what Mr Lloyd says in his statement of 19 October about APS not providing a breakdown of costs to Messrs Parry and Welch in either Ms Carrigan's or Ms Brown's cases is true, Messrs Parry and Welch have either simply guessed at APS's costs/expenses or, more likely, they have copied and pasted the schedules from other files.

Since the schedules of costs relating to the prosecutions of Ms Carrigan and Ms Brown both refer to consideration and application of the "full code" test, and since in the withdrawal letters Messrs Parry and Welch maintain on behalf of APS that there remains a legal, evidential and public interest basis to the prosecutions, the legal, evidential and public interest considerations need to be considered in a little detail.

5. Unlawful Sale of Pets/Carrying on an Unlicensed Business Selling Animals.

As stated, the particulars of the sole count faced individually by Ms Carrigan and Ms Brown allege that the defendant had carried on a business selling animals as pets and had *"..falsely stated or otherwise (given) the false impression that the sale of those products...was lawful, whereas such sales were prohibited in the absence of a licence being issued to permit the sale of those animals as pets."* Paragraph 9 of Schedule 1 of the relevant Regulations – the paragraph said to have been breached - reads as follows:

"9. Stating or otherwise creating the impression that a product can legally be sold when it cannot."

And Schedule 1 is headed:

"Commercial practices which are in all circumstances considered unfair"

The factual basis for this allegation was that Ms Carrigan and Ms Brown had each advertised dogs/puppies for sale using a website, Pets 4 Homes. Whether there was in fact evidence that Ms Carrigan and Ms Brown had placed such adverts is another matter. Mr Parry told me in the course of oral submissions that since in his view both Ms Carrigan and Ms Brown would have required a licence to sell puppies (and because APS contended that neither had licences at the time the adverts were placed) the adverts offended paragraph 9 because the puppies could not be sold by individuals not holding a licence and therefore the puppies were a product that could not legally be sold.

So far as I am aware there is no case law interpreting paragraph 9 of the Regulations, and certainly no case law was cited to me to support Mr Parry's interpretation of paragraph 9. This may not be a surprise, since it might be thought that paragraph 9's meaning is plain and obvious, and plainly and obviously not the meaning attributed to it by Mr Parry.

The fact is that nothing in the adverts said to have been placed by either Ms Carrigan or Ms Brown states or implies anything about whether the "product" – in each case puppies – can or cannot be legally sold. The adverts are merely adverts for the sale of a product. In any event,

puppies **can** legally be sold and since paragraph 9 is clearly generic in nature referring as it does to "...a product", not "the product", the fact that puppies can legally be sold means that the paragraph has no application at all to the cases of Ms Carrigan and Ms Brown. In my judgement, paragraph 9 is intended to apply to assertions about products that are unlawful to sell, or products which incorporate a product that it is unlawful to sell (so for example, controlled drugs, or some types of firearm). Mr Parry's assertions to the effect that because, he suggests, Ms Carrigan and Ms Brown needed licenses to sell puppies, the sale of (the) puppies was unlawful, and that they committed an offence merely by offering puppies for sale, amounts to a perverse interpretation both of the Regulations and of the adverts said to have been placed by Ms Carrigan and Ms Brown. APS and Messrs Parry and Welch may wish that the Regulations could be interpreted as Mr Parry submitted they could, indeed they may each genuinely believe their interpretation to be reasonable, but either their interpretation is wilfully perverse or it arises from a blind belief in the importance of animal welfare above due and proper process and over balanced and objective interpretation of the evidence and the applicable law.

Another equally fundamental problem with the charge brought against Ms Carrigan and Ms Brown is that the offence charged under the Consumer Protection from Unfair Trading Regulations 2008 applies only to a "trader". A "trader" means any person who in relation to a commercial practice is acting for purposes relating to his business, and anyone acting in the name of, or on behalf of a trader; so much is stated in the Regulation 2 – the Interpretation part of the Regulations. The statement of Serena James in Ms Carrigan's case actually establishes no more than that in Ms Carrigan's case, between particular dates, some five separate adverts were placed on the Pets4Homes site offering puppies for sale using an account with Pets4Homes in the name of Kayze Carrigan. In Ms Carrigan's case, Serena James says that the puppies offered for sale were "sold" by Ms Carrigan, who is said to have "made a profit from doing so". Whilst the statement provides an investigative basis for the assertions made in it, actually the only facts demonstrated are that adverts were placed against named accounts. In Ms Brown's case, Serena James' statement demonstrates that over a specific period three adverts were placed against a Pets4Homes account in the name Elisha Brown, and again the same assertions are made about sales and profit.

The summary only charge against both Ms Carrigan and Ms Brown requires evidence that each carried on a business selling animals – Serena James' statement contains enough to warrant further investigation of this issue, but no more than that.

The statements of Serena James (and the exhibited material) concerning Ms Carrigan and Ms Brown provide a basis for investigating their activities, but the statements come nowhere near to demonstrating a prima facie case against either in relation to the charges ultimately brought. No one could properly conclude that there were realistic prospects for conviction based on the scant evidence produced by APS and submitted to Messrs Parry and Welch to be considered in a "...full code test conference with litigator".

I have seen no evidence that either APS or Messrs Parry and Welch ever actually considered the second limb of the full code test; that is whether the public interest would be served by prosecuting rather than taking no action or by exploring an alternative resolution. As a matter of strict logic, the public interest test should never have arisen because there was no evidential basis for prosecuting either Ms Carrigan or Ms Brown, but since it was decided to prosecute and since the withdrawal letters each indicate that it had been in the public interest to prosecute, in deciding whether APS and Messrs Parry and Welch have conducted the proceedings against Ms Carrigan and Ms Brown with the required integrity and to the required standards, the public interest considerations need, briefly, to be considered.

APS had checked that neither Ms Carrigan nor Ms Brown had previous convictions. The evidential material available to APS and Messrs Parry and Welch whilst it demonstrated no offences *suggested* (and no more than that), that Ms Carrigan and Ms Brown were small scale opportunistic traders/breeders, *probably* acting in ignorance of legal requirements that they *may* have been subject to. The material demonstrated nothing about the welfare standards the puppies each was said to be selling had enjoyed, nothing about Ms Carrigan's and Ms Brown's background, if any, in dog breeding, and nothing about their respective knowledge of the licensing provisions which they may have been subject to. All of these would have been material considerations in applying the public interest test, indeed the public interest test could not properly have been applied without at least some of the type of information referred to being available to APS and Parry and Welch.

In my judgement, the **only** proper course open to APS and Messrs Parry and Welch **at the time the decision to charge Ms Carrigan and Ms Brown was taken**, was either to themselves carry out further investigation and to obtain further evidence, or to refer each case to the police, or Trading Standards or the RSPCA.

6. The decisions to commence and to withdraw proceedings.

In my view the decisions to charge both Ms Carrigan and Ms Brown were profoundly flawed, so flawed that it requires me to consider why the decisions were taken. Both APS and Messrs Parry and Welch maintain that the decisions were reasoned, reasonable and proper. Messrs Parry and Welch have not been able to divulge the advice they gave to APS on them reviewing the evidence and applying the full code test, but if their advice had been the correct advice, firmly steering APS **at that stage** away from commencing proceedings, then such advice must have been rejected by APS. In turn, if that was the position and APS insisted on commencing proceedings, Messrs Parry and Welch should have withdrawn or refused to act. On the other hand, if Messrs Parry and Welch advised APS in the sort of terms set out in the withdrawal letter and to the effect that there were realistic prospects of conviction and that the public interest favoured prosecution, then such advice was profoundly wrong, indeed, it was perverse.

To take a generous view of the decisions and actions of Messrs Parry and Welch, they may in part have been motivated by a genuinely held belief that Ms Carrigan and Ms Brown were guilty of some offence, although, as detailed above, at the stage the decisions to prosecute

were taken the evidence formed a basis only for further investigation, not for prosecution. Even had further evidence revealed a sound basis for charging, nothing that was submitted to me at the hearing on 18 October, nor any written submissions, suggests that APS and Messrs Parry and Welch were capable of standing back and taking a rational, objective view of the public interest in prosecuting.

However, I also conclude that APS and Messrs Parry and Welch simply did not care whether the evidence demonstrated realistic prospects for conviction or whether there was a public interest in prosecuting. Prosecuting Ms Carrigan and Ms Brown, even on the flimsiest basis, permitted an element of naming and shaming and also provided a vehicle for the recovery of fees. In my judgement, and based on the material put before me relevant to Ms Carrigan and Ms Brown, the primary reasons APS, with the support of Messrs Parry and Welch, commenced proceedings against Ms Carrigan and Ms Brown was to seek to punish them, quite regardless of whether they had in fact committed any offence, and to recover fees at (at least) a grossly exaggerated (in terms of both prosecutor's and litigator's fees) level. I cannot go so far as to say that what occurred was systematic fraud, but the breakdown of prosecutor's and litigator's fees does not stand up to scrutiny. Further, the withdrawal of proceedings in the Crown Court also provides clear evidence that the proceedings against Ms Carrigan and Ms Brown were brought for improper motives. Paradoxically, it is true that the cases have needlessly taken up valuable court time, but that is because the cases were improperly brought in the first place and detailed scrutiny has been required of just what has been going on. The assertion made in relation to a case **properly** brought, that "*...it is not in the public interest to use valuable court time at this time of public emergency...*" would; a) have been true at the time the proceedings were commenced in the Magistrates' Court, and b) would be true (on the apparent reasoning of APS and Messrs Parry and Welch) of many of the less serious cases which come before the Crown Court.

In my judgement, APS and Messrs Parry and Welch sought to withdraw the proceedings against Ms Carrigan and Ms Brown for two reasons; firstly, to try to achieve swift recovery of fees, and secondly to seek to avoid judicial scrutiny of their decisions and actions (and indeed to seek to avoid detailed judicial scrutiny of the schedules of costs submitted).

7. Abuse of Process and Dismissal.

It may not matter greatly, but it seems to me that Abuse of Process, because it falls to be considered in the context of the commencement of proceedings in the cases of Ms Carrigan and Ms Brown, and because it requires consideration of what might be described as misconduct by APS and Messrs Parry and Welch (rather than simply evidential sufficiency), should be considered first. I also remind myself that when abuse of process is raised by a defendant, it is for the defendant to prove there has been such abuse as justifies a stay of the proceedings. Discharging that burden requires proof on the balance of probabilities, but where misconduct is alleged the Court will act only on clear evidence of such misconduct.

My concluded view is that there was serious misconduct by both APS and Messrs Parry and Welch both in commencing and in continuing the prosecutions of Ms Carrigan and Ms

Brown, misconduct so serious that it represents an affront to the conscience of the criminal justice system. Given the apparent relationship between Mr Lloyd, Mr Parry and Ms Welch and the seemingly mutual ideological sympathies, I have grave doubts as to whether Messrs Parry and Welch should have been accepting instructions from APS as regards advising in, and pursuing, prosecutions, work that requires rigorous objectivity and robust, probably sometimes unwelcome, advice. That Messrs Parry and Welch did accept such instructions cannot of itself be misconduct even if it was at least unwise, but the relationship and sympathies I have referred to may well, at least partly, explain why APS and Messrs Parry and Welch commenced and pursued proceedings against Ms Carrigan and Ms Brown when there was no evidential basis for doing so. As I have already found, the proceedings against Ms Carrigan and Ms Brown were brought and pursued for wholly improper reasons and purposes. As the guidelines of the Private Prosecutors Association correctly say, where criminal legal process is being used against another primarily to accomplish a purpose for which it is not designed, then such may amount to abuse of process – to improper manipulation of the criminal justice system. In my judgement, APS and Messrs Parry and Welch share equal responsibility for this misconduct and for what I conclude is, in relation to both Ms Carrigan and Ms Brown, abuse of process. In the context of the standards of integrity expected of prosecutors and those who conduct criminal proceedings, this was particularly egregious misconduct. If authority is required for the proposition that this sort of misconduct, in the context of private prosecutions, is an abuse of process, then it is to be found in *Dacre v Westminster Magistrates' Court* [2008] EWHC 1667 (Admin), and in *Zinga* [2014] EWCA Crim 52 (and in numerous other authorities of varying relevance). In fact, no submissions of law were made to me to the effect that abuse of process could not arise in these cases and circumstances; it was accepted that my rulings would turn on the nature and impact of any misconduct I might find had occurred.

The proceedings against Ms Carrigan (under calendar number T20210341) and Ms Brown (under calendar number T20210342) are hereby stayed as an abuse of this Court's process.

The stay of proceedings begs the question whether dismissal arises at all, but that, for reasons which will become clear, is a question I need not answer. Dismissal applications require the court to consider whether served evidence makes out a *prima facie* case against a defendant, or, to be rather more accurate, to consider whether the served evidence would be sufficient for the defendant to be properly convicted (see Schedule 3, paragraph 2(2) Crime and Disorder Act 1998). I have analysed (see above) the evidence relating to each of the charges both defendants face. No purpose would be served by repetition of any analysis of the evidence, analysis that led me to the conclusion that the evidence served by APS formed no more than a basis for investigation. The charges are based on a misunderstanding or perverse interpretation, or both, of the applicable law and of what, as a matter of fact, the served evidence is capable of demonstrating.

If, given that I have stayed the proceedings against Ms Carrigan and Ms Brown, I have the power also to dismiss the charges each faced, then they are dismissed, neither charge is

sufficiently (or at all) supported by the served evidence to allow either defendant, on either charge, properly to be convicted.

If I have no such power, then I simply record that had I not stayed the proceedings as an abuse of process, I would have dismissed all the charges for, of course, the same reasons.

8. Costs.

As has already been set out, the withdrawal letters from Messrs Parry and Welch, written on behalf of APS included claims for costs – of both APS and Messrs Parry and Welch – and schedules of costs relating, or said to relate, to the individual cases. The claims were for the payment of costs from central funds, that is from the public purse as administered by the Legal Aid Agency. At the hearing on 18 October 2021, it was my understanding that the applications for costs by APS and Messrs Parry and Welch were withdrawn, but even so, I consider it to be appropriate to rule on the applications.

The statutory regime for costs in private prosecutions is set out in s.17 Prosecution of Offences Act 1985 and, so far as costs from central funds are concerned, in Rule 45.4 of the Criminal Procedure, a regime given detailed and recent consideration in *TM Eye Ltd v Crown Court at Southampton [2021] EWHC 2624 (Admin)*.

It is enough for me to say that in a properly brought prosecution an order for costs from central funds should normally be made, such being the effect of the Practice Direction (Costs in Criminal Proceedings) 2015, contained in Division X of the Criminal Practice Directions 2015. Paragraph 2.6.1 of the Practice Direction states, in relation to an award of a private prosecutor's costs out of central funds:

“An order should be made save where there is good reason for not doing so, for example, where proceedings have been instituted or continued without good cause.”

Paragraph 2.6.4 goes on to say:

“If there has been misconduct a private prosecutor should not be awarded costs out of central funds.”

Although there was some discussion in *TM Eye* as to what constituted misconduct, the context was very different in the sense that the misconduct in that case was what amounted to a lax approach to the application for costs itself, rather than any substantive misconduct in the commencement and pursuit of a prosecution. It follows, that I conclude that an award of costs from central funds in either Ms Carrigan's or Ms Brown's case would be wholly inappropriate given that the misconduct I have concluded did occur was in the instigation of the prosecutions and the conduct of the prosecutor and the prosecutor's solicitors.

9. Wasted Costs.

Messrs Parry and Welch made very detailed written submissions as regards wasted cost in their representations dated 27 September, representations which are particularly helpful in

terms of setting out the applicable legal principles relevant to parties to criminal litigation and to legal representatives of the parties when wasted costs fall to be considered.

As I have found, Ms Carrigan and Ms Brown should never have faced prosecutions. The prosecutions were brought for improper reasons amounting to abuse of process, a situation APS and Messrs. Parry and Welch are equally responsible for. Ms Carrigan and Ms Brown, entirely understandably, sought legal advice and representation in the proceedings brought against them. I know not whether either or both might have been entitled to legal aid funding, but neither has been legally aided, and even if that were by choice neither can be criticized for exercising that choice. Both have incurred very substantial costs, costs which are entirely “wasted” in the sense that they should never have needed to be incurred.

Although there is a limited power in the Crown Court for an award of a defendant’s costs from central funds (s.16 (2) Prosecution of Offences Act 1985) it seems unlikely that Ms Carrigan and Ms Brown qualify for such an award since neither appears to have applied for legal aid funding (which by reason of schedule 7 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, is a pre-requisite to an award of costs from central funds).

An award of costs from central funds is, in effect, an award of costs from public funds – it is payment by the taxpayer. In the circumstances envisaged in s.16 Prosecution of Offences Act 1985, the position will generally be that a prosecution was properly brought and conducted, but the defendant was acquitted. In such circumstances it is easy to see why a qualifying defendant should be able to recoup costs and why a private prosecutor should also generally be able to recover costs from central funds (under s.17, as above).

Where there has been misconduct by a private prosecutor, not only will the Court disallow an application by the prosecutor for costs from central funds, but the Court will also consider whether wasted costs orders are appropriate.

Sections 19 and 19A Prosecution of Offences Act 1985 allow for orders in relation to wasted costs to be made as against parties to criminal litigation and against the legal representatives of the parties:

s.19 Provision for orders as to costs in other circumstances.

(1) The Lord Chancellor may by regulations make provision empowering magistrates’ courts, the Crown Court and the Court of Appeal, in any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.

s.19A Costs against legal representatives etc.

(1) In any criminal proceedings—

(a) the Court of Appeal;

(b) the Crown Court; or

(c) a magistrates' court,

may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.

(2) Regulations shall provide that a legal or other representative against whom action is taken by a magistrates' court under subsection (1) may appeal to the Crown Court and that a legal or other representative against whom action is taken by the Crown Court under subsection (1) may appeal to the Court of Appeal.

The operative part of s19 when considering the position of APS is; “...*in any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.*” and I have set out above in detail why I have found serious misconduct on the part of APS in bringing and pursuing proceedings against both Ms Carrigan and Ms Brown. This misconduct very clearly in my view amounts to *unnecessary or improper act(s)* within the meaning of s.19 and Ms Carrigan and Ms Brown are entitled to recover wasted costs from APS. I will turn to quantification in due course.

What of Messrs Parry and Welch? S.19A refers to “wasted” costs, which are defined in s.19A (3) as:

“wasted costs” means any costs incurred by a party—

(a) as a result of any improper, unreasonable, or negligent act or omission on the part of any representative or any employee of a representative;

In *Holden and Co v Crown Prosecution Service and other appeals* [1990] 1 All ER 368, the Court of Appeal considered the circumstances in which a firm of solicitors might be ordered to pay wasted costs. An improper act or omission which fell short of a serious dereliction of duty was not sufficient for an order to be made against a solicitor for payment of costs. Moreover, the object of such an order was not punitive and therefore the amount of the costs which the solicitor could be ordered to pay was limited to the costs which his default had caused.

In *Holden*, the failings considered were:

Holden and Co – Jury discharged and a fresh trial ordered where the solicitor had failed to arrange the attendance of a witness at trial – appeal dismissed;

Steele Ford and Newton – Solicitor ordered to pay costs where his client changed his plea from not guilty to guilty – appeal allowed;

Robin Murray and Co – Solicitor ordered to pay £50 towards costs thrown away as a result of an adjournment to enable the CPS to obtain a memorandum of conviction of the defendant – appeal allowed;

McGoldrick and Co – Solicitor ordered to pay costs as a result of his client failing to attend trial – appeal allowed;

Bradburys – solicitor ordered to pay costs thrown away in relation to a criminal trial which was delayed because of a failure by the solicitor to serve an alibi notice – appeal dismissed.

It is to be noted that the conduct, whether act or omission, considered in the conjoined appeals with Holden, related to professional failings rather than to misconduct.

In *In re P (A Barrister)* [2001] EWCA Crim 1728; [2002] 1 Cr App R 207 the Court of Appeal gave guidance as to wasted costs orders generally and clear principles emerge:

(i) The primary object is not to punish but to compensate, albeit as the order is sought against a non-party, it can from that perspective be regarded as penal.

(ii) The jurisdiction is a summary jurisdiction to be exercised by the court which has “*tried the case in the course of which the misconduct was committed*”.

(iii) Fairness is assured if the lawyer alleged to be at fault has sufficient notice of the complaint made against him and a proper opportunity to respond to it

(iv) Because of the penal element a mere mistake is not sufficient to justify an order: there must be a more serious error.

(v) The normal civil standard of proof applies but if the allegation is one of serious misconduct or crime clear evidence will be required to meet that standard.

Messrs. Parry and Welch contend that:

“It is submitted that in such circumstances that:

- 1. It cannot be said that the litigators failed to apply their minds to the appropriate test before commencing the prosecution or that in on behalf of the defendant that no consideration was given to both elements of the Attorney General’s test by the litigators in this matter, and;*
- 2. Given the substantial conviction rate obtained in cases brought by Animal Protection Services on near identical evidence the determination that there was sufficient evidence to “provide a realistic” prospect of conviction was reasonable.” (see para. 53 skeleton argument 27 September 2021)*

Whilst it is true that APS and Messrs. Parry and Welch claim to have applied the “full code” test and therefore to have considered the prospects for conviction and the public interest test, my findings as regards abuse of process mean that no *bona fide, good faith*, consideration was actually given to the tests. The whole process, if conducted at all, was a sham to give the appearance of legitimacy to a process in fact intended to shame and intimidate Ms Carrigan and Ms Brown and to recover inflated and/or fictitious costs. Reliance on the “...*substantial conviction rate obtained in cases brought by Animal Protection Services...*” is wholly inappropriate. I am concerned only with the conduct of the cases concerning Ms Carrigan and Ms Brown. The cases being referred to were all concluded in the Magistrates’ Court and no material has been placed before me concerning the proportion of the cases brought by APS in which defendants were legally represented, the proportion in which there were guilty pleas and as to whether there have been any contested trials. There is, moreover, evidence of very serious misconduct by APS and Messrs. Parry and Welch in other cases, evidence which I have ignored in dealing with the applications before me, because the allegations cannot properly be investigated in the context of these applications.

In my view, the conduct of Messrs. Parry and Welch in the proceedings against Ms Carrigan and Ms Brown has been improper and unreasonable within the meaning of s.19A Prosecution of Offences Act 1985, and it is entirely appropriate that the firm should pay wasted costs.

My conclusion concerning abuse of process was that APS and Messrs. Parry and Welch were equally at fault in terms of the misconduct I found required a stay of the proceedings. Accordingly, liability for the wasted costs of Ms Carrigan and Ms Brown will be shared equally between APS and Messrs. Parry and Welch.

The Practice Direction (Costs in Criminal Proceedings) 2015 indicate:

4.2.2 The Judge has a much greater and more direct responsibility for costs in criminal proceedings than in civil and should keep the question of costs in the forefront of his mind at every stage of the case and ought to be prepared to take the initiative himself without any prompting from the parties.

4.2.3 Regulation 3B of the General Regulations requires the court to specify the amount of the wasted costs and before making the order to allow the legal or other representative and any party to the proceedings to make representations.

Ms Carrigan has been represented under a fixed fee agreement incurring litigator’s fees of £5,000 + vat, and counsel’s fees of £5,000 + vat (total, including vat £12,000). This, it seems to me, is an entirely reasonable sum given that the work to defend Ms Carrigan has clearly required considerably more time would have been necessary had the prosecution been properly brought. The schedule of costs submitted on behalf of Ms Brown totals £29,906 + vat (£35,887.56) and this includes counsel’s fees of £5,850. The work done on behalf of Ms Brown has been carried out by Katie McCreath of KMC Legal and Finance, a solicitor who is described as a Grade A Solicitor Advocate charging an hourly rate of £285.00 plus vat. Whilst clearly Ms McCreath and Jonathan Turner, counsel instructed by KMC Legal and Finance, who represented Ms Brown before me, had to work assiduously on behalf of Ms

Brown, some of their work must have gone beyond what was strictly necessary to deal with Ms Brown's case. I say that because clearly Ms McCreath has carried out quite a wide ranging investigation of the activities of APS and Messrs Parry and Welch, and whilst that is understandable I do not consider that it is appropriate to make orders requiring APS and Messrs. Parry and Welch to pay costs going beyond the costs necessarily incurred by Ms Carrigan and Ms Brown. Although it cannot be a scientific assessment, I assess the costs in Ms Brown's case that ought to be met by APS and Messrs. Parry and Welch at a total of £20,000 + vat (£24,000).

Accordingly, but subject to any representations from APS and/or Messrs. Parry and Welch as regards the quantum of cost, I propose to make the following orders as regards costs:

In APS v Carrigan T20210341

APS to pay Ms Carrigan's wasted costs in the sum of £6,000 (under s.19 Prosecution of Offences Act 1985).

Messrs. Parry and Welch to pay Ms Carrigan's wasted costs in the sum of £6,000 (under s.19A Prosecution of Offences Act 1985).

In APS v Brown T20210342

APS to pay Ms Brown's wasted costs in the sum of £12,000 (under s.19 Prosecution of Offences Act 1985).

Messrs. Parry and Welch to pay Ms Brown's wasted costs in the sum of £12,000 (under s.19A Prosecution of Offences Act 1985).

I will consider any written representations made by or on behalf of APS and/or Messrs. Parry and Brown as regard the *quantum* of wasted cost. Written representations, if any, must be made by 4pm on Wednesday 10 November. The Orders for costs will be confirmed or varied by 4pm on Friday 12 November and will not be enforceable until then.

10. Matters of concern.

In the course of the proceedings concerning Ms Carrigan and Ms Brown I was provided with a judgment of HH Judge Darren Preston, who dealt with a similar case in the Crown Court at Preston recently (APS v Young). HH Judge Preston stayed that case as an abuse of process saying:

"It is my judgment that there is an improper financial motive for bringing this prosecution. The second motivation is that this investigation, in reality steered by Jacob Knight/Lloyd from the shadows is his misguided belief that he can do whatever he wishes, whether inside or outside the law, to carry out his personal crusade to, as he sees it, protect animals. I am further satisfied that these motivations are the only motivations behind this prosecution.

The behaviour of Jacob Lloyd/Knight in investigating this case has been itself disgraceful and the prosecution's conduct around him has been improper such that were this prosecution be allowed to continue, there would be an affront to justice, that if the public knew the background to this case and the consequences of a trial, let alone a conviction, they would rightly be affronted."

Lloyd's behaviour, as detailed by HH Judge Preston, was bullying and intimidatory toward a suspect/defendant APS targeted for prosecution, and demonstrated complete disregard for the integrity of the criminal justice system. It is not clear to me whether Messrs. Parry and Welch were involved in that case.

As mentioned above, in the course of hearing the cases of Ms Carrigan and Ms Brown I was provided with material suggesting serious misconduct by APS and Messrs. Parry and Welch, I disregarded that material because, as I have already said, it would not have been possible fairly or fully to investigate the issues raised in the context of the cases of Ms Carrigan and Ms Brown and because it was unnecessary to deal with other allegations being made about how APS and Messrs. Parry and Welch may have conducted themselves. The material put before me is too voluminous to repeat or meaningfully to summarise in this judgment, but what is required is a full and holistic investigation of the issues raised in the cases of Ms Carrigan and Ms Brown, in the case of Young, as dealt with by HH Judge Preston and in the material set out in the PDF bundle served on behalf of Ms Brown containing a number of witness statements.

The concern I have is that APS, sometimes in conjunction with Messrs. Parry and Welch, may have been involved in systematic fraud and in perverting the course of public justice. I have concerns that individuals may have pleaded guilty to offences in the Magistrates' Court as a consequence of being misled by APS and possibly Messrs. Parry and Welch, or without scrutiny taking place of their actions (in terms of possible abuse of process).

In all the circumstances, I intend to send a copy of this judgment (with the statements and exhibited material produced in the cases of Ms Carrigan and Ms Brown) and a copy of HH Judge Preston's judgment, to the Attorney-General's office, to Greater Manchester Police, to the Charities Commission and to the Solicitors Regulation Authority. It will be for those bodies to decide whether to investigate further.

HH Judge Nicholas Dean Q.C.
Honorary Recorder of Manchester
Crown Court at Manchester
Crown Square.
Manchester M3 3FL

2 November 2021