

Tolstoy wrote that “Happy families are all alike; every unhappy family is unhappy in its own way.” An unfortunate reality is that serious disputes can arise among family members, just as they can among unrelated parties.

Our Family Office team has extensive experience in resolving intra-family disputes, whether through negotiated resolution, mediation or litigation. We can also offer specialist assistance to families or family offices who have been the victims of crime. In this insight, our London-based colleagues Hannah Laming, Ben Ticehurst and Vicky James outline a dispute resolution method available under English law – the private prosecution – that allows private litigants to institute criminal proceedings as an alternative to seeking recourse through the government’s criminal investigative process in appropriate cases.

Introduction

In a damning report published in November 2022, the House of Lords found that “the UK has retreated from the fight against fraud”. While fraud accounts for 41% of crime against individuals and has a significant impact on businesses, the report noted that, currently, only 1% of law enforcement is focused on financial crime, and that policing is ineffective and lacks the digital skills needed to tackle digital crime. These findings will resonate with anyone who has been the victim of financial crime or who has experienced it in their family or business dealings. The steady decline in the state investigation and prosecution of fraud in the UK for more than a decade has been matched by the increased profile of private prosecutions. Private prosecutions provide an alternative route to justice, offering the same deterrent effect and sanctions as public prosecutions.

What Is a Private Prosecution?

A private prosecution is very similar to a state prosecution: criminal proceedings are initiated in the criminal court of England or Wales. For anyone watching the proceedings, there would be no perceptible difference. However, in a private prosecution, the prosecutor is a private citizen or company, rather than the state. The private prosecutor will often be the victim or complainant (but does not have to be) and, generally, the private prosecutor will conduct its own investigation prior to proceedings with the assistance of expert law firms, accountants and forensic IT teams.

What Types of Cases Are Brought as Private Prosecutions?

As a private prosecutor does not have the same powers to compel the provision of information during an investigation as a state prosecutor, private prosecutions are usually only suitable in cases where the prosecutor already has much of the evidence in their possession or can obtain it publicly or from third parties on a voluntary basis. In addition, some types of offences, such as bribery and insider dealing, are effectively reserved for state prosecution. However, a broad range of cases are suitable for private prosecution, including many frauds, cybercrime, theft (including employee or third-party theft of data), IP/trademark breaches, blackmail, harassment and perjury.

Below, we have highlighted two cases that provide good examples of how private prosecutions can offer a compelling alternative remedy in these types of cases.

R v. Somaia

Mr. Mirchandani was a wealthy individual who invested US\$23 million over the course of one year with Mr. Somaia. He believed Mr. Somaia to be an affluent and successful businessman – an image Mr. Somaia encouraged by laying on luxurious all-expenses-paid trips. Mr. Mirchandani provided Mr. Somaia with loans and money he believed would be invested in various businesses. The deals were based on Mr. Somaia’s assurances, “my word is my bond.” Over time, the interest payments dwindled and stopped, and it became apparent that Mr. Somaia had no intention of returning the capital. Mr. Mirchandani made various attempts to pursue Mr. Somaia through civil courts in multiple jurisdictions, but all to no avail. Ultimately, he prosecuted him privately through the English criminal court. Expert investigators and lawyers conducted a thorough investigation and collated the evidence, including liaising with overseas authorities, before instigating proceedings. The case was heard before HHJ Hone QC at the infamous Old Bailey criminal court in London. The jury heard how Mr. Somaia perpetrated a systemic series of frauds to fund his lavish lifestyle. Following the trial, Mr. Somaia was convicted of nine counts of obtaining money transfers by deception amounting to US\$19.3 million. Mr. Somaia was sentenced to eight years imprisonment, and, in January 2016, he was ordered to pay over £18 million to Mr. Mirchandani and an additional £20 million to the state.

Hannah Laming, partner in our Government Investigations & White Collar team, acted for Mr. Mirchandani during the investigation and prosecution.

Supreme

A private prosecution was brought by Supreme, the US clothing and skateboarding lifestyle brand, as part of its fight to prevent the widespread counterfeiting of Supreme clothing in the UK, the EU and China. The subject of the private prosecution was a UK incorporated company, International Brand Firm Ltd, and its two directors (both Italian nationals). The sentencing judge, HHJ Beddoe, said that “over four years, these defendants hijacked every facet of the prosecutor’s corporate identity” and sought “to steal Supreme’s entire brand identity and their marketing techniques.” Neatly illustrating in his comments why the private prosecution was an effective alternative to more traditional civil options for enforcing trademark breaches, HHJ Beddoe said the defendants “exploited weaknesses in trademark protection in Italy. Like ticks, they jumped from one company and jurisdiction to another, and carried on regardless, all through the façade created by International Brand Firm Ltd in the UK.” The UK company was fined £7.5 million and the two Italian nationals (who were tried in their absence) received eight-year and three-year sentences, respectively.

Ben Ticehurst, director in our Government Investigations & White Collar team, acted for Supreme in these proceedings.

Who Can Bring a Private Prosecution?

Private prosecutions can be brought by individuals or entities. Criminal cases are different from civil cases because there is often no limitation period and there is generally a wider scope to bring cases in England and Wales. For dishonesty offences such as fraud, jurisdiction can be established, provided at least one element of the offence occurred in England and Wales. This can include, for example, communications taking place in the UK and Wales, payments being made to or from the jurisdiction, or an impact on victims in England and Wales. If you, your family or your business has been a victim of crime, a private prosecution may be available to you, even if you are not based in the UK.

Important Points to Remember If You Are Thinking of Bringing a Private Prosecution

Criminal proceedings must only be initiated where there is sufficient evidence for a reasonable prospect of conviction and where a criminal prosecution is in the public interest. This differentiates criminal proceedings from civil proceedings, where you can initiate proceedings even if you believe the case is unlikely to succeed. There are also more onerous duties on a criminal prosecutor than a civil claimant. For example, a criminal prosecutor has a duty to pursue reasonable lines of inquiry and to proactively disclose material that might undermine their case or assist the defence. If a private prosecution is brought for an improper motive, vexatiously or improperly, or if the duties of the prosecutor are not adhered to, this can result in proceedings being stayed or discontinued and can have adverse costs consequences.

Why Bring a Private Prosecution?

Bringing a private prosecution allows individuals and entities to select an expert team with the specialist skills required to conduct any investigation and proceedings thoroughly and expeditiously. It enables the victim of crime or other interested parties to seek justice without facing the challenges of trying to navigate an under-resourced state agency that may not be able to prioritise the case, bring to bear specialist skillsets required, or deal with matters within a reasonable time frame.

A private prosecution can offer effective alternative legal remedies to civil proceedings, particularly where civil action has been thwarted due to limitation issues, lack of jurisdictional nexus or forum shopping. Where defendants are convicted, the court can award compensation to victims, confiscate any benefit obtained by the defendant as a result of their criminal conduct and make costs awards. In appropriate cases, there is the possibility of recovering some costs from central funds. Private prosecutions are a critical tool in fighting crime and have a strong deterrent effect in cases where there are repeated offences.

We are able to advise on all stages of a private prosecution, from the initial assessment of the case and the investigation, through to prosecution, trial and compensation.

Interested in Finding Out More?

For more information, please contact Hannah Laming or Ben Ticehurst.

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