

## **Recovery of Investigative Expenses by a Private Prosecutor (where proceedings commence on or after 1 September 2016)**

The House of Lords Notes on Clauses make clear that the parliamentary intent behind the wording in s.17 (1) of the Prosecution of Offences Act 1985 was to preclude investigative costs from being claimed from Central Funds. The full text of the Note on Clauses states as follows:

“A private prosecutor will be able to recover any expenses properly incurred by him in the proceedings. This will include legal expenses and any out of pocket expenses (such as travelling expenses) but not any loss of earnings. The private prosecutor will also not be able to recover any investigation expenses, for example the charges made by a private enquiry agent instructed to make enquiries before the commencement of proceedings.”

Consequently any investigative expenses incurred by a private prosecutor prior to the commencement of proceedings may not be included within a claim for costs under s.17 of the Prosecution of Offences Act. Where such costs are included with a claim submitted for determination by the NTT these will be disallowed on assessment.

Where a successful private prosecutor has incurred investigative expenses prior to the commencement of proceedings they may recover these from the defendant under s.18 of the Prosecution of Offences Act 1985 (see *R v Associated Octel Ltd* [1997] 1 Cr.App.R.(S.) 435).

Where investigative expenses have been incurred during the course of proceedings which commenced prior to 1 September 2016, and the prosecutor is able to demonstrate that he or she had a legitimate expectation that these would be allowed on assessment based on the previous NTT practice, the determining officer will be able to exercise discretion to allow reasonable investigative expenses where they are included within a claim for costs from central funds.

However, it remains the NTT's position that such costs ought to be recovered from the defendant under s.18 of the Act in all cases and therefore where proceedings commence prior to 1 September 2016, but conclude after this date we would expect the prosecutor to seek to recover these costs under a s.18 order in the first instance and only claim these costs from Central Funds where the Court declines to make a s.18 order.