

IN THE HIGH COURT OF COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT  
BETWEEN:



CO/2347/2022

THE KING

on the application of

JOINT ENTERPRISE NOT GUILTY BY ASSOCIATION LIMITED ("JENGBA")

Claimant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

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~~[DRAFT]~~ ORDER

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UPON considering the attached Statement of Reasons;

AND UPON the consent of the parties

AND UPON the Defendant agreeing to (i) undertake a pilot scheme in designated Crown Prosecution Service areas to *inter alia* gather and review data regarding relevant protected characteristics of persons prosecuted on a secondary liability basis (see paragraph 3 of the Statement of Reasons); (ii) commence a full national scheme for monitoring these matters thereafter (see paragraph 4 of the Statement of Reasons); and (iii) consult the Claimant and other relevant stakeholders on the scope and design of the final scheme (see paragraph 5 of the Statement of Reasons).

**IT IS ORDERED BY CONSENT THAT:**

1. The claim is withdrawn.
2. The Defendant is to pay the Claimant's reasonable costs of the claim limited to the costs incurred on or before 15 November 2022, such costs to be subject to detailed assessment if not agreed.

Approved by Jessica Pressman

16/02/2023

BY THE COURT

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## STATEMENT OF REASONS

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1. Following an exchange of pre-action correspondence between 18 March 2022 and 26 May 2022, the Claimant issued a claim for judicial review directed to an on-going failure of the Defendant to take steps to collect and/or evaluate data regarding the protected characteristics of persons prosecuted on a secondary liability basis, and in particular a failure to collect and/or evaluate such data in respect of persons prosecuted for serious offences of violence. The failure was challenged on the ground that this breached the requirements of the public sector equality duty in s.149 of the Equality Act 2010 (“PSED”).
2. Following issue of the claim (and subsequent correspondence and a meeting between representatives of the Claimant and the Defendant), whilst the Defendant does not accept that he is required to do so in order to comply with the PSED, the Defendant has agreed to take steps to collect and evaluate data regarding the protected characteristics of persons prosecuted on a secondary liability basis, as summarised below.
3. The Defendant has agreed to establish a pilot scheme to commence in February 2023 in the CPS areas of London North and London South, Mersey-Cheshire, the North-West, the North-East, and Yorkshire and Humberside, pursuant to which:
  - a. Prosecutors will be required to flag homicide prosecutions (including attempted homicide prosecutions) brought on a joint enterprise basis;
  - b. The Defendant will undertake a manual review of flagged cases to identify and analyse *inter alia* (i) whether there is any evidence of disproportionality in prosecutions where one or more defendant is prosecuted on a secondary liability basis, by reference to race, age, sex

and mental impairment (via the CPS 'mental health flag', as outlined in the CPS' *Mental Health Suspects and Defendants Legal Guidance*); and (ii) use of gang narratives, any link to gang offending as defined in the CPS *Decision making in Gang-related offences* guidance and compliance with that guidance;

- c. The Defendant will establish and host a National Scrutiny Panel comprising third sector stakeholders, including the Claimant, to *inter alia* review anonymised completed cases (including cases falling within the *Decision making in Gang-related offences* guidance) with the purpose of answering stakeholder questions and receiving feedback from stakeholders;
  - d. Data from the pilot will be shared with the CPS' Defendants and Inclusion & Community Engagement (DICE) Board for review and oversight;
  - e. Prior to commencement of the pilot, the Chief Crown Prosecutor of each pilot area will write to the Chief Constable of the relevant police force to inform them of the pilot and to remind them of the importance of providing complete and accurate data regarding the relevant protected characteristics of defendants;
  - f. By the end of September 2023, a review of six months of pilot data will be completed and the Defendant will publish his findings regarding the data and implications for the scope and design of a full national scheme.
4. The Defendant has agreed, following the pilot, to commence a full national scheme comprising a mandatory Joint Enterprise Monitoring Code 'flag' on the CPS Case Management System, which will apply to all CPS areas. It is intended that the full national scheme will come into operation in February 2024. The precise scope and design of the full national scheme is yet to be determined by the Defendant, but it will be no less extensive in data gathering than the pilot scheme. The Defendant will publish data gathered at least annually and review

the data periodically. The flagging as set out at 3(a) will continue in operation until the full national scheme comes into operation

5. The Defendant has agreed to consult the Claimant and other relevant stakeholders on the proposed scope and design of the final scheme (following publication of the review undertaken under the pilot scheme).
6. The Defendant has committed to giving consideration to extending data gathering and evaluation in the full national scheme beyond homicide offences to other offences of serious violence, and to write to the Claimant communicating his decision and the reasons for it.

*For the Treasury Solicitor*



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Solicitor for the Defendant

Solicitor for the Claimant

Approved by Jessica Pressman, Administrative Court  
Office Lawyer (in exercise of powers delegated by the  
President of the King's Bench Division pursuant to CPR  
Part 54.1A) 16/02/2023