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SUBMISSION BY THE NATIONAL SECULAR SOCIETY TO

THE HOUSE OF COMMONS JUSTICE SELECT COMMITTEE'S

INQUIRY INTO THE CROWN PROSECUTION SERVICE

20 MAY 2008

The attention of the Committee's members is respectfully drawn to both sections of this Submission:

Section 1 deals with the work of the Crown Prosecution Service in general, and

Section 2 deals with the very serious implications of the Service's role in relation to the Channel 4 *Dispatches* programme "Undercover Mosque" broadcast in January 2007.

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This Submission is a response to the call for evidence into the work of the Crown Prosecution Service (CPS) as set out in Press notice No. 23 of Session 2007-08 dated 3 April 2008, currently on the Committee's webpage on http://www.parliament.uk/parliamentary_committees/justice/jsc030408pn23.cfm.

The National Secular Society (NSS) thanks the Justice Committee for the welcome opportunity to make a Submission.

- 1) **Section 1** of our Submission deals with the work of the CPS in general and **Section 2** deals with the very serious implications of the CPS's role in relation to the Channel 4 *Dispatches* programme "Undercover Mosque" broadcast in January 2007. The CPS's apology is on http://www.cps.gov.uk/news/pressreleases/channel_4.html and repeated in the Appendix, together with the Press Release apologised for. Recommendations are shown in **bold**.
- 2) The NSS is a human rights-focussed organisation campaigning for equality for all, regardless of religion or belief (which, as the Committee will know, in legal terms, includes lack of belief). This involves seeking to ensure that no single religious group or individual belonging to a particular religious group is privileged above citizens of other religions or none, or that religious groups are not privileged above the non religious.

SECTION 1

MATTERS RELATING TO THE WORK OF THE CPS IN GENERAL

3) Even-handedness and Equality

The NSS believes that this equality for all is of particular importance in the field of Justice and that all individuals, regardless of their religious affiliation or non-affiliation are afforded the same rights and protections. We also see equality for all under some threat in the field of Justice as a seemingly growing deference on the part of the CPS to religious perspectives can or could lead to these religious perspectives, sensitivities or attitudes being given quasi-legal status or even a parallel religious justice system.

- 4) This consultation provides a particularly welcome and timely opportunity to reflect the views of the Society's members and supporters, as well as some of the wider public who, unlike those represented by religious leaders, often do not have the opportunity to have their views heard.
- 5) To the extent that the Justice System goes - or were to go - beyond the law in giving special weight to the perspectives, sensitivities or attitudes of any group or groups (for example religious groups), it risks (or would risk) - regardless of however well-meaning its motives - unwittingly discriminating against others. Were this to happen in a sustained way and taken to the extreme, it could alienate those being discriminated against. Such discrimination can occur actively or passively, as described below.

6) Especial care needed for the vulnerable and marginalised

We are concerned that many institutional practices are based on consultations with representatives of so-called 'faith communities'. While this is often done on the basis of being *inclusive*, ironically in practice this is very *excluding* or *exclusionary*. It ignores and therefore marginalizes the voices of those people who keep their faith in the private realm or who are of no faith at all. At the greatest disadvantage are those who have left a 'faith community', sometimes because of victimization and discrimination within that community. The CPS, in particular, must not ignore these latter voices.

- 7) Non-believers have no pre-existing organized ‘community’ and therefore do not have the same strength of voice of those who form part of a religious community. They can be adversely affected by demands made by religious groups, for example for special treatment, or for others to behave in ways that they believe to be appropriate or acceptable. We are concerned that non-believers should be treated fairly and equitably in the development of policy and in practice by public bodies such as the CPS despite this inbuilt disadvantage. Non-believers are also at risk of harassment, victimization or discrimination on the basis of their lack of belief as people with religion. Indeed, those who have left a religion are a very high-risk group.
- 8) **We recommend that the CPS guards against assuming that faith leaders – nearly always older men - are necessarily representative of all those in their groups, and takes special steps to seek out the views of:**
 - a) **those people who keep their faith in the private realm or who are of no faith at all, especially those who have left a ‘faith community’**
 - b) **those within faith communities that are vulnerable, such as women who may be susceptible to forced marriage, female genital mutilation, honour killings, or have their freedom of movement or association restricted**
 - c) **homosexuals**
 - d) **young people**
- 9) **Consultation**

The need to consider society as a whole also applies to CPS documents and policies. We quote from the CPS website section on Racist and religious crime – CPS prosecution policy¹: “we have consulted with people from Black and minority ethnic communities and faith communities and we have taken their comments into account when writing this document. Their contributions have helped us to have a better understanding of the things that are important to them and that we need to know about when we deal with racist and religious crime.” We support the need to consult vulnerable groups, but a balance must be struck by other representative groups being consulted too.

¹ <http://www.cps.gov.uk/publications/prosecution/rrpocrbook.html>

- 10) We recommend that the CPS undertakes a formal audit of who is affected by their policies and operations, not forgetting that Human Rights including Freedom of Expression should be also regarded as stakeholders. As well as Black and minority ethnic communities and faith communities, other groups reflecting wider society are also consulted and have their views taken into account, , and are acknowledged publicly. We suggest, for example, Liberty, Justice, the Council of Ex-Muslims, and the National Secular Society. We made a similar representation in a meeting with the Director of Public Prosecutions in 2004.
- 11) **Subjectivity**
Those in some religious groups, especially in religions and denominations where religion is held to be important to group identity, tend to perceive insult and offence much more strongly than others. It is a subjective matter which the CPS must attempt to codify into as an objective test as is possible under the law.
We invite the Committee to consider recommending the establishment of clearer guidance for the CPS so that those who are accused of causing some offence are not dealt with more harshly (and therefore unjustly) simply because the complainant may have taken more offence than the average reasonable person. One of the causes for the Channel 4 debacle referred to below appears to have arisen from ambiguous or inadequate guidance or interpreting the current guidance over-zealously.
- 12) **Freedom of Expression – General Principles:**
Race and religion need to be treated differently

The NSS of course supports the law, which protects *people* from incitement to hatred and discrimination on the grounds of their religion or belief, but we emphasise *people*, rather than *belief*. The belief itself, rather than the people who hold it, is sometimes erroneously thought to be legally protected.

- 13) We welcome the clear differentiations on the racial and religious hatred sections of the CPS website between race and religion and about the importance of freedom of expression, but did not believe the differentiations were given sufficient attention in respect of other types of what is described in the CPS website as “religious crime”. It is essential that these distinctions are followed through in practice and training, but we do not have any way of verifying the extent to which this occurs.
- 14) **We recommend that greater emphasis be given to:**
 - a) **the differentiation between offences aggravated by race and religion, and**
 - b) **the importance of making due allowance for freedom of expression in respect of all religious offences, which will be a greater allowance than in cases concerning race.**
- 15) Where religious affiliation and racial or ethnic identity are conflated, this opens up a danger that criticism of religion or religious practices and attitudes (practices and attitudes which are often themselves discriminatory and hateful, and thus rightly criticised) might inappropriately result in prosecutions.
- 16) **We recommend that wherever appropriate in CPS practice, training and publications:**
 - a) **A clearer differentiation is made between offences concerned with race and those with religion,**
 - b) **It is clearly stated that religious *beliefs* are not protected by law, and**
 - c) **More emphasis is given to the need to protect freedom of expression (subject to – in the words of the CPS website – “the duty of the state to act proportionately in the interests of public safety, to prevent disorder and crime, and to protect the rights of others”).**
- 17) **We recommend the appointment of a designated official to advocate for freedom of expression responsible direct to the Minister of Justice and to produce an annual report on successes, failures and concerns. We would have made this proposal even before the debacle over Channel 4 and the *Undercover Mosques* programme, which now makes such an appointment essential.**

18) **Freedom of Expression – Blasphemy and implications arising from its demise**

We note that the references to blasphemy on the CPS website were last updated in 2005² and as of the date of this Submission do not reflect the abolition of the offence in May 2008. **We recommend that the CPS website is updated to reflect the abolition of the blasphemy law.**

19) NSS stresses that even before the demise of the blasphemy law, the primary emphasis of what is described in the CPS website as “religious crime” is in place to protect the believer, not the belief. Now that blasphemy has been abolished this is unarguable. **We recommend that CPS practice, training and publications make explicitly clear that “religious crime” is in place to protect the believer, not the belief.**

This should reassure the public that Freedom of Speech – save for the provisos noted above – is protected in law and that the CPS, as a wing of the criminal justice system, is committed to upholding and defending those rights without fear or favour. Clear guidance in the areas we have recommended will ensure both that the CPS does not exceed its mandate *and* that religious groups are not misled into thinking their faith or belief *itself* is protected by prosecution.

² <http://www.cps.gov.uk/publications/prosecution/rrpbcrbook.html> and <http://www.cps.gov.uk/publications/prosecution/rrpbcrpol.html#06>

SECTION 2

CHANNEL 4 UNDERCOVER MOSQUE PROGRAMME –

POLICE AND CPS ACTIONS COMBINED TO UNDERMINE THE JUSTICE SYSTEM

- 20) Perhaps the most disturbing and serious case in the history of the CPS is the inappropriate involvement of the Crown Prosecution Service in, at the very least, acquiescing to a West Midlands Police referral to OFCOM of a television documentary '*Dispatches: Undercover Mosque*' aired by Channel 4 in January 2007. The (very belated) joint apology by the CPS is on http://www.cps.gov.uk/news/pressreleases/channel_4.html. It raises many important questions going to the very heart of the Justice System. **We strongly recommend an *ad hoc* enquiry by the Committee into the Channel 4 *Undercover Mosques* debacle unless, as we would prefer, there is a public enquiry or a Royal Commission.** As we imagine that the background will be well known we will confine ourselves to referring to relevant highlights and giving our detailed concerns and recommendations.
- 21) An independent arbiter, OFCOM, completely rejected every complaint being backed by the CPS³, which it had advocated after acknowledging no (or no prosecutable) breach of the law had taken place. OFCOM had gone further to point out that "There appeared to be evidence that the complaints were part of a campaign." The matter could not have been more high-profile (and therefore potentially hugely damaging) with dozens of articles appearing in the serious press criticising the authorities. (We can provide a list on request. Significantly, we only found one supportive article, and that was self-serving letter from the Police Authority, also available on request.)
- 22) This underlines one of the most shocking aspects of this affair: that it simply cannot be dismissed as a one-off local difficulty that management accidentally overlooked. We observe that the list of those potentially responsible and accountable, whether by commission or omission would appear to extend far wider than those directly involved.

3 http://www.ofcom.org.uk/tv/obb/prog_cb/obb97/ issued 19 November 2007 – item 4

- 23) **We recommend that the broader questions arising from the Channel 4 debacle of accountability, procedures, checks, policy and even culture are thoroughly, independently and openly investigated.** Only when remedial action is seen to have been taken will public trust in the CPS be restored.
- 24) **Given this level of independent scrutiny and rejection by OFCOM (in November 2007) and attendant publicity, we recommend that the Select Committee consider investigating why the joint apology was not issued until six months later, in May 2008. Although the reasons are the principal issue, the prompt withdrawal of the accusations would have spared the public purse the cost of the six-figure compensatory payment and presumably legal costs.**

25) **Press releases, media coverage and freedom of press questions**

To facilitate members of the Committee in considering this matter, the text of the joint CPS and Police Press Releases, both the apology and the Press Release apologised for are included in the Appendix.

- 26) It is surprising that the apology is not displayed where most enquirers would look for it on the COS site, raising questions of openness. The Press release containing the apology was dated 15 May 2008. Yet despite it being the latest press release issued by the CPS (as at the date of this Submission), it did not appear on the prominent CPS webpage described as “Media Centre Find out what is happening in the Crown Prosecution Service (CPS) across the country. Your first port of call for news, information and press releases.”⁴ The Media Centre page did however feature a press release dated 8 October 2007 entitled “CPS praised in Race Report”.
- 27) An article by Nick Cohen in the *Observer* on 18 May 2008 gives a revealing insight into public perceptions about the affair and makes uncomfortable reading
<http://www.guardian.co.uk/commentisfree/2008/may/18/islam.religion>.
- 28) Journalists and commentators have been increasingly intimidated into self-censorship in recent years over minority faith issues and the *Dispatches* debacle can only have intensified this. Quite apart from the important Human Rights implications, such restrictions to freedom of expression are counter-productive. They benefit religious extremists whose hate speech goes unchallenged and right-wing extremists, whose popularity is growing as an impotent reaction to this.

29) **Suggested enquiry and terms of reference**

When taken together, the concerns set out above make a powerful case for an enquiry as described above, and with terms of reference as suggested below.

Clearly, similar questions also apply to the Police and Police Authority, but are not included here as they do not form part of the Committee's current remit:

- a) What motivated the CPS to act in the way they did?
- b) Did any senior official regionally or centrally query the way the case was being handled or give instructions about it? If so, who and in what terms? How was any query or instruction reacted to? Bearing in mind the exceptionally high profile of the case, should further enquiries or more specific instructions have been made and if so what instructions/enquiries and by whom?
- c) Has there been an independent review to check that the film (including unscreened footage) does not contain *prima facie* evidence of offences that have not been followed up? If not, why not and could there be a further independent review of this?
- d) To what extent was the need to protect freedom of expression considered, by whom, in what terms and who (if anyone) concluded it had been adequately safeguarded?
- e) Is there any evidence (we are not asserting that there is) of:
 - (i) pressure from minority communities on the CPS at any level (or on the West Midlands Police or its Authority) that could have led to the circumstances leading to the joint Police/CPS apology, or
 - (ii) a corporate culture in the CPS that seeks to apply a non even-handed approach (i.e. a more lenient one) to minority communities? If so, could this have implications for the level of prosecutions over so-called "honour killings", female genital mutilation, and forced marriages?
- f) Is there any evidence that a misguided interpretation of community cohesion has taken priority over fundamental justice issues?
- g) Was Police / CPS independence compromised, and if so why and how?
- h) Did the CPS act properly, both in its internal operations and in the external statement(s) it made?

4 <http://www.cps.gov.uk/news/index.html> accessed 20 May 2008.

- i) Have there been/will there be an appropriate review of individuals' conduct in the CPS and of their corporate culture to prevent a recurrence?
 - j) Has any disciplinary action been taken in respect of the apology and matters leading up to it, and is any appropriate?
 - k) Is there any evidence of similar problems:
 - (i) elsewhere in the region, or
 - (ii) elsewhere in the CPS?
 - l) Could / should CPS action be opened up to public interest complaints by groups, on a limited basis, perhaps with the permission of a senior law officer independent of the CPS?
 - m) What is to be learned from this damaging episode and what steps are necessary at every level and every aspect to prevent a recurrence?
 - n) If the lessons and steps arising from asking the questions set out in m) above suggest further enquiries or action are necessary outside the remit of the CPS, these should be stated.
- 30) The Society places on record its willingness to provide any further information sought by the Committee and would welcome an opportunity to give further evidence in person or writing.

APPENDIX

Text of the joint CPS and Police Press Releases:
the Press Release apologised for, followed by the apology.

NB These are provided solely to facilitate members of the Committee in considering this matter. We of course do not associate ourselves with content of the first press release, for which the Police and CPS have apologised in the subsequent joint press release.

Joint statement regarding Channel 4 Dispatches programme - 8 August 2007

West Midlands Police have completed their investigation into the Channel 4 Dispatches programme 'Undercover Mosque' broadcast in January 2007.

The police investigation initially looked at whether there had been any criminal offences committed by those featured in the programme and following careful consideration by the Crown Prosecution Service (CPS), West Midlands Police have been advised that there is insufficient evidence to bring charges against those individuals featured within the programme.

West Midlands Police acknowledge the concerns that some parts of the programme may have been considered offensive, however when analysed in their full context there was not enough evidence to bring criminal charges against any individual.

ACC Anil Patani for West Midlands Police said: "As a result of our initial findings, the investigation was then extended to include issues relating to the editing and portrayal of the documentary.

"The priority for West Midlands Police has been to investigate the documentary and it's making with as much rigour as the extremism the programme sought to portray".

The police investigation concentrated on three speakers and their comments in the programme. CPS reviewing lawyer Bethan David considered 56 hours of media footage of which only a small part was used in the programme.

She said: "The splicing together of extracts from longer speeches appears to have completely distorted what the speakers were saying.

"The CPS has demonstrated that it will not hesitate to prosecute those responsible for criminal incitement. But in this case we have been dealing with a heavily edited television programme, apparently taking out of context aspects of speeches, which, in their totality, could never provide a realistic prospect of any convictions".

The CPS was also asked by the police to consider whether a prosecution under the Public Order Act 1986 should be brought against Channel 4 for broadcasting a programme including material likely to stir up racial hatred. Miss David advised West Midlands Police that on the evidence available, there was insufficient evidence that racial hatred had been stirred up as a direct consequence of the programme. It would also be necessary to identify a key individual responsible for doing this together with an intent to stir up racial hatred, which was not possible.

West Midlands Police has taken account of this advice and explored options available to them and has now referred the matter to the broadcasting regulators Ofcom as a formal complaint.

West Midlands Police has also informed Channel 4 of this course of action.

Channel 4 Undercover Mosque – an apology

15 May 2008

On 8 August 2007 we published jointly with the West Midlands Police a press release relating to the Channel Four *Dispatches* programme "Undercover Mosque". This press release alleged that footage of the speakers shown in the programme had been so "heavily edited" and taken out of context that it had "completely distorted" their meaning. Reference was made to the CPS having been asked to consider (although advising against) instituting proceedings against those involved in making the programme for inciting racial hatred.

Following an independent investigation by the broadcasting regulator, Ofcom, we now accept that we were wrong to make these allegations. We now accept that there was no evidence that the broadcaster or programme makers had misled the audience or that the programme was likely to encourage or incite criminal activity. A review of the evidence (including untransmitted footage and scripts) by Ofcom demonstrated that the programme had accurately represented the material it had gathered and dealt with the subject matter responsibly and in context.

We accept, without reservation, the conclusions of Ofcom and apologise to the programme makers for the damage and distress caused by our original press release.