Letter for the personal and urgent attention of Sir Keir Starmer QC

From: Julian Brennan

To: k.starmer@doughtystreet.co.uk

Cc: david_evans@labour.org.uk

Date: Wednesday, 1 December 2021, 21:00 GMT

Please see the attached letter with appendices (total 5pp).

It requires urgent action.

J. F. Brennan

Letter of 1 December 2021 to Sir Keir Starmer (with Appendices).pdf
1.2MB

Julian Brennan
3 Byland Road, Skelton TS12 2NJ

1 December 2021

The Rt Hon Sir Keir Starmer KCB QC MP
c/o Doughty Street Chambers
53-54 Doughty Street
London WC1N 2LS

via **k.starmer@doughtystreet.co.uk**

Dear Sir Keir

I have written to you on various occasions regarding certain acts and failures to act when you were Director of Public Prosecutions and responsible for the Crown Prosecution Service. Not once have you shown me the courtesy of replying. I am still waiting for you to provide me with an appropriate e-mail address which I can use to send you pdf files of legal documents that contain sensitive material. My need for an e-mail address is due to my disability. I have assured you that the address would be treated as confidential. There is no good reason why you cannot respond positively. It appears that you are seeking to avoid accountability.

You are aware that I am disabled within the meaning of section 6 of the Equality Act 2010 (first determined medically and Judicially under the Disability Discrimination Act 1995) and that section 28(1) of the Limitation Act 1980 applies to the causes of action I am able to issue in respect of Misfeasance in Public Office. You are also aware that in relation to this matter my Convention rights coming within the scope of Article 10 (receiving and imparting information) have been "engaged" at all material times, and that Article 14 (the enjoyment of rights without discrimination) has applied and applies in relation to Article 10.

You are aware also that you are responsible personally for a related non-disclosure of a relevant interest, and that recently when you used your former position as DPP to support the "positioning" of yourself as the next Prime Minister of the UK you wilfully misled many others. That happened on 29 September this year when you were acting in the position of Labour Party Leader (Appendix A). However, due to the fact that the Code of Conduct for Members of Parliament applies to "*all aspects*" of an MP's public life, what you said had the effect of "reviving" a previous misleading statement on the same issue which you made in Parliament in 2015.

The issue you must address now is your non-compliance with an obligation to Parliament and your subsequent failure to correct the important omission. I refer you to the Westminster Hall debate on The Crown Prosecution Service held on Tuesday 23 June 2015, and refer you to *Hansard* HC Deb 23 June 2015 c225WH (Appendix B). At the beginning of your contribution to that debate you declared your interest as a former DPP, and did so quite properly. However, what you said later [recorded at Col. 225WH] required a further – and more specific – declaration of interest, which you did <u>not</u> make.

What you stated at that point in the debate was <u>not</u> true. Further, it had the effect (whether unintended or not) of gaining from the Solicitor General an endorsement of an unethical and unlawful decision taken by a Crown Prosecutor when you were DPP. That decision was to proceed with a prosecution in the Crown Court, and to put the case to a Jury, when it was known <u>*before*</u> trial that: (a) the principal prosecution witness intended to perjure herself (and did so), and (b) the CPS and the Police had wilfully not disclosed an essential document of

evidence that not only would have assisted the defence but also would have undermined the credibility of the witness in question, and allowed for the inclusion of rebuttal evidence that would have proved the perjury. The Crown Prosecutor was under an obligation to act in the interests of justice, but did not do so. Instead, the CPS acted improperly with the definite intention of obtaining a wrongful conviction; doing so in breach of Articles 6, 8 & 10 and Article 1 of the First Protocol. There was an abuse of process and an affront to justice. Issues of criminal law arise regarding the application of section 7 of the Perjury Act 1911 in relation to the witness's offence under S. 1 (Appendix C). The Officer in the Case, who also acted knowingly, has been reported for the Common Law offence of Misconduct in Public Office.

In all the circumstances a very significant problem now exists for you personally, and you will no doubt wish to act without delay so as to avoid possible damage to your reputation. On the assumption that you inadvertently failed to make a necessary declaration your repeated positive references to what you did when head of the CPS – including one made during PMQs on 17 November during an exchange with the Prime Minister over Standards in Public Life – leave you vulnerable to accusations of dishonesty. I suggest that you must correct the public record in order to avoid your possible dishonesty being realised as fact.

In encouraging you to do so, I warn you that you should not use the cover of Parliamentary Privilege to say or do anything that could harm my reputation or standing. You may be protected from a Claim for Defamation or Malicious Falsehood, but you are not immune from factually correct statements being made publicly about the CPS under your leadership and it acting – possibly with your knowledge – in a way that pursued an innocent individual wrongly, and in abuse of process, with the intention of securing a conviction for a serious offence he did not commit, doing so: on the basis of perjured evidence made maliciously in furtherance of fraud; in the full knowledge that a conviction would in all probability lead to a significant term of imprisonment; and when the accused had actually been the victim of a lengthy and sustained assault resulting in actual or grievous bodily harm committed against him as a Vulnerable Adult by his Designated Carer who had a legal duty of care.

I encourage you now to re-read the above paragraph so the provable facts finally "sink in" and so you take account of the very serious effects of your continuing failures to disclose information and to correct misleading statements you have made. You will understand that, to my ears, your statement about "Justice" in your speech of 29 September sounded a complete sham.

With the above as context, perhaps others will see a possible reason for you over-shadowing Angela Rayner's launch of "***Labour's plans to clean up politics***" on Monday in a major speech to the Institute of Government. Your very odd and seemingly "inexplicable" decision to hold a major reshuffle of the Shadow Cabinet to coincide with that launch, and for the knowledge of it to be briefed to the press and media in advance, might be seen as intentional in order to downplay the importance of the issue and to diminish how your own conduct might be viewed at a later date. Swift action by you now to remedy your various failures to disclose information will, I imagine, allay suspicions about how you operate and could defeat opinions about you being hypocritical, dishonest and untrustworthy. It is for you to act.

Yours sincerely

Julian Brennan

cc: Mr David Evans, General Secretary of the Labour Party (*via* **david_evans@labour.org.uk**)

The Solicitor General: I am sorry to disagree with the hon. Gentleman, but therein lies the problem. If we as politicians and commentators start making such value judgments, we undermine confidence in the independence of the prosecutorial system. We must trust an impartial and objective application of the threshold test. Any questioning of that causes me and many others great concern about the integrity of our prosecutorial system.

Keir Starmer: Does the Solicitor General agree that, when a case is charged and the judge decides that there is a case to answer, that case is properly brought, even if there is an acquittal? It is important to our criminal justice system that we adhere to that. The mere fact that a case, high-profile or otherwise, does not end in a conviction is not a test of whether the charging decision was right or wrong. A better test is whether the judge left it to the jury. If that is so, it normally means that the case should have been brought.

The Solicitor General: I am grateful to the hon. and learned Gentleman. He presages the point that I was going to make about sufficiency, and about the checks and balances throughout the court process. Arguments can be made about the sufficiency of the evidence at the beginning of a case, at the end of the prosecution case, and, indeed, in some rare circumstances whereby judges withdraw cases from juries—it does not often happen—at the end of defence cases, but the power remains.

In making such criticisms, we are also in danger of calling into question the jury process and indeed the whole system, which is so integral to the rule of law in this country. I was asked—rhetorically, perhaps, but I will give an answer—what strategy this Government have. It is a criminal justice system that upholds the rule of law, enhances public confidence in the system and ensures that there is a consistent approach to bringing cases and sentencing, so that the public feel confident and are protected by due process within the system. That is nothing new—it has been with us for generations—but this Government believe in it as passionately as previous Governments, of whatever colour.

I want to deal with each contribution in turn, but particularly with the opening speech by the hon. Member for Erith and Thamesmead and her experience of giving evidence in a trial. It does not sound to me as though best practice was followed in her case. I am glad she has brought it to the attention of the House, because those with responsibility for the administration of justice, not only in the magistrates court in Bexley but elsewhere, will do well to remember that the housing of witnesses for the prosecution with either defendants or their families is wholly inappropriate and leads to all sorts of complications that I need not recite here.

[Nadine Dorries *in the Chair*]

The hon. Member for Erith and Thamesmead asked specific questions about witness care officers. I accept that the numbers have been reduced in line with other staff reductions, but, importantly, those reductions have been accompanied by reforms to better target our limited resources to help witnesses who are intimidated or vulnerable, and those who are in greatest need. Even more is being done with regard to the change of culture to which my hon. Friend the Member for Cheltenham referred. For example, the Government are now improving access to information for victims through the new online and telephone-based victim information service that was launched in March. The increasing commissioning of victims' services through local police and crime commissioners will create a more responsive service—a more localised service—that I do not believe will create a postcode lottery, but will emphasise best practice from which other areas can learn. Although I accept there have been reductions in expenditure, the change in culture that everybody in the system—counsel, solicitors, and lawyers in their role in explaining matters and reassuring and supporting witnesses and victims—has experienced continues to grow.

Alex Chalk: On precisely that point, if counsel apply the victims' charter and explain the situation to witnesses and victims as they come to court, it can have an extraordinary impact on how they end up viewing the criminal justice system, and it does not cost a penny.

The Solicitor General: Very much so. A lot of us who pioneered such work in the '90s now find that a lot of what we said and believed then is becoming standard practice, and that is absolutely right. We have heard reference to the victims' right to review, and, as was made clear in an intervention on the hon. Member for Rochdale (Simon Danczuk), there is an ongoing process in relation to a particular case that means that it would be inappropriate for me to comment on it. However, I hear what the hon. Gentleman says, and I will come back to his point about historical child sexual exploitation in a moment.

Importantly, the new victims' right to review scheme that was established last year gives victims a further opportunity to ask the Crown Prosecution Service, with the help of independent advice, to consider again the merits of particular decisions. So far, between June 2013 and the end of September last year, 263 decisions have been overturned by the new system. It is a small proportion of the number of Crown Prosecution decisions that are made, but it is an extra safety valve that goes a long way, as I said in relation to our strategy, to enhance public confidence in the criminal justice system.

I have referred en passant to the hon. Member for Rochdale, who talked with his usual power about child sexual exploitation. It is a national emergency. I entirely agree with him, and so do the Government. The way in which complainants were dealt with historically in towns such as Rotherham and the town that he represents was wrong. There was far too much emphasis on the reliability of the individual witness, who was often very young and vulnerable, rather than an overall view of the merits of the case. That is rightly acknowledged to have been an incorrect approach. The thrust of the work being carried out by the Crown Prosecution Service now very much reflects the fact that lessons have been learnt, and there are a number of marked successes when it comes to convictions in such cases. A number of so-called celebrities have rightly been brought to justice, and young victims in larger conspiracy-based cases involving many young and vulnerable complainants have now had their voices heard, as the hon. Gentleman says, and can now see that some justice has been brought in order to help them get on with lives that have been torn asunder by the abuse that they suffered.

The hon. Member for Torfaen rightly talked about pressure and efficiency and how decisions are to be made where there is a reduction in the number of

So, you see, family life taught me about the dignity of work and the nobility of care.

But, even with a name like Keir, I was never one of those people reared for politics. I became the first person in my family to go to university, the first to go into the law.

Every day as a lawyer, if you are a young radical as I was, you think of yourself as working for justice.

You see people getting a raw deal and you want to help.

Justice, for me, wasn't a complicated idea. Justice, to me, was a practical achievement. It was about seeing a wrong and putting it right.

That is my approach in politics too. Down to earth. Working out what's wrong. Fixing it.

I had the great honour of becoming this country's chief prosecutor, leading a large organisation; the Crown Prosecution Service.

Three very important words.

Crown brings home the responsibility of leading part of the nation's legal system. Prosecution tells you that crime hurts and victims need justice to be done. Service is a reminder that the job is bigger than your own career advancement.

I will always remember the day that John and Penny Clough contacted my office. Their daughter Jane was a nurse who had been the victim of terrible domestic abuse. After repeated assaults, Jane had summoned the great courage to report her partner. He was arrested and remanded in custody.

7 Aiders, abettors, suborners, &c.

(1) Every person who aids, abets, counsels, procures, or suborns another person to commit an offence against this Act shall be liable to be proceeded against, indicted, tried and punished as if he were a principal offender.

(2) Every person who incites . . . F1 another person to commit an offence against this Act shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to imprisonment, or to a fine, or to both such imprisonment and fine.

Textual Amendments

F1 Words repealed by Criminal Attempts Act 1981 (c. 47), **Sch. Pt. I**