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### **Costs of FB's prosecution of Peter Hain for criminal conspiracy**

English law takes the view that the private prosecutor stands in no different position regarding costs than the public prosecutor; indeed, except for the statutory provisions relating to the office of Director of Public Prosecutions, the law does not distinguish between them. This is right, because the prosecutor (whoever he may be) acts in the Queen's name and merely sets in motion the machinery of criminal justice, with all its built-in safeguards for the accused. It follows that the right to costs is, and should be, independent of the outcome of the case. If it were not so, prosecutors would be tempted to press for a conviction and a trial would turn into a lottery. It also follows, and should continue to do so, that considerations of whether the prosecution was in the public interest are not permitted to affect the question of costs. If a magistrate has thought it right to issue process, and if examining justices have found that there is a case to answer and committed the accused for trial, the prosecutor is not, and should not be, at risk over costs provided he does not misconduct himself. If a prosecutor had to speculate on whether, at the end of the day, the court would share his view that the public interest required the accused to be prosecuted, he would never dare start his action - unless perhaps he were wealthy enough to regard with indifference the prospect of meeting a heavy financial burden. It cannot be right to make the bringing of private prosecutions a preserve only of the rich.<sup>1</sup>

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<sup>1</sup> *The Times*, 8 September 1972.