Justice Committee

Select Committee Announcement

EMBARGOED: 00.01am, Wednesday 17 December 2014

NEW REPORT: JOINT ENTERPRISE: FOLLOW-UP

Justice Committee calls for urgent review of law of joint enterprise in murder cases

The Law Commission should review the common-law doctrine of joint enterprise in murder cases as a matter of urgency, says the Justice Committee in a follow-up report published today.

After examining developments in the three years since publication of its previous report on joint enterprise, including new information on numbers of prosecutions, convictions and appeals in joint enterprise cases and on the ethnic breakdown of those convicted under the doctrine, the Committee says the Law Commission should be asked to consider in particular the mental element or mens rea threshold for establishing the culpability of secondary participants in joint enterprise cases. The Committee also says that the Law Commission should consider the proposition that it should not be possible to charge with murder, but only with manslaughter or a lesser offence, secondary participants in joint enterprise cases who did not encourage or assist the perpetration of the murder.

The Committee Chair, Rt Hon Sir Alan Beith MP, said:

“There are clearly cases in which joint enterprise is necessary to ensure that guilty people are convicted. But the Committee’s disquiet at the actual functioning of the law of joint enterprise has grown since we inquired into the subject in 2011. We are particularly concerned about joint enterprise in murder cases. The mandatory life sentence for murder means that an individual can be convicted and given a life sentence without the prosecution having to demonstrate that they had any intention of murder or serious bodily harm being committed, and where their involvement in a murder committed by someone else was minor and peripheral. In murder cases judicial sentencing discretion is strictly limited by statute”.

When the Committee reported previously on the subject, it recommended that the Crown Prosecution Service produce guidance to prosecutors on joint enterprise charging decisions, which the CPS did in December 2012. In this report the Committee considers the impact of that guidance. It also considers statistics compiled by the CPS for 2012 and 2013 on murder and manslaughter cases with two or more defendants, as well as information on the use of joint enterprise assembled by academics, journalists and campaigners.
The Committee concludes that the guidance for prosecutors contains a comprehensive and detailed account of the law as it stands, but when it comes to assessing the impact of the guidance the Committee says that the available information enables only the most tentative conclusions to be drawn about whether prosecutors are avoiding overcharging. The Committee recommends the introduction of arrangements to provide much fuller information about the use of the doctrine in the future.

Sir Alan Beith said:

“Given the degree of concern which exists about the operation of joint enterprise, we say it is not acceptable for the main authorities in the criminal justice system to give such limited attention and priority to the recording and collation of fundamental information about the use of the doctrine. We also call for research to provide information covering the last five years, and for the CPS to monitor and analyse the way prosecutors are following the guidance in cases where the joint enterprise doctrine is used.”

Preliminary findings from Cambridge Institute of Criminology research provided to the Committee show that the proportion of Black and mixed race young men serving very long sentences for joint enterprise offences is much higher than their representation in the general population or the overall prison population. Some witnesses to the inquiry used the metaphor of a ‘dragnet’ to describe the operation of joint enterprise, claiming that it was hoovering up young people from ethnic minority communities who have peripheral, minor or in some cases even non-existent involvement in serious criminal acts, along with the principal perpetrators of those acts, and imposing draconian penalties on them.

Sir Alan Beith added:

“Joint enterprise remains a highly controversial subject amongst lawyers, academics and others. We heard from campaigners who believe that it has resulted in widespread miscarriages of justice. At the same time review of the law will have to be handled carefully so as not to cause distress to victims and their families.

It is noticeable that Black and mixed race young men are disproportionately represented among those convicted under joint enterprise. Some have argued that the doctrine has an important effect in deterring young people from getting involved in criminal gang activities, but others are sceptical about this. We say in our report that there is a real danger in justifying the joint enterprise doctrine on the basis that it sends a signal or delivers a wider social message, rather than on the basis that it is necessary to ensure people are found guilty of offences in accordance with the law as it stands.”

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Editors Notes

The subject of the report: The doctrine of joint enterprise dealt with in the report does not cover cases where more than one person jointly commit a crime; nor does it cover cases of traditional secondary liability where one person assists or encourages another person to commit a crime. The report concerns cases in which, where two or more people participate in a joint venture to commit a crime and one of the participants commits another crime which others involved had foreseen he might commit, those secondary participants may be charged with the second offence. The report focuses particularly on murder cases, where the mandatory life sentence removes much judicial discretion to give proportionate sentences to secondary participants. The threshold of foresight for establishing the mental fault of secondary participants in such cases is sometimes known as the Chan Wing-siu principle, after the 1985 case in which it was enunciated.

The Committee’s previous report: In late 2011, the Committee held a short inquiry into the operation within the criminal justice system of the common law doctrine of joint enterprise. That inquiry was prompted by concerns that the complexity and opacity of the doctrine could be the cause of injustice – whether to victims and their families or to defendants. In its report of January 2012, the Committee made three main recommendations:

- Noting the lack of information about the extent of use of joint enterprise, the Committee recommended the collation of data on the number of joint enterprise cases and the number of appeals.

- The Committee recommended that the DPP should issue guidance on the proper threshold at which association potentially becomes evidence of involvement in crime, dealing specifically within the guidance with murder cases

- The Committee recommended that the doctrine should be enshrined in statute, and that the Govt should consult on the legislative proposals on joint enterprise contained in the Law Commission’s 2007 report Participating in Crime

In December 2012, the DPP published guidance for prosecutors on joint enterprise charging decisions. Following an exchange of correspondence with the Committee, the DPP also agreed to collate and provide information on numbers of homicide cases in 2012 and 2013 involving two or more defendants. This information is published on the CPS website and on the Committee’s web pages. In its response to the Committee’s report the Government indicated its preference to await an assessment of the impact of guidance to prosecutors before taking any decisions on consulting on new legislation.

FURTHER INFORMATION:

Committee Membership is as follows:
Rt Hon Sir Alan Beith (Liberal Democrat, Berwick-upon-Tweed) (Chair); Steve Brine (Conservative, Winchester); Rehman Chishti (Conservative, Gillingham and Rainham); Christopher Chope (Conservative, Christchurch); Jeremy Corbyn (Labour, Islington North); John Cryer (Labour, Leyton and Wansted); Nick de Bois (Conservative, Enfield North); John Howell (Conservative, Henley) Rt Hon Elfyn Llwyd (Plaid Cymru, Dwyfor Meirionnydd); Andy McDonald (Labour, Middlesbrough); John McDonnell (Labour, Hayes and Harlington); Yasmin Qureshi (Labour, Bolton South East).

Specific Committee Information: justicecom@parliament.uk/ 020 7219 8196/8198

Media Information: Liz Parratt ParrattL@parliament.uk/ 020 7219 1708

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