



House of Commons
Justice Committee

**Joint enterprise:
follow-up: Government
Response to the
Committee's Fourth
Report of Session
2014–15**

Second Special Report of Session 2014–15

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Committee reports are published on the Committee's website at <http://www.parliament.uk/justicecttee> and by The Stationery Office by Order of the House. Evidence relating to this report is published on the Committee's website at <http://www.parliament.uk/justicecttee>.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Daniel Whitford (Second Clerk), Gemma Buckland (Senior Committee Specialist), Hannah Stewart (Committee Legal Specialist), Ana Ferreira (Senior Committee Assistant), Ellen Bloss (Committee Support Assistant), Conor Johnson, (Sandwich Student) and Liz Parratt (Media Officer).

Contacts

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Second Special Report

We have received the Government's Response to our Fourth Report of Session 2014–15, *Joint Enterprise: follow-up*. The response came in a letter dated 27 January 2015 to the Chair of the Committee from Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice. We publish Mr Grayling's letter, which we received on 30 January, as an Appendix to this Special Report.

Appendix: Government Response

Letter dated 27 January 2015 from Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice to Rt Hon Sir Alan Beith MP, Chair, Justice Committee.

THE LAW ON JOINT ENTERPRISE

I am writing in response to the report on joint enterprise that you published on 10 December 2014 in which you recommended that:

- *The Ministry of Justice, in co-operation with the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service as necessary, establish a system which records homicide cases brought under the joint enterprise doctrine. Information recorded should enable regular statistics on joint enterprise to be produced which would include: the number of cases in which any joint enterprise prosecutions are brought for murder and manslaughter; the number of defendants in each case charged as primary and secondary participants; the number charged with each offence and with lesser offences; the number of prosecutions which result in convictions for each offence as a primary or secondary offender; the number of appeals brought against conviction and/or sentence and the number of those which are successful; and a breakdown by age, ethnicity and gender of those prosecuted. We also recommend that the Ministry of Justice commission research to produce this information retrospectively from case management files for the last five years, although we recognize that there will be greater cost implications in this course of action.*
- *That the Government should request the Law Commission to undertake an urgent review of the law of joint enterprise in murder cases. This review should consider the appropriateness of the threshold of foresight in the establishment of culpability of secondary participants in joint enterprise cases. It should also consider the proposition that in joint enterprise murder cases it should not be possible to charge with murder secondary participants who did not encourage or assist the perpetration of the murder, who should instead be charged with manslaughter or another lesser offence. The Law Commission should be asked to present proposals for the codification in statute of the law of joint enterprise, together with any proposed changes arising from its review. We consider that the Law Commission should be asked to report on these matters by the end of 2015.*

The Minister of State for Policing, Criminal Justice and Victims, Mike Penning, explained during oral evidence that he would explore the possibility of collecting data in joint enterprise cases relating to homicide on a routine basis. I am grateful to the CPS for the work they did in collating data on homicide prosecutions in 2012 and 2013 involving two or more defendants. In a proportion of those cases, of course, the defendants may have been acting as joint principals so the aspect of the joint enterprise doctrine which is of greatest concern to the Committee, namely the operation of the so-called Chan Wing-siu (or “foresight”) principle, would not have been a relevant factor in the prosecution.

As the Committee identifies, any new system would ideally be capable of discerning which cases relied on the use of the foresight principle. These cases would have to be identified by prosecutors so that officials in Her Majesty’s Courts and Tribunals Service (HMCTS) could record them accurately on the Court Proceedings Database. Some joint enterprise cases involve many defendants, for example the murder of Sofyen Belamouadden in Victoria Station, and it may take several months or even years for all the defendants to be tried and sentenced. This makes data collection and subsequent analysis more difficult and further discussions between my officials and the Crown Prosecution Service are needed before any new system can be put in place. I have asked my officials to progress this work and we will revert to you once those discussions are complete. We cannot, however, commit resources to reviewing historic case files and I am not convinced that such an exercise would have any real practical benefit.

Turning to your recommendation on the law itself, I have carefully considered the evidence that has been submitted to the Committee. It is worth emphasising that the law on joint enterprise only applies when a group of people are already engaged in criminal activity (sometimes very serious criminal activity) and in the course of that activity another offence is committed. The law means that all those who foresaw that the ‘collateral’ offence might be committed in the course of the original criminal activity can be prosecuted for that offence. The law certainly does not criminalise innocent bystanders as has been portrayed in some sections of the media.

I recognise that families of convicted offenders and academics believe that the ‘foresight’ principle is too harsh, particularly where the conviction is for murder and a mandatory life sentence is imposed. However, there are many law-abiding citizens and families of victims who disagree and who may be concerned if the changes suggested by academics meant that certain offenders could no longer be prosecuted for murder.

The question of whether the law should be reviewed and clarified in statute will need to be considered carefully by Ministers in the next Parliament. It would not be appropriate for me to ask the Law Commission to launch a review prior to the General Election, as this would effectively tie incoming Ministers to a particular course of action. The scope of any review and who should lead it are issues that should rightly be left to new Ministers.