

Problems with the current law and how the Law Commission's proposals would deal with them

Conspiracy

D1, an undercover police officer, agrees with D2 and D3, both drug dealers, to deliver a large amount of heroin to X. All three will go to X's home, where D1 will hand over the drugs to X. D1's purpose is to smash the gang that D2 and D3 belong to and bring them and X to justice.

Under the current law, D1, despite his underlying purpose, has committed an offence of conspiracy to supply controlled drugs. Under our proposals, it would be a defence to a charge of conspiracy that in agreeing to commit the offence D was acting reasonably in the circumstances.

V, aged 14, agrees with D, aged 35, that they will have sexual intercourse. V tells her brother who in turn informs their mother. The mother informs the police. As a result, the sexual intercourse does not take place.

If V and D were to have sexual intercourse, V could not be convicted of the offence of sexual activity with a child under 16 because the offence exists in order to protect young girls such as V. However, D would be guilty of the offence. This seems right. However, if sexual intercourse does not take place, neither V nor D can be convicted of conspiracy to commit the offence. This seems right as far as V is concerned. However, we believe that it ought to be possible to convict D of conspiracy and our proposals would ensure that he could be convicted.

Attempt

D plans to rob a post office. He is armed with an imitation firearm and has with him a threatening note for the cashier. He is arrested as he comes within a few yards of the entrance to the post office.

Under the current law, although D has committed a firearm offence, he is not guilty of attempted robbery. Under the Commission's proposals, he could be convicted of an offence of criminal preparation to commit robbery.

P overhears D saying that he is trying to starve his baby to death and has already denied the baby food for three days. P informs the police.

Under the current law, it is unclear whether D can be convicted of attempted murder because the method of trying to kill the baby consists of an omission (omitting to feed the baby) rather than a positive act (administering poison). Our proposals make it clear that D can be convicted of attempted murder.