



The impact of illegal conduct – how much bearing should it have on legal claims?

How should the law respond if a claimant has been involved in some form of illegal conduct? Should this prevent the claimant winning his or her claim? It is difficult to set out hard and fast rules as the illegality defence may be used against claimants in such a wide variety of contexts. The courts have attempted to lay down a series of rules to apply in different circumstances. The result is a body of law which is uncertain and sometimes arbitrary, occasionally producing results which may appear unduly harsh or not harsh enough.

In a consultative report, *The Illegality Defence*, published today, the Law Commission sets out some provisional recommendations for change.

The Commission believes that, in most areas of the law, it is up to the courts to develop clear, fair law, based on a set of policy rationales.

Kenneth Parker QC, the Commissioner leading the project, said:

“The diversity in circumstances where this issue comes into play makes this a very difficult area to navigate. In some cases, the claimant’s offence may be trivial and have nothing to do with the claim. In others it may be very serious indeed and be inextricably linked. In most cases the courts weigh policy arguments to provide a fair result. However, their task is made more difficult by the perceived need to abide by detailed and ostensibly rigid rules.

We believe that judges should base their decisions directly on the policies that underlie the illegality defence and explain their reasoning accordingly. We have made proposals on what those policies should be and welcome views on our suggestions. The most important thing is that the law is fair, should deter illegal conduct and should prevent a claimant from profiting from his or her wrongdoing. An illegality doctrine should maintain public confidence in the integrity of the legal system.”

There is one area in which the Commission does not think that judicial clarification is possible: where a trust has been set up to hide true ownership for criminal purposes. The Commission feels that statutory reform is needed here, and is in the process of preparing a draft Bill which will be presented with the final report later this year.

A summary of the consultative report is attached.

Notes for Editors

1. The Law Commission is a non-political independent body, set up by Parliament in 1965 to keep all the law of England and Wales under review, and to recommend reform where it is needed.
2. For further details on this project visit <http://www.lawcom.gov.uk/illegality.htm>
3. For all press queries please contact:

Correna Callender, Head of Communications	020 3334 0230
Dan Leighton	020 3334 0231
Terry Cronin	020 3334 0255
Email:	communications@lawcommission.gsi.gov.uk