



Tackling criminal conspiracies and attempted crimes

The law must be updated to deal with new challenges posed, for example, by internet paedophiles and organised gangs planning criminal activities who may be operating on a world-wide basis.

The Law Commission, which advises the Government on legal reforms, has recommended a series of changes to improve and clarify the law governing conspiracy and attempts to commit crimes to make it simpler and fairer both for the prosecution and the accused.

A new report, Conspiracy and Attempts (Law Com No 318), contains draft legislation that would:

- Make it possible to bring a charge of conspiracy when conspirators deliberately take a risk that they will engage in criminal activity. Examples might be where they agree to handle large amounts of cash, realising that the cash might be the proceeds of crime. Under the present law, the conspirators cannot be convicted.
- Abolish the outdated rule that prevents married couples from being charged with conspiring to commit a crime.
- Make it possible to bring a charge of conspiracy when conspirators deliberately take a risk that they will engage in criminal activity. Examples might be where they agree to handle large amounts of cash, realising that the cash might be the proceeds of crime. Under the present law, the conspirators cannot be convicted.
- Introduce a new defence of reasonableness to a charge of conspiracy. It would apply, for example, to an undercover police officer entering into a conspiracy in order at a later point to expose the other participants.

Jeremy Horder, the Law Commissioner leading the project, said:

“New technology has made it easier than ever for criminal conspiracies to be organised world-wide, and this development poses new challenges that the existing law, already uncertain in its scope, was not designed to meet. The reforms we recommend will make the law fit for purpose in meeting the challenge of 21st century criminal activity.”

A summary of the recommendations is attached to this press release.

Notes for Editors

1. The Law Commission is a non-political independent body, set up by Parliament in 1965 to keep the law of England and Wales under review, and to recommend reform where it is needed.

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**Law
Commission**
Reforming the law

CONSPIRACY AND ATTEMPTS (LAW COM NO 318)

SUMMARY

- 1.1 Our report addresses the law governing statutory conspiracy (under the Criminal Law Act 1977) and attempt (under the Criminal Attempts Act 1981). It completes our review of the law of inchoate offences.

Conspiracy

- 1.2 The main focus of our recommendations is on the fault requirements for conspiracy. We also make recommendations concerning the exemptions from liability for spouses or civil partners, for intended victims. We also recommend the introduction of a defence to conspiracy of acting reasonably.
- 1.3 For a person to be guilty of conspiracy under the present law, he or she must agree with at least one other person on a course of conduct that, if carried out, will result in an offence being committed. In that regard, under the present law, the prosecution must prove that the parties to the agreement *intended* or *knew* that the facts or legal circumstances of the offence which is the subject of the conspiracy would exist. Equally, where the offence which is the subject of the conspiracy can be committed without knowledge of the circumstances, then a person cannot be guilty of conspiracy to commit that offence unless intention or knowledge as to those circumstances can be proved.
- 1.4 Under the present Criminal Law Act 1977, spouses or civil partners who conspire with each other exclusively throughout the duration of the agreement are exempt from liability.
- 1.5 There is also at present an exemption from liability for both the intended victim of the offence and for the co-conspirator who conspires exclusively with that victim.
- 1.6 There is presently no defence of acting reasonably to the offence of conspiracy under the Criminal Law Act 1977.

Attempt

- 1.7 We have also made some recommendations for amending the offence of attempt in section 1 of the Criminal Attempts Act 1981.
- 1.8 These recommendations, if implemented, would not alter the general nature or scope of the offence. However, they would bring greater clarity to the law and address some identifiable flaws in the offence.
- 1.9 The principal change we are recommending is that it should be possible to charge a person (D) with attempted murder if D endeavoured to kill someone (V) by not doing what he or she was legally required to do in relation to V.
- 1.10 So, if a father or mother (D) decided to kill their child (V) by not providing the child with food, and had gone some way towards achieving that objective, it would be possible to charge D with the attempted murder of V by starvation.
- 1.11 Other recommendations we make would clarify the state of mind needed to be guilty of attempt, without detracting from the important principle that D should be guilty of attempt only if he or she intends to commit an offence.

The problems with the current law

Conspiracy

- 1.12 The present law of statutory conspiracy is unsatisfactory because:
 - In relation to the fault requirements for conspiracy, there is a lack of clarity as to the need for proof of intention and agreement.
 - The requirement that the prosecution must prove knowledge (on the part of the accused) of the circumstances of the offence which is the subject of the conspiracy is too generous to the accused. It means that there is a more stringent requirement of knowledge for the offence of conspiracy even when the substantive offence only requires some lesser degree of fault such as belief or recklessness. For example, if X and Y agree to handle goods believing that they are stolen, they cannot be convicted of a conspiracy to handle stolen goods. This is because the current law requires that X and Y be shown to have *known* at the time of the agreement that the goods were stolen. Yet, if X and Y actually went on to handle the goods, they could be convicted of handling, because this offence – by way of contrast with the conspiracy – permits conviction of those who either knew *or believed* that the goods were stolen.
 - The scope of the exemption from liability for victims is too uncertain because there is no definition of who is to be regarded as a ‘victim’ of conspiracy for the purposes of the exemption.
 - The exemption from liability for a co-conspirator who conspires exclusively with an intended victim is unsatisfactory because he or she otherwise satisfies all the requirements of the offence of conspiracy. There is still a meeting of two minds capable of forming a criminal intent. Liability is avoided purely because one party is the intended victim.

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- The exemption from liability for spouses or civil partners who conspire exclusively throughout the duration of the conspiracy is anachronistic and has no place in the modern law of criminal liability.
- The absence of a defence of acting reasonably means that, for example, a law enforcement officer who, even unintentionally, goes beyond his or her immediate authorisation and conspires to commit an offence in order to prevent crime is presently guilty of conspiracy if he or she intends to carry out the agreement as part of an undercover operation. The absence of a reasonableness defence also means that there is no defence where someone agrees with others to commit a relatively trivial offence, in the hope that this will prevent the others agreeing to commit a much more serious offence. At present, the absence of a defence to conspiracy of acting reasonably means that the law on conspiracy is inconsistent with the law on encouraging and assisting crime.

Attempt

- 1.13 It is generally accepted that someone cannot at present be liable for attempted murder by failing to do what one is legally obliged to do.
- 1.14 So, if D tries to kill his or her child by starvation or dehydration, it is not currently possible to charge D with attempted murder, even though D could be charged with murder if the child died as a result of D's inaction.
- 1.15 There is also a degree of uncertainty as to the state of mind needed to be guilty of attempt. Although it is clear that to be liable for attempt D must intend the relevant conduct and consequence elements of the substantive offence (the offence D attempted to commit), the courts have not explained the culpable state of mind required for some types of circumstance element. In our recommendations we set out rules which would apply to all offences and would clearly explain what state of mind needs to be proved in relation to each element of the attempted offence (including any circumstance element).

Draft Conspiracy and Attempts Bill

- 1.16 Our report includes a draft Bill (see Appendix A) which would amend the Criminal Law Act 1977 and the Criminal Attempts Act 1981. Appendix A also includes notes which explain how our draft provisions would work.
- 1.17 The provisions in our draft Bill, if given legal effect, would:
- Clarify the existing law by providing that a conspirator must intend to bring about the conduct and, where relevant, the consequences of the offence.
 - Provide that where the fault required in relation to the circumstances of the offence which the conspirators agree to commit is not mere negligence (or its equivalent), then that same degree of fault must be shown in order for a conspirator to be guilty of conspiracy to commit the offence.

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- Provide that where the offence which the conspirators agree to commit requires no proof of fault in relation to the circumstances of the offence, or proof of fault which is objective in the sense that it is negligence (or its equivalent), then a conspirator must be shown to have been reckless as to the circumstances of the offence in order to be guilty of conspiracy to commit that offence.
- Provide a coherent set of rules for extra-territorial jurisdiction in relation to conspiracy.
- Provide for an exemption from liability for the intended victim of a conspiracy when the offence in question is an offence which exists wholly or partly to protect a particular category of persons, and the 'victim' falls within that protected category.
- Abolish the present exemption from liability for a conspirator who conspires with an intended victim of an offence.
- Abolish the present exemption from liability for spouses or civil partners who conspire with each other exclusively throughout the period of the agreement.
- Provide for a defence of acting reasonably to the offence of conspiracy.
- Provide that the present requirement for the Director of Public Prosecutions to give consent to initiate proceedings to prosecute a conspiracy to commit a summary offence need not be retained.
- Clarify the culpable state of mind required to be guilty of attempt.
- Remove the restriction which currently prevents prosecutions for attempted murder if the perpetrator tried to kill another person by an omission (not doing what he or she was legally required to do).