

The Chartered Institute of Legal Executives (CILEX)

Consultation Response: Joint Enterprise

Introduction

- 0.1. CILEX would like to take the opportunity to respond to the All Party Parliamentary Group for Miscarriages of Justice' consultation as part of the Westminster Commission on Joint Enterprise. CILEX represents a substantial number of members whose work involves joint enterprise.
- 0.2. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL). For context, CILEX represents over 17,000 members of which 76% of the membership are female, 16% of members are from an ethnic minority background, 4% are LGBTQA+ and 7% have a disability. Additionally, in terms of social mobility, 65% of CILEX members attended a non-selective state-run or state-funded school and 41% have an undergraduate university degree. 15% of members come from households which received free school meals."

1. Prevalence of Joint Enterprise

- 1.1. CILEX is of the view that joint enterprise is still sparingly used in multi-defendant cases. Some CILEX practitioners, when surveyed, highlighted that 20% or less of cases involved joint enterprise.
- 1.2. CILEX notes that there are ongoing concerns regarding when joint enterprise should arise in cases, and where joint enterprise has been incorrectly charged. CILEX advocates for joint enterprise to be used only where it serves a legitimate purpose based on the facts of a specific case.

2. The current Legal Framework

- 2.1. When surveyed, in response to the question "To what extent do you agree with the following statement: 'The current legal framework on joint enterprise is clear and consistently applied?'" most respondents disagreed or strongly disagreed.
- 2.2. As a result, CILEX is of the view that the current framework needs to be clearer, for both practitioners, and for defendants. Additionally, the current framework for joint enterprise needs to be more consistently applied. CILEX is of the view that consistency will be better delivered once clarity is achieved.
- 2.3. CILEX members were unsure as to how often joint enterprise is misapplied in prosecutions (e.g. inappropriate charging decisions). However, no respondents outlined that they had never seen it happen.

- 2.4. CILEX is of the view however that the Supreme Court decision in *R v Jogee* [2016] UKSC 8 is beneficial. CILEX believes that this should be built on through more precise legislative language.

3. Fairness on Defendants

- 3.1. CILEX members were overall unsure whether the law of joint enterprise is fair. CILEX believes that there lack of consistency prevents joint enterprise being fair. Anecdotally, it is known that there are discrepancies in how the law is applied, and sentenced, and this reduces the fairness of the law of joint enterprise.
- 3.2. CILEX cannot provide conclusive evidence that joint enterprise charges disproportionately affect specific groups, e.g. young people, or ethnic minorities. However, CILEX considers further research on this specific aspect of joint enterprise crucial. CILEX is aware of disproportionate sentencing for those with protected characteristics and would like similar evidence to demonstrate that joint enterprise is discriminatory (or not, depending on the outcome of the research).
- 3.3. Anecdotally, CILEX members have raised that ethnic minorities are disproportionately affected. Additionally, another member has raised that young people (those 14-25) are disproportionately affected.
- 3.4. One aspect of the criminal justice process which is inadequate in criminal trials, is judicial direction. This negatively effects the fairness of trials, and CILEX believes that better guidance is needed on judicial direction.

4. Reform

- 4.1. CILEX supports reform to the law of joint enterprise. CILEX believes that the following is required:
- There should be clearly defined statute,
 - There should be clear directions available to judges, e.g. an expansion of joint enterprise as a topic within the Crown Court Compendium.
 - There should be a clear statutory distinction between conspiracy cases and the law of joint enterprise.

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