



" Joint enterprise, in its current form, entrenches racial disparities within the criminal legal system and, as APPEAL makes clear in this report, creates a real risk of wrongful convictions. This carries significant human and financial costs and undermines public confidence in the fairness of our legal institutions. Urgent reform is long overdue"

- JUSTICE

"The prosecution case consists of groundless contention upon which is piled speculation. **Not a scrap of evidence.** This is a high stakes game of hunt the thimble, but you will find no thimble."

- Defence barrister, Case Five



APPEAL is a charity and law practice dedicated to fighting miscarriages of justice and demanding reform. We fight the cases of individual victims of unsafe convictions and unfair sentences who cannot afford to pay for a lawyer themselves. We are leaders in integrating quality legal representation and holistic care for those we represent in parallel with advocacy for system reform.

#### ABOUT THE RESEARCHERS AND AUTHORS



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## **EXECUTIVE SUMMARY**



#### **Background and Purpose of the Report**

Joint enterprise-also known as secondary liability-permits the state to prosecute people for crimes which they did not directly carry out, so long as they assisted or encouraged the crime and intended that it occur. Over the past few decades, the use of joint enterprise has been highly contested. Campaigns for reform have been ongoing, and the legitimacy of the law is increasingly being called into question.

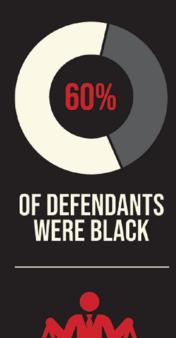
Joint enterprise is mostly criticised for its disproportionate use against young Black men, and for allowing the conviction of people who made no clear contribution to the crime. Its use is especially controversial in murder cases, where a mandatory life sentence is imposed.

This report presents the findings of a court watch conducted by APPEAL at the Central Criminal Court ('Old Bailey'), focusing on joint enterprise. Researchers observed 17 murder and attempted murder trials. The study documents and analyses how secondary liability is applied in high-stakes prosecutions, offering first-of-its-kind evidence that exposes the systemic issues with the use of joint enterprise.

### **KEY FIGURES** | 63 DEFENDANTS | 17 TRIALS



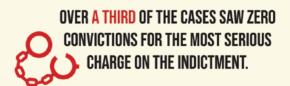




#### **Key Findings**

#### 1. Overcharging: A Wide Net Cast on Weak Grounds

A striking pattern was the excessive use of charging powers—both in the number and severity of charges brought against individuals and in the number of people charged in one case. Individuals were swept up in murder charges despite only very tenuous connections to the crime, reflecting an approach that cast an unreasonably wide net. In one of the cases, a defendant faced seven charges, six of which were thrown out by the judge for lack of evidence. In another, over 50 charges were brought against eight defendants; the jury returned a single conviction against one. These low conviction rates highlighted a clear disconnect between the charges brought and the evidential basis supporting them.



of Secondary Defendants Charged With Murder or attempted Murder were convicted of these offences.

In many cases, the evidence was weak, and in some, virtually non-existent. One especially concerning case involved seven boys charged with murder, where the prosecution case against five of them relied almost entirely on their "voluntary presence" at the scene, raising concerns about how the Crown Prosecution Service (CPS) policy thresholds for charging decisions were deemed to have been satisfied. This case exemplifies how the law is not used precisely or carefully, but as a tool to charge young people who are proximate to a crime and are simply perceived as suspicious.

#### 2. Trial by Storyline: Constructing Guilt in the Absence of Evidence

When CPS safeguards fail and the most peripheral suspects are charged, evidential gaps are often filled by unfair and prejudicial prosecution narrative. Across the study, alleged assistance or encouragement by defendants was minimal or unclear. In such cases, the prosecution leaned heavily on theory rather than facts or evidence—constructing a story from a tenuous chain of inferences, which often crossed the line into speculation. While the adversarial system demands persuasive case theory, our observations revealed that many prosecutors blurred the boundary between advocacy and fairness.

Knowledge and intention—key components of secondary liability—were routinely presumed, rather than evidenced. Prosecutors leaned on evocative, vague phrases such as "in it together" or "force of numbers" to gloss over the absence of clear acts of assistance or encouragement. These ambiguous slogans became substitutes for an absence of evidence whilst collapsing meaningful distinctions between the roles of individual defendants. The claim that defendants were acting as "back up if needed" functioned as a catch-all mechanism which dangerously expanded the scope of liability. This broad-brush approach erased the complexity and context surrounding the offence. Key evidence was overlooked or dismissed by the prosecution when it did not support their case theory, and there was a lack of genuine inquiry into the nuances of what had occurred.

The weak evidential foundation of many cases was compounded by a concerning pattern: the tendency of prosecutors and police officers to introduce new interpretations of evidence late in trial, advancing claims they previously failed to mention. Though permissible, this observation raises serious concerns about the integrity of joint enterprise prosecutions, which are already perceived by many as illegitimate. The prosecutions evolving narratives were clearly driven by the pursuit of conviction than by commitment to the truth. The courtroom was not always a forum for testing evidence, but a stage for affirming suspicion—where secondary liability was performed, not proven.

#### 3. The Gang Narrative and Its Double Edge

Prosecution storytelling was entangled with racialised constructions of crime and criminality, including stereotypes about gangs, drugs and knife crime, which appeared to be relied on to strengthen the prosecution's case.

In others, the narrative was more subtly evoked. The term 'gang' was explicitly used in just five cases. However, where the offence was categorised as gang-related, the gang narrative dominated trial proceedings. In such cases, the prosecution placed undue weight on proving motive to establish intent, leaning heavily on gang-related evidence to do so.

One of the most troubling findings was the frequent and impermissible suggestion of guilt by association. In some of the observed cases, the prosecution inferred the defendants' motive and intent from tenuous associations—relying on mutual rather than direct connections with others and referencing previous violent incidents that did not involve the defendants themselves, but people they knew.

Even in cases where the word 'gang' was not used, gang-centred stereotypes were nonetheless present. Prosecution closing speeches often veered into language designed to evoke a sensationalised and stereotypical image of dangerous youth engaged in 'knife crime' and 'gang culture.' Language was strategically employed to provoke fear, while references to the defendants as a "team" served as a stand-in for the word 'gang'. Similarly, the gang narrative was subtly evoked during the cross-examination of defendants, particularly through questions about drug dealing and territory—even when these topics had no obvious relevance. These tactics allowed the prosecution to evoke the powerful connotations of the gang while avoiding the scrutiny that using the label might attract.

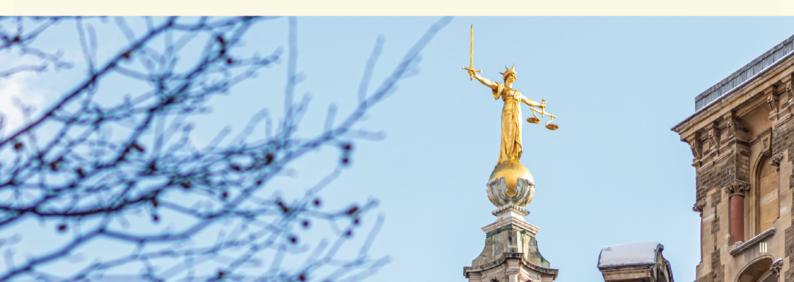
#### 4. Institutional Whiteness: The Cultural Code of 'Justice'

Prosecution case theory derived its power not only from persuasive legal argument but also from the courtroom's structural dynamics—where whiteness, professionalism, and legitimacy are deeply intertwined. The trials took place in spaces dominated by institutional whiteness:

84% BARRISTERS 79% OF DEFENDANTS WERE FROM RACIALLY MINORITISED BACKGROUNDS, AND 60% WERE BLACK

This imbalance shaped how proceedings unfolded—from how evidence was interpreted to the expectations placed on defendants. For working-class and racially minoritised defendants, the prosecution's narrative can be especially difficult to counter in a courtroom space that presumes and upholds white, middle-class norms of communication and behaviour. For example, defendants' voices were often "lost in translation", as the Courts failed to understand or accommodate different forms of communication and expression. The racial homogeneity of legal professionals also had tangible consequences for how evidence was framed and understood. While diversity cannot solve racial injustice, lawyers from underrepresented backgrounds sometimes brought important cultural insight—that equipped them to identify and challenge potential misinterpretations of evidence.

A comparative reflection on two concurrent trials in the final months of observation also revealed a striking disparity in the Crown's approach to prosecution when whiteness was present in the dock. This was the only trial observed in which all but one of the defendants was white, the only case in which all but one defendant was granted bail, and the only instance where several defendants were not charged on a secondary liability basis (see page 1 and pages 25-26).



### **CONCLUSIONS**

#### **What This Report Reveals About Joint Enterprise**

#### 1. Joint Enterprise is being used excessively, and safeguards are failing

Joint enterprise is being applied too broadly and inappropriately. While the law is too wide in scope and needs reforming, excessive charging practices compound its unfairness. The CPS and judiciary are failing to filter out weak or unfounded cases before they reach trial, instead placing the burden on juries.



#### 2. There is a clear departure from what the law of complicity should be

Complicity is a principle rooted in knowing of another person's intention to commit a crime and deliberately assisting or encouraging them. In practice, this standard is rarely met. Secondary liability is often diluted to little more than association, suspicion, and story.



#### 3. Prosecution narrative strategy has replaced evidential clarity

Prosecutors rely more on narrative performance as opposed to evidence, meaning joint enterprise trials are often not a truth-seeking process. The narrative strategies adopted by prosecutors frequently reinforce racialised stereotypes. The gang narrative remains prominent, even in the absence of official gang evidence or discourse.



#### 4. The system is producing injustice at scale and the costs are high

Prison space and court time are being consumed by cases that often end in acquittals and should not have reached trial. Public money is being used to stage justice, rather than deliver it. Court backlogs and the "prison crisis" are exacerbated by the overuse and misuse of joint enterprise, while individuals' lives are irreparably altered by overreaching prosecutions.



#### What's Next? A Call for Accountability and Change

If joint enterprise continues to be used, it must be a proper doctrine of complicity—both in law and in practice—grounded in a clear requirement of intent to assist or encourage the principal offence, whilst making a significant contribution to the offence. Anything less encourages inappropriate costly prosecutions and risks wrongful convictions. We therefore recommend legislative reform to narrow the law and create a safer framework for prosecution. However, we also recognise the limits of legislative change.

The police, CPS and judges play a critical role in how the law is applied and must be accountable for doing their utmost to ensure that, regardless of the legal framework, only those genuinely complicit in a crime face prosecution. The inappropriate overuse of the law must end. In response to these findings, APPEAL will organise a roundtable with relevant stakeholders to determine the best way to end the inappropriate overuse of the law. We will invite prosecutors, judges, policymakers, and all those implicated in this report to engage in this process.

## FOREWORD BY KEIR MONTEITH KC

#### It is the worst of times

This seismic report on how the law on joint enterprise is being misused in the Old Bailey is a wakeup call for the Justice Secretary and all those that are involved in reforming the Criminal Justice System. I was in Case 14 and was an eyewitness to how the whole system failed my client and four other defendants. I can confidently say there was no evidence that he murdered anyone. I asked no questions, didn't call my client and made a 25-minute speech. He was acquitted of murder and manslaughter – that outcome was inevitable. Four other legal teams didn't call their clients – one did. All five defendants were acquitted, and the jury returned just one guilty verdict. All defendants were Black.

The trial took over 4 months to complete. Almost every single day defendants were brought to court late – it became customary to start at 12pm. As a result, the judge told the jury it was normal for defendants to be locked up in murder cases. Well, it shouldn't be normal to lock up anyone let alone children if the evidence is paper thin.

Before and during the trial the prosecution agreed just one person stabbed the deceased. However, at the time of the single stab they could not tell the jury where my client was let alone which way he was facing. The same applied to many others.

Given the paucity of evidence, I applied for bail and later for the case to be dismissed -this was opposed and refused. Given the paucity of evidence at the close of the prosecution case six submissions were made for the case to end - these were opposed and refused. Over 6 months the court watchers only observed one successful no-case-to-answer submission]. Consequently, all the defendants were locked up from arrest to verdicts. My client, of good character, was imprisoned in Feltham YOI which in July 2024 had the highest levels of violence of any prison in England and Wales. He and his co-defendants should have been completing their education rather than being imprisoned for a murder they obviously did not commit. The impact on their young lives, family, friends and their community was and remains devastating.

In the courtroom below, eight defendants – seven of them white – were on trial for an attempted murder involving the discharge of a firearm. The jury were told that "[They provided] loyal assistance and encouragement and support... each of them helped the first three defendants... they were part of the plan." However just three defendants were charged with attempted murder and seven out of eight were on bail. In this case joint enterprise was used in a more proportionate and measured way.

The situation couldn't be starker, but we have been here before, and the situation is now worse. In 1999 the Macpherson report<sup>2</sup> called out institutional racism in the police force and made 70 recommendations for change. In 2016 Theresa May told the country "If you're black, you're treated more harshly by the criminal justice system than if you're white." The following year the Lammy review expressed concern about joint enterprise prosecutions, bias and overt discrimination, in parts of the justice system.<sup>3</sup> In 2022 Racial Bias and the Bench found evidence of institutional racism in the justice system presided over by judges <sup>4</sup> and in 2023 the Casey review again called out institutional racism in the Metropolitan police.<sup>5</sup>

#### But it could be the best of times

In the long term the law must change, in the short term I am confident that on reading this report the Justice Secretary, judges and prosecutors will engage with APPEAL in a roundtable meeting; redouble their efforts to scrutinise joint enterprise cases and stop the courts from being clogged up with the prosecutions of innocent people.

Meanwhile the statistics in this report shine a bright light on the juries that heard these trials and exonerated all the, predominately Black, defendants who were wrongly accused of 'being in it together' and guilty by association. I hope Sir Brian Leveson rethinks any plans he might have to limit the right to trial by jury. Also, I urge him to recommend a significant reduction in the deployment of joint enterprise prosecutions in the criminal courts. On this reports analysis such a reduction will save years of court time, an astounding amount of taxpayer's money and prevent the wrongful prosecution of hundreds of defendants.



## A TALE OF TWO TRIALS





In the final months of 2024, two lengthy trials unfolded simultaneously at the Old Bailey Crown Court. Both cases involved serious allegations of violence. Both trials included multiple defendants charged for one offence. But the contrast between them was impossible to ignore.

Upstairs, Case 14 was underway. Seven Black boys—still in school at the time of the incident—were on trial for murder following a fatal stabbing at a summer party in a park. All seven attended the party together. The prosecution alleged that one of the seven carried out the stabbing, and that the other six encouraged or assisted them by being "voluntarily present," adding "force of numbers."

The prosecution presented some evidence which connected two of the seven defendants to the stabbing. However, they could not identify who inflicted the stab wound, nor could they say exactly whereabouts in the park each boy had been or precisely what they had been doing moments before the stabbing. The case against the five remaining boys relied significantly on the fact that they had travelled to the party with the other two boys, and their association and travel pattern as a group. These five boys had no criminal history—not even a caution. Yet they were remanded into custody, brought to court each day under guard, and spent over a year in a Young Offender Institution before the jury reached their verdict.

In the courtroom below, Case 13 was taking place. Eight young men and boys—seven of them white—were on trial for an attempted murder shooting. A stolen car had been used to drive to the victim's home, occupied by three defendants. A loaded firearm was brought to the scene and discharged by the first defendant, seriously injuring the victim. The prosecution alleged that the others helped facilitate the shooting by acquiring the stolen vehicle, sourcing false registration plates,

and preparing for a getaway. The prosecution alleged clear, tangible acts of assistance by the defendants both before and after the shooting. According to the prosecution, [They provided] loyal assistance and encouragement and support... each of them helped the first three defendants... they were part of the plan."

Despite these allegations, only three defendants were charged with attempted murder. The remaining five faced lesser charges of assisting in offences. All but one were granted bail, including two of three defendants charged with attempted murder, and were free to go home at the end of each court day.

Case 13 and Case 14 ended similarly: only one conviction in each. But the road each group of defendants travelled could not have been more different. The charging decisions, the use of remand and decisions made about risk and responsibility all followed a different pattern—one that, in this instance, mirrored the racial lines dividing the two courtrooms.

This is not to say that the young men in Case 13 should have faced harsher prosecution, or that the evidence warranted more convictions. Nor is it to deny that white people are also unfairly prosecuted under joint enterprise. Rather, the point is this: the police and CPS can and do exercise restraint in using the law. Case 13 was the only joint enterprise trial in our six-month court watch where multiple defendants were neither charged under secondary liability nor held on remand—and it was also the only case where the defendants were overwhelmingly white.

Without suggesting that the charges in either case were more justified, these two trials offer a window into how differently joint enterprise can be applied—how the same legal principles can be stretched or softened.

## INTRODUCTION

For centuries, the law in England and Wales has allowed the state to prosecute individuals for crimes they did not carry out, so long as they assisted, encouraged, or organised those crimes and intended that they take place. In recent decades, this legal principle has been widely criticised for enabling the prosecution of individuals whose actions and contribution to the offence are minimal at best, and wholly insufficient to safely establish criminal liability at worst. Known in legal terms as complicity or secondary liability, this element of the law is often referred to as 'joint enterprise'.

Campaigns surrounding joint enterprise have been ongoing, and the legitimacy of the law is increasingly being questioned. Calls for reforming joint enterprise are driven by concerns over the imprecise nature of what constitutes assistance or encouragement, as well as overzealous prosecution practices, and the racially disproportionate use of the law. Black people are 16 times more likely to be prosecuted under joint enterprise than white people, and most of those prosecuted are young men and children.<sup>7</sup>

Joint Enterprise on Trial presents the findings of a six-month court watch at the Old Bailey, the most prominent Crown Court in England and Wales. Two researchers observed 17 multi-defendant trials, 16 prosecuted under joint enterprise and one as a conspiracy. All the trials involved charges of murder or attempted murder, providing rare insight into how joint enterprise is applied in the most serious criminal prosecutions. This report is part of APPEAL's wider racial justice work, which aims to challenge racism and discrimination in the criminal legal system through research and advocacy.

This study provides a first-of-its-kind evidence base on joint enterprise, offering a primarily qualitative analysis of prosecution practices—specifically how secondary liability is applied and argued in court. The findings of *Joint Enterprise on Trial* reveal serious concerns about the way joint enterprise continues to be used. Defendants were charged with serious offences on weak evidential grounds which stimulated a range of problematic prosecution strategies, aimed at maximising the chances of conviction. Racialised stereotypes appeared throughout the cases, with minimal judicial scrutiny or challenge, raising urgent questions about the fairness and legitimacy of joint enterprise prosecutions.

The relevance of the findings extends beyond the cases we observed. CPS data revealed that in a six-month period in 2023, 680 people were prosecuted under joint enterprise for homicide or attempted homicide across six regions. That we observed 16 such trials in one crown court over the same period of time highlights the scale of the issues illustrated in this report.





## PART 1

THE RACIALISED DRAGNET: A CRITICAL LOOK AT JOINT ENTERPRISE "The joint enterprise doctrine is racist and deliberately targets working class communities. It is a common law, criminalising common people that makes no common sense and its use undermines the very integrity of the UK criminal justice system."

- JENGbA

# WHAT IS JOINT ENTERPRISE?

oint enterprise—more accurately referred to as complicity or secondary liability—has a long-established place in English law. Codified in Section 8 of the Accessories and Abettors Act 1861, the principle allows someone who "aids, abets, counsels, or procures" (assists or encourages) an offence to be prosecuted and sentenced as if they had committed the offence themselves. The person who carries out the offence is called the "principal," and those who assist or encourage are "secondary parties."

For many years, courts allowed secondary parties to be convicted based on foresight alone. This typically applied in cases where a group set out to commit one crime (such as robbery) and, during that offence, one of them committed a further crime (such as murder). Under what became known as *Parasitic Accessorial Liability* (PAL), anyone involved in the original offence could be held liable for the second offence if they had foreseen that it might occur, even if they did not intend or agree to it. In 2016, the Supreme Court reversed this extremely wide interpretation of the law in the landmark case R v Jogee, restoring the earlier legal standard. Once again, to be guilty as a secondary party requires that a person intentionally assisted or encouraged the

## THE LAW STILL NEEDS "FIXING"

Despite the Supreme Court's ruling, the current law remains deeply flawed. While prosecutors are required to prove intention, the threshold for what constitutes "assistance" or "encouragement" remains dangerously broad and vague. A person can be convicted of murder based on their presence at the scene of a crime, so long as the jury deems that their presence constituted assistance or encouragement and to offer "support". A prosecutor may argue that the person intended, through being present, to embolden and thus encourage the principal offender, without needing to show that their presence had any actual effect on the principal's actions.

This vagueness creates significant space for subjective interpretation and discretion, enabling prosecutorial overreach. This concern has recently attracted parliamentary attention. In 2023, when the current Labour government were in opposition, Kim Johnson MP proposed a Private Member's Bill which sought to reform the law by requiring that secondary parties must have made a significant contribution to the offence to be held liable." While the Bill was not adopted by the government, it aimed to establish a clearer, fairer threshold for prosecution.

The Centre for Crime and Justice Studies later published *The Legal Dragnet*, a report highlighting how the law's vagueness enables the prosecution of people only marginally connected to a crime, often based on weak circumstantial evidence. It warned that prosecutors are more likely to rely on speculative theories, unsubstantiated claims, and racialised narratives—particularly in cases involving young Black defendants—to bolster their case and secure convictions under the current law, heightening the risk of wrongful conviction. The findings of Joint Enterprise on Trial echo these observations.

## BEYOND THE LAW: HOLDING STATE ACTORS ACCOUNTABLE FOR PROSECUTORIAL OVERREACH

While the law's vagueness heightens the risk of inconsistent and discriminatory outcomes, its broad scope does not completely explain the scale or nature of the injustice. Joint enterprise is not applied uniformly across all types of offences or to people from all demographic groups (more of which is below). The police and CPS play a critical role in how it is applied. They decide whether and how cases are investigated, charged, and framed. Legislative reform is clearly needed but this report's primary focus is on how state actors are using the law as it stands, and the prosecution practices that flow from it. State actors must be accountable for doing their utmost to ensure that only those genuinely complicit in a crime are prosecuted and convicted, while working to end discriminatory and unjust overreach of the law.



## RACE AND THE GANG LABEL

For decades, joint enterprise has been applied in a starkly racialised and disproportionate manner, with young Black adults and children hugely overrepresented amongst those prosecuted and convicted. Critics have long attributed this fact to the discriminatory use of gang narratives and gang evidence by prosecutors, and it is widely recognised that young Black men and children are stereotyped as gang members. Research shows that a prosecution gang narrative—that is, framing a case around the notion of gangs and gang violence—is more likely to be adopted in joint enterprise cases involving Black or otherwise racially minoritised defendants.

Following a judicial review brought by the campaign group JENGbA (Joint Enterprise Not Guilty by Association) and the human rights organisation Liberty,15 the CPS in 2023 began collecting data on joint enterprise cases. This data, which covered six regional areas, highlighted the proportion of cases the CPS classified as gang related. The CPS reported that 33% of cases in North London and 21% of all cases fell into this category.16 However, critics argue these figures underrepresent the reality, as language and imagery stereotypically associated with gangs are often used without explicitly using the term." Indeed, this court watch study found that terms like "team" regularly substituted the gang label—a practice that conceals the racialised framing of the prosecution case, while preserving its effects (see pages 22-24).

## THE CRIMINALISATION OF BLACK YOUTH

A particularly troubling dimension in recent years is the use of drill music as evidence—often to suggest gang membership, imply bad character or criminal intent. Drill, a Black British rap genre, is frequently interpreted by prosecutors and police as autobiographical rather than artistic, unlike other genres where violent themes are rarely used as evidence. This practice disproportionately impacts Black defendants, particularly since the genre has become a central focus of police and policy initiatives designed to respond to gangs. The organisation Art Not Evidence is actively campaigning for legislative change to restrict the use of music in criminal trials.

The use of social media evidence in joint enterprise cases further highlights how youth

culture and daily interactions between young people are (mis)interpreted as indicators of criminality or criminal intent. Digital platforms are a space where young people express themselves, document their experiences, and communicate. More recently, this online space has become a place for police surveillance—where even casual interactions can be framed as evidence of gang affiliation or criminal intent. This reflects not only the limitations of police intelligence, which often cannot grasp the social and contextual nuances of (mostly digital) communication amongst young people, but also a wider denial of innocence, where all behaviour, criminal or otherwise, is interpreted through a lens of suspicion and presumed criminality. This problem was apparent in the recent Manchester 10 case—a conspiracy case that mirrored the patterns we have seen in joint enterprise trials.<sup>22</sup> One alarming example was the prosecution's interpretation of the 'money phone' trend—a common pose used by footballers, music artists, and young people-which was presented as evidence of gang membership.33



## **POLICING:**THE FRONTLINE OF INJUSTICE

Despite these concerns, joint enterprise continues to be applied aggressively—with its impact particularly felt by Black communities who have long been subjected to racial violence at the hands of the police. Indeed, the prosecution of joint enterprise cases and the findings of this report must be understood within the wider context of policing, race, and the criminal legal system.

While this report is critical of the CPS and prosecution barristers, it is the police who initiate the investigation, shape its trajectory, and produce the intelligence that underpins the prosecution case. This is particularly troubling given that the police have been repeatedly identified as institutionally racist.<sup>24</sup> Research has also shown that detectives have justified racial disproportionality in

joint enterprise cases by citing perceived associations between Black youth, knife crime, and gangs—rather than interrogating how racialised assumptions about crime influence how and when they use joint enterprise.<sup>25</sup>

The criminalisation of Black youth remains a pervasive issue in England and Wales, with police gang units, intelligence databases, and targeted surveillance disproportionately concentrated in Black communities and therefore, disproportionately affecting young Black people.26 This policing framework, developed as a primary tool for tackling "gang violence", directly influences joint enterprise prosecutions, shaping how cases are constructed and presented in court. In 2022, The Metropolitan Police's Gangs Matrix database was found to be operating unlawfully following a legal challenge by UNJUST and Liberty, exemplifying how such tools institutionalise racial profiling. These concerns are exacerbated in the age of Artificial Intelligence (AI) and digital policing, where emerging technologies are being used to expand gang databases and monitor online activity, raising human rights concerns. Organisations like Erase the Database and Amnesty International have highlighted the dangers of these practices and their connection to joint enterprise prosecutions.27

## OVER-POLICED AND UNDER-PROTECTED

The phrase "over-policed and under-protected" has been used in recent years to describe the relationship between Black communities and the police. Joint enterprise, which is used to respond to knife-related violence in public spaces, exemplifies this reality. On the one hand, young people are disproportionately surveilled, criminalised, and punished in the face of limited evidence; on the other hand, meaningful efforts to address the actual threat of violence that some of them face daily are sidelined. The cases examined in this study take place within a broader social context of very real concern about violence amongst young people. The seriousness of this issue must be acknowledged; however, joint enterprise is not effectively addressing the problem.

The government's current approach appears to rely on deterrence through the threat of long-term punishment, even where the individual did not commit the violence themselves. In effect, the state responds to harm by inflicting or threatening further harm. This punitive strategy has so far failed to reduce serious violence among young people, undermining claims of legitimacy in using joint enterprise for this purpose. Rather than investing in long-term solutions or addressing root causes—such as the

erosion of community resources—we continue to see the deepening reach of policing into young people's lives, which are often irrevocably shaped by police violence, prosecution, and imprisonment.



JENGbA campaigners pictured by Geoff Halsall

## THE COSTS OF INJUSTICE

The personal costs of joint enterprise prosecutions are profound and impossible to overstate. Even for those who are ultimately acquitted or convicted of lesser offences, damage is already done. Many spend months or even years in prison awaiting trial, grappling with the trauma of arrest, the stigma of serious allegations, separation from family and community, and major disruptions to education or employment. The psychological toll of being punished—or fearing punishment—for something they did not do defies easy description. For those 'secondary parties' who are convicted, the consequences are even more profound, with such individuals often enduring life sentences. These cases leave families shattered, communities fractured, and young lives irreparably altered.28

The economic costs of this injustice also cannot be overlooked. Recent research estimates that joint enterprise prosecutions cost £242 million annually to process defendants with an additional £1.2 billion spent each year on punishment and

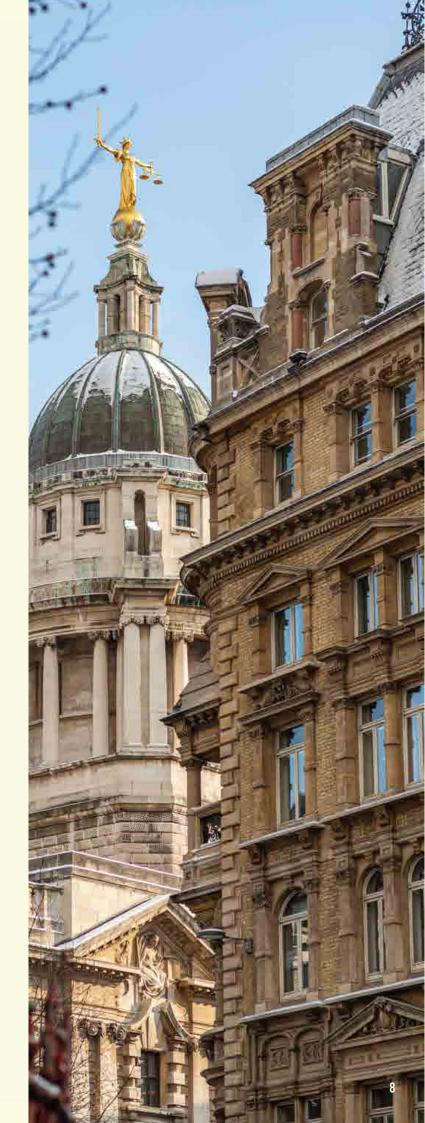
imprisonment.<sup>29</sup> Joint enterprise trials are often lengthy and resource-intensive, contributing significantly to the Crown Court backlog, which reached a record high in September 2024 of 73,105. Defendants—many of whom are later acquitted or convicted of lesser offences—are held on long remand periods before their cases conclude. Some trials observed in this study lasted months and resulted in several acquittals, demonstrating the immense strain these prosecutions place on the court system and the wider "prison crisis". During the court watch, as many as one third of the Old Bailey's eighteen courtrooms were simultaneously occupied by joint enterprise homicide trials, underscoring the state's continued resolve to prosecute, convict, and impose life sentences on multiple people for one offence, even amid growing concerns about wrongful convictions, unjust prosecutions and the current state of the courts and prisons.

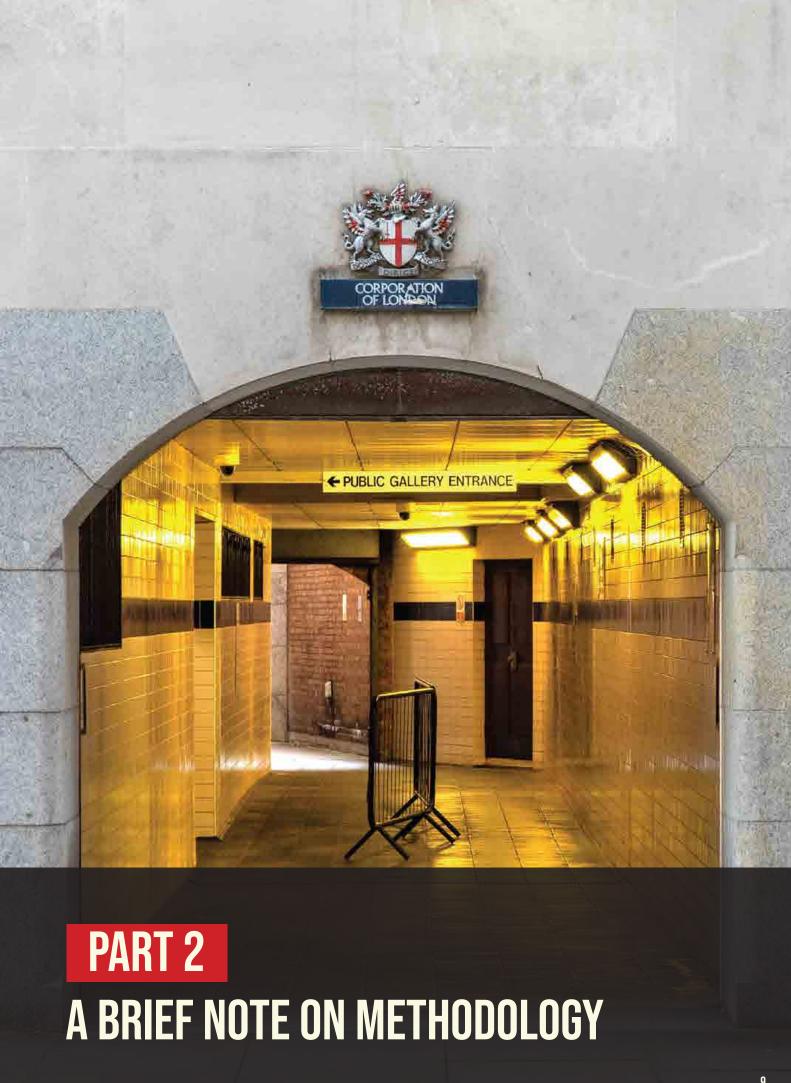
## CHANGE CANNOT BE DELAYED

It is widely accepted that the criminal law ought to include a mechanism to prosecute those genuinely complicit in crime. However, the concerns surrounding joint enterprise can no longer be left to languish in vague promises of reform without action. The current government—despite committing to joint enterprise reform while in opposition—has taken little to no meaningful steps since entering office. The work of Kim Johnson, MP for Liverpool, has been vital in maintaining pressure, with a Westminster Commission into joint enterprise currently underway.<sup>31</sup>

The CPS, as the body responsible for deciding whether a case proceeds to court, has started to engage with the issue—particularly following the judicial review initiated by JENGbA and Liberty. The CPS has committed to reviewing its guidance on gang-related evidence and has proposed action steps to address racial disproportionality in charging decisions more broadly. However, we are yet to see any significant changes in the excessive and disproportionate use of joint enterprise, as demonstrated by the cases outlined in this study.

We therefore urge all those implicated in the findings of this report—including the police, CPS, and judiciary—to engage in our roundtable discussion to help shape appropriate and effective proposals for change that can be implemented swiftly and with genuine commitment. We also call on lawmakers to engage seriously with the case for legislative change and take steps toward delivering it.





### **METHODOLOGY**

In England, court watching has recently gained visibility as a form of solidarity and activism—most notably through Dr Roxy Legane's observation of the "Manchester 10" trial, which helped build public support for several appeals." More formalised court watch studies have a long global history, with aims ranging from promoting transparency and public engagement to influencing judicial and prosecutorial conduct. Although still rare in England, Transform Justice's recent court watch study is an example."

#### Study Aims, Timeline and Sample

Over six months between June 2024 and January 2025, we observed 17 trials—16 joint enterprise cases and one conspiracy. Joint enterprise trials that began after November 2024 were not included in the study. We sought to document and critically examine how secondary liability is applied in joint enterprise trials. Specifically, we focused on prosecution strategies, how liability was constructed for secondary defendants, the quality of evidence used, and whether racialised or stereotypical narratives were introduced—and how the court responded. The study also sought to investigate whether prosecutorial strategies or trial outcomes varied according to defendants' ethnicity.

#### Conditions of Observation and Approach to Data Collection

We observed from the public gallery and our notes were handwritten. A standardised datasheet was used to log general trial data including defendant demographics, charges, verdicts, and forms of evidence (e.g., gang evidence). We classified defendants' roles based on the prosecution's case, with an "unknown" category used where no distinction between principal and secondary roles was made. While in court, we did not conceal our research purpose but avoided directly referencing joint enterprise to prevent influencing courtroom behaviour, given the law's contentious nature.

#### **Ethics and Confidentiality**

We navigated many ethical challenges, including protecting the privacy and dignity of those involved in the cases. We were aware of the danger of reducing their trauma to a spectacle for observation and remained committed to critically engaging with the systemic issues at play. To preserve anonymity as far as possible and assist the reader in following case descriptions, all defendants' names were replaced with a numbered system (D1, D2). Any locations or people mentioned in the report are pseudonyms.

#### A Note on Subjectivity

Qualitative observation is shaped by both what is observed and who observes it. As two racially minoritised women observing a legal process affecting the communities we are part of, our perspective is inseparable from our identities. This subjectivity is inevitable and valuable, helping us identify racial undertones others might miss. To that end, our conclusions are grounded in clear evidence, including detailed quotes and case descriptions, offering a perspective that is subjective but not speculative.

<sup>&</sup>lt;sup>8</sup>One conspiracy case was included in the sample as it was not immediately apparent that the case fell outside the scope of secondary liability. We invested considerable time in observing the proceedings before this became clear.

<sup>&</sup>lt;sup>c</sup>Identifying race or ethnicity based on visual assessment limits the accuracy of the data. We independently noted our perceived ethnicity and later compared our assessments to ensure a level of corroboration.



# PART 3 COURT WATCH IN NUMBERS: A SNAPSHOT

### **COURT WATCH IN NUMBERS: A SNAPSHOT**

This section illustrates the key statistical findings from the 17 trials observed. The figures below offer a visual representation of some of the data collected, accompanied by brief commentary highlighting the most significant observations.

While we made every effort to capture accurate and consistent data, in some instances exact figures were not available. In such cases, informed estimates are used and are clearly noted. These limitations do not detract from the broader picture that emerges—one that raises important questions about the fairness and legitimacy of joint enterprise prosecutions.

#### I) WHO WAS PROSECUTED?

In total 63 defendants were tried by jury in the 17 trials we observed. However, 76 defendants were indicted in relation to the 17 cases included in this study, given we observed some retrials.

The 76 figure encapsulates all individuals indicted for these offences, including those from previous trials related to the same charges. This number therefore gives a more accurate view of the number of people prosecuted in these cases. However, the figures below, which relate to the demographics of the defendants and case outcomes, are based on the 63 defendants who were present at trial during our observations.



Fig 1: Percentage breakdown of ethnicity of the defendants in all the cases observed.

79% of defendants were from a racially minoritised background, and 60% were Black. 75% of defendants were aged 25 or under and approximately 40% were aged 18 or younger. All but three defendants were male. These findings mirror long-standing patterns of racial and age disproportionality documented in previous studies with significantly larger samples, including the CPS's own data collection.<sup>20</sup>

20% of defendants were identified in court as having a recognised neurodevelopmental condition or cognitive difficulty, including but not limited to Attention Deficit Hyperactivity Disorder (ADHD) and Autism Spectrum Disorder (ASD). This figure may be an underestimate, as such conditions may not have been known, disclosed, or raised in court when we were present in the public gallery.

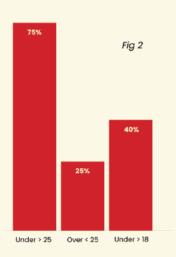


Fig 2. Percentage breakdown of the age categories of the defendants in all the cases observed.

### II) WHO WERE THE LEGAL REPRESENTATIVES AND JURORS?

The ethnic makeup of barristers and jurors in the observed trials stood in stark contrast to that of the defendants. Across all trials observed, there were 142 counsel members, comprising both male and female barristers, with men making up the majority. Of these 142 barristers, 78% were white, 22% were racially minoritised. Amongst the racially minoritised group, 7% were Black. On average, there were eight barristers per case.

Across the 17 trials, there were a total of 204 jurors. 61% were white, 27% were racially minoritised, and 12% were Black.

This marked contrast between the ethnic backgrounds of defendants and those of counsel and jurors raises important questions about how the courtroom's apparent whiteness may influence trial proceedings—including how defendants engage in the process and how evidence is interpreted.

This issue is explored further in Part Four, which draws on examples from the cases to illustrate how the overwhelming whiteness of the courtroom can influence trial dynamics and the interpretation of evidence.

#### **Counsel Ethnicity Breakdown**

Fig 3

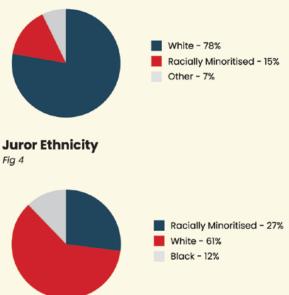


Fig 3: Breakdown of ethnicity of counsel across all cases observed.

Fig 4: Breakdown of the ethnicity of jurors across all cases observed.

## III) HOW MANY SECONDARY PARTIES WERE THERE?

As previously noted, one of the 17 cases observed was prosecuted as a conspiracy. Considering the 55 defendants in the 16 joint enterprise cases, 14 were principal offenders and 33 were secondary parties. Such distinctions were not always explicitly stated by the prosecution, meaning that four defendants are categorised as unknown. The remaining six defendants were not tried on a secondary liability basis.

#### **Principals and Secondary Parties**

Fia 5



Fig 5: The number of defendants across the joint enterprise cases observed, broken down by principals and secondary parties.

## IV) WHAT WERE THE DEFENDANTS CHARGED WITH?

89% of the defendants across the 16 joint enterprise cases were charged with murder or attempted murder. Even though all of the cases involved charges of murder or attempted murder (with murder being the predominant charge), no defendants were charged with manslaughter as a standalone offence. Manslaughter was only included on the indictment as an alternative to the charge of murder. Six defendants were charged with assisting in an offence, but not on a secondary liability basis.

#### Offences charged

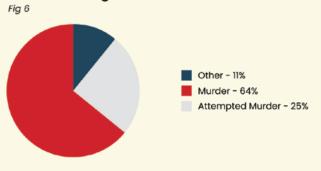


Fig 6: Breakdown of charges for all defendants across the joint enterprise trials observed.

## V) HOW MANY CONVICTIONS AND ACQUITTALS WERE THERE?

Conviction rates for murder and attempted murder were notably low. In **over one-third** of cases (six out of 17),

#### there was **not** a single conviction for either of these charges.

Of the 38 defendants charged with murder, only 16 were convicted of murder. Five were convicted of manslaughter as an alternative. Of the 12 defendants charged with attempted murder, only four were convicted of attempted murder.

#### Convictions and acquittals - Murder

Fig 7

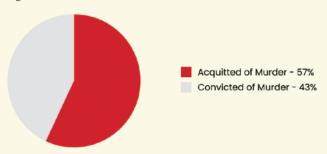


Fig 7: Percentage of convictions and acquittals amongst all defendants charged with murder

#### Convictions and acquittals - Attempted Murder

Fig 8



Fig 8: Percentage of convictions and acquittals amongst all defendants charged with attempted murder.

Across all 49 defendants charged with either murder or attempted murder, 19 defendants were convicted for these offences. 16 defendants were acquitted on all counts. 11 others received convictions for lesser offences such as possession of a bladed article, and three received a hung jury.

#### Outcomes for defendants prosecuted for murder or attempted murder

Fig 9

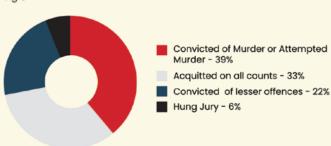


Fig 9: Case outcomes for all defendants prosecuted for murder or attempted murder

A high number of acquittals was particularly evident in the case of secondary defendants. Among the 33 defendants explicitly identified by the prosecution as secondary parties charged with murder or attempted murder, only 8 (24%) were convicted of murder or attempted murder, while 12 were acquitted on all counts and three received a hung jury verdict. Two of those who received a hung jury verdict will not be tried again.

#### **Outcomes for Secondary Parties**

Fig 10

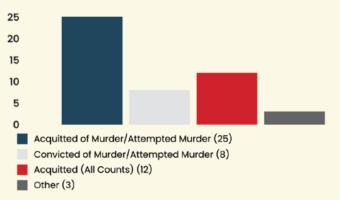


Fig 10. Case outcomes for all secondary parties charged with murder or attempted murder

Of the six defendants charged with assisting rather than on a secondary liability basis, none were convicted. Five were acquitted, and one was discharged for retrial due to a legal matter.

These findings align with earlier research by the Centre for Crime and Justice Studies, which—based on a significantly larger sample—found that the conviction rate for secondary suspects<sup>0</sup> indicted for murder was relatively low, at around 40%, compared to approximately 60% for all suspects charged with murder.<sup>37</sup>

Government statistics indicate that among all male suspects indicted for murder, the conviction rate—measured by those both indicted and ultimately convicted of murder (as opposed to a lesser homicide offence)—consistently hovers around 60%.

The low conviction rate for secondary parties suggests an overreach in the application of secondary liability and a potential disparity in the quality of evidence presented against principal and secondary suspects. It also highlights a deeper, more inherent issue with the legitimacy of a legal framework that allows individuals to be prosecuted for murder when they, quite simply, did not commit murder.

## VI) HOW MANY COURT DAYS AND HOW MUCH PRISON TIME?

#### **Prison Time**

Despite the low conviction rates for murder and attempted murder, the courts still imposed a total of 601 years in custodial sentences. This figure excludes one convicted defendant for whom sentencing information was unavailable.

The estimated total time spent on remand by defendants was at least 18,641 days (51 years). This figure excludes 11 defendants for whom we were unable to estimate remand time. It is therefore likely that the true figure exceeds 20,000 days (54 years). Among those not convicted of any offence or not sentenced to custody, the total time spent on remand was approximately 6,635

days (18 years). This figure excludes three defendants for whom we were unable to estimate remand duration. The more accurate total is therefore likely to be more than 7,000 days (19 years).

## DAYS (19 YEARS) SPENT ON REMAND BY THOSE WHO WERE ACQUITTED OR NOT SENTENCED TO CUSTODY

#### **Court Days**

Trial durations ranged from one to 15 weeks, with the majority lasting at least four weeks. Collectively, the trials spanned approximately 95 weeks, covering 665 calendar days.

While it is difficult to determine the precise number of court days—since the 665-day figure includes weekends and occasional non-sitting days—this total excludes all pre-trial hearings. As our observations typically began at the point of prosecution opening speeches, the 665-day figure may not be far off the actual number of court days.



#### VII) WHAT DO THESE NUMBERS SUGGEST?

These figures offer a snapshot of who is being prosecuted under joint enterprise that aligns with existing data. While recognising that convictions cannot be assumed to be fair or error-free, the high acquittal rate for murder and attempted murder raises questions about the appropriateness and evidential basis of the charges brought.

The hundreds of days spent in court and the thousands on remand by those later acquitted speaks to lives irreparably disrupted—and to the financial cost of a prosecutorial approach that leans towards overreach rather than restraint, as illustrated through the remainder of this report.

According to this dataset, the suspect with the longest sentence or most serious conviction is determined as the principal suspect. Where there is no court outcome, the principal suspect is either the person considered by the police to be the most involved in the homicide or the suspect with the closest connection to the victim. It therefore may not always accurately reflect the form of liability for the offence.

<sup>E</sup>Remand time was calculated using different sources, including approximate or exact remand durations provided by counsel, remand dates stated in open court, and the recorded dates of charge for the relevant offence. Where none of this information was available, we did not make an estimation.

<sup>&</sup>lt;sup>f</sup> This figure includes two defendants for whom juries returned no verdict.



## PART 4

INSIDE THE COURTROOM: JOINT ENTERPRISE IN ACTION

"Joint enterprise is not delivering justice. It is delivering mass punishment. This doctrine is tearing families apart, devastating communities, and feeding a system that perpetuates racial injustice. Urgent reform is needed that reflects genuine complicity, not proximity to prejudice."

- UNJUST

### **INSIDE THE COURTROOM:** Joint enterprise in action

#### FINDINGS INTENDED TO SCRUTINISE

The purpose of this findings section is to critically examine how secondary liability is being applied, and to shed light on why concerns about the law persist and where key problems lie. While in some cases it was clear—within the current legal framework—why secondary liability charges were pursued by the police and CPS, and there was tangible evidence reasonably supporting the prosecution's case, this report is primarily concerned with identifying patterns of concern. The focus of this section is therefore on our observations that raise questions about overreach in charging decisions, the narrative strategies of prosecutors and the safety of joint enterprise prosecutions.

## CASE STUDY (CASE 14) "VOLUNTARY PRESENCE" IS ENOUGH

#### BACKGROUND

Seven boys were jointly tried for the victim's murder, with manslaughter as an alternative charge. D3 was also charged with possession of a bladed article. This case study focuses on the prosecution case for murder against all seven.

#### THE INCIDENT

At 8:26 PM, D1 met eight boys aged 14–15. The group included his six co-defendants, an unknown male and another boy (W1), who became a witness. W1 left the group, and the other boys headed to a park party, where the victim was already present. Soon after their arrival, the victim was fatally stabbed once.

#### PROSECUTION CASE

The prosecution accepted that only one person inflicted the fatal stab wound but could not say who. Still, they argued all seven who travelled to the park together were guilty of murder.

The prosecution argued that the boys were voluntarily present at the party, at least two were armed, and all were part of a joint plan to cause serious harm if there was a confrontation. They claimed that being there as a group offered "strength in numbers" and was evidence of assistance or encouragement.

While the prosecution did not say who inflicted the stab wound, they implied that it was most likely to be DI or D2. This was because some evidence linked DI and D2 to the incident. For example, a small amount of the victim's blood was found on D2's jacket, though experts could not be sure of how it got there.

The prosecution's case against the remaining five boys was nearly identical. It relied on their association with DI and D2 and the fact that they all attended the party together. Forensic evidence linked D3 to a knife found at the park—though not the murder weapon—which also contained DNA from three unrelated individuals. The prosecution argued that D3 brought the knife intending to cause serious harm if needed, stating: "That is why people carry knives." The prosecution also placed emphasis on the fact that most of the boys were wearing hoods and balaclavas, asking the jury:

"Why put on a balaclava just as they approach [the park]? To intimidate. What effect would that have on the group? It would convey that they were there for business... in it together, to strengthen and resolve. That is exactly what we mean when we talk about secondary parties—to contribute to the force of numbers."

The case also relied on witness accounts, particularly from two young witnesses (W1 and W2). W1 travelled with the defendants by train. In his first police interview he did not mention weapons. Months later, he said that D7 showed a flick knife to someone at the station and thought D1 might have had a knife based on the way he was walking. W1 was initially described in a police report as a suspect, and his account shifted over time—from describing casual group conversations to suggesting there was a "bad energy" during the journey.

W2 attended the party. He described it as initially positive but said fights broke out after the music stopped. He claimed a group arrived from the station and began robbing people, before approaching the victim. The prosecution also relied on texts between W2 and another individual which implicated D1 in both the alleged robbery and the stabbing.

W2 later admitted he heard about the stabbing but did not see it, despite initially suggesting otherwise.

#### **CASE OUTCOME**

The jury returned with six acquittals on all counts. Only D1 was convicted of murder by a non-unanimous verdict of ten votes to two.

## I) OVERCHARGING: A WIDE NET CAST ON WEAK GROUNDS

"Joint enterprise trawls all seven of them into the dock because the law permits the prosecution to say mere presence with a little bit more is enough"

- D5 counsel, Case 14

#### The Low Conviction Rate and Prosecution Overreach

A key observation was the excessive use of charging powers—both in the number and severity of charges brought against individuals and in the number of people charged in one case. Individuals were swept up in murder and attempted murder charges despite very tenuous connections to the crime.

As seen in the previous section, convictions for these charges were low, and a high number of acquittals was most clear for secondary parties. These findings may indicate either the prosecution's inability to prove its case or that the charges were unwarranted. The findings also raise broader concerns about the extent to which juries may resist the expansive and vague use of secondary liability that we observed.

The extent of prosecutorial overreach is illustrated by several cases. For example, Case 13 involved eight defendants facing over 50 charges between them. The jury returned a guilty verdict on just one count, for the principal, who was also acquitted of the most serious charge (attempted murder). In Case Seven, one defendant faced seven charges relating to the kidnapping of two victims—one of whom died over a day later following sustained violence. The prosecution could not identify who inflicted the violence or precisely when it occurred. D2, who had learning difficulties, did not participate in the violence and was not even present during the kidnap itself. The case against D2 rested largely on two facts: that he had spent approximately 12 minutes in a café earlier that day where other defendants were present, and that his phone was later used by those involved in the kidnap.

Following the defence no-case-to-answer submission, the judge noted that it was not possible to conclude that D2 was aware of the crimes that were planned and dropped six of the seven charges against him. Across multiple cases, defence teams made similar applications citing weak prosecution evidence, yet trials proceeded. Case 14 (Case Study) starkly illustrates this—a four-month trial that ended in six acquittals, an outcome that should have been reached much sooner.

#### Weak Grounds: Poor Quality Circumstantial Evidence

The CPS is the first safeguard before a case goes to trial. They must apply and satisfy the 'Full Code Test'—considering factors like the quality of evidence, offence severity, harm caused, and the suspect's age and culpability. While courts maintain that circumstantial evidence is not inherently weaker than direct evidence, cases built solely on inferences drawn from non-criminal

behaviour carry a higher risk of misinterpretation—especially when cultural nuance or unfamiliarity with defendants' lives is at play.

In some cases we observed, the circumstantial evidence reasonably supported the prosecution's theory. But in others, the prosecution relied on evidence that was inadequate to safely establish guilt. In Case Five, a 15-year-old boy (D3) was charged with murder largely based on his presence at the scene and a 28-second inaudible call he received from D2. Both defendants were acquitted of all charges.

Case 14 (Case Study) is the clearest example of a prosecution on weak evidential grounds. Five of the defendants were charged despite a near-total absence of evidence. The CPS's decision raises serious concerns about how the case met the Full Code Test threshold, particularly as the boys were aged 14–15, and two had neurodevelopmental conditions (though this may not have been known pretrial).

### "[The prosecution] had nothing. Nada. Zilch. Nothing"

- Case 14, D4 closing speech

CPS guidance urges caution in cases involving spontaneous violence, children, or suspects with learning difficulties. Prosecutors should consider whether the crime was planned and whether the evidence supports safe inferences about intent to assist or encourage. None of these factors appeared to guide Case 14. There was no clear evidence of planning. The case relied almost entirely on inferences drawn from six facts that, alone or together, failed to safely demonstrate assistance, encouragement, or intent.

- The defendants had been in each other's company before the stabbing and travelled together.
- 2. The defendants were voluntarily present in the park.
- 3. The defendants were part of the same group.
- The stabbing took place shortly after their arrival at the park.
- Most defendants were wearing hoods and face coverings, and there were no girls in the group.
- A knife (not the murder weapon) was recovered from the park, forensically linked to D3.

These facts were presented as "undisputed evidence that these seven [defendants] acted together." The prosecution argued that those without knives "lent encouragement and/or assistance to other members when violence broke out". Yet, based on the evidence, the prosecution was unable to answer with any certainty the following basic information about the incident and the actions of the defendants:

- Whereabouts in the park was each defendant at the time of the stabbing?
- What was each defendant doing at the time of the stabbing and were they all still together?
- · Did all the defendants witness the stabbing take place?
- If knives were present, how many were there, who had them, and were they drawn?

<sup>&</sup>lt;sup>o</sup> A 'no-case-to-answer submission' is essentially a request for the judge to dismiss the case on the grounds that there is insufficient evidence from which a jury could safely convict the defendant.

"The prosecution cannot tell you who the stabber was. They cannot tell you where D4 or others were at the time of the stabbing... I did not have to ask a single witness a question in the Old Bailey."

- Case 14, D4 closing speech

The prosecution could not answer some of these questions altogether, and others with any certainty. While a knife was forensically linked to D3, he was acquitted of possession. These six facts were plainly inadequate to support a safe inference of guilt. Yet they were used to build a murder case against children—some neurodiverse—contradicting the cautionary approach urged in CPS charging policy.

Case 14 illustrates how the vague law enables prosecutions based on broad assertions of encouragement, such as "voluntary presence" or "force of numbers." However, it also illustrates the conflation of social anxieties about groups of young people, knife carrying and public danger—with the legal response to serious crime. Repeated references to hoods, balaclavas and group identity acted as proxies for intent, illustrating how generalised suspicions turned into murder charges. The decision to prosecute seven boys, without clarity about who did what, where, or when, reflects how joint enterprise is not typically used as precise doctrine of secondary liability, but as a tool that enables the state to charge young people who happen to be proximate to a crime and are perceived as suspicious. Once CPS safeguards fail, a suspect's fate shifts to the court, where guilt is mediated through a series of narrative prosecution tactics.

### II) TRIAL BY STORYLINE: CONSTRUCTING GUILT IN THE ABSENCE OF EVIDENCE

"[the prosecution case is] a house of cards propped up by speculation"

- Case Five, D2 defence counsel

### More Theory than Evidence: Prosecution Storytelling

When CPS safeguards fail and the most peripheral suspects are charged, evidential gaps are often filled by unfair and prejudicial prosecution narratives. Across the study, the prosecution leaned heavily on theory rather than facts or evidence—constructing a story from a tenuous chain of inferences, which often crossed the line into speculation. While the adversarial system demands persuasive case theory, many prosecutors seemed to blur the boundary between advocacy and fairness.

Prosecutors made claims which were unsupported or contradicted by evidence. In Case 14 (Case Study), the prosecution could not identify who stabbed the victim or precisely what each defendant was doing at the time, yet they argued that arriving at the party as a group wearing balaclavas showed they were emboldening one

another—recasting non-criminal behaviour as encouragement. The defence noted that the victim also wore a balaclava, a common fashion item among young people. Even the prosecution's own witness (W1), who travelled with the group, stated that "they dress like that to be cool."

"Our client has a uniform that every JD store pushes on our children."

- Case 14, D6 closing speech

The case was therefore not grounded in evidence which demonstrated the defendants' involvement. Instead, it relied on a narrative constructed from a fragile chain of inferences. This approach was repeatedly criticised by defence counsel, who warned juries about the dangers of "conjecture". In Case Five, the defence criticised the prosecution for asking the jury to treat a few short, inaudible phone calls as proof of "coordinated planning"—a claim unsupported by the broader evidence.

"The prosecution say [these phone calls are] impressive coordination between the three of them acting together to commit a crime. What on earth is the evidence of that? It's conjecture."

- Case Five, D2 closing speech

The prosecution framed Case Five as a "3-on-1 unprovoked attack," yet the evidence suggested a different picture: the victim appeared to follow D1 and was carrying a knife; his friends, who wore face coverings, fled the scene without him and made no emergency call after the stabbing. One witness recalled a friend of the victim saying, "Hurry up, get in the car, we've done him," suggesting they believed the victim had stabbed D1. Such details-often treated as clear signs of criminal intent when linked to defendants-were sidelined when they did not support the prosecution's case. In this case, the prosecution leaned almost entirely on inferences drawn from the silent CCTV and inaudible phone calls, assuming all three defendants were "in it together" without meaningfully exploring the evidence. When the evidence was considered in full, the claim of a premeditated plan became increasingly implausible.

In Case 14 (Case Study), the prosecution also advanced a theory that the seven defendants had a premeditated plan to commit violence upon arriving at the party if necessary, despite the absence of supporting evidence. The prosecution's own witness (WI) rejected the idea that any such plan existed.

"[Joint enterprise has been used to] cast a big fishing net to group anyone and sweep up anyone within eyeshot".

- Case 14, D6 defence barrister

In keeping with a speculative approach, defendants' knowledge and intention—key components of secondary

liability—were routinely presumed, not evidenced. This was particularly apparent in relation to knowledge of weapon carrying or an alleged plan. For example, in Case Seven, where the judge dismissed six charges against D2 (see page 18), the prosecution did not thoroughly assess what the evidence could reasonably demonstrate with regards to his knowledge. As the judge noted: "How can a jury conclude that he knew what took place...?"

"He knew at least two knives were in the group and must have realised that the use of knives was likely."

- Case 14, prosecution closing speech

"There was no evidence that he had a knife, no evidence he knew about a knife... There was no evidence he heard any of the conversations [about knives that] the prosecution claimed took place."

- Case 14, D4 defence counsel closing speech

The same criticisms were levelled at the prosecution's approach to proving intention, with defence counsel cautioning against drawing unsafe inferences about a defendant's state of mind. This issue was particularly pronounced in Case 12, which involved three defendants. D2 and D3 did not engage in any demonstrable physical act to support the attack, making the case against them highly dependent on what they knew and intended by being at the scene. A key question in this case was therefore the distinction between mere presence and intentional participation. D2's defence counsel warned the jury against conjecture and assumption, suggesting that the prosecution had failed to evidence his intention:

"You are being asked to consider intent, state of knowledge. Quite a lot of what you are being asked to be sure of is what was in the mind of D2. There is a difference between safe inferences and guesswork, and it is important to know where the line is... What evidence actually exists to support the inference that D2 must have known? You are left in a situation and inference territory that is dangerous"

- D2 defence counsel

D2 and D3 were both acquitted by the jury. The defence's criticism of the prosecution in this case reflects the broader pattern we observed: a lack of restraint on the theory and inferences that prosecutors are permitted to draw, no matter how tenuous or unreasonable. This contradiction was glaring given that juries were repeatedly warned against speculating or filling evidentiary gaps in their deliberations, yet the prosecution often relied on precisely that conjecture. In cases such as these, where the conduct in question is minimal, it is vital that every nuance, piece of evidence, and surrounding

circumstance is carefully scrutinised before pursuing charges. Rather, these cases suggest a determined effort by the prosecution to mould selective fragments of evidence to fit a predetermined theory—prioritising convictions over a genuine effort to understand what occurred.

#### The Use of Vague "Catch all" Phrases

To gloss over the absence of clear acts of assistance or encouragement, prosecutors leaned on evocative, vague phrases such as "in it together", "force of numbers" or "back up if needed". These ambiguous slogans became substitutes for an absence of evidence whilst collapsing meaningful distinctions between the roles of individual defendants. For example, in Case Three, a shooting in which four defendants were charged with attempted murder, the prosecution framed the defendants as operating as a "team". When attempting to demonstrate participation, the prosecution emphasised that "numbers matter" but failed to specify any clear or demonstrable acts of assistance or encouragement.

Where the defendants' conduct did not extend beyond mere presence, the prosecution made efforts to frame their presence as more directly contributory. For example, in Case Five it was argued that the defendants were blocking the victim's escape. This appeared to be a deliberate attempt to construct a more concrete form of assistance, rather than relying solely on the tenuous notion that presence alone amounted to encouragement. In reality, however, both D2 and D3 were positioned several yards behind D1 and the victim, with the area in front of and beside the victim visibly unobstructed.

The prosecution's use of the phrase "back up if needed" was apparent in several cases, which reflected a strategic ambiguity that blurred the line between passive presence and active participation. An example is Case 15, in which six defendants were charged with murder. D2, D3, D4 and D5 accepted being present in the car which was alleged to have followed the victim. It was agreed that D5 and D6 did not get out of the vehicle, but the prosecution asserted that they were present as "back up if needed", whilst emphasising the common phrase "support in numbers".

"Were any of the occupants [in other cars] to intervene you may think that's why support in numbers was needed and that they are there should the need arise. The defendant didn't need to get out and assist but his presence is because he was there as backup if needed."

- Prosecution Closing speech, Case 15

This argument operated as a catch-all mechanism as it allowed the prosecution to claim that even if the defendants did not provide any measurable or clear assistance or encouragement through their conduct, their mere availability at the scene gave the principal confidence to act, thus constituting encouragement. Nonetheless, D5 and D6 were acquitted of all charges.

When the phrase "backup if needed" was used, the prosecution did not establish that the defendant physically assisted the principal; instead, they suggested that the defendant's readiness to support the principal-if required-was sufficient, despite there being an absence

of evidence to support the claim that the defendant was willing to or intended to assist if required. With this broad approach, defendants are criminalised not for what they did, but for what they might have done in a hypothetical scenario that never materialised. This is a dangerous way to apply the law of secondary liability, resembling offences like conspiracy, which are meant to deal with plans to commit crime that do not necessarily materialise. But unlike conspiracy, this approach comes with none of the legal safeguards such as having to prove that there was an actual agreement between the defendants to begin with.

It is in such instances that the theory of a premeditated plan becomes crucial to the prosecution, as it provides a means of bridging an evidentiary gap—namely, the absence of any clear act of assistance or encouragement. If the jury accepts the narrative of a prior plan between defendants, even passive presence can be interpreted as active participation.

#### **An Evolving Truth?**

The weak evidential foundation of many cases was compounded by two key features that distinguished the prosecution's narrative approach. First, as discussed above, prosecution case theory was grounded in speculation as opposed to evidence. Second, prosecution case theory was fluid and changing. In several cases, the prosecution introduced new lines of argument late in trial, meaning they could not be properly tested or challenged by the defence.

This approach was especially evident in Case Two—the only conspiracy case. The prosecution claimed defendants visiting a property throughout the day were collecting items for a planned gang "ride-out" attack. But during cross-examination, one defence counsel noted her client, unlike others, was not seen carrying anything on CCTV. In response, the prosecution, for the first time in closing arguments, suggested the defendant must have been carrying the car key—small enough to hide. Such last-minute shifts appeared to be a strategy to salvage weak or collapsing arguments.

"The prosecution say that [this phone call] is him arranging to pick up the [the car used in the incident]. This was not mentioned in the prosecution's opening. The call was not mentioned until the closing speech. The closing speech was the first time it was pointed out, and no one was asked about it in their evidence."

- Defence Counsel, Case Two

Police officers also introduced new interpretations of evidence mid-trial, having previously failed to identify those same details in earlier statements. These shifts included belated claims about what could supposedly be seen in poor-quality CCTV footage and witness accounts that evolved in ways that appeared strategically timed to undercut defence arguments and reinforce the prosecution's case.

Case 18—a retrial—is a prime example. Here, the CCTV officer, who had reviewed the footage extensively over several years, made many new observations during the

retrial that were absent in earlier statements. In 2019, he stated that "no weapon is clearly seen" in the defendant's hand. In 2024—six years after the incident and six days before the retrial—his account changed. He now claimed a pointed object that "glints" was visible in the footage, suggesting it might be a weapon. This shift raised serious concerns that the evidence was being retrofitted to bolster the prosecution's case, particularly in light of the previous hung jury. The defendant was subsequently convicted by a non-unanimous verdict.

Whilst this issue is not unique to joint enterprise, it becomes especially concerning in such cases, where there is often little to no direct or forensic evidence. In this context, the police and prosecution may be more inclined to exploit the ambiguity of evidence–such as a "glint" in the CCTV footage–to offer an interpretation that aligns with guilt, particularly as weaknesses in their case become apparent.

The evolution of the prosecution's case not only undermines the fairness of the proceedings—since late–stage claims cannot always be tested—but also raises deeper concerns about the legitimacy of the prosecution's claim to present to the jury a case they can be sure is true. The fluid nature of prosecution storytelling calls into question whether their narrative is predominantly shaped by the goal of securing a conviction. In this way, the courtroom risks becoming less a site of rigorous evidence–testing and more a stage for affirming suspicion—where guilt is constructed and performed, rather than proven.

### III) THE GANG NARRATIVE AND ITS DOUBLE EDGE

"The single story creates stereotypes, and the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the only story."

- Chimamanda Adichie<sup>40</sup>- Author and Feminist

The prosecution's narrative tactics were entangled with racialised constructions of crime, including stereotypes about gangs, drugs, knife crime and association. It has long been recognised that the term gang functions as a powerful indicator of collective culpability and a racialised marker of criminality and dangerousness. In recent years, the courts and the CPS have become increasingly attuned to the problems associated with the term, acknowledging that it carries racially loaded assumptions and can risk overcasting the net of liability if used inappropriately.<sup>41</sup>

While prosecutors may exercise caution in using the term 'gang', the gang narrative can persist through indirect language, stereotypes, and other signifiers. Across the cases, the gang narrative manifested in two ways. First, it sometimes appeared overtly, either through direct use of the term by advocates or as a core feature of the prosecution's case theory, framing the offence as gang-related violence. Second, it emerged more subtly, even without direct reference to the term, as illustrated below.

#### The Explicit Gang Narrative: The Foundation of the Prosecution Case

The term gang was used by advocates and/or judges in just five cases. However, where the prosecution categorised the offence as gang-related, the gang narrative was central to the case and overshadowed the factual questions the jury were meant to consider in deciding a verdict. This was particularly evident in Case 18—a retrial of one defendant charged with murder, following a previous hung jury.

The defendant denied being at the scene. No phone data placed him there, and the identification evidence was poor. The prosecution relied solely on clothing-based identification, though the clothing was not recovered. It was not even possible to discern the suspect's race, and the identification was weakened by the generic nature of the suspect's clothing. Reliability was further undermined by the shifting police interpretation of the footage, as discussed briefly on page 21. Notably, an image analysis expert was consulted between 2018 and 2021 and was not relied upon at trial, raising a crucial question: if expert input had been deemed necessary earlier, why was it omitted? The omission suggested that the expert's findings did not support the prosecution's case.

The prosecution's gang-related case theory appeared to compensate for the weak identification evidence. The prosecution set out a series of "tit-for-tat" violent incidents involving people and gangs allegedly associated with the defendant. Crucially, the defendant was not involved in these acts of violence but had been victimised on one occasion. The prosecution argued that this victimisation, coupled with his associations, provided context, motive and intent for the attack.

At times during the observed cases, the prosecution inferred motive and intent based on tenuous associations—relying on mutual, rather than direct, connections between defendants and other individuals. Although the defendant in Case 18 had not engaged in any of the "tit-for-tat" violence the prosecution described, the jury were invited to infer that, as someone "affiliated to the [gang name]," he would automatically "share the grievances of the gang." This is a significant leap which assumes that group identity and associations dictate individual intent, reducing the defendant's motive and intent to a function of collective gang behaviour rather than providing evidence of his own state of mind.

To situate the case within broader "tit-for-tat" gang violence, the prosecution referenced a 2017 murder and subsequent retaliatory attacks, arguing that the killing "illustrate[d] how quickly the [gang were] to act and offer swift and terrible violence on their rivals." Though the defendant was not involved in these acts, the implication was clear: as someone associated with a group that had previously enacted revenge, he likely did the same in this case. In this way, the gang narrative overshadowed the core question the jury was meant to decide: was the defendant the suspect at the crime scene?

The prosecution also emphasised the defendants continued contact after the attack with some of the now-convicted individuals from the original trial, again relying on association to reinforce their case.

This impermissible suggestion of guilt by association was not confined to the 'gang cases'. In other cases, evidence of association appeared to drive the investigation and charging decision from the outset, raising broader concerns about how proximity and association can carry a case from investigation to trial, shaping outcomes in the absence of direct evidence.

#### The Covert Gang Narrative and Racialised Discourse

With the stereotypical image of the gang member ingrained in the public imagination, using the term gang is not essential to the gang narrative. Various signifiers—such as references to drugs, territory, rap music, and knife crime—either amplify or subtly reproduce the gang narrative. In several trials, the prosecution evoked sensationalised, stereotypical images of youth, knife crime, and gang culture. This practice was especially evident in Case Four, as discussed below.

"You're probably used to hearing these days, knife crime that blights not just London, our city, but across the country. You might ask yourself why. Where do they get these knives? You may wonder what the police can do to stop it. You've obviously felt for the parents who've lost a child to this mindless violence. Some have come to see it as something to be expected. Apart from in the news, it's probably something distant to you. But it's now on our doorstep, a quiet residential street in this case. Until it came to their quiet residential street, with a community spirit. Involving machetes shipped from other countries...The cowardly nature of their violence, slaying another in daylight on a residential street."

The above excerpt from the prosecution closing speech exemplifies the subtle yet powerful way that racialised ideas about crime are perpetuated by language. A range of rhetorical strategies were used to evoke fear and reinforce stereotypes. The phrase "you are probably used to hearing these days" acknowledges that the jury are likely to have had exposure to media portrayals of knife-related violence, setting the stage for the reinforcement of existing stereotypes about knives and gangs.

Language of "our city", "quiet residential street" and "community spirit" further creates a boundary between the defendant's and jury, positioning defendants as outsiders who intruded on the sanctity of an imagined white, middle-class, peaceful community. This 'us' (the jury) versus 'them' (the Black criminal) dynamic was reinforced by the notion that the violence is something distant and foreign, now unnervingly close to home. Repeated emphasis on a quiet community not only evokes whiteness, but also a sense of middle-class respectability, perceived to be under threat from outsiders. Mention of "machetes shipped from other countries" reinforced the narrative of a foreign threat invading "our city", playing into broader stereotypes about crime, race, and immigration. The prosecution went on:

"This senseless act was so violent, and it is hard to believe that anyone can commit such savagery on our streets. But you must put your feelings aside. The two defendants, together, one chasing from the west, one armed for combat from the east... There is no doubt that the pair of them were a team...The wall of silence in interview continued with D2, because they've got each other's backs. They are a team...This was a joint attack, a team effort, a call to arms. It doesn't matter who inflicted the fatal blow, they were both in it together. This was a case of hastily planned violence of a brutal slaying. It was an armed pursuit...It took place in such public location and in daylight hours, even the dazzling effect of the sun is offset by their shadows in the CCTV"

This excerpt is a vivid example of how language is strategically deployed to evoke strong emotions, despite explicit instructions to the jury from both the judge and prosecution to disregard emotion in their decision-making. The inherent paradox in this rhetoric is

stark. Terms like "savagery" carry racialised connotations, associated with a lesser culture. The phrase "you must put your feelings aside" is preceded and followed by language designed to provoke emotion. Repeated reference to the defendants as a "team" is a strategic evocation of the gang, serving to replace the explicit term. This characterisation is further reinforced through militarised language, such as a "call to arms" which dramatises the events and situates them within the context of coordinated gang violence. Likewise, in Case 12, the prosecution described the attack on the victim as "an armed expedition into [location] territory", despite the scene of the murder being a short walk from the defendants' homes.

Despite the absence of gang evidence or the use of the term gang throughout Case Four, the framing of the case on the prosecution chambers' website indicates that the case was perceived through the lens of gangs. The chambers' report refers to the defendants as having armed themselves to murder a rival in cold blood. This characterisation not only decontextualises the events but also employs the term "rival", implying gang activity. There was no indication that the victim was a rival in any meaningful sense; the conflict arose from an altercation earlier in the day where the victim and his friends stole DI's bike. "Rival" implies a history of hostility associated with gang conflict, which was not apparent in this case.

#### **Evoking the Gang in Cross Examination**

Another way the prosecution evoked the gang narrative was by questioning defendants about drugs, even if it was not relevant to the offence. This was evident in Case Four and Case 10, explore below.

#### Reflections on Case Four

As with narratives on knife-related violence, popular media portrayals of drug offences overwhelmingly feature young Black men, reinforcing the historical stereotype of the Black drug dealer that continues to shape policing, including racialised patterns of drug related searches. During the prosecution's cross-examination of DI, drug-dealing was introduced to imply that DI was predisposed to carrying a weapon. DI told the jury that before encountering the victim, he was on his way to purchase £50-70 worth of cannabis, intending to use some personally and sell some to friends. The prosecution commenced their questions focusing on this cannabis transaction:

Prosecution: You told the jury you were on your way to buy drugs?

D1: Yes, cannabis

Prosecution: And that you were going to sell it?

D1: Yes

From this point, the prosecution expanded their inquiry, probing D1 about his broader involvement with drugs. During this questioning, D1 admitted to having previously participated in activities associated with the distribution of Class A and B drugs to cities outside of London. He clarified that he did not sell the drugs but would hold and transport money for others. The prosecution then continued by asking:



In this exchange, the prosecution sought to exploit DI's admission of his earlier involvement in transporting drug-related money outside of London by linking it to his purchase and intended sale of 3.5 grams of cannabis. Through questioning, the prosecution drew a parallel to the use of weapons associated with the Class A drugs trade, creating a false equivalence between this cannabis transaction and the supposedly high-risk environment of Class A drug dealing. This led to a moment of confusion where DI sought to clarify, "What you're asking me about wasn't in London."

It was evident that DI's purchase and sale of cannabis was a small operation among friends, as underscored by the modest quantity, his personal use of the substance, and the following exchange. When asked by the prosecution how he found his buyers, D1 responded, "I'm a weed smoker, so I hang around with weed smokers." When pressed on how he contacted them, he simply stated, "How you would contact your friends." Despite the obvious informality of this dealing, the prosecution conflated it with DI's unrelated and earlier involvement in 'county lines' to suggest that he must have been armed. The prosecution went as far as to label his cannabis purchase as "moving drugs," implying that his electric bike was used to transport drugs. This allowed them to suggest not only that DI was likely carrying a knife, but also that his motive for revenge arose from being disrespected in his own "patch":

"For [DI's bike to be stolen] on [his] own patch where he was on his way to buy drugs, he'd been shown attitude, lost face in his neighbourhood... he was not willing to let it go."

The prosecution also asked DI, "You wanted to show who the big men in [local area] were didn't you?" This strategic use of drug dealing as a narrative device enabled the prosecution to introduce the notion of territory—a concept deeply intertwined with the popular characterisation of gangs, including at the level of state policy. Notably, the Metropolitan Police's own definition of gangs explicitly includes "identifying with or laying claim over territory" as a defining characteristic.

#### Reflections on Case 10

In Case 10, D1 was accused of running a Class A drug line and ordering the attack on a rival dealer. He denied this, claiming the operation was run by a friend of his. The prosecution asked D1:

**Prosecution:** [gang name] back in [area name]. I'm not saying you were a part of it, but you'd have seen effects these drug gangs have?

D1: Yes

Prosecution: It's a competitive world, dealing in London?

D1: Yes

**Prosecution:** Groups will have areas they like to control, turf. That's the drama in that world and the concept of laying claim over an area is just as disgusting as taking over a user's house... Drug dealing is a dangerous business?

D1: Yes

Prosecution: Makes you targets for attacks by rivals?

D1: Yes

**Prosecution:** In London, when you talk about violence, it's not giving someone a punch anymore, it's knives... There's a whole language in this drug world, street language. "Traphouse", "bando" – houses the gangs take over. "Food" – drugs. There's a dictionary for knives – "Rambs", "chetties", "flicks".

By using terms like "turf," "rivals," while mentioning knives, the prosecution constructed a gang narrative without directly calling D1 a gang member. The prosecution narrated a story that evoked broad generalisations about inner-city drug culture, positioning violence as an inevitable feature of it. Listing so-called "street terminology" served less to clarify facts than to imply D1's cultural proximity to gangs and crime, while reinforcing the prosecutor's apparent authority as a cultural translator for the jury.

The cumulative effect of this line of questioning was to prime the jury to view the case through a gang lens, despite the absence of gang evidence. This was made evident by the first question: "[gang name] back in [area name]... I'm not saying you were a part of it, but you'd have seen effects these drug gangs have?". This rhetorical strategy allowed the prosecution to introduce an incriminating association and reference a particular gang while maintaining deniability. The judge made no intervention.

Such strategies exemplify the performative and prejudicial potential of cross-examination. Through this process, the court became a space not for probing relevant facts, but for narrating a racially coded story. Yet, when young defendants, including those with neurodevelopmental conditions, opted not to give evidence, prosecutors criticised them harshly. In Case One, the prosecution dismissed the relevance of two defendants' diagnoses, suggesting they should have given evidence because they were "fully medicated." At one point, the prosecutor remarked: "In the case of [one defendant], counsel, no doubt, has also brought up his ADHD..." —framing his neurodevelopment condition as a mere legal tactic to justify not giving evidence. This compounds the injustice of a dynamic where cross-examination is wielded not to elicit truth, but to impose a narrative of guilt.

### IV) INSTITUTIONAL WHITENESS: THE CULTURAL CODE OF 'JUSTICE'

The prosecution's version of events and interpretation of the evidence can be difficult for defendants to counter. This challenge becomes even greater when the prosecution's account is shaped by racialised stereotypes, and when those narratives unfold in a courtroom characterised by a dominant whiteness. As detailed in Part Three of this report, the legal professionals in the cases we observed were overwhelmingly (84%) white. While juries were more racially diverse, they too were mostly white.

Understanding the impact of jury diversity is limited by the lack of information on other factors such as jurors' age, class, and political outlook. The jury's role is also shaped by a legal system dominated by white professionals, who are typically not of the same generation as the defendants, and whose interpretations of evidence and legal arguments guide the direction of the trial. Moreover, the adversarial nature of criminal proceedings means that defendants must rely on their legal representatives to navigate the courtroom—a space that, as our observations show, often fails to account for the cultural and social experiences of young people and racially minoritised communities.

The physical and symbolic features of the courtroom

reinforce its role as an establishment institution. Traditional wigs and gowns—steeped in Britain's colonial history—served as a visual marker of the legal profession's historical exclusivity and a symbol of institutional authority. The prosecution's narrative gains its authority not just from legal argument, but from this courtroom structure itself—a structure in which whiteness, professionalism, and legitimacy are entwined. It is within this context that racially minoritised and working-class defendants face barriers in challenging the prosecution's interpretation of the evidence.

#### **Lost in Translation**

One of the more subtle but powerful ways the courtroom's dominant culture showed itself was through language—where the way defendants were expected to speak often reflected a style far removed from how they naturally spoke and made sense of the case. The use of complex, non-everyday vocabulary created an environment where 'justice' was mediated through an elite linguistic framework.

Many defendants spoke with what a voice recognition expert referred to in court as a "Multicultural London English accent"—which, while easily understood by us, often prompted repeated requests for clarification, particularly from judges. Defendants were asked to repeat or rephrase statements, even when their meaning was clear.

These exchanges revealed more than a simple need for clarification; it signalled a deeper unease with the defendant's mode of expression—one that fell outside the courtroom's narrow expectations of how evidence should be given. In such moments, defendants' narratives appeared to be dismissed as incoherent, and they were pressured to present their version of events in a way that conformed to the linguistic conventions of the courtroom. Ironically, as shown earlier on page 24, the prosecution at times adopted the vernacular they associated with the defendants—not to bridge understanding, but to reinforce stereotypes and emphasise the perceived social and cultural gap between the defendants and the jury.

Ultimately, the language of power, law, and persuasion is not the language of most defendants. The consequences of this can be profound, since a defendant's ability to grasp the evidence, to challenge the prosecution's case, and to present their defence is fundamental to a fair trial.

#### When Identity Informs Advocacy

Diversity and representation will not address structural inequalities embedded within the criminal legal system. Indeed, the CPS, which has a relatively diverse workforce, is an example of this complexity. Its own research into racial disparities in charging decisions found that these disparities were not caused by a lack of workforce diversity. Rather, more subtle and systemic factors—such as differences between the way cases involving white versus racially minoritised suspects were described and framed—were at play. Nonetheless, a more representative legal system can play a role in challenging racial injustice.

Throughout the cases we observed, there was often a sense of cultural foreignness projected onto aspects of the evidence—interpreted through a lens that rendered the defendants' everyday lives as unusual or inherently suspect. In one instance, something as commonplace as going to a "shisha spot" had to be explained to the Court. The race and personal biography of counsel sometimes

played a crucial role in enabling a clearer and more accurate understanding of the evidence. In Case II for example, flaws in the prosecution's identification were brought to light by the defendant's barrister, a South Asian woman. Her ability to rigorously scrutinise the identification and challenge the claim that her client (who was clearly of South Asian heritage) matched the witness's description of a Black mixed-race male highlighted the value of racial diversity at the Bar. She challenged the evidence in a way that was both judicious and assertive, demonstrating confidence in addressing sensitive issues of race, hairstyle and texture, and cultural identity—an approach that a less assured barrister might have hesitated to take.

This is not to suggest that a white barrister could not have done the same, or that another South Asian barrister necessarily would have. However, it became evident that some lawyers—particularly those from underrepresented backgrounds—brought perspectives and experiences that equipped them to identify and challenge potential misinterpretations of evidence.

#### **Considering Racialised Patterns of Remand**

The centrality of whiteness in the courtroom became striking during the final months of the court watch. As set out in the first section of this report, two long cases unfolded simultaneously, but differently. Case 14 involved seven Black boys prosecuted for murder. As outlined earlier, there was no evidence directly linking five of them to the stabbing. There was no clarity about who, if anyone, was carrying a knife. There was also no clarity about exactly what the defendants were doing at the time of the stabbing. All five had no criminal history, were still in school when the crime occurred, and had multiple good character references. Yet they were remanded in custody from the date they were charged.

In the courtroom below, Case 13 was taking place—an attempted murder retrial in which a stolen vehicle was driven to the victim's home. The victim was shot outside his house. DI discharged the gun, D2 drove the car, and D3 exited the vehicle alongside DI at the scene. Other defendants were accused of facilitating the shooting, including by acquiring the stolen car and holding the first three defendants' belongings whilst the shooting took place. The prosecution had specific, tangible evidence which they claimed demonstrated coordination between the defendants. Despite this, only DI, D2 and D3 were charged with attempted murder. All remaining defendants—some of whom played significant roles according to the prosecution, were not charged with attempted murder, but with assisting in offences.

This included D4 who helped acquire the stolen car and drove what the prosecution called a "support vehicle" near to the crime scene. These charging decisions were therefore in stark contrast to Case 14.

Like Case 14, D1 was the only defendant to be convicted in Case 13. However, he was found not guilty of attempted murder. He was instead convicted (by majority verdict) of possession of a firearm with intent to cause fear. His defence was that he went to the victim's house to collect a debt. D1 claimed that the victim appeared armed with a machete, so he retrieved the gun to protect D3, and the gun discharged accidentally during the confrontation. This account was supported by evidence that the victim had indeed armed himself and likely contributed to D1's acquittal for attempted murder.

Notably, only D1 was remanded in custody in Case 13. All other defendants—including D2 and D3, who were both

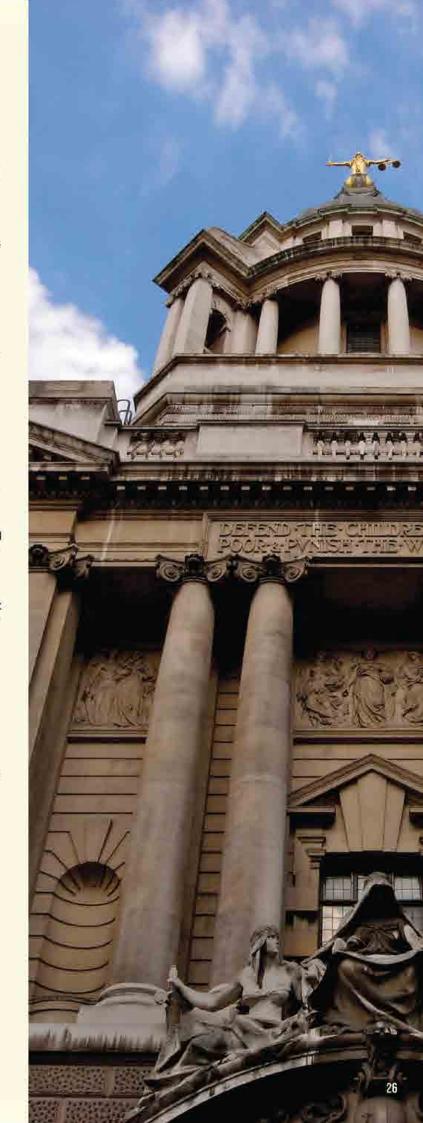
charged with attempted murder—were on ball. This disparity is not easily explained by the fact that Case 13 was a retrial. There were at least two other retrials within the study involving Black defendants who had been held on remand for over three years. It is also not clear if D2 or D3 in Case 13 were ever on remand, and the first trial only included D1, D2, D3 and D4.

This disparity is particularly striking when viewed through the lens of CPS guidance which emphasises that remand into custody should be determined in light of the nature and seriousness of the offence, the defendant's background, and critically, the strength of the prosecution's case. In Case 13, the prosecution case—while very reasonably contested—was clearly more developed than in Case 14: specific roles were alleged, corroborated by sources of evidence. Yet those with clearer proximity to the serious violent act were granted bail, while school-age boys in Case 14, facing extremely vague allegations, were imprisoned from the point of charge.

This is not to suggest that the prosecution case in Case 13 was particularly strong, nor is it to suggest that all the defendants should have been charged with attempted murder and kept on remand. The point is not to argue for more punitive measures across the board. Rather, this observation highlights the inconsistent application of prosecutorial discretion and remand decisions, and in these two cases, these inconsistencies appear to fall along racial lines. Though not generalisable, this observation is particularly concerning given the overwhelming racial disproportionality within the remand prison population, especially in youth custody.<sup>24</sup>

The visual and spatial conditions of being held on remand also have often overlooked consequences. In Case 14, the defendants were dressed in the same clothes each day, flanked by court security in the dock, and escorted under guard. The jury was repeatedly told that the defendants were late due to issues with prison transport—a detail that subtly reinforced their status as prisoners. These constant visual and verbal cues are likely to influence how the jury perceive defendants, their riskiness and thus, guiltiness. This observation was not lost on defence counsel, who urged juries not to let the defendants' positioning or security presence cloud their judgment.

By contrast, the defendants in Case 13 could wear different clothes each day and move through public areas during breaks where they were visible to jurors in a more neutral context. This comparatively relaxed environment likely mitigated their perceived riskiness. It is therefore imperative to consider how racial disparities in remand decisions can further complicate the ability of Black and racially minoritised defendants to contest the prosecution's narrative. The conditions of their confinement—constantly guarded and physically distanced from the jury—reinforces stereotypes that are likely to increase the prospect of conviction.



### **CAN WE AFFORD THIS?**

## CONSIDERING THE FINDINGS IN LIGHT OF THE "PRISON CRISIS" AND COURT DELAYS

While the personal, community, and social costs of the findings outlined in this report are undoubtably the most devastating, the economic and financial implications cannot be ignored—particularly in light of the Government's recent efforts to address the growing "prison crisis" and court delays.

As of September 2024, the Crown Court backlog stood at an unprecedented high of 73,105 cases, prompting Sir Brian Leveson's Review of the criminal courts. The purpose of the review is to consider and propose how criminal courts can be reformed to ensure cases are dealt with proportionally and efficiently. One of the more controversial considerations is the reclassification of certain offences to reduce reliance on jury trials—a safeguard enshrined in English law since Magna Carta in 1215.

Yet Joint Enterprise on Trial reveals a different and overlooked source of inefficiency: joint enterprise prosecutions. Courtrooms and prison cells are being filled by cases that frequently end in acquittals—many of which should never have proceeded to trial at all. Public money is not being used to deliver justice, but to stage it. Weakening the right to trial by jury, rather than confronting the system's own role in generating delay and injustice, risks obscuring the real problem.

During the six-month court watch, up to one third of the Old Bailey's 18 courtrooms were simultaneously occupied by joint enterprise trials. Some of the trials observed were four months long, making these trials some of the most complex and resource-intensive proceedings in the criminal legal system. It is undoubtable that their cumulative effect is to significantly exacerbate delays and congestion across the courts.

The findings further demonstrate that joint enterprise cases intensify the ongoing "prison crisis" which prompted the Independent Sentencing Review led by former Lord Chancellor and Justice Secretary David Gauke." As detailed in Part Three of this report, across the 17 trials, the estimated total time spent on remand was 20,000 days (54 years), with approximately 7,000 days (19 years) served by individuals who were not convicted of any offence or were not sentenced to custody.

In 2023–24, the average annual cost of holding one adult prisoner was estimated at £53,801. For the youth custodial estate, the annual cost is approximately £120,000. Based on these figures, this study estimates that between £1 million and £2.2 million was spent on remand time resulting in no conviction or no custodial sentence—across just 17 trials over a six-month period in a single Crown Court.

In Case 14 alone, more than £720,000 is estimated to have been spent on remand for six boys who were ultimately acquitted, alongside four months of court time lost to the case. Joint enterprise prosecutions, particularly with the overreach observed in charging decisions, are therefore uniquely positioned to drive up both prison time, court time and financial costs.



PART 5 CONCLUSIONS

#### A Culture of Overreach, Not Restraint

This report has examined the use and misuse of joint enterprise prosecutions, revealing a prosecutorial landscape shaped less by the fair and precise application of law than by expansive overreach. While the law of secondary liability is undoubtedly broad in scope and needs reforming, its unfairness is compounded by the excessive charging practices identified in this study. The findings demonstrate that the CPS at times fails to rigorously assess whether the inferences being drawn are reasonable, instead making assumptions about knowledge and intention based on highly tenuous grounds. Whether this overreach stems from insufficient safeguards in CPS policy—or from a failure to adhere to it—is not entirely clear. What is clear, however, is that the current approach lacks adequate safeguards and enables prosecutorial strategies that heighten the risk of wrongful conviction.

Once a defendant enters court, they are subjected to narrative-driven prosecutions, where broad allegations and prejudicial storytelling fill an evidential void that should have precluded the case from coming to Court. When narrative strategy replaces evidential clarity, the criminal legal system is not functioning as a fair, truth-seeking institution. Instead, it becomes a stage for the performance of guilt. In the context of joint enterprise, this performance carries grave consequences for individuals, families and communities.

#### Systemic Failures to Safeguard at Every Stage

The findings illustrate that the CPS allow weak cases to proceed, while judges—who should act as a critical safeguard-refrain from intervening, even when the defence presents compelling no-case-to-answer submissions. This effectively shifts the burden onto juries, about whom little is known regarding how they respond to the prosecutorial narrative strategies illustrated in this report. In many cases we observed, juries were unconvinced by the prosecution's evidence, resulting in notably low conviction rates—especially for secondary parties. However, this should not be taken as evidence that the system is functioning properly. The very fact that so many cases are rejected by juries highlights the fundamental problem that many of these prosecutions should never have been brought. We must also bear in mind that defendants have been convicted on similarly weak grounds-hence the ongoing criticism of the law.

It is not the role of juries to filter out unfounded charges—that responsibility lies squarely with the police, the CPS, and the judiciary. The findings of this study and the low conviction rates observed severely undermine the legitimacy of a legal framework that allows individuals to be prosecuted for murder when they did not carry out the crime and made no clear contribution to it. It also undermines claims that joint enterprise is an effective, necessary tool to tackle serious violence among young people. Crucially, there is a profound mismatch between those who the state deems complicit and those who are genuinely responsible—a discrepancy that juries, in many of the cases, clearly recognised.

#### **Complicity Redefined by Suspicion**

The findings illustrate a fundamental departure from what the law of complicity ought to be: a principle rooted in knowing of another persons intention to commit a crime and a deliberate decision to assist or encourage them in the act. In practice, this standard is rarely met. Instead, both in the charging stage and in court, secondary liability is often diluted to little more than association, suspicion,

and story. The consequences are deeply troubling—not only for the integrity of the law, but for defendants who are prosecuted not for what they did, but for who they were with, how they appeared, or the story that could be told about them. Many of these individuals, even if ultimately acquitted, endure long remand periods.

Since its resurrection as a key policy tool to address violence amongst young people-often framed as gang-related-joint enterprise has become a mechanism through which police, operating within the context of widely documented discriminatory gang policing, pursue charges against groups of young people who are simply proximate to a crime and deemed suspicious. It appears that in some cases in this study, the occurrence of a 'joint enterprise' was assumed to be the only plausible explanation for an individual's presence or behaviour. Crucially, suspicion and Blackness often go hand in hand. The findings therefore highlight the urgent need for greater transparency and accountability in charging decisions to ensure that prosecutions are grounded in robust evidence rather than stereotypes and conjecture—and that the system protects against, rather than contributes to, miscarriages of justice.

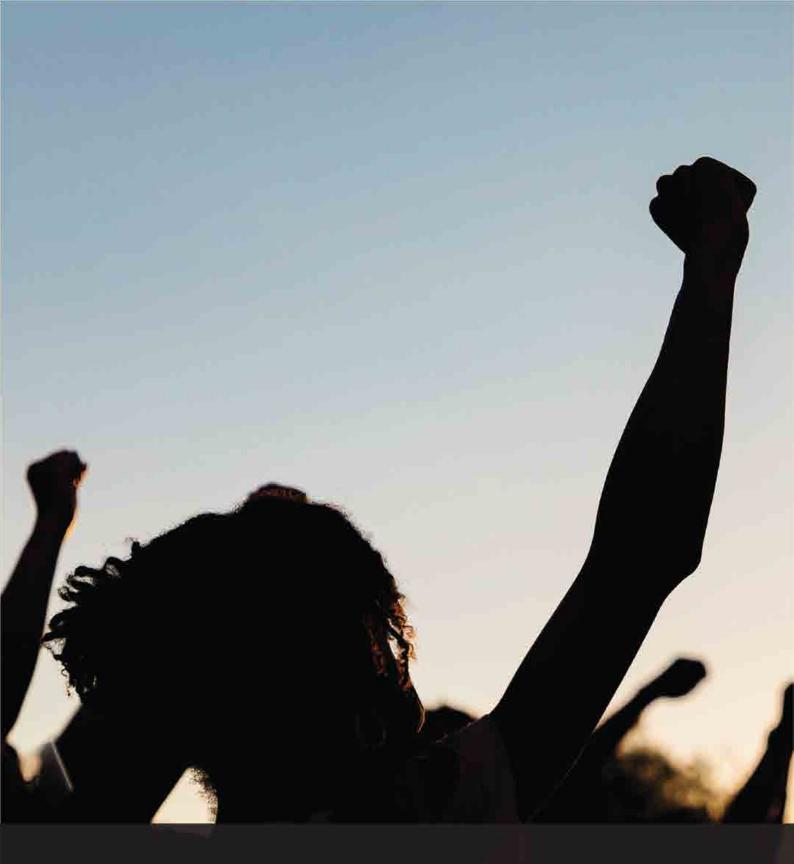
#### Institutional Whiteness, Racialised Language and Stereotypes

Under the current approach, 'justice' is arbitrary—shaped less by the strength of evidence than by the power of narrative performance. These performances are often racialised, operating within a courtroom culture whose whiteness is not just demographic but institutional. It is embedded in how legal actors view defendants, interpret the law and construct stories. The courtroom privileges particular cultural ways of knowing, marginalising the lived realities of working-class and racially minoritised people. This exclusion raises serious questions about whether the courts can deliver justice to all. Addressing this is not merely a matter of increasing diversity among legal professionals; it demands a critical reckoning with the racial, cultural, and class-based assumptions that shape legal practice.

The persistent use of gang narratives—even in the absence of official gang designations—exposes an institutional failure to confront racism. Official guidance on the dangers of gang labelling and gang evidence rings hollow when prosecutors can deploy racially coded language that carries the same implications. The racialised language observed in this study was at times unnecessary, excessive, and transparently aimed at reinforcing stereotypes and myths. In contrast to the significant strides made in tackling prejudicial myths in rape and sexual violence trials,<sup>∞</sup> the courts continue to fall short in addressing deeply embedded racialised tropes about racially minoritised youth, gangs, and violence.

#### The Economic Costs of Injustice

Finally, but no less importantly, we must consider the cost of the findings laid out in this report. These costs are not only personal, but economic. The report documents a troubling misuse of public resources: prisons and court time consumed by cases that often end in acquittals and should never have reached trial. Public money is not being used to deliver justice, but to stage it. In the context of current debates around the "prison crisis" and proposals to limit jury trials to reduce court backlogs, it is crucial to acknowledge that both crises are exacerbated by the overzealous prosecutions highlighted in this study. Rather than eroding one of the legal system's final safeguards—trial by jury—the system must confront its own role in generating inefficiency and injustice.



## PART 6

RECOMMENDATIONS: A CALL FOR ACCOUNTABILITY AND CHANGE

# REFORM THE LAW TO ESTABLISH IT AS A PROPER DOCTRINE OF COMPLICITY

he evidence presented in this report makes one thing unequivocally clear: joint enterprise is being used far too frequently—and far too loosely—than it should be. It must be a proper doctrine of complicity, one that requires clear intent to assist or encourage the principal offence and concrete acts of assistance or encouragement that demonstrate a significant contribution to the commission of the crime.

Anything less invites miscarriages of justice.

As outlined in Part One, the current law permits any conduct to be treated as assistance or encouragement, without requiring the secondary party to have made a meaningful or significant contribution to the offence. This overly broad scope is clearly a key driver behind the unsafe, weak and speculative prosecutions observed in this study.

A proposal for legislative reform already exists. As outlined in Chapter One, Kim Johnson MP previously tabled a Private Members' Bill that would introduce a requirement for the secondary party to have made a significant contribution to the offence. Even if not adopted in its current form, the Bill provides a clear starting point for discussion about meaningful legal reform.

This report, alongside others such as *The Legal Dragnet*, underscores the urgent need to narrow the law and make it safer. These existing resources should be used to inform and shape legislative change, while also grappling with the challenges and questions such reform may entail.

## END THE INAPPROPRIATE OVERUSE OF THE LAW

e are mindful that law reform may be slow. More importantly, even the most precise law is only as fair as its application. The issues revealed in this report stem not solely from a

vague legal framework, but from how the law is interpreted and used by decision-makers in an inappropriate and excessive way. This cannot be allowed to continue.

The comparison between Case 13 and Case 14 illustrates that discretion plays a significant role: different approaches were taken under the same legal framework, showing that restraint in charging decisions is sometimes deemed appropriate. This highlights that legal overreach stems not only from the law itself, but from the decisions of the police and CPS. The role of prosecutorial discretion is particularly critical in understanding the racial disproportionality seen in joint enterprise cases.

In light of this, APPEAL will organise a roundtable to explore practical solutions beyond legislation. We will seek prosecutors, judges, policymakers, and all those implicated in this report to engage in the discussion.

The stakes are too high for complacency. The findings set out in this report are not abstract legal concerns—they are decisions that alter lives, futures, and entire communities. This is not only a call for reform. It is a call for accountability—for those who wield the law to reckon with its consequences, and for a legal system that prioritises fairness and challenges institutional racism.

Change is not optional. It is urgent.

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