

Consultation on CPS Guidance on Secondary Liability

Summary of Responses



Introduction

This is a summary of responses to the public consultation undertaken by the Crown Prosecution Service (CPS) on the revised Legal Guidance on Secondary Liability (previously titled “Joint Enterprise”).

The interim guidance was published in July 2017 and consulted on for a period of 12 weeks, ending 28 September 2017.

The guidance was revised following the decision of the Supreme Court (SC) in *R v Jogee; Ruddock v The Queen* [2016] UKSC 8; UKPC 7.

The SC addressed the controversial doctrine of “parasitic accessory liability” (PAL). Where PAL applied, if two people (D1 and D2) set out to commit crime A, and in the course of that venture D1 commits crime B, D2 would be guilty as an accessory to crime B if he had foreseen the possibility that D1 might act as he did.

The SC held that the law had taken a wrong turn 30 years earlier and was in error, as it equated foresight that D1 might commit crime B with intent to assist D1’s commission of crime B. The correct approach is to treat such foresight as evidence of intent to assist D1 in crime B.

The interim guidance summarised the main principles of secondary liability, as stated in *Jogee*, and clarified how prosecutors should approach charging decisions in cases of secondary liability, in particular those that involve conditional intent and those that involve group assaults.

The consultation

The purpose of the consultation was to provide an opportunity for people to comment on the guidance, so that the final version was informed by as wide a range of views as possible.

The consultation was available to the public on the CPS website and we targeted those with a particular interest in joint enterprise, including: Parliamentarians, other Government Departments, CPS prosecutors, the judiciary, legal practitioners, academics, the police and campaign groups. Additionally, we participated in an academic and practitioner roundtable discussion on the guidance, hosted by Oxford University.

The consultation asked 4 questions:

1. Does the section on *Principles of Secondary Liability* cover all the main principles accurately?
2. Does the section on *Conditional intent cases* provide clear guidance that accurately reflects the law post-*Jogee*?
3. Do the sections on charging group assaults provide clear guidance on how to approach charging decisions in such cases post-*Jogee*?
4. Do you have any further comments on the *Legal Guidance on Secondary Liability*?

Method of Analysis

We received 38 responses in total, which included 15 from the campaign group Joint Enterprise Not Guilty by Association (JENGbA).

All responses have been analysed, including any received after the consultation closed. A breakdown of the source of the responses is at Annex A.

Each response to each question was analysed separately and the main points were identified and carefully considered. Not every respondent gave specific answers to each individual question but their views were considered. This summary addresses the main points made by respondents.

General Observations and Key Themes

This section sets out some of the broad themes and issues that recurred in the responses we received, and provides the CPS response to each of these.

The Policy was generally well received by a number of respondents. For example:

- *Generally, we consider the guidance to be an excellent and clear overview of a difficult subject.*
- *I think your guidance deals admirably with what remains in significant ways an unclear/difficult area of the law.*
- *This is a good attempt at a useful and effective guidance ... it is generally well written and accessible.*
- *The interim guidance is clear and provides welcome assistance to prosecutors considering the different issues in play when deciding how to charge suspects in Jogee-type cases.*

However, other respondents expressed some general concerns about the guidance. For instance:

- *Whilst we appreciate the complexity of the area, from a police force perspective a simplified version would be particularly useful.*
- *The guidance in no way ensures that miscarriages of justice will not continue in the future.*
- *All sections are far too lengthy and complicated.*
- *This is essentially a work around for the CPS to clarify to CPS workers how they might obtain the same old unfair convictions in a post-Jogee world.*

A number of key themes emerged from the responses:

Easy-Read Version of Guidance

One respondent commented that an easily accessible version of the guidance is needed, as this is a complex area of law that legal academics and practitioners acknowledge is difficult even for them to understand. Given the potentially severe implications for individuals convicted as secondary parties of serious violence, particularly murder, it is imperative that the guidance is easy to understand. This is especially so for young people and those with mental health issues. The respondent suggested that an 'Easy-Read' version of the guidance would meet this need.

We agree and we will publish an Easy-Read version of the guidance on the CPS website.

Title of the Guidance

The original guidance was titled *Joint Enterprise Charging Decisions*. We re-named it *Secondary Liability: charging decisions on principals and accessories* for this publication, and avoided use of the term "joint enterprise" in the guidance where possible. The reason for this is that the term itself has become controversial and the Supreme Court in *Jogee* appeared to move away from its use. In particular, we note:

- The Court said: "the expression 'joint enterprise' is not a legal term of art ...it unfortunately occasions some public misunderstanding" [77].

- The terms more commonly used in *R v Jogee* are “secondary liability”, “principal” and “accessory” or “secondary party”, which we use in the guidance.
- The 2016 Report *Joint Enterprise: Righting a Wrong Turn* by the Prison Reform Trust and the Institute for Criminal Policy Research, Birkbeck, University of London recommended that the courts, CPS and others avoid use of the controversial term “joint enterprise”.

A number of respondents welcomed this change but others expressed concern that use of the term “secondary liability” implies that any controversy or problems occasioned by use of the joint enterprise doctrine have disappeared. Further, use of “secondary liability” lacks transparency and prevents future monitoring of joint enterprise cases. As one respondent put it, “there is nothing secondary about the charges and convictions that arise from joint enterprise prosecutions”.

We have considered whether to revert to the original title but we are not persuaded that we should ignore the steer of the Supreme Court or the recommendation in the 2016 Report. We have therefore retained the same title in the final version of the guidance.

The Lammy Review/Gangs

During the consultation, the Lammy Review, chaired by David Lammy MP, published its report on the treatment of, and outcomes for, Black, Asian and Minority Ethnic (BAME) individuals in the Criminal Justice System (CJS). Recommendation 6 stated:

The CPS should take the opportunity, while it reworks its guidance on Joint Enterprise, to consider its approach to gang prosecutions in general.

A number of responses to the consultation made reference to the Review and this recommendation, and to the approach to “gangs” in the guidance. For example:

- Confidence in the guidance could be seriously undermined if we retain the references to “gangs”.
- Since police evidence is likely to include overt or covert bias, there should be specific reference to prosecutors checking for bias, specifically in respect of BAME suspects and victims.
- Prosecutors should be cautious before describing a group as a gang, which is a term that automatically carries implications of criminality and a prior common purpose.
- Research indicates that there is little consensus on which groups are gangs and, by implication, who the gang members are.

We have implemented the Lammy Recommendation and revised the approach to gangs in the following ways:

- i. The section on “Participation” already made clear that evidence of association with or membership of a group or gang, without any other evidence, will not be sufficient to charge an accomplice with an offence. We have made additions to this section, to provide more specific guidance on evidence relating to gangs: we advise prosecutors to be cautious about describing a group as a “gang”, and to only do so if there is an evidential basis to support the assertion; we advise that if evidence of gangs is to be used in a case, prosecutors should refer to our new legal guidance on Gangs; and we reference the Lord Hughes warning in *Myers v R* [2016] AC 314 that prosecutors should distinguish between explanatory evidence and evidence of propensity when seeking to introduce evidence relating to gangs.

- ii. Our internal guidance on gangs is to be converted into new legal guidance, which will be available to the public on our website. It will include:
 - A section on the Lammy Review, which instructs prosecutors to continue to ensure that race / ethnicity plays no part in our decision making process.
 - A summary of the case law on the admissibility of evidence relating to gangs, including the Lord Hughes warning referenced above.
- iii. Additionally, the Secondary Liability guidance contains two sections that address our approach to group / gang prosecutions: “Charging group assaults” and “Charging murder or manslaughter in group assaults without a weapon”. We have checked these sections to ensure that they are compatible with the recommendation, in particular to ensure that they do not in any way contribute to disproportionality of BAME individuals being prosecuted for group / gang offences.

It should be noted that:

- We have not deleted references to “gangs” in the guidance, as this would be unrealistic and misleading, given that some cases do involve gangs and case law supports the admission of evidence relating to gangs, where relevant.
- The other Lammy Recommendations relevant to the CPS are not addressed in this guidance but the CPS is responding to them.

CPS role in applying *Jogee*

A number of respondents point out ways in which they regard the decision in *Jogee* to be deficient, suggesting that it is unclear, ambiguous, incomplete or inconsistent with other authorities. One respondent claimed that the Court had misled the public by suggesting that it had corrected the problem of joint enterprise. Some respondents request that the CPS address these perceived deficiencies through its guidance. Examples are given below.

The CPS’ position is that its function is to apply the law. It is not for the CPS to fill in any perceived gaps in the law or to determine what the law should be where there is any apparent ambiguity or inconsistency in the law. The guidance therefore attempts to summarise the main principles of secondary liability, as set out in *Jogee* and subsequent authorities, and to provide assistance to prosecutors on how to apply them.

Examples:

- What degree of foresight is necessary to found an inference of intention to assist or encourage? Some respondents suggest that foresight of virtual certainty is required. The interim guidance that we consulted on addressed this issue by acknowledging that in some cases the requisite intent of D2 may be problematic, such as where D2 foresaw only a slight possibility that D1 might commit crime B. We give guidance that in such cases prosecutors should carefully consider whether the evidence of foresight, together with the other evidence in the case, is sufficient to prove intent. However, we do not think it appropriate for the CPS to define the precise level of foresight required. *Jogee* did not do so (despite a certified question that related to the level of foresight that was required in relation to the old PAL test), and this issue may in future be considered by the Court of Appeal.
- The statement of the law on manslaughter at paragraph 96 is incorrect or inconsistent with other authorities: we provide a detailed response to this at Question 1 below.

- The concept on “conditional intent” was subject to a number of criticisms: see our response at Question 2 below.
- The concept of an “overwhelming supervening act” is unclear and it is uncertain how and to what extent it relates to the concept of “fundamental departure”. We have not elaborated on either concept, as it will be for the courts to further define “overwhelming supervening act” and *Jogee* indicates that “fundamental departure” will not usually need to be considered.

Approach for children and young persons

A number of respondents made observations in respect of the capacity or otherwise of children and young persons, some of whom may have a communication or learning disability, to foresee what others may do and to form the requisite intent as an accessory to a crime. For example:

- When considering whether there is sufficient evidence in young people of a shared or conditional intention to commit crimes, and/or evidence of foresight, it may assist prosecutors to be aware of studies in adolescent brain development.
- Distinct issues arise when considering *mens rea* and children ... the CPS guidance on secondary liability should be modified when suspects are aged under 18.
- The Government response in 2017 to the 2016 Justice Committee Report on Young Adults (18-25 year olds) argued that developmental status does not need to be recognised in legislation because of the increasing role maturity plays in policy and practice. The CPS therefore needs to reflect this in its guidance.

We note that submissions were made on behalf of JustforKids Law in the case of *Jogee* on the issue of the capacity of children and young persons to form the requisite *mens rea*. Although the decision of the Court did not address this issue specifically, it did abolish PAL and it clarified the law on secondary liability, both of which were the requested by the submission.

The issue of maturity in children and young persons and how it affects their criminal culpability is clearly of wider relevance, not limited only to cases of secondary liability. For instance, we note that the age for criminal responsibility (ten) is not set by the CPS but by Parliament, and it is not differentiated by crime types.

We also acknowledge that the Government’s response to the Justice Committee Report on Young Adults states:

It is widely accepted as a principle by those working in the criminal justice system that young adults (and especially men) will continue to mature into their mid-twenties, in line with the considerable scientific evidence gathered and presented by the Committee [12].

The CPS has addressed this issue in a number of ways:

- Paragraph 4.12(b) of the Code for Crown Prosecutors (the Code) explicitly states that “age or maturity” should be considered when making a judgement about culpability in all cases. “Maturity” was included in the Code for the first time in the 2013 edition.
- The CPS has recently reminded all prosecutors of the importance of considering the “age or maturity” factors in weighing up whether a prosecution should be brought.
- New training for specialist youth prosecutors commenced in November 2016. The training takes account of recent developments involving the prosecution and diversion of youths, including the importance of considering the maturity of young adults (18 to 25 year olds), as part of the prosecutors’ review and decision making process.

- The CPS monitors prosecutors' compliance with the Code, guidance and relevant policies by way of Individual Quality Assessments, with an assessment of the prosecution decision making process and whether decisions are properly informed and reasoned.

With regard to the Secondary Liability guidance, the interim version already addressed age and maturity in the section on *The public interest stage*, in which we repeated text from paragraph 4.12(b) of the Code, relating to persons under 18 years old. This text is retained in the final version.

Additionally, in light of the responses received on this issue, we have now included the following text on maturity in this section:

- *The suspect's maturity: young adults will continue to mature into their mid-twenties. The maturity of the child or young person should be considered, as well as their chronological age.*

We have also passed on the relevant responses to the CPS policy lead for Youth Offenders and Vulnerable Offenders, so that the issues may be considered in a wider context.

Structure of the guidance

Although one respondent commented on the helpful structure, a few respondents thought that the structure of the guidance was difficult to follow and suggested significant or minor revisions.

The structure is intended to first set out the principals of secondary liability, as espoused in *Jogee* and, secondly, to provide guidance on how to apply these principals when making charging decisions. Although we have broadly retained this structure, we have made a few changes in an attempt to make the guidance easier to follow.

Outside scope

We received a number of responses that addressed issues outside the scope of the consultation or the guidance, most of which we have not included in this Summary. For example:

- Joint enterprise should be abolished. This is an issue for Parliament or the Courts, but not the CPS.
- The guidance should address the need for collation and publication of data on convictions involving secondary liability. Although we recognise the desire for this and we have passed on the request to the CPS Common Platform team that deals with cross-CJS digital working, we do not think it appropriate to include it in the guidance. Note though that we have included a section on recording the basis for charging decisions.
- References to specific cases, including the application of the law or the guidance to these cases.
- Uninformed and untrained juries are ill equipped to deal with the complexities of some issues that arise in secondary liability cases. The role of juries in our criminal justice system cannot be addressed by this consultation.
- Human trafficking and forced labour cases should be covered in the guidance. Note that we have separate guidance on [Human Trafficking, Smuggling and Slavery](#), available on the CPS website.
- Demands for a government enquiry into miscarriages of justice brought about by use of joint enterprise.

Where appropriate, we have passed on suggestions and responses to relevant CPS policy leads, so that they may consider them in the context of those portfolios.

Revisions

In light of the responses received, we have made a number of revisions to the Guidelines. The main revisions are those indicated above and those explained below under each question.

Summary of Responses to Specific Questions

This section provides a summary of the key points and themes raised in response to each of the questions, and the changes made as a result of the feedback.

Question 1

Does the section on Principles of Secondary Liability cover all the main principles accurately?

There were 22 responses to this question.

Suggested changes that we have not made included:

1. Respondents raised a number of concerns regarding the way in which *Jogee* deals with manslaughter, including references to academic articles on the issue. The main points raised were:
 - *Jogee* is wrong to hold that D2 can be liable for manslaughter when D1 has been convicted of murder, because it is necessary to prove that the accessory intended D1 to perpetrate the actus reus of the relevant offence with the requisite mens rea for that offence.
 - Unlawful and dangerous act manslaughter is not always compatible with accessorial liability, as it requires a causal connection between the unlawful act and the victim's death, whereas no causal link is required between the accessory's conduct and the principal's act.
 - The reference to an *escalation* of violence in *Jogee* is a departure from the paradigm of manslaughter by unlawful and dangerous act, whereby D intends to support violence short of GBH but death results.
 - Guidance is required on how to determine what the unlawful dangerous act is where there is more than one to choose from as the "base crime" (eg burglary / assault).

We note that *Jogee* sought to re-draw the boundaries between murder and manslaughter. In particular, see: the extensive analysis of authorities on manslaughter starting at paragraph 27; the link the Court makes between these authorities, some of which reference an *escalation* of violence, and its re-statement of the principles of manslaughter in the context of secondary liability [33; 74; 69; 96]; the distinction made between an escalation of violence (manslaughter) and an overwhelming supervening act (no liability) [33; 96; 97]; and the Court's observations that suggest that there had previously been an over-extension of the law of murder and a reduction of the law of manslaughter [74; 83].

Given this close examination and re-statement of the principles of manslaughter, we do not think it would be appropriate to depart from the principles as set out in the decision. Therefore, although we appreciate all of the nuanced observations on the law of manslaughter by respondents, we have not revised the guidance in line with these views.

We have also not provided guidance on matters which are better dealt with on a case by case basis, such as determining which is the unlawful dangerous act, where there is more than one to choose from as the "base crime".

2. One respondent suggested that we disregard the concept of an overwhelming supervening act altogether, as it narrows the “fundamental difference” test and provides no detail. We disagree as this is clearly part of the law on secondary liability following *Jogee*.
3. One respondent requested further guidance on the concept of “fundamental departure”. We have not done this as the court in *Jogee* emphasises that it will not usually need to be considered [98] and the guidance is not intended to be an academic text.
4. One respondent suggested that *Jogee* and the guidance is incorrect to sometimes express the accessory’s mens rea as an intention to encourage / assist D1 to commit the crime, as opposed to an intention to encourage / assist D1 to act with the intent to commit the crime. We appreciate that the latter is the correct test, but as stated in *Jogee*, in cases of concerted physical attack there may be no practical distinction to draw between the two and it may be simpler and safe to direct the jury as per the former expression of the test [90]. We have therefore not revised the guidance in this respect.
5. One respondent requested clearer guidance on oblique intention. This is not a concept discussed in *Jogee* and, although it may merit attention in academic debate, we think its inclusion in the guidance would be confusing and unhelpful.
6. One respondent suggested we expand on the mens rea requirement of knowledge of existing facts necessary to make the act criminal, to include the point addressed in the conspiracy case of *Saik*, as to belief of future circumstances. We appreciate the point but do not wish to make the guidance too academic or technical, and note that *Jogee* partly addresses future circumstances through the concept of conditional intent. We have therefore not expanded on the concept of knowledge in the way suggested.
7. One respondent suggested that the CPS should only charge where there is strong evidence that the encouragement made more than a negligible or trivial difference. We do not agree that this is the test but in the section on the public interest we include the suspect’s level of involvement as a factor to be considered in the charging process.

Main changes as a result of feedback

1. We were asked to clarify that D2 need not intend D1’s commission of the relevant crime, as *Jogee* is loose in its consideration of the matter. Another respondent suggested that we use the example at paragraph 90 of *Jogee*, of D2 supplying D1 a weapon, to demonstrate this point. We have done this.
2. Some respondents suggested that the guidance is wrong to say that it is not necessary to prove D2’s conduct in fact encouraged / assisted D1. We have reconsidered *Jogee* paragraph 12 on causation, which states that the prosecution need not prove that the encouragement had a positive effect on D1’s conduct or on the outcome. We accept that our wording may be construed differently to the wording in *Jogee* and we have therefore revised the wording in line with paragraph 12.
3. Some respondents pointed out that procurement, which was not addressed in *Jogee*, does require the secondary party to intend that the principal will commit the offence, and does require a causal link between D2’s contribution and D1’s offending. We agree and we have clarified this in the guidance.

4. Some respondents asked us to clarify that the concept of “overwhelming supervening act” applies not only in homicide cases but to other offences too. We have done this.
5. In the first bullet under in the *mens rea* subsection, we have clarified that the *mens rea* required for an accessory to an offence under ss5-8 of the Sexual Offences Act 2003 is that D2 knows that the child is under 13 years old.
6. One respondent suggested that the term “youths” has negative connotations and that we should instead refer to “children and young people”, which is the term used in the Sentencing Council Guideline on “Sentencing Children and Young People” 2017. We have changed one reference to “youths” accordingly. However, the other two referred to our guidance on Youth Offenders and to the Youth Justice System, which we have not changed. We have passed on the suggestion to the relevant CPS policy lead to consider further.

Question 2

Does the section on Conditional intent cases provide clear guidance that accurately reflects the law post-Jogee?

There were 20 responses to this question.

Suggested changes that we have not made included:

1. Respondents made a number of criticisms of the concept of “conditional intent”. These included:

- *The meaning of conditional intent is unclear and the Jogee definition is circular.*

We do not agree and we have defined it as defined and illustrated in *Jogee*. However, we have added a further example from *Jogee*: see below.

- *Conditional intent is no different from or is a subset of intent.*

This may be correct but for the purposes of providing thorough guidance to prosecutors, it is useful to break down the concept of intent in this way, particularly when analysing the facts of a crime A / crime B type case.

- *Conditional intent too easily collapses into recklessness (D foresees a potential outcome of his conduct but goes ahead with the conduct regardless), so the guidance should explain the difference between the two.*

We appreciate that in some cases the distinction may be a narrow one. However, we do not think it would be helpful to state this in the guidance as it may cause confusion rather than clarifying the requisite *mens rea*. We also considered whether the section may inadvertently imply that something less than conditional intent, such as recklessness, may be sufficient. We do not think that it does (it relies on the language of *Jogee* and *Anwar*), and therefore we have not made any revisions in this respect.

2. The guidance should not advise prosecutors to resist all submissions of no case to answer that assert that proof of intention based on foresight is insufficient. We disagree, as *Jogee* and *Anwar* clearly indicate that in some circumstances intention may be inferred from foresight, and that the

inference is a question of fact for a jury. Further, we give guidance that when making charging decisions that are partly based on a *low degree* of foresight, care must be taken to ensure all the evidence in the case meets the charging threshold. We also note that the evidential threshold for charging is higher than the threshold used for a submission of no case to answer.

3. Reliance on *Anwar* is misplaced as the cited passages on the evidence that may be relied on to prove foresight / intent are obiter and do not reflect the decision and reasoning in *Jogee*. We disagree, as we do not suggest in the Guidance that *Anwar* sets a precedent or that it develops the law in a different way to *Jogee*; it simply clarifies and confirms the decision in *Jogee*.

Main changes as a result of feedback

1. Conditional intent cases can arise where there is no prior joint criminal adventure but the guidance does not make this clear. We agree and we have clarified this in the first paragraph of the section.
2. Some respondents suggested that the terms “if the occasion arose” and “if the need arises” are not sufficient to explain conditional intent, or should be explained more fully by the CPS. In the guidance we describe conditional intent as it is described in *Jogee*, using these same terms. It would not be helpful to further define the terms, as the court in *Jogee* did not do so and they could relate to various factual scenarios. The interim guidance already contained one of the examples given in *Jogee* but, to meet the concern expressed by respondents, we have added the other example, of the bank robbery.
3. The penultimate line in the last paragraph should read “proof of intention based on foresight” rather than simply “foresight”. We agree and we have made this revision.

Question 3

Do the sections on charging group assaults provide clear guidance on how to approach charging decisions in such cases post-Jogee?

There were 15 responses to this question.

Suggested changes that we have not made included:

1. Some respondents suggested that a separate section for group assaults without a weapon is not necessary, as *Jogee* clarifies that a case involving a weapon is not categorically different to a case not involving a weapon. We acknowledge that *Jogee* discouraged too close a focus on an associate’s knowledge of a particular weapon, however *R v Johnson* confirms that knowledge of a weapon remains highly material in relation to the inference of intention. It is therefore useful to provide guidance to prosecutors on the approach to take in non-weapon homicides, particularly since the approach has changed post-*Jogee*.
2. One respondent advised that we should not separate out conditional intention from simple intention, when considering charging decisions. Although we appreciate that conditional intention is a form of intention, we think it useful to break down the analysis required to make a charging decision into these separate, simple steps or questions. Moreover, the questions arise from the principles of secondary liability, as set out in *Jogee*.

3. One respondent suggested the guidance should instruct prosecutors not to charge a defendant against whom there is weak evidence, simply to elicit evidence at trial of what they have said to incriminate other participants. We agree that prosecutors should not charge on this basis but there is no need to give instructions in the guidance, as prosecutors are aware that they must apply the Full Code Test in the Code for Crown Prosecutors when making charging decisions.

Main changes as a result of feedback

1. Some respondents pointed out that the assertion in the section on group assaults without a weapon that “there will be no doubt that someone has committed a murder in cases where a lethal weapon is used” is overstating the position. We agree and we have amended the line to read that “there will *often* be no doubt ...”.
2. The guidance states that in homicide cases in which it is not possible to identify who are the killers or principals and who are the accessories, it is necessary to prove that someone committed “murder”. One respondent suggested this should be amended to “murder or manslaughter”. We agree and we have done this.

Question 4

Do you have any further comments on the Legal Guidance on Secondary Liability?

There were 32 responses to this question.

Suggested changes that we have not made included:

1. Some respondents suggested that post-*Jogee*, Crime A and crime B type cases no longer exist (as PAL has been abolished) and should not be referred to in the guidance. We disagree: *Jogee* [94] refers to this crime type and in practice the fact scenario that gives rise to this crime type will continue to exist. It is still necessary to refer to this crime type in order to clarify for prosecutors what the law is in relation to it.
2. In the section “Three types of offence involving multiple parties”, the second example of the type 3 offence needs elaborating upon, as D2 would not be liable for manslaughter if D1 commits a different crime to the one assisted / encouraged by D2. We agree that there will be occasions where D2 may not be liable at all, such as where there is an overwhelming supervening act or where D2 has withdrawn from the joint venture. However, these concepts are covered elsewhere in the guidance and we wish to keep the examples as simple as possible.
3. One respondent suggested that the section “Three types of offence involving multiple parties” need not include the examples of joint principal liability, as they are a distraction. We appreciate that joint principal liability is distinct from the principles of secondary liability and we have now made this clear in the section. However, we think it is beneficial to include an explanation of joint principal offending, so that it is not confused with accessorial liability.
4. One respondent requested that the guidance provide a non-exhaustive list of all the options for describing the role D is alleged to have played, for the purpose of recording the charging decision. We regard this as too detailed for the guidance, as the exact role will vary on a case by case basis and can only be described by reference to the facts of the case.

5. One respondent suggested that the offences under the Serious Crime Act 2007 (SCA) should be placed at the start of the guidance, as good practice demands that they should be relied on in preference to the principles of secondary liability. We do not agree, as many cases would be unnecessarily complicated by charging principals with a substantive offence, such a robbery, and accessories with a SCA offence. We give detailed guidance on when it may be appropriate to charge a SCA offence.

Main changes as a result of feedback

1. A number of respondents asked for more detail on the distinction between a principal and secondary offender, including guidance on how to distinguish the two. For example, one respondent requested that we clarify that not all parties to a common purpose are principals for all offences committed pursuant to that purpose (they may be accessories), which has not been the law since 1967. Whilst we appreciate that the distinction between principals and accessories may be more nuanced than we outline in the guidance, we do not think it helpful to make the guidance overly complex or academic. Distinguishing between principals and accessories is often not necessary, and may not always be clear on the facts. In cases where it is necessary, this will be done by close examination of the *actus reus* of the offence and the actions of the suspects and further general guidance is unlikely to assist. However, we have made some small revisions to the guidance on this issue:
 - In the section “Parties to an offence”, we clarify that a principal is one who performs *or causes* the actus reus of the offence.
 - In the first of the three scenarios involving multiple parties, we have clarified that the principals of secondary liability do not apply, as none of parties are accessories.
 - We have amended the third example of joint principals in the section “Three types of offence involving multiple parties”, to clarify that D1 and D2 are acting *together* in the burglary, as *joint* principal offenders.
2. One respondent advised that we should not use the word “accomplice” for a secondary party, as it can denote a joint principal offender. We agree and we have substituted “accessory” for all references to “accomplice”.
3. At the request of one respondent, in the section “The parties to an offence”, we have clarified that each offence must have at least one principal.

Next Steps

The interim Guidance has now been replaced by the final Guidance, which comes into effect on 22 May 2018, and is published with this Summary.

Conclusion

We are very grateful to everyone who responded to the consultation. We are content that the responses have led us to make changes that have resulted in clearer, improved Guidance.

Annex A Source of the Responses

SECTOR	NAME	ORGANISATION	
ACADEMIC	Catarina Sjolin Knight	Nottingham Trent University	
	Professor Dennis J. Baker	University of Surrey	
	Professor Jeremy Horder	London School of Economics	
	Dr Findlay Stark	University of Cambridge	
	Dr Beatrice Krebs	University of Reading	
	Dr Mark Dsouza	University College London	
	Becky Clarke and Patrick Williams	Manchester Metropolitan University	
	Dr Susie Hulley and Dr Tara Young	Cambridge University/ University of Kent	
	Rebecca Williams	University of Oxford	
	Dr John Child	University of Sussex	
	Matthew Dyson	University of Oxford	
	CPS	Alyson Sprawson	CPS
LEGAL	Becky Flood	Kingsley Napley LLP	
	Felicity Gerry QC	Carmelite Chambers	
	Janet Arkinstall	The Law Society	
	Leigh Webber	London Criminal Courts Solicitors' Association	
	Francis Fitz-gibbon QC	Doughty Street Chambers	
ORGANISATION	Kate Aubrey-Johnson	Just For Kids	
	Dr Laura Janes	Howard League for Penal Reform	
	Peter Dawson	Prison Reform Trust	
	Gloria Morrison	Joint Enterprise Not Guilty by Association (JENGbA)	
	unidentified	JENGbA	
	Kevan Thakrar	JENGbA	
	Roger Morgan	JENGbA	
	Steven Kidd	JENGbA	
	Maureen Smith	JENGbA	
	Joseph Jenkins	JENGbA	
	Ashleigh Robinson	JENGbA	
	David Taylor	JENGbA	
	Arzan Khan	JENGbA	
	Charlotte Coulson	JENGbA	
	Chris Reed	JENGbA	
	Danny Dixon	JENGbA	
	Mark Brown	JENGbA	
Charlotte Henry	JENGbA		
PUBLIC SECTOR	Claire Brader	British Transport Police	
GOVERNMENT	Lucy Powell MP	MP for Manchester Central	
	Bob Neill MP	Chair, Justice Committee	

