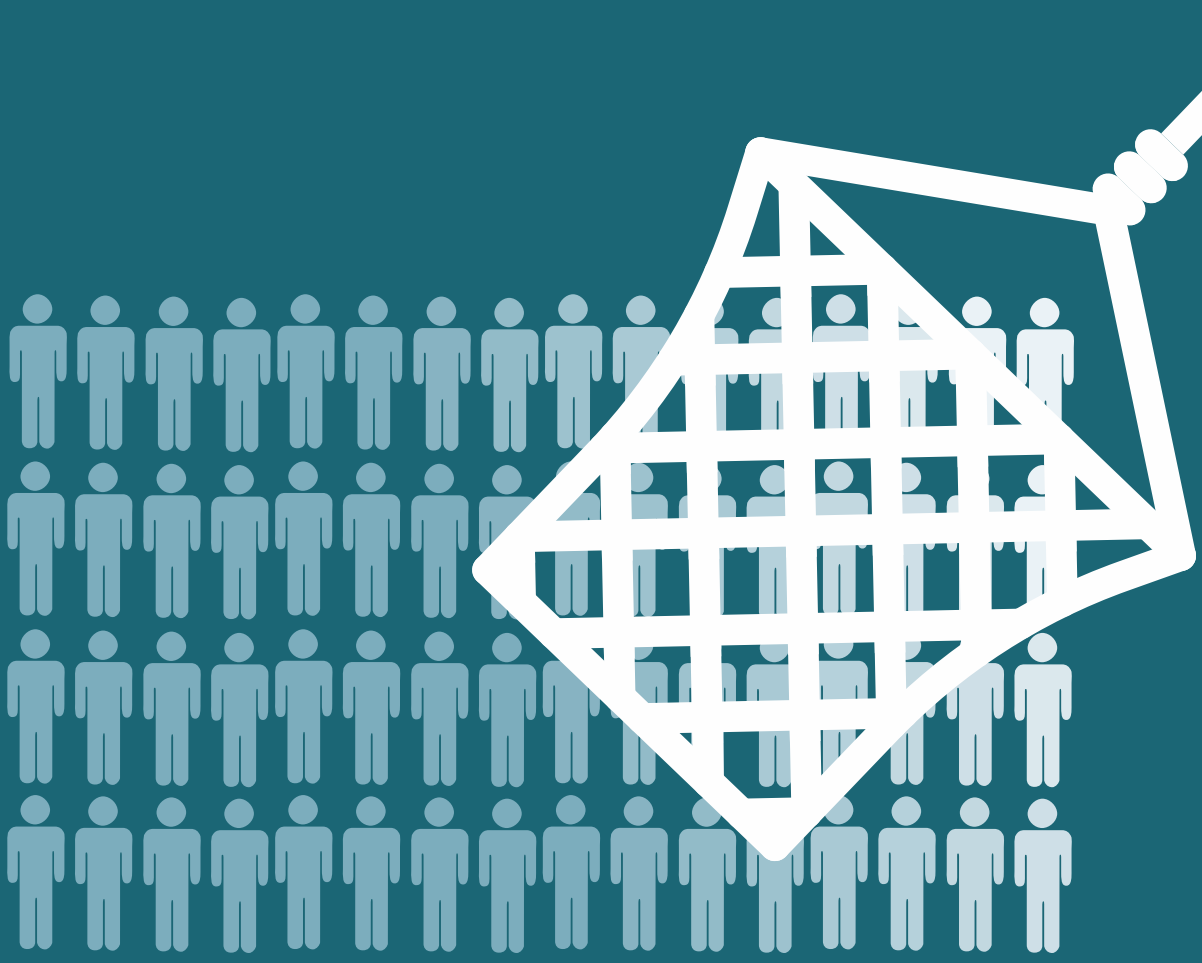
The usual suspects

Joint enterprise prosecutions before and after the Supreme Court ruling

By Helen Mills, Matt Ford and Roger Grimshaw

2nd edition



CENTRE FOR CRIME
AND JUSTICE STUDIES

About the authors

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Our thanks also to the three anonymous legal professionals who discussed preliminary findings with us.

We are grateful to the staff and trustees at the Barrow Cadbury Trust for providing the resources to make this report possible and their continued support for this work.

This is a second edition to our original report published in April 2022. This second edition has been updated with our clarified understanding of one of the two data sources used in the original report. This update does not change the findings or conclusions of our original report. However, given the importance and complexity of the subject area the Centre believes this clarification better contextualizes the data we have used and so have produced a second edition of the report.

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Contents

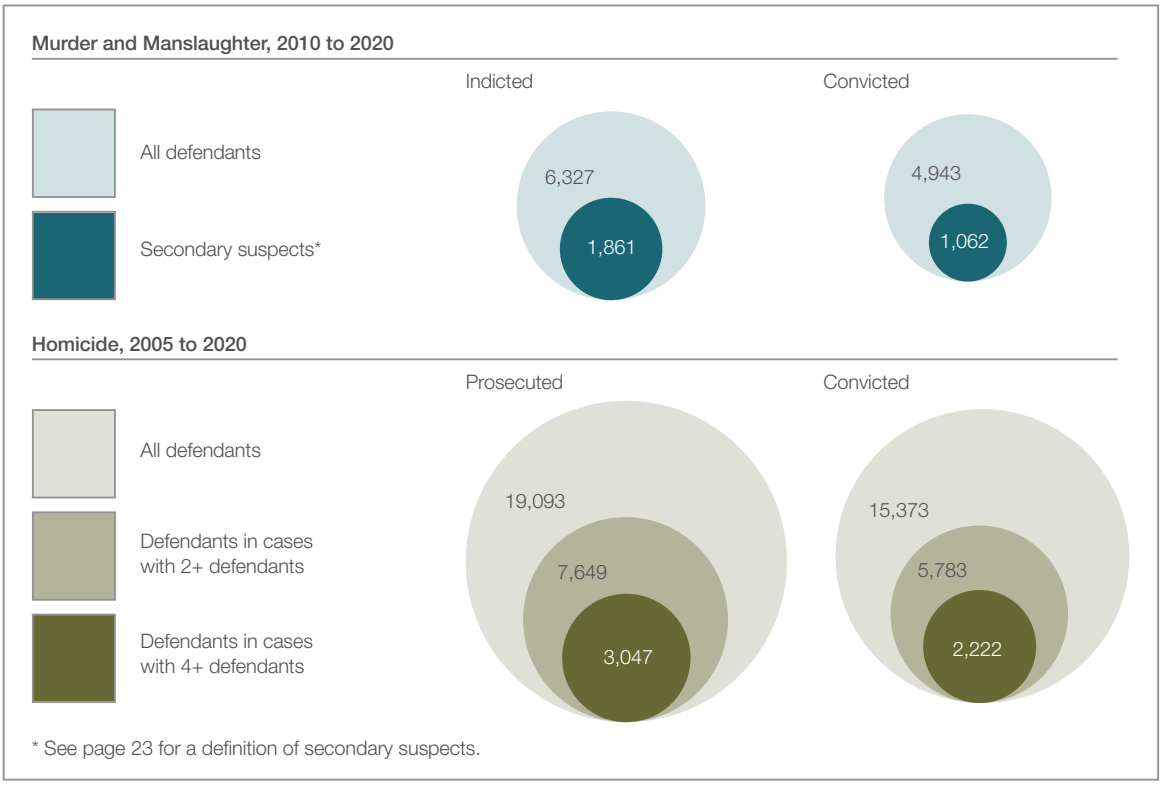
Overview and key messages

The usual suspects uses national data to assess the use of joint enterprise laws in prosecutions and convictions for serious violence in England and Wales over the last fifteen years.

It is the first publication to track information over this significant period of years, and features up-to-date figures inclusive of the period post the 2016 Supreme Court judgment, which ruled the law had taken 'a wrong turn' for more than thirty years. In this report we use the best available data to answer questions about the scope, demographics and changes over time in the use of joint enterprise. Until it is routinely recorded when a prosecution and conviction relied on joint enterprise or secondary liability laws, these approximations are the best available sources to address such important questions.

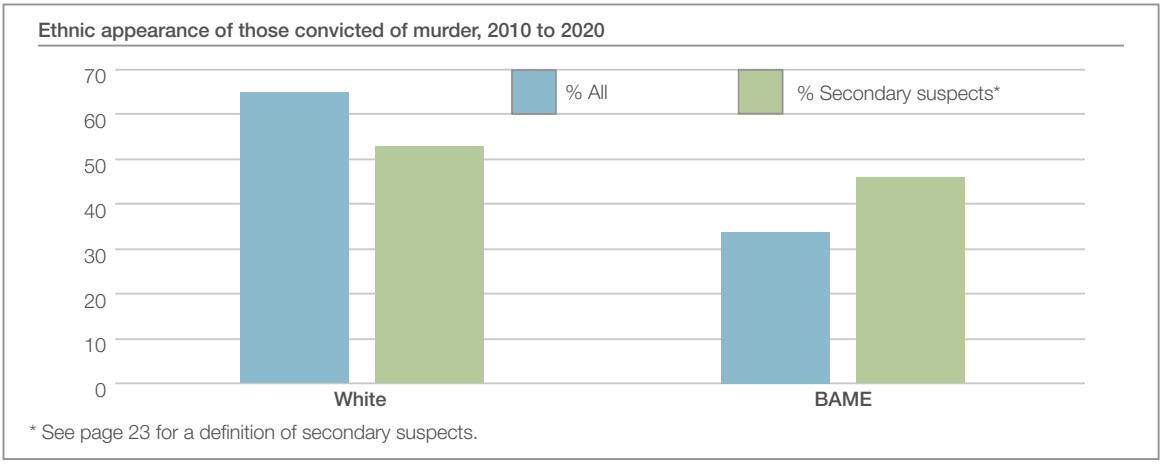
Key messages

1 Over a thousand secondary suspects were convicted of murder or manslaughter in the ten year period to 2020. Over two thousand people have been convicted of homicide in cases involving four or more defendants in the 15 year period to 2020.

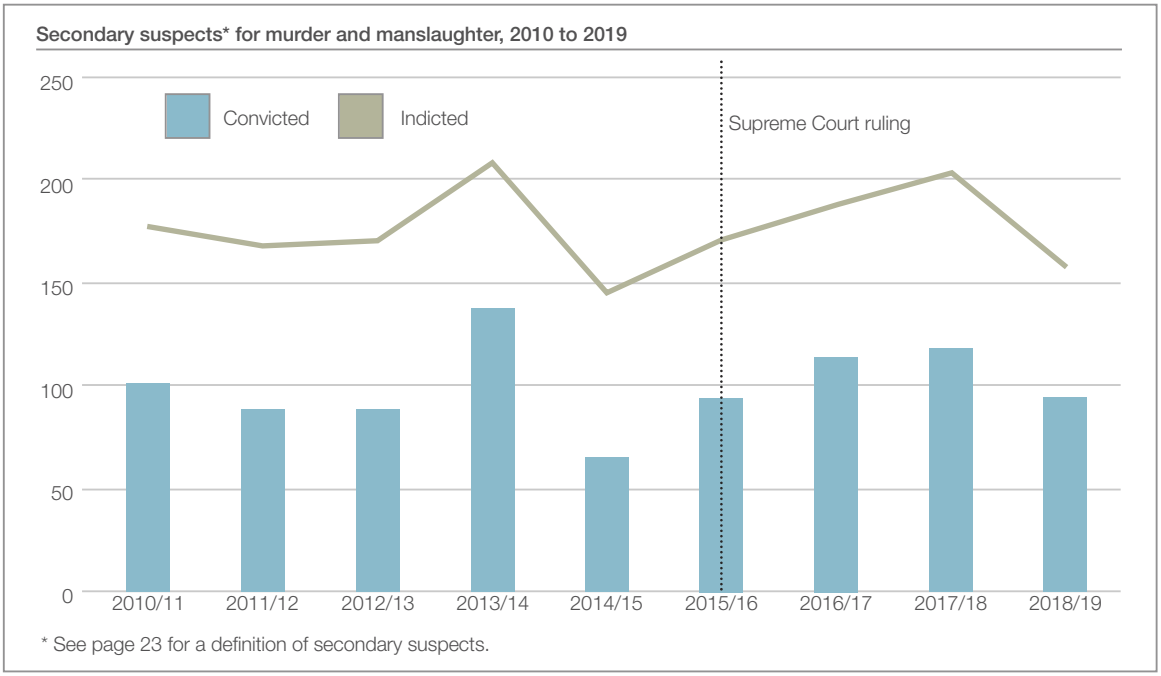


* See page 23 for a definition of secondary suspects.

2 A clear profile emerges about who has been convicted of serious violent offences in multi-defendant cases. They are predominately young men. Those from minority ethnicity communities, particularly the Black community, are consistently over represented.



3 The Supreme Court ruling had no discernible impact on the numbers of people prosecuted or convicted of serious violence as secondary suspects.



Recommendations

1 The seriousness and scope of the issues identified in this report warrants a full parliamentary select committee investigation. To date, joint enterprise has been the subject of a short inquiry by the Justice Committee in 2012 and follow up inquiry in 2014.

2 The evidence of disproportionality in relation to secondary suspects, over many years, is sufficient to justify the CPS commissioning a representative case sample audit of secondary suspect decision-making, especially for young people, in cases of homicide.

3 In the absence of improved data collection, an achievable minimum next step is for the CPS to produce regularly-updated, publicly-accessible data about the numbers and demographics of defendants in multi-defendant homicide cases.

1 Background: About joint enterprise

What is joint enterprise?

Joint enterprise is a doctrine of criminal law which permits two or more defendants to be convicted of the same criminal offence in relation to the same incident, even where the levels and nature of involvement in the incident were different (Jacobson *et al,* 2016).

Individuals in a joint enterprise case may be 'principals' or 'secondary parties'.

A 'principal' is the person who carries out the substantive offence, for example the person who fired the gun.

A 'secondary party' is one who is deemed to have assisted or encouraged a principal to commit the substantive offence, without being a principal offender. Under the doctrine of joint enterprise, the secondary party can be prosecuted and punished as if he or she were a principal offender. Secondary parties can be held liable for the principal's act on the basis of secondary liability. There is no limit to the number of secondary parties who can be charged.

Why is joint enterprise controversial?

The notion of charging more than one person in relation to the same offence is long-standing and in many ways uncontentious. Crimes can be planned and committed in groups, it is of course right that they can be prosecuted and sentenced on this basis.

However joint enterprise has received sustained criticism and concern because of the way these laws have been shown to be used, principally that joint enterprise:

- Over criminalises and over punishes.
- Is disproportionately employed to criminalise and sanction those from working class communities and from ethnic minority communities, particularly the Black community.

The campaign group Joint Enterprise Not Guilty by Association (JENGbA) has been at the forefront of calls from greater scrutiny and reform, often alongside concerned parliamentarians, legal professionals, journalists, and academic allies.

The Justice Committee published two highly critical reports about joint enterprise (Justice Committee, 2012 and 2014). The findings of which inspired the Centre for Crime and Justice Studies to commission and publish a study considering the processes underlying joint enterprise prosecutions. *Dangerous Associations,* the resultant report, was damning (Williams and Clarke, 2016). This research demonstrated the racist practices underpinning joint enterprise prosecutions. It showed how 'the gang' and association was constructed by the prosecution to build a case against those from the Black and minority ethnic community in particular.

The Lammy review of racial disparities in the criminal justice system, published the following year, cited joint enterprise as an example of explicit racism in the criminal justice system (Lammy, 2017).

The 'wrong turn'

Joint enterprise is a common law doctrine, which means it has been developed by the courts over the years.

From 1985 until a Supreme Court ruling on 18 February 2016, there were three ways that

multiple people could be prosecuted for a single offence under joint enterprise principles. First, if two or more people jointly committed a single crime. Second, if one or more people actively assisted or encouraged someone else to commit a crime. The third way, known as 'parasitic accessory liability' (PAL), involved cases in which two or more people committed a crime, during which one of them committed another crime.

Under PAL, the others could be prosecuted as secondary suspects, on the basis that they should have foreseen that the principal suspect would commit another crime.

In 2016, the Supreme Court ruled that this third approach – PAL – had been wrongly applied for over thirty years, setting too low a bar for individuals to be convicted of offences they did not perpetrate. This is sometimes referred to as 'Jogee' or 'the Jogee ruling', named after the individual who brought the case.

This ruling effectively abolished PAL, one of the most controversial aspects of the joint enterprise doctrine, as a basis for criminal liability. Following the ruling, PAL can still be used as evidence of intention, though it is not enough in itself to prove intent to aid or assist an offence.

The ruling was welcomed at the time by many of those concerned about the use of joint enterprise. There were high hopes it would provide a basis to appeal the conviction of some of those imprisoned during 'the wrong turn.' There were also hopes that the ruling would go some way to refining the scope of one of the most troubling aspects of joint enterprise doctrine.
In response to the Supreme Court ruling, the Crown Prosecution Service (CPS) revised its guidelines on secondary liability in 2019 (Crown Prosecution Service 2019). Following the recommendation of the Lammy review (Lammy, 2017), the CPS also revised the criteria for using 'gang' in the prosecutorial practice (most recently updated in Crown Prosecution Service, 2021).

"Where people sit around the table and they plan an armed robbery, and you've got the planner, and he's got the plans and the clipboard, then you've got the driver and the guy with the shotgun, I mean that is either a conspiracy or a joint enterprise or both. I get that. But when you get a 17 year-old in a row with a load of his mates with another 'gang' who are equally up for it and somebody on his side punches somebody in the wrong place, or too hard or whatever, and he hasn't done anything other than be there, just stretch that to joint culpability is what we're talking about here"
Legal professional two

2 About the research

Rationale

The rationale for this research is based on the lack of data in the public domain about the use of joint enterprise, particularly in the period following the Supreme Court ruling. As the House of Commons Justice Committee noted in its inquiry report on joint enterprise, back in 2012:

> *"We were surprised to learn in the course of this inquiry that no record is made of the number of people charged under Joint Enterprise every year, or the outcomes of those cases. Given the evidence we heard that the doctrine is being applied inconsistently, together with the high number of cases involving Joint Enterprise being heard in the Court of Appeal, we would have expected that such data would have been collated to ascertain a true picture of the number of charges, convictions and appeals involving the Joint Enterprise doctrine. We have recommended such data be collated in future."*
> (Justice Committee, 2012: 3)

A decade on from this observation, this lack of data remains the case. Despite numerous requests for more information, there are still no official sources about joint enterprise. As the Justice Minister, James Cartlidge, explained in parliament earlier this year:

> *"The Ministry of Justice only collects information on how many defendants are prosecuted and convicted for each offence in any given year. Information is not collated on whether a prosecution or conviction relied on the law of joint enterprise. Such information may be held on court records but could only be obtained at disproportionate cost."*
> (HC Deb, 24 February 2022, cW)

No data is collated about whether joint enterprise principles have been applied during the process of charge, prosecution and conviction, let alone more detailed information about which particular principle of secondary liability is being relied upon.

As others have noted, this presents significant challenges to understanding the use of this complex and controversial aspect of law. Only an approximate picture can be established from secondary analysis due to this limited data collection. Data is available about the numbers and demographics of individuals prosecuted and convicted in multi-defendant cases. Such data is the best available approximation for joint enterprise prosecutions.

In the absence of official data, we submitted a series of Freedom of Information requests, similar to the method adopted by a Bureau of Investigative Journalism report on joint enterprise some years ago (McClenaghan *et al.* 2014).

Our focus in this report is on the number of defendants prosecuted and convicted. We do not look at the number of cases (one case could involve the prosecution of several individuals) or at the number of victims or at the number of appeals of joint enterprise convictions.

About the data

Statistics

The Ministry of Justice, CPS and Home Office were all asked for data about serious violence prosecutions, through Freedom of Information requests. The data each institution held differed and our requests to each reflected this. For a description of what we did to obtain the data

Table 1: About key data sources

Institution	Crown Prosecution Service (CPS)	Home Office (HO)
Period covered	2005 to 2020 (16 years of data)	2009/20 to 2019/20 (11 years of data)
Offence type	Homicide	Murder and manslaughter

through Freedom of Information requests, see appendix A.

Two main data sources obtained through this process are used in this report.

For more detail about each dataset and the key caveats to bear in mind as a measure of joint enterprise, see appendix B. Despite the caveats, and in the absence of better data collection, these figures are the best guide available to gauging trends about how this complex and problematic area of law is working.

Contemporary accounts

An initial set of data obtained through Freedom of Information requests was shared with three legal experts familiar with joint enterprise cases, with whom we discussed the data in the context of their court experiences. All the quotes featured in this report were obtained from this consultation and are provided here to help put this official data into context.

Note on key terms

Murder and manslaughter both refer to specific offences, homicide is a collective category of many offences including murder, attempted murder and manslaughter. In this report we used the term 'serious violence' to refer to data from both sources.

The Home Office data on murder and manslaughter used in this report identifies 'secondary suspects' in relation to murder and manslaughter cases. Please note, secondary suspect is an administrative definition, rather than one recording the form of liability for an offence.

See page 23 for a full definition.

3 Findings

A How many people have been prosecuted and convicted for serious violence under joint enterprise laws?

Overall figures

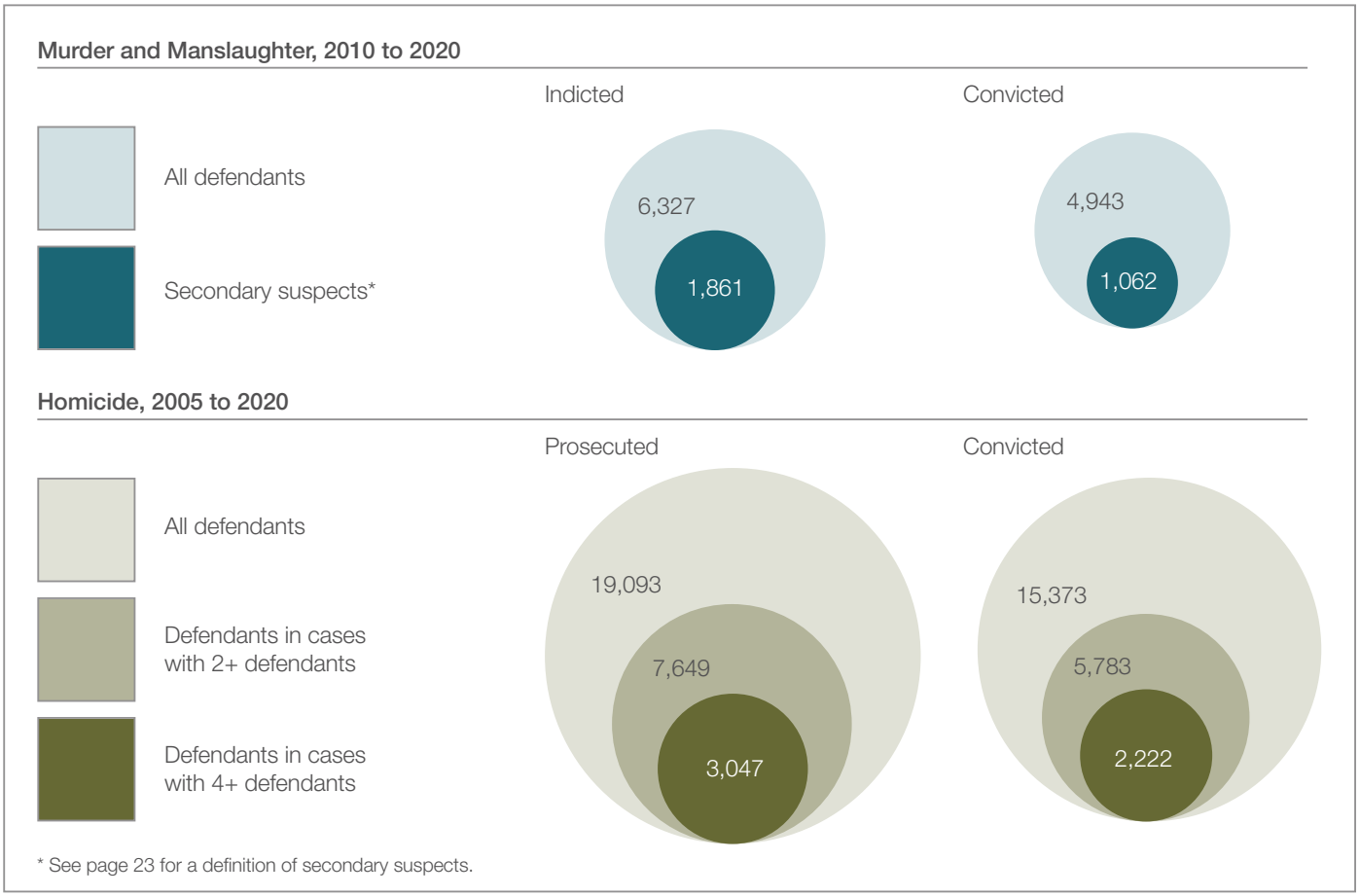
Over a thousand secondary suspects were convicted of murder or manslaughter in the ten year period to 2020. Over two thousand people have been convicted of homicide in cases involving four or more defendants in the 15 year period to 2020.

Secondary suspects formed around three in ten of those indicted[1] for murder and manslaughter and two in ten of those convicted for these offences.

The conviction rate for secondary suspects indicted for murder was relatively low (four in ten) compared with all suspects (six in ten).

1 Indicted refers to all defendants who have been charged with an offence and had an indictment against them presented at the Crown Court.

Figure 1: Prosecutions and convictions



* See page 23 for a definition of secondary suspects.

***Source**: CPS M 10120, HO 65127, HO 66548*

Each year between 2005 - 2020, more than 200 people were homicide defendants in cases involving two or more defendants. In most years, this rose to more than 300 people. In all but one year in this period, more than 100 people were homicide defendants in cases involving four or more defendants.

In 2020, the most recent year for which there is data, 400 homicide defendants were prosecuted in cases with two or more defendants, of which around a quarter (130), were prosecuted in cases with four or more defendants.

How many people were convicted during 'the wrong turn?'

In the seven years up to the Supreme Court ruling (from 2009/10 to 2015/16):

- 426 secondary suspects were convicted of murder.
- 272 secondary suspects were convicted of manslaughter.

These figures identify a much wider category than only those convicted under PAL for these offences. They also include those held liable on the basis of intending to assist or encourage a principal and joint principals in common.

The law has been acknowledged as having taken 'wrong turn' for over 30 years. Yet no audit has been conducted of cases during this period to assess the number or proportion of cases in which PAL could have been misapplied. The above figures show the large size of the potential group whose fate may have been affected by the mistake.

B Who has been prosecuted and convicted for serious violence through joint enterprise laws?

A clear profile emerges about who has been convicted of serious violent offences in multi-defendant cases. They are predominately young men. Those from minority ethnicity communities, particularly the Black community, are consistently over represented.

Predominantly male

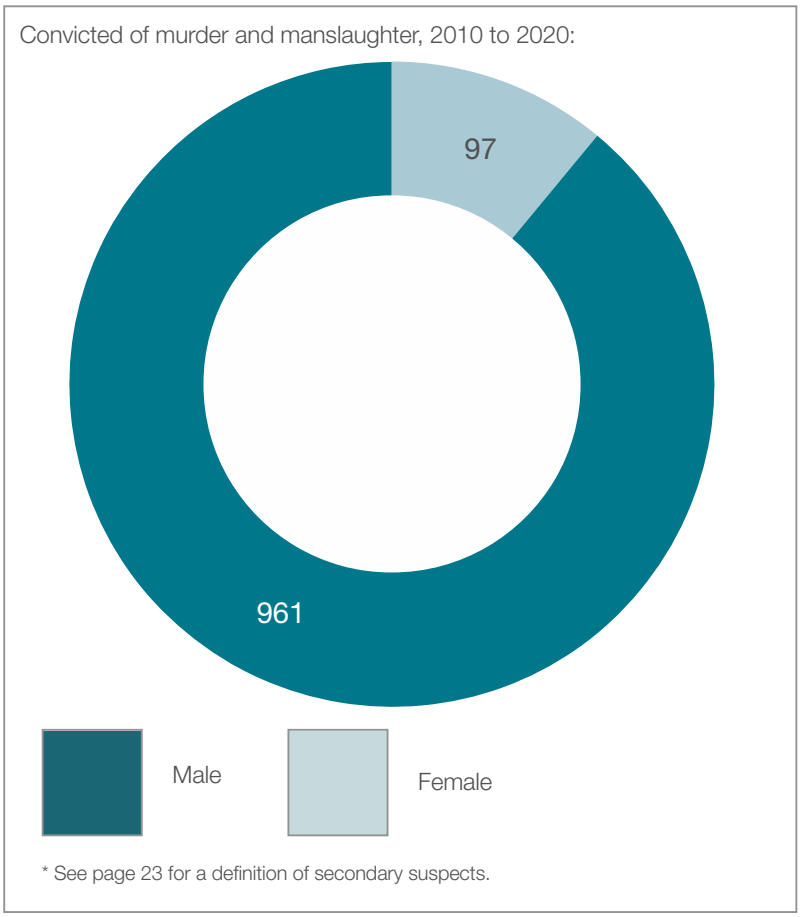
Around 90 per cent of defendants in multi-defendant cases for serious violence were male. (*Figure 2, overleaf*). This is not remarkable. Men dominate convictions for serious violent offences and the figures here reflect that.

Indeed, females with convictions for serious violence through joint enterprise laws have been found to be peripheral to the violent incident itself. Research with imprisoned women convicted through joint enterprise laws found '90% engaged in no violence in relation to the events related to their joint enterprise conviction. In no cases did the women use a deadly weapon' (Clarke and Chadwick, 2020).

Young people are over-represented

Whilst it is also true that young adults are overrepresented amongst those convicted of serious violence offences in general, compared to their distribution in the overall population, (*Figure 3, page 13)* shows that prosecutions and convictions for serious violent offences in multi-defendant cases disproportionately involve young adults as

Figure 2: Secondary suspects* by sex



***Source**: HO 65127 and HO 66548*

defendants.

More than a third of homicide defendants in cases involving two or more defendants were young adults (aged 18-24).

The number of young adults rose to four in ten defendants in homicide prosecutions involving four or more defendants.

Young people aged 14-17 year-old were also more prominent as defendants in homicide cases with four or more defendants compared to the age profile of defendants in homicide cases overall.

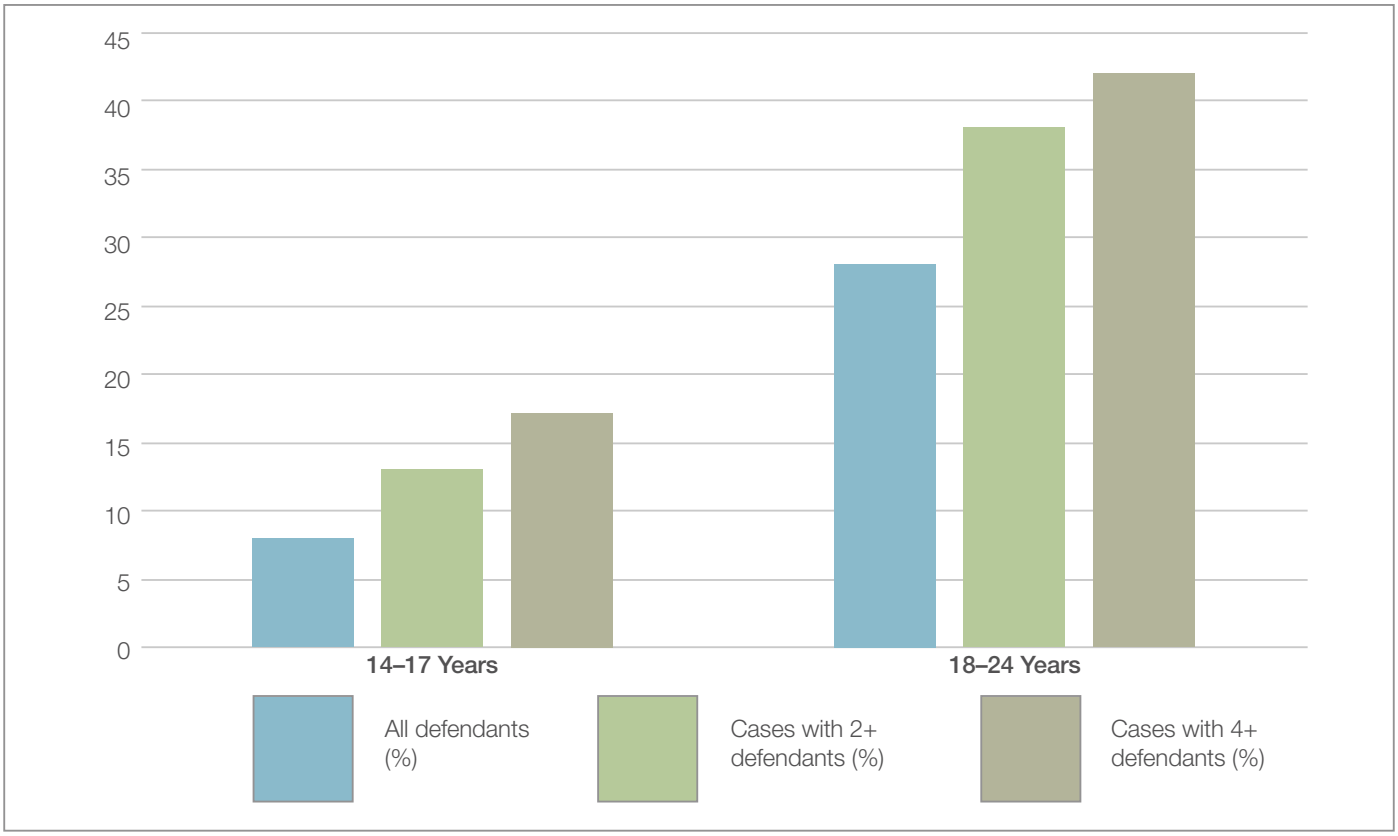
A similar distribution was found for murder and manslaughter. Secondary suspects in these cases had a younger profile than that of the age profile of those convicted for murder and manslaughter

Table 2: Homicide prosecutions, 2005 to 2020

Age group	All defendants (%)	Cases with 2+ defendants (%)	Cases with 4+ defendants (%)
10-13	<1	<1	<1
14-17	8	13	17
18-24	28	38	42
25-59	55	44	38
60-69	2	1	1
70-79	1	0	0
80+	1	0	0
Not Provided	4	3	2
N=	**19,093**	**7,649**	**3,047**

***Source**: CPS M-10120*

Figure 3: 14 – 25 year olds prosecuted for homicide, 2005 to 2020



***Source**: CPS M 10120*

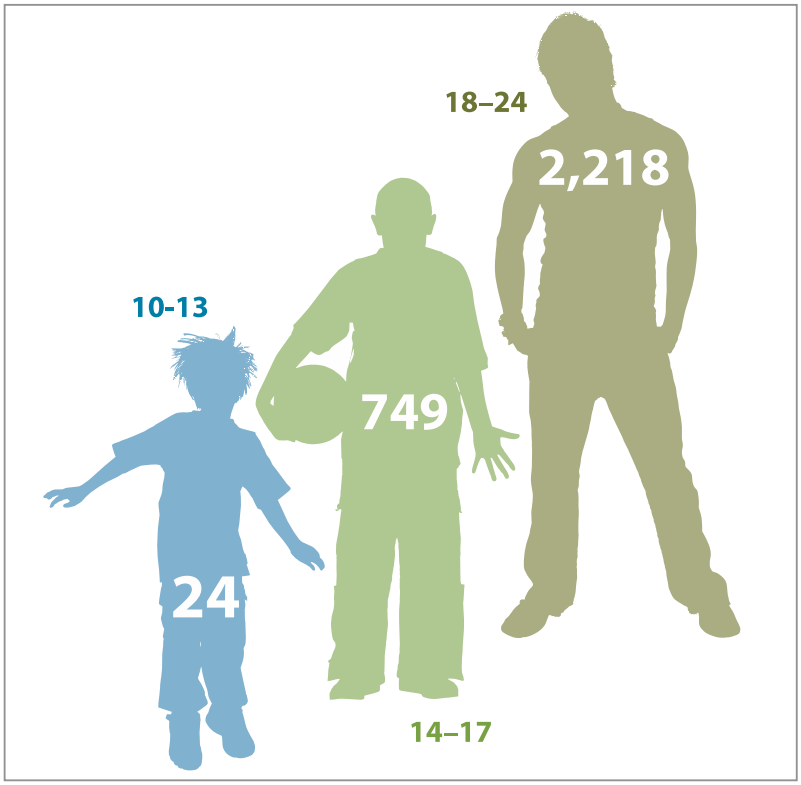
generally.

Previous research has shown the lengthy custodial consequences imposed on young people with serious violence convictions under joint enterprise (Crewe *et al* 2014).

This is particularly the case for murder. The length of custodial sentences for murder has increased due to changes in legislation. When a murder involves a knife, the statutory starting point for sentencing is 25 years in prison for those aged over 21 years old, and 30 if the murder involved a firearm.

Whether an individual is convicted as a principal suspect, or on the basis of secondary liability, is not officially recognised as a mitigating factor in sentencing.

Figure 4: Under 25 year olds convicted of homicide in multi-defendant cases, 2005 to 2020



***Source**: CPS M 10120*

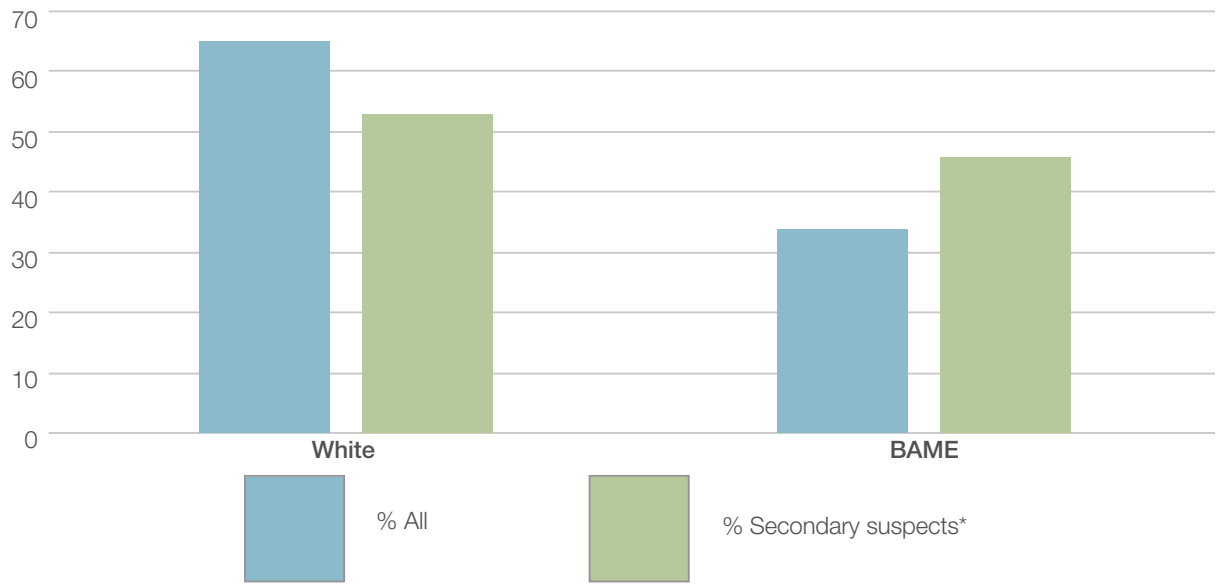
Consistent over-representation of Black people

When data about ethnicity was analysed, a broad historical pattern emerged from the homicide data over the past 15 years.

Approximately 30 per cent of all defendants convicted for homicide were from Black and minority ethnic communities, rising to 40 per cent of those convicted in cases involving two or more defendants, and 50 per cent of those convicted in cases involving four or more defendants.

The data for murder (*Figure 5*) indicates that those from Black and minority ethnic communities form nearly half of secondary

Figure 5: Ethnic appearance of those convicted of murder, 2010 to 2020



Ethnic appearance	% all convicted	% secondary suspects* convicted
White	65	53
Total BME	34	46
Of which Black	22	32
Of which Asian	9	11
Of which other	3	3
Not known/not recorded	1	1
N=	**3,139**	**635**

* See page 23 for a definition of secondary suspects.

***Source**: HO 65127*

suspects convicted of murder (46 per cent). This is a significantly higher proportion compared to the profile of all those convicted for murder (34 per cent).

This disproportionality was particularly the case for those from the Black community. Black people form around a third of secondary suspects convicted of murder. This is a higher proportion compared to the ethnic profile of all those convicted for murder, by some 10 per cent. For manslaughter too, people of Black ethnic appearance formed higher proportions of secondary suspects convicted of manslaughter compared to all those convicted of manslaughter (30 per cent compared to 18 per cent).

The data we have collected updates the previously available information about who has been prosecuted and convicted for serious violence in multi-defendant cases. However, the over-representation of young people and those from Black and minority ethnic communities amongst those convicted for serious violence, through joint enterprise laws, is well-established by previous studies based on prisoner surveys (Crewe et al 2014; Williams and Clarke 2016) and has been highlighted in official reviews (Justice Committee 2014; Lammy 2017) .

To understand how and why this disproportionality occurs, these figures should be considered alongside empirical work on the police and court processes that underlay these convictions (Williams and Clarke 2016; Clarke and Williams 2020). This work has shown how the identification and stigmatisation of groups as 'gangs' in the prosecution process widens the net. Prosecution through association stereotypes young Black men in particular and links them with violent criminal behaviour.

"The language of 'these people' is often used, you know, I had a case this year where in the closing speech by the prosecutor he said 'these people are not normal'"

Legal professional one

"If we look at our inner cities, where a lot of young men congregate and meet, of course through social media and the music scene, it's all very easy when there's an act of violence to lump everyone together and say well they are a gang, [..] in terms of bringing a prosecution where you want to have principals and secondaries and then you rely on social media and things that are perhaps posted"

Legal professional three

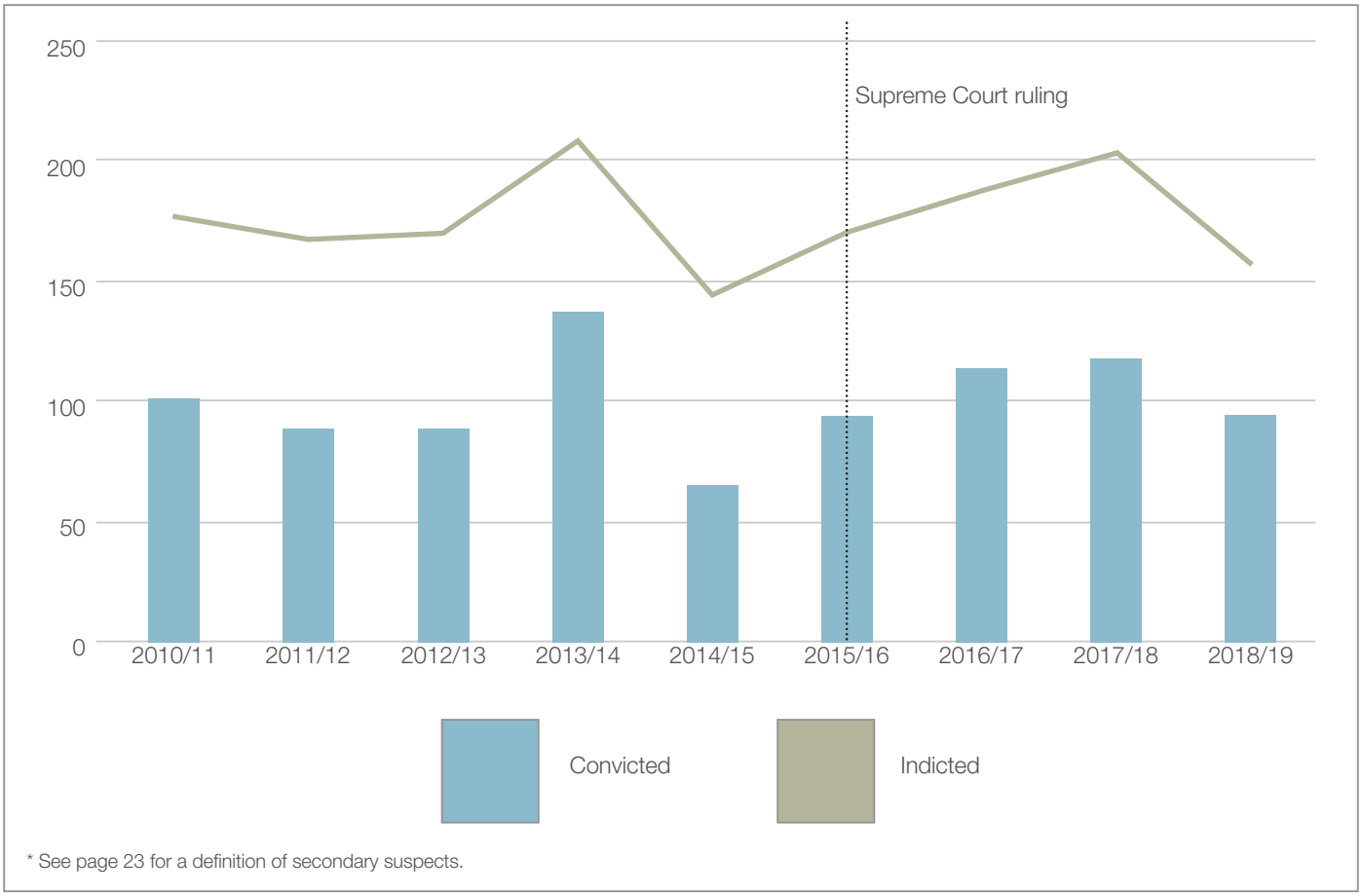
C What impact has the Supreme Court ruling had on trends in the use of joint enterprise laws?

The Supreme Court ruling had no discernible impact on the numbers of people prosecuted or convicted of murder and manslaughter in multi-defendant cases.

As previously discussed, it is not possible to distinguish in the data those cases that relied on PAL to secure a conviction – the target of the Supreme Court ruling. However the time-frame of data we have can help to address whether the Supreme Court ruling introduced, as some had hoped for at the time, some restraint in the prosecution of defendants in multi-defendant murder and manslaughter cases If it did, we would expect to see a significant decline in the number and proportion of secondary suspects compared with all suspects in the years following the Supreme Court ruling, and explore if any decline was proportionate, particularly in respect of age or ethnicity.

When relevant periods in time are compared, before and after the Supreme Court ruling, the

Figure 6: Secondary suspects* for murder and manslaughter, 2010 to 2019



* See page 23 for a definition of secondary suspects.

***Source**: HO 65127 and HO 66548*

Table 3: Secondary suspects* for murder and manslaughter

	Pre Supreme Court ruling	Around Supreme Court ruling	Post Supreme Court ruling
	2010/11to 2012/13	2013/14 to 2015/16	2016/17 to 2018/19**
Indicted	514	522	547
Convicted	278	296	326
Proportion indicted (%)	27	30	31
Proportion convicted (%)	19	22	24

* See page 23 for a definition of secondary suspects.

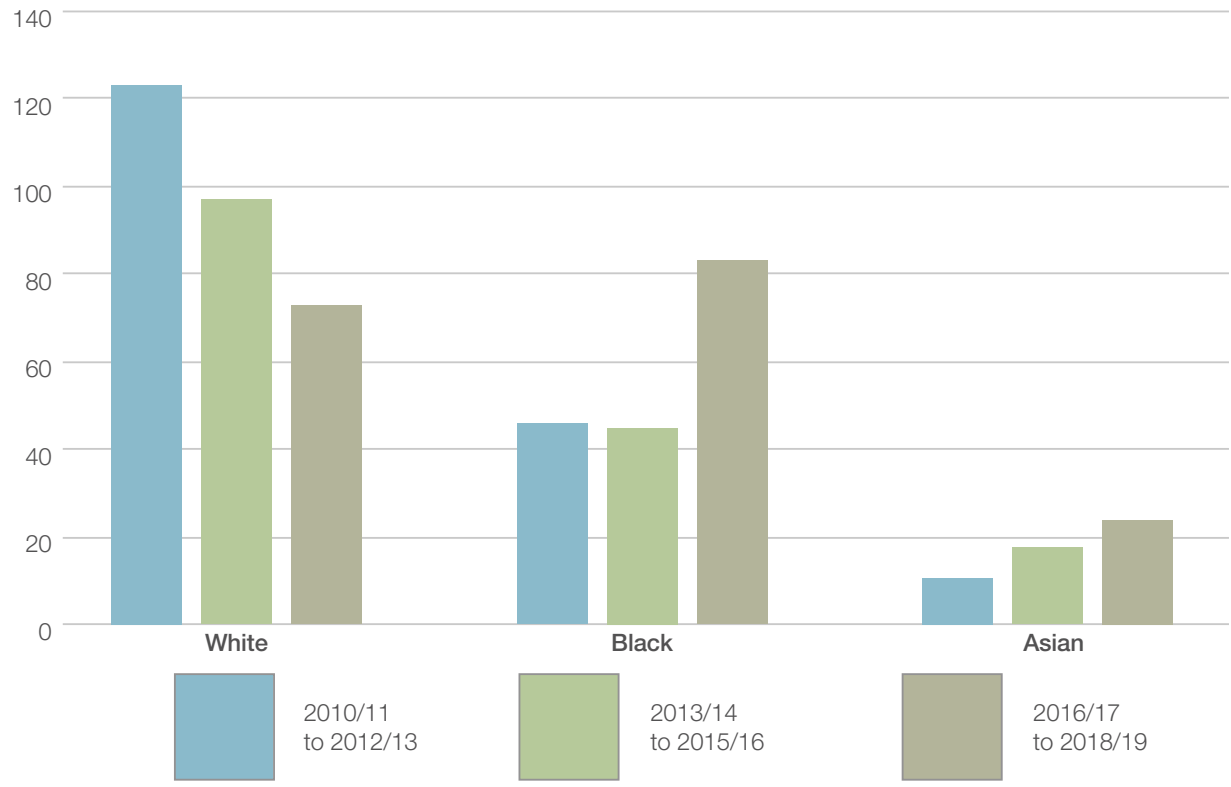
** The number of cases in this period may increase due to the time lag in completion of cases.

***Source**: HO 65127 and 66548*

judgment appears to have made little material difference to the general trend or pattern among secondary suspects for murder and manslaughter.

The number of secondary suspects indicted and convicted as a proportion of all those indicted and convicted also shows little change after the Supreme Court ruling (*Table 3*). There is also little shift over time period considered here in the proportion of secondary suspects indicted for murder who are convicted, at around 40 per cent.

Figure 7: Ethnic appearance of secondary suspects* convicted of murder and manslaughter



* See page 23 for a definition of secondary suspects.

***Source**: HO 65127 and HO 66548*

Table 4: Ethnic appearance of secondary suspects* convicted of murder and manslaughter

	Pre Supreme Court ruling	Around Supreme Court ruling	Post Supreme Court ruling
	2010/11 to 2012/13	2013/14 to 2015/16	2016/17 to 2018/19**
White	123	97	73
Black	46	45	83
Asian	11	18	24
Other	3	3	5
Not known/not recorded	1	1	2
BME	60	66	112

* See page 23 for a definition of secondary suspects.
** The number of cases in this period may increase due to the time lag in completion of cases.
***Source**: HO 65127 and 66548.*

The lag in time it takes for murder trials to conclude makes trends since the Supreme Court ruling more difficult to analyse conclusively. However, on the basis of this data, there is no indication of a significant reduction in either the number or proportion of secondary suspects in murder and manslaughter cases after the Supreme Court ruling. There were no notable changes to the established age and sex profile of secondary suspects in the period following the Supreme Court ruling judgment.

"My impression is that the approach by prosecutors hasn't changed at all, if anything I would say it's got worse because what they now try and do is say 'well everybody is a principal offender', it's joint or some form of shared intention or common purpose or even charging conspiracy" Legal professional one

"Prosecutors are still slipping back into their old ways of foresight and bringing in other issues, which really should've been left post-Jogee, but they're still reverting to type, and so whilst there is this acceptance that we have to show active participation or encouragement, a lot of the evidence which they seek to rely on is based really on the old principles" Legal professional three

The data also suggests there has been no significant reduction in the proportion of secondary suspects from Black and minority ethnic communities. Indeed, there are indications that the most recent period has seen some increase in ethnic disproportionality among secondary suspects (*Figure 7 and Table 4*). However these detailed comparisons need to be understood in terms of fairly small numerical differences between the time periods. The number of Black secondary suspects convicted of murder rose from 45 to 83 (from 27 per cent to 44 per cent of secondary suspect convictions) when comparing the relevant time periods before and after the Supreme Court ruling.

The explanation put to us by legal professionals familiar with the use of joint enterprise laws is that the Supreme Court ruling has changed the principles or precise way in which joint enterprise is articulated. They described a move away from PAL, as per the intention of the Supreme Court ruling, to assistance or encouragement. However, the Supreme Court ruling has not impacted on the overall use of joint enterprise nor addressed concerns regarding its low threshold and racialised outcomes.

Conclusions and recommendations

The usual suspects

Stretching over a period of more than a decade, the data reveals the scope of multi-defendant prosecutions for homicide. Of concern, but not surprise, the data shows an over-representation of children and young adults, and of defendants of Black appearance.

The data also shows no evidence that the number of individuals prosecuted in groups for murder and manslaughter has reduced in the period following the Supreme Court ruling in 2016, as some had hoped for at the time. Indeed, as the planned introduction of Serious Violence Reduction Orders demonstrates, the government continues to view guilt by association as important.

We make the following specific recommendations for the future.

1 Select Committee Inquiry

Enough evidence about the questionable application of joint enterprise laws has already emerged to cast doubt on current practices and to demand fresh answers from the prosecuting authorities.

The seriousness and scope of these issues warrants the consideration of a full parliamentary select committee investigation. To date, joint enterprise has been the subject of a short inquiry by the Justice Committee in 2012 and follow up inquiry in 2014.

2 Crown Prosecution Service accountability

The law demands that those responsible for serious violence are identified and held to account. However, justice requires that the law be applied equally. The scale of the racial disparities revealed by this research over such a long period requires explanation. How does it come about that such clear trends are maintained, year on year?

This more than meets the criteria set out by the Lammy review, for institutions to 'explain or reform' (Lammy, 2017). The CPS should commission an independent representative audit of secondary liability decision-making, especially for young people, in cases of homicide. The purpose would be to look in-depth and comprehensively at prosecution decision-making in such cases, from the point of first charge to sentencing outcome, and identify any evidence of racial bias in considerations or in decisions.

3 Improved transparency

Current practices

The lack of data about this problematic and complex area of law has prompted longstanding requests for improved data collection (Justice Committee, 2014; Lammy, 2017 and most recently Liberty, 2022). We note the government has taken up previous calls made a number of years ago to improve data collection regarding the use of joint enterprise, including assessing the options to record cases on the basis of liability:

> *"Collecting data on joint enterprise cases is being considered as part of the Common Platform Programme. The Common Platform aims to provide a single case management system that will enable the sharing of evidence and case information across the Criminal Justice System".*
> (HC Deb, 31 January 2018, cW)

However, the government's response on this issue earlier this year suggests these plans have not come to fruition and may have been dropped:

> *"The Ministry of Justice only collects information on how many defendants are prosecuted and convicted for each offence in any given year. Information is not collated on whether a prosecution or conviction relied on the law of joint enterprise. Such information may be held on court records but could only be obtained at disproportionate cost".*
> (HC Deb, 24 February 2022, cW)

Despite numerous attempts during this research to find out whether information about joint enterprise is now being collated by the CPS, and if so how it could be accessed, we were unsuccessful. We will, however, seek clarity from the CPS about its attempts to improve the available data about the use of joint enterprise.

In the absence of improved data collection, an achievable minimum next step is for the CPS to produce regularly-updated, publicly-accessible data about the numbers and demographics of defendants in multi-defendant homicide cases.

Historic injustice

In addition to improved data collection to better understand and hold current practices to account, there is an additional issue of clarifying and, where necessary, rectifying unjust previous practices. The Supreme Court ruled in 2016 that the law on secondary liability had taken a wrong turn for over three decades and abolished PAL as the sole basis for criminal liability.

Only one conviction has been successfully been overturned since the ruling, with campaigners critical of the high threshold the substantial injustice test has created for individuals to appeal their convictions.

No data has been made available which allows a clear picture to emerge about the number and proportion of cases which relied on PAL for conviction during this period. This is too important a matter to be left unresolved. It warrants the CPS undertaking an audit to sample and assess the number and proportion of cases within which PAL was applied prior to 2016.

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Appendix A: **Obtaining the data**

Between May and November 2021, the Centre for Crime and Justice Studies submitted a series of Freedom of Information (FOI) requests, in order to obtain statistical information and clarify the information obtained.

The Ministry of Justice (MoJ), CPS and Home Office were all approached for data. The MoJ produce statistics on prosecutions and convictions for all offences as well as breakdowns by age, sex and ethnicity which are designated national statistics. A FOI request was sent asking for information on the number of all cases and multi-defendant cases for murder, and the number of defendants prosecuted and convicted for murder in multi-defendant cases between 2010 and 2020, broken down by demographics. The MoJ sought clarification as to how the information was to be presented, which was confirmed. The request was then refused on cost grounds. No data was therefore provided by the MoJ.

The CPS was approached for information on defendants prosecuted and convicted for homicide, including in multi-defendant cases, and broken down by sex, age and ethnicity, since 2013. The request was refused, based on the CPS interpreting the request as referring to the offence of murder, which they cannot provide. A clarification response was sent, and the CPS subsequently provided information on defendants prosecuted and convicted for homicide multi-defendant cases only, broken down by sex, age and ethnicity, between 2005 and 2020.

The statistics were not consistent with data previously published in a Bureau of Investigative Journalism report in 2014, which was based on FOI requests to the CPS (McClenaghan *et al* 2014). An email was sent asking for clarification from the CPS, but was ignored. A further FOI request was sent asking for data on all defendants prosecuted and convicted of homicide between 2005 and 2020, broken down by demographics, and another on the numbers of unsuccessful prosecutions and the reasons they were unsuccessful. Again, clarification was sought about the disparity between the previously published data on multi-defendant prosecutions and convictions and the set provided to this research project. The CPS responded with a new set of data, which more closely approximated that provided to the Bureau of Investigative Journalism, and incorporated the two further requests, but did not clarify why the two datasets were inconsistent.

The Home Office produce regular figures on homicide which are designated national statistics. They were approached for data on the number of all suspects and secondary suspects indicted and convicted for murder, broken down by age, sex and ethnicity. This data was provided without issue. Subsequently, the same data for manslaughter was requested, as was information on the number of suspects indicted per homicide offence. Again, this information was provided without issue.

The work of obtaining the required information therefore included six FOI requests and four follow-up requests. The data analysed here were derived from the following:

FOI requests - Home Office 65127 and 66548; CPS M-10120.

Appendix B: **About the key data sources**

Two main data sources are used in this report: following Freedom of Information Act requests.

The datasets are collected in different ways, and cover different offence groups so are not directly comparable with each other.

Offence type:	Homicide	Murder and manslaughter
Institution:	Crown Prosecution Service (CPS)	Home Office
Period covered:[2]	2004/05 to 2019/20 (16 years of data)	2009/20 to 2019/20 (11 years of data)
FoI reference:	CPS M 10120	Home Office 65127 and 66548
Key caveats and comments:	This data is drawn from CPS administrative data. Homicide is a collective category of many specific offences including; murder, attempted murder, manslaughter and causing death by dangerous, reckless or careless driving. It cannot be disaggregated into specific offences. This source distinguishes defendants prosecuted and convicted when there are two or more defendants in relation to the same incident and when there are four or more defendants in relation to the same incident. This includes all circumstances in which two or more people are prosecuted for the same offence in relation to the same incident. It therefore includes those classified as the principal suspect in a multi-defendant case, as well as those classified as involved on the basis of secondary or equal liability.	This data is drawn from designated National Statistics. The source includes all those indicted (charged with an offence and had indictment against them presented at the Crown Court) and convicted for each of the identified offences. It further identifies 'secondary suspects'. Secondary subjects are defined as: *" Where there are multiple suspects, they are categorised in the Homicide Index as either the principal or a secondary suspect. The suspect with the longest sentence or most serious conviction is determined to be the principal suspect. In the absence of any 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 relationship to the victim."* (Office for National Statistics, 2022, p6) Only one principal is identified in each case. Secondary suspects include all circumstances in which two or more people are prosecuted for the same offence in relation to the same incident. It therefore includes those prosecuted in cases with more than one principal suspect, as well as those classified as involved on the basis of secondary liability. Due to the time lag in completion of murder and manslaughter cases, the number of indictments and convictions particularly in the most recent years of data shown here may increase in future versions of this dataset as cases are dealt with by the courts.

2 All data was provided by financial year. When single years are used in this report they refer to the end year e.g. 2016 refers to 2015/16.

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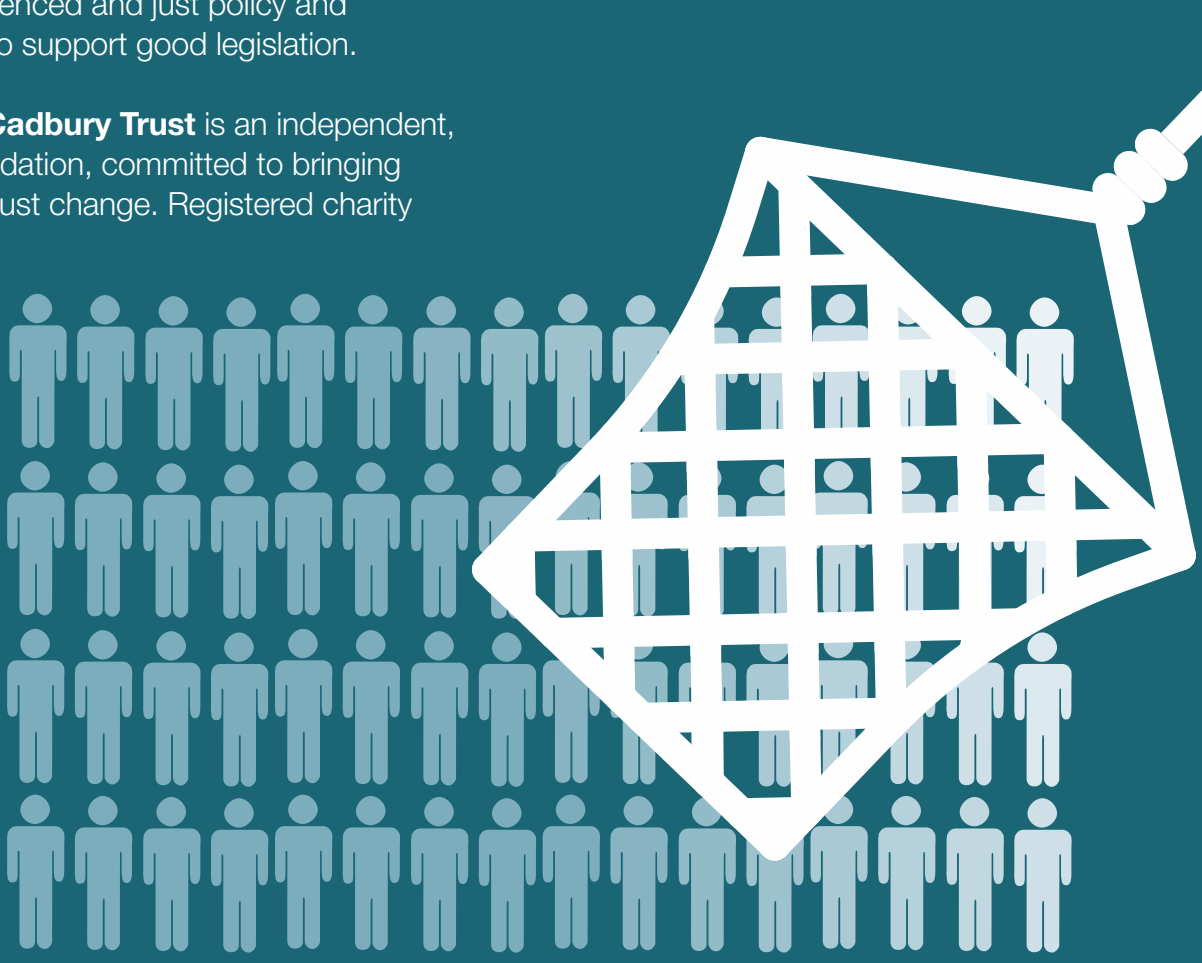

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