
Crime Team Bulletin: Drafting Attempts – A Change in Practice

Submitted by Jessica Armfelt on Tue, 01/11/2022 - 15:18

R v Reed [2022] 1 All ER 60, [2021] EWCA Crim 572

In my experience, one of the most confusing aspects of cases concerning defendants who have communicated with undercover police officers, or vigilante paedophile hunters in a sexual manner, is that the charges which follow are prosecuted as attempts, with the charges being drafted as 'contrary to section 1(1) of the Criminal Attempts Act 1981, irrespective of the substantive charge.

This has, of course, always been a perfectly proper and correct practice, but has the downside of not making it easy to identify the substantive offence which has been attempted. This can then make it more difficult to ascertain the correct sentencing guideline, particularly in these cases where the distinctions between a host of offences under the SOA 2003, such as ss. 9, 10, 13, 14, 15 and 15A are quite fine.

Fortunately, the Court of Appeal has been experiencing the same frustrations as myself (always nice to know you're not alone in feeling a little thick!) and have issued new guidance for the drafting of Criminal Attempt charges and indictments.

The case of *Reed & Others* is important for several reasons: firstly it clarifies the approach with regard to sentencing a whole host of child sexual offences commonly charged as attempts where there is no actual child involved, confirming that the approach in *Privett* is to be similarly applied to offences under sections 5-13, 15, 15A and 47-50. Namely that the harm in such cases should always be assessed in the first instance by reference to the offender's intentions, followed by a downward movement from the starting point to reflect the fact that the sexual act did not occur, either because there was no real child or for any other reason. The extent of downward adjustment will depend on the facts of the case.

Reed however goes on to look at the issue I have identified above, that when every offence is charged as an attempt, and all under s.1(1) of the CAA 1981, it can be difficult to identify what the substantive offence is, which has particular relevance to identifying the correct guideline and relevant starting point to apply the relevant discount to.

The answer, the Court of Appeal suggests, is simple. Charge sheets and indictments should be drafted so as to refer to both the substantive offence AND the CAA 1981 on the face of the charge. So that a charge of:

'Attempting to incite a girl under 16 to engage in sexual activity (penetrative), contrary to section 1(1) of the Criminal Attempts Act 1981.'

Becomes:

'Attempting to incite a girl under 16 to engage in sexual activity (penetrative), *contrary to section 10(1) of the Sexual Offences Act 2003 and* section 1(1) of the Criminal Attempts Act 1981.'

The Court of Appeal's view is that "bearing in mind that charges and indictments need to be

understood not just by lawyers but by defendants, the public and the press, clarity as to the offence attempted is essential." I agree with this, and suggest that the same principle should equally apply to the drafting of Conspiracy charges as well.

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