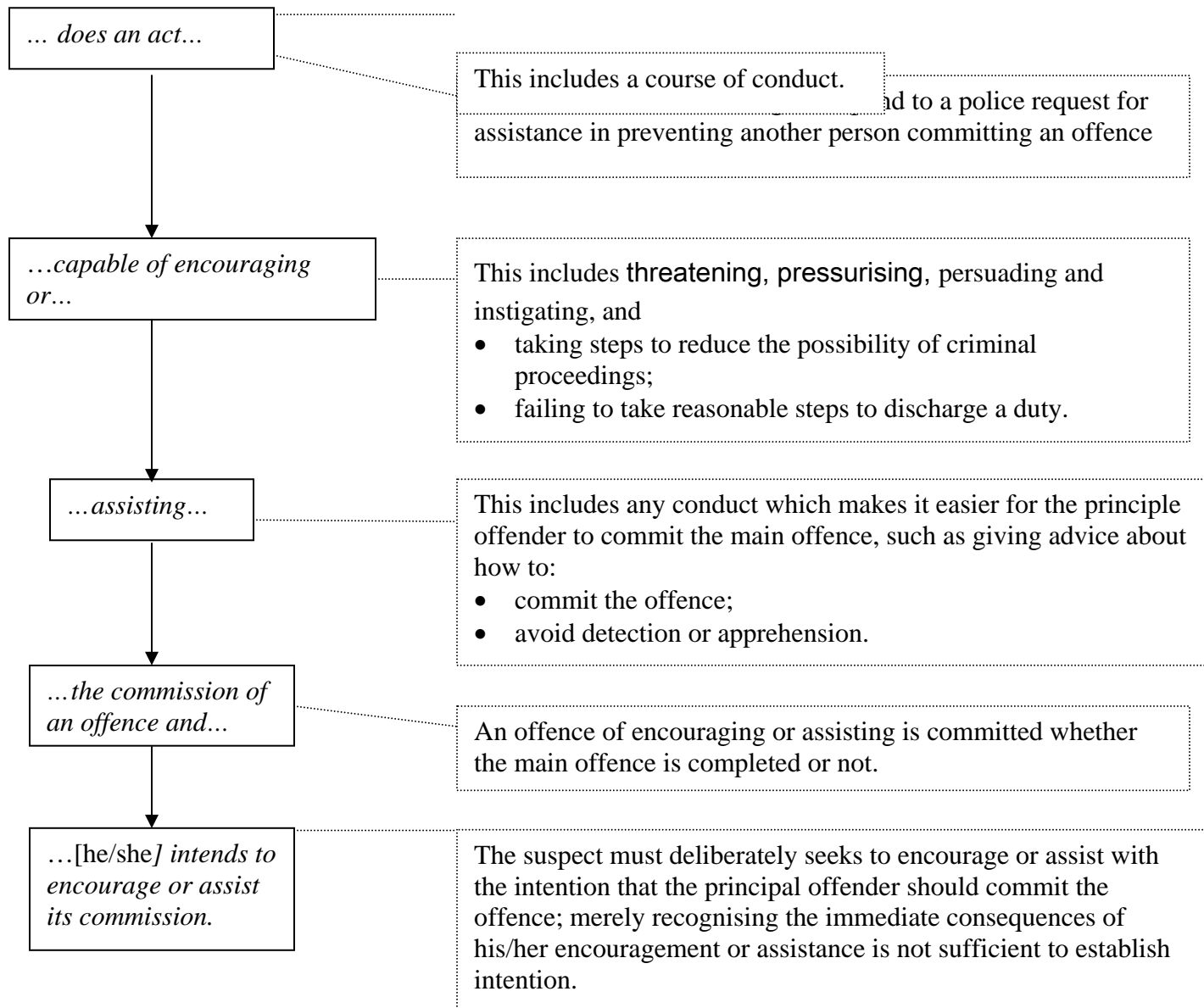


## **Encouraging or assisting crime**

Quite commonly, criminal offences involve two or more accomplices. However, more often than not, only some of the accomplices are the actual perpetrators of the offence and the role of others at the scene is to offer encouragement. Yet others may assist in the commission of a crime from a distance, providing information, transport or finances. A person who encourages or assists in a crime (but does not perpetrate the main offence) may believe or claim that he/she was not a true accomplice. However, under the Serious Crime Act 2007 there are three criminal offences for which a person becomes criminally liable for encouraging or assisting another person to commit an offence. Together they replace the common law offence of incitement (now abolished), and also provide additional scope for prosecution in cases where the crime has not yet taken place; previously there was no criminal liability for assisting the commission of an offence unless the offence had been committed or attempted.

### **Intentionally encouraging or assisting an offence**

This is covered by s 44 of the Serious Crime Act 2007 which states that an offence is committed by a person who:



### Practical examples

1. At a noisy and angry street demo, a police officer speaks to Dodie (a protestor) to try and help him calm down, but Dodie becomes increasingly irate and aggressive. Due to the loud noise, the officer is unable to summon assistance from a colleague. Instead the officer requests Neil, another protestor, to help restrain

Dodie, but Neil refuses. Neil's failure to respond to the officer's request for assistance in preventing the breach of the peace would probably **not** be regarded as encouraging or assisting a person to commit a criminal act.

2. Frankie lends a baseball bat to a neighbour who is scared that someone might possibly break into his house to steal some antiques. Frankie knows that a baseball bat is sometimes used as a weapon to injure people, but gives it to her neighbour with the sole purpose of helping him feel more confident. Subsequently an intruder is seriously injured by the neighbour using the baseball bat. This would probably not amount to assistance or encouragement to cause grievous bodily harm.
3. Kristoff is married to Shazia but is having an affair with Bella, one of Shazia's work mates. Kristoff intends to murder Shazia and dispose of the body and make it seem that she has moved away. Bella knows all about Kristoff's plan and agrees to provide him with up-to-date information on Shazia's whereabouts during the day to give Kristoff a better opportunity to murder Shazia and hide the body without being caught. In the meantime, another work colleague overhears Bella on her mobile talking to Kristoff about the plan to kill Shazia. The work colleague alerts Shazia who flees the country to live abroad. However, Bella has still committed the offence of intentionally assisting in the commission of murder.

4. Brown works for a double glazing firm and in return for payment gives his friend Mal a spare key from a recently installed door that Brown knows Mal will use to burgle a particular house. One night Mal enters the house, takes the keys of an expensive car and drives off in it with the intention of selling it abroad. Brown has committed the offence of intentionally assisting in the commission of burglary.

### **Encouraging or assisting an offence and believing it will be committed**

This relates to belief rather than intent, and is covered by s 45 Serious Crime Act 2007 which states that an offence is committed by a person:

...who does *an act capable of encouraging or assisting the commission of an offence and*

- [he/she] *believes that the offence will be committed;* and
- *that [his/her] act will encourage or assist its commission.*

This differs from the s 44 offence above in that the person A offering the encouragement and assistance to person B must believe that:

- person B will definitely will commit the main offence; and
- the encouragement and assistance is crucial to the commission of the main offence.

It is immaterial whether the main offence is completed or not

Practical example

Black is a car salesman who makes a copy of a key to the most expensive car on his forecourt. He gives the spare key to his car thief friend Steve, knowing full well it is very likely that Steve will steal the car one night. However, Black hopes that Steve will change his mind about stealing the car. Steve does not steal the car but is arrested during a burglary and is found in possession of the spare key. During his interview, Steve outlines his reasons for possessing the spare key, including Black's involvement. In this example, Black has committed the s 45 offence because although not he did not **intend** that Steve should commit theft Black still **believed** that Steve would commit the offence.

### **Encouraging or assisting offences and believing one or more will be committed**

This offence (s 46 of the Serious Crime Act 2007) is very similar to the s 45 offence described above, but applies in circumstances where there are a number of possible main offences (rather than just one) planned by person B, and person A (who has provided encouragement or assistance) does not know which offence(s) person B is going to commit.

It is immaterial:

- whether the person has any belief as to which offence will be encouraged or assisted; or
- whether the main offence is completed or not.

Practical example

Tilly has been disqualified from driving and is now concerned that the local police will recognise her if she drives. Late one night she pays her friend Jas to drive her to the next town. From what Tilly has said recently, Jas believes Tilly plans to carry out three offences; a serious assault in one house, a burglary in the second and a murder at the third. Scared of getting caught, Jas drops Tilly off around the corner from the first house and drives off. However Tilly suspects that she is under surveillance and so decides to delay her plans for another time. Here Jas believes all three offences will be committed and so she can be prosecuted and convicted of encouraging or assisting the commission for all of the offences that she believed might be committed.

### **Possible Defences to Encouraging or assisting offences**

If the defendant can prove that it was **reasonable** for him/her to act the way he/she did (in the circumstances he/she was aware of, or believed existed) this may be a defence to an offence under s 44, s 45 or s 46. When determining if it was reasonable, the following will be considered:

- The seriousness of the anticipated main offence; it might be reasonable to encourage or assist in the commission of a minor offence in order to prevent a more serious offence being committed. For example, Peta infiltrates a gang who are conspiring to commit an armed robbery. He tells one of the other members of the gang to steal a car for the gang to use when making off from the robbery. Peta's intention is to look credible in front of the other gang members so he can

achieve his main objective of preventing the robbery from taking place therefore he may have the 'reasonable' defence available as a result of his actions.

- The purpose of the act of encouragement or assistance; it might be reasonable to encourage or assist in the commission of a minor offence in order to prevent more serious harm being inflicted. For example Manny and Sam are members of a teenage gang on a housing estate. Sam meets with other members of the gang and together they plan to attack a rival gang and stab the leader Taz. However, Manny does not want Taz to be injured and succeeds in persuading Sam and the others to smash the windows of Taz's house instead. Sam is charged with encouraging Manny to commit criminal damage but may have the 'reasonable' defence available as a result of his actions.
- The authority under which he/she was acting; it might be reasonable to encourage or assist in the commission of an offence if it was done for the benefit of collecting evidence during an investigation by law enforcement agencies. For example, Boris, a 15 year old, is tasked by a local authority trading standards department to go into a local shop and purchase a lottery ticket.

The maximum penalties for an offence under s 44, 45 or 46 of the **Serious Crime Act 2007** will be the same as the maximum available on conviction for the relevant main offence.