

**THE LAW COMMISSION**

**SIMPLIFICATION OF CRIMINAL LAW:  
KIDNAPPING AND RELATED OFFENCES**

**EXECUTIVE SUMMARY – KIDNAPPING AND  
FALSE IMPRISONMENT**

# **PART 1**

## **INTRODUCTION**

- 1.1 This is one of two summaries of our report on kidnapping and related offences (the report).<sup>1</sup> This introduction gives an overview of the full report and the recommendations we make in it. Thereafter, the summary deals exclusively with those aspects of the report relating to kidnapping and false imprisonment. We have published another summary dealing exclusively with those aspects of the report relating to reform of child abduction offences. These summaries are for people with no specialist legal knowledge.

### **BACKGROUND**

- 1.2 In our Tenth Programme the Law Commission embarked on a programme of simplification of the criminal law. Simplification involves:
- (1) giving the law a clearer structure;
  - (2) using more modern terminology;
  - (3) making the law in a given area more consistent with other closely allied areas of law;
  - (4) making the law readily comprehensible to ordinary people by ensuring that it embodies sound and sensible concepts of fairness.
- 1.3 The simplification project has now developed into a rolling scheme reviewing several areas of the criminal law over successive Law Commission programmes. In addition to this report on kidnapping, we have ongoing projects relating to public nuisance and outraging public decency, and misconduct in public office.
- 1.4 On 27 September 2011 we published a consultation paper<sup>2</sup> (“the CP”), which proposed three alternative models for reform of the law on kidnapping and false imprisonment.

### **CLARIFICATION OF KIDNAPPING AND FALSE IMPRISONMENT**

- 1.5 Kidnapping and false imprisonment are both common law offences. They are defined in case law, and not in legislation.
- 1.6 The elements of the current offence of kidnapping are complex and overlapping; the boundaries of the offence are uncertain. We recommend that common law kidnapping should be replaced with a narrower and more certain statutory offence based on a defendant’s (D) intentional use of force in order to compel the victim (V) to accompany D.

<sup>1</sup> Find the full report at <http://lawcommission.justice.gov.uk/areas/kidnapping.htm>.

<sup>2</sup> Simplification of Criminal Law: Kidnapping, Consultation Paper No 200.

- 1.7 We recommend that common law false imprisonment should be replaced with a statutory offence of unlawful detention, with the same core elements as the existing offence. These require that D, without lawful authority or reasonable excuse, intentionally or recklessly restricts V's freedom of movement.
- 1.8 The reforms we recommend will help clarify the relationship between these two closely related, but distinct, offences. Certain conduct which might be kidnapping under current law, such as moving a person by deception, would not be classified as kidnapping under a new statutory offence. Such conduct should, however, remain criminal as unlawful detention. Conduct that is currently caught by this pair of offences - kidnapping and false imprisonment – will still be caught by the pair of new offences – kidnapping and unlawful detention.

### **CHILD ABDUCTION**

- 1.9 In the case of *R (Nicolaou) v Redbridge Magistrates' Court*<sup>3</sup> it was held that the offence under section 1 of the Child Abduction Act 1984 (the abduction of a child by his or her parent or guardian) does not extend to a case where the child was lawfully removed from the United Kingdom but retained for longer than the permitted period in a foreign country. This appears to be a gap in the law, and in July 2013 the terms of reference of the kidnapping project were extended to include this problem. We recommend the offence of child abduction be amended so as to criminalise wrongful retention in addition to the initial act of abduction.
- 1.10 Further, in the case of *R v Kayani*<sup>4</sup> Lord Judge CJ (as he then was) stated that the sentencing options in relation to child abduction are inadequate. We recommend that these sentences are increased to meet this concern.

### **THE LACK OF CAPACITY CASE**

- 1.11 One particular problem with the current law of kidnapping, identified in the CP, was “the lack of capacity case” which could arise if a child or other person lacking capacity was abducted through exploitation of their lack of capacity, without need for recourse to force or fraud. Although in the CP we considered possible ways of dealing with this issue, we have decided that in a project which proposes reform to the general offences of kidnapping and false imprisonment is not the best place to resolve it.
- 1.12 Cases involving children will be adequately protected by the Child Abduction Act offences. We consider that any recommendation for reform in relation to adults should follow a targeted consultation which addresses directly the concerns of interested stakeholders and allows a proper assessment of the scope of the problem in practice.

<sup>3</sup> [2012] EWHC 1647 (Admin), [2012] 2 Cr App R 23, discussed below at para 3.40 and following.

<sup>4</sup> [2011] EWCA Crim 2871, [2012] 1 WLR 1927 at [16].

1.13 As part of the Law Commission's 12th programme of law reform, beginning this year, we will be undertaking a project on the deprivation of liberty of those lacking capacity (and the protections under the Mental Capacity Act 2005). While the precise remit has yet to be determined, the role of criminal law may form part of this review. This project will provide a more appropriate context for proper consideration of this difficult issue.

## PART 2

# KIDNAPPING

2.1 In the case of *D*<sup>1</sup> Lord Brandon defined kidnapping as follows:

First, the nature of the offence is an attack on and infringement of the personal liberty of an individual.

Secondly, the offence contains four ingredients as follows: (1) the taking or carrying away of one person by another; (2) by force or fraud; (3) without the consent of the person so taken and carried away; and (4) without lawful excuse.

2.2 This definition, and the way it has been interpreted in the later cases, leaves at least the following questions:

- (1) How exactly is “the infringement of personal liberty” defined and is it a separate requirement or a summary of what the offence is designed to prevent? What is the relationship between this “deprivation of liberty” element, and the similar sounding requirement of “restriction of freedom of movement” which is used in false imprisonment? Must the deprivation of liberty occur while V is on the move or can it occur subsequently? For instance, does V need to be actually locked up, or physically confined in some way? And whatever the answer to that is, need that happen during the journey, or is it sufficient that V is imprisoned on arrival at the final destination?
- (2) Does “taking or carrying away” simply mean “moving” or something more complicated? For instance, is kidnapping committed when V initially agrees to go with D, but later wants to leave and is unable?
- (3) What is the relationship between the “force or fraud” requirement, and the “lack of consent” requirement? (On one view the presence of force or fraud would simply be types of evidence of lack of consent). In other words, in a case where there is force or fraud used by D, what does the lack of consent requirement add? When will V be considered to have consented to a forcible or fraudulent taking?
- (4) To what does consent, or lack of it, need to relate: the taking or carrying, the deprivation of liberty, the force or fraud, or some combination? For instance, if V is happy to go on a journey, but not if tied up in the back of a locked van, then has he consented for the purpose of the offence?
- (5) Indeed, what is the meaning of consent in this context? The common law has dealt with consent in other contexts and general definitions exist, including general principles of when apparent consent will be considered

<sup>1</sup> [1984] AC 778 at p 800.

to be ineffective due to deception.<sup>2</sup> However these questions have caused considerable uncertainty and difficulty.

- 2.3 There is a further question: what must D's state of mind be in order to be found guilty of kidnapping? The cases state that D must either intend, or be reckless<sup>3</sup> as to the possibility of, a kidnapping. However it is not clear what exactly this means: must this intention or recklessness apply to the deprivation of liberty, the use of force or fraud, the movement of the other person, or some combination of these factors?

## **RECOMMENDATION 1: CREATE A STATUTORY OFFENCE OF KIDNAPPING**

### **Outline of our recommendation**

- 2.4 The common law offence of kidnapping would be replaced in statute. This statutory offence would simplify the elements of the offence, and ensure they do not overlap. This would resolve the ambiguities we have found in the existing offence. Unlawful detention would exist as a separate, though closely related, offence.
- 2.5 The new kidnapping offence would be committed where D:
- (a) without lawful authority or reasonable excuse;
  - (b) intentionally uses force or threats of force, directed at V or another person,
  - (c) in order to take V, or otherwise cause V to move in his or her company.

### **Benefits of our recommendation**

- 2.6 The benefits we see in recommendation 1 include:
- (1) providing an offence with a clearer underlying rationale;
  - (2) providing an offence with clearly defined elements;
  - (3) providing a structure which avoids the complexities arising from the overlapping nature of the elements in the existing offence; and
  - (4) ensuring that the relationship between false imprisonment (renamed unlawful detention under our proposals) and kidnapping is clear.

<sup>2</sup> In very brief terms, the common law holds that consent will be ineffective if it is given under deception as to the nature of the act consented to, or as to the identity of the person to whom consent is apparently given.

<sup>3</sup> Recklessness in this context meaning that D acts in the knowledge that there is a risk his behaviour will bring about some result, and is unjustified in taking that risk.

### **The consultation**

- 2.7 In our CP we proposed that the offence of kidnapping should be replaced in statute,<sup>4</sup> and put forward three possible models for reform.<sup>5</sup> In this section we consider the responses to our consultation, both in terms of the desirability of statutory reform, and the shape any such reform should take.

#### ***Should kidnapping be made a statutory offence?***

- 2.8 As to whether there should be a new statutory offence of kidnapping, eight respondents were in favour, five expressed no view and one was opposed.
- 2.9 By way of example, the senior judiciary stated in their response: “we would support the provisional proposal to abolish the common law offence of kidnapping and to replace it with one or more statutory offences”. We agree that statutory intervention is the best solution.

#### ***Models on consultation***

- 2.10 In our CP we provisionally proposed that the new offence should not contain the separate requirements of force or fraud and consent. Our provisional proposal was to remove the force or fraud requirement.<sup>6</sup> A majority of consultees agreed that the dual requirement of force or fraud and consent in the present offence caused problems.
- 2.11 We offered three models for reform on consultation:
- (1) Model 1: a single offence of deprivation of liberty. This would cover the scope of both false imprisonment and kidnapping.
  - (2) Model 2: two offences, one of unlawful detention and one of unlawful abduction or kidnapping.
  - (3) Model 3:
    - (a) a basic offence of deprivation of liberty, and
    - (b) an aggravated offence of deprivation of liberty coupled with the intention to mistreat V in further ways.
- 2.12 The majority of consultees favoured model 2 because, among other reasons, it:
- (1) preserves the powerful label of kidnapping, a serious offence which would be intuitively familiar to the public and juries; and
  - (2) preserves an independent offence of false imprisonment (or unlawful detention) which consultees generally considered was working in practice without causing problems.

<sup>4</sup> See CP para 4.4.

<sup>5</sup> See CP paras 4.107 to 4.109.

<sup>6</sup> CP para 4.26.

2.13 Model 2 therefore provides our preferred basis for reform. We are left with the task of solving the problems with the current law identified above,<sup>7</sup> whilst preserving kidnapping and unlawful detention as two distinct offences.

#### **Creating a new statutory offence: a principled approach**

2.14 In formulating new statutory offences we aim to respect some core principles of criminalisation.<sup>8</sup> Any statutory criminal offence should:

- (1) reflect the harm caused,<sup>9</sup> and the culpability of D;
- (2) provide a clear and accurate label for the conduct in question, and should be defined in language that is easy to understand;
- (3) set out each ingredient of the offence, whether an external element<sup>10</sup> or a mental element,<sup>11</sup> should be set out explicitly and not left to implication;
- (4) avoid overlaps or redundancies amongst different ingredients of the same offence; and
- (5) not be unnecessarily wide – in particular, defendants should not be penalised for harm that is inadvertently caused and unforeseeable.

2.15 In order to reflect these principles, it will be apparent that we need to give thought to the harm which offences of kidnapping and false imprisonment are intended to prevent, and to the wrongfulness of the behaviour involved in these offences.

2.16 We consider these theoretical questions in more detail in the main report. However, in short, we conclude that there is a substantial overlap between the wrongfulness and the harms involved in false imprisonment and kidnapping, but that kidnapping should be designed to address some additional harms and wrongs which do not occur in cases of false imprisonment.

2.17 We argue that the unique wrongfulness of kidnapping lies in the fact that D moving V by force and, crucially, in D's company reflects a more dramatic attack on V's freedom. Moving a person in this way involves treating that person more like a piece of personal property, rather than as a free and reasoning human agent.

<sup>7</sup> In particular, (1) the problematic overlap between the force or fraud and lack of consent requirements in kidnapping; and (2) reducing the substantial overlap between kidnapping and false imprisonment.

<sup>8</sup> A Ashworth and J Horder, *Principles of Criminal Law* (7th ed 2013) pp 45-48.

<sup>9</sup> A Ashworth and J Horder, *Principles of Criminal Law* (7th ed 2013) p 28.

<sup>10</sup> The "external elements" of an offence are the physical facts that must be proved. They divide into: conduct elements (what D must do or fail to do); consequence elements (the result of D's conduct); the circumstance elements (other facts, for example in theft whether the property belongs to another; in rape whether V consented affecting whether D is guilty or not).

<sup>11</sup> The "mental element" of an offence is the requirement as to D's state of mind, for example intention, knowledge or belief.

- 2.18 This leads us to conclude that a new kidnapping offence should be restricted to instances of forcible movement. We now go onto consider the other elements of our new statutory kidnapping offence in more detail.

### **Elements of the new offence of kidnapping**

- 2.19 We believe that a new kidnapping offence should contain at least the following elements (all of which look familiar from the current law):

- (1) a movement element (currently 'taking or carrying away');
- (2) by force (the use or threat thereof);
- (3) without lawful authority or reasonable excuse.

- 2.20 We will discuss these elements of our proposed new offence in turn. Rather than giving it separate consideration, we discuss the question of the mental element of our new offence in respect of each ingredient as we go along.

### ***The movement element***

- 2.21 We consider that kidnapping should be confined to the compelled transportation of V. Extending it to unconstrained movement followed by imprisonment complicates the offence and creates an unnecessary overlap with false imprisonment (or the recommended offence of unlawful detention). Retaining the accompanying requirement has the desirable effect of ensuring that cases of 'fool's errand', where V is simply tricked into making an unnecessary journey, are excluded from kidnapping. Accordingly, it is preferable to retain the understanding of kidnapping in which D physically abducts V.

- 2.22 We recommend that the new offence of kidnapping should contain a requirement that D accompany V throughout.

- 2.23 We believe that cases where D is merely reckless as to causing V to move are highly unlikely. However, for the avoidance of doubt we recommend that the new offence of kidnapping should be committed only when D intends to take V or cause V to be moved in V's company and that recklessness should not be sufficient.

- 2.24 So far, then, we consider that the offence should be committed when D intentionally takes V, or otherwise causes V to continue to be moved from one place to another, in company with D. This description is of course subject to the remaining ingredients of the offence. In the existing law, those remaining ingredients are force or fraud, deprivation of liberty and lack of consent.

### ***Force or threats of force***

- 2.25 It follows from our reasoning regarding the unique harms and wrongs which underpin kidnapping, as distinct from false imprisonment, that kidnapping should be restricted to cases of movement by force or threats of force, and not extend to cases of movement under false pretences.

- 2.26 We also consider that only an intentional use or threat of force on the part of D should suffice because:

- (1) it is difficult to imagine a realistic scenario in which D could recklessly use or threaten force with the result that another person moved in their company;
  - (2) this reflects the serious nature of our proposed new kidnapping offence; and
  - (3) the essence of the offence is a forcible movement. Therefore, it should be a requirement that in using or threatening force, D's intention is to cause V to move in his or her company.
- 2.27 On balance, we also consider that force or threats of force directed by D at another should suffice, if this is done with the intention of moving V. The harms identified in the main report which form the basis of our re-focussed kidnapping offence would typically be present in a case of movement brought about by force or threats of force against a third party (typically a close friend or relative).
- 2.28 It follows from the fact that force or the threat of force is the means by which D intends to move V that D must intend that this force or threat is operative upon V at the time of the taking or continued movement.
- 2.29 In cases where V is physically forced to move this requirement will inevitably be satisfied. However, in a case where the threat or use of force precedes the taking or continued movement, this should be no bar to liability. In other words, kidnapping should not be restricted to situations in which V is physically manhandled by D, but should also apply where D's use or threat of force intimidates V into moving in company with D, in order to prevent (further) force. For instance, if D punches V in the face on Monday, and then D drives up to V on Friday and tells V to get into D's car, intending his previous violence to intimidate V into complying, and it has this result, then kidnapping will be committed.
- 2.30 In such cases of kidnapping by intimidation, it must simply be D's intention that the effect of the threat or use of force (even where it substantially precedes the movement) is to cause V to fear the use of further force and therefore to move along with D.

***Lawful authority or reasonable excuse***

- 2.31 In short, we conclude that the general common law and statutory defences would apply to the new statutory kidnapping offence, without need for any express provision save a reference to lawful authority and reasonable excuse in the offence definition.
- 2.32 We consider some specific forms of lawful authority and reasonable excuse in more detail in the main report.

### **Mode of trial**

- 2.33 At present both false imprisonment and kidnapping, being common law offences, are triable on indictment (in the Crown Court) only. False imprisonment may, in some cases, occur for a very short duration and cause very minor harm. In the CP, we proposed that this offence should be made triable either way. We made the same proposal in relation to our provisionally proposed statutory kidnapping offence.<sup>12</sup>
- 2.34 We received mixed views in response to this provisional proposal.<sup>13</sup> Notably, the CPS regarded both offences as unsuitable for magistrates' court trial in any circumstances. They also indicated that the statistics set out in the CP did not correspond to their own experience as prosecutors.
- 2.35 In response to the CPS' views we conducted a further sampling exercise using prosecution files, from which we were able to conclude that the case for making these offences triable either way is not made out. Indeed, the main effect of the provisional proposal might well be to encourage prosecutions in minor cases which at present are not prosecuted at all.<sup>14</sup> The Council of HM Circuit Judges, in their response, observed that:
- We are not persuaded by the argument that many cases are not prosecuted because the offence is triable only on indictment. On the contrary we fear that making it triable either way is likely to encourage the prosecution of trivial cases and to encourage over-charging as a means of obtaining a guilty plea to a lesser offence.
- 2.36 In addition, there is a risk that making false imprisonment and kidnapping triable either way would give the impression that the seriousness of these offences was being downgraded. There is an associated risk that the public perception of the criminal justice system would be harmed by the change. There would be some transitional costs entailed by making the change, and some continuing costs for the procedure for choosing the mode of trial, though the hope would be that these were outweighed by the eventual savings.
- 2.37 Accordingly, we recommend that the existing offences of kidnapping and false imprisonment should continue to be triable only in the Crown Court by a judge and jury. Similarly we recommend that any offences enacted to replace them should be triable only in the Crown Court by a judge and jury.

<sup>12</sup> CP para 4.63.

<sup>13</sup> Of those who responded to the CP, seven favoured making one or more of the offences triable either way (in the magistrates' as well as the Crown Court), three expressed no view and four wished to retain the position that these offences were triable on indictment (ie in the Crown Court) only.

<sup>14</sup> For arguments for and against allowing magistrates' court prosecutions in these minor cases, see CP paras 4.58, 4.59 and 4.62.

### **Charging practice**

- 2.38 We raised in the CP whether or not there was need to reconsider the charging policy regarding choosing between kidnapping and child abduction charges, and also whether the statutory requirement for consent of the Director of Public Prosecutions to charge a parent with kidnapping or child abduction of their child should be removed.
- 2.39 We conclude that there is no need to make any radical change to the charging policy. The practice regarding consent to prosecution for kidnapping by parents, under section 5 of the Child Abduction Act 1984, should continue to follow the existing CPS guidance, taking account of the observations of the court in *Kayani*.

### **Summary of Recommendation 1**

- 2.40 We recommend the creation of a new offence of kidnapping, which would be committed when D:
- (1) without lawful authority or reasonable excuse;
  - (2) intentionally uses force or threats of force, directed at V or another person;
  - (3) in order to take V, or otherwise cause V to move, in his company.
- 2.41 We recommend kidnapping continue to be triable only in the Crown Court by a judge and jury, and make no recommendations for change to section 5 of the Child Abduction Act 1984 or any other aspect of the charging practice.

## **PART 3**

### **FALSE IMPRISONMENT**

- 3.1 False imprisonment is defined as “the unlawful and intentional or reckless restraint of V’s freedom of movement from a particular place”.<sup>1</sup> This definition has been quoted without dispute in many cases.<sup>2</sup>
- 3.2 Fundamentally, false imprisonment is an interference with personal autonomy. It is therefore not committed when one person (D) confines another (V) with V’s consent. For example, a recovering alcoholic may ask to be shut in a room and monitored so as to prevent his or her access to drink.
- 3.3 We mentioned above how the common law approach to consent and deception might cause problems for kidnapping. The same difficulty applies in false imprisonment, in particular:
- (1) An established form of false imprisonment is the case where D purports to arrest V, for example by pretending to be a police officer. This undoubtedly involves deception. However it is not clear that this deception always relates to the identity of D or the nature of the act, so as to negate consent. It could be argued that a false arrest is an act of a different nature from a genuine one. On the other hand, it might be viewed as a deception as to an attribute of the act and not as to its identity or nature.
  - (2) Other forms of deception, involving deceiving V as to the possibility of escape, can constitute false imprisonment, provided that the effect of the deception is that V feels compelled to remain. These deceptions, too, may not fall within the “identity of D or nature of the act” test.

#### **RECOMMENDATION 2: CREATE STATUTORY OFFENCE OF UNLAWFUL DETENTION**

##### **Outline of our recommendation**

- 3.4 The common law offence of false imprisonment would be replaced in statute. This new statutory offence would clarify the relationship between this offence and the new statutory offence of kidnapping.

<sup>1</sup> *Archbold Criminal Pleading and Practice* (2014), para 19-417.

<sup>2</sup> For example, *Rahman* (1985) 81 Cr App R 349; *Daley* [2001] EWCA Crim 1666; *R (Chief Constable of Northumbria) v Newcastle upon Tyne Magistrates’ Court* [2010] EWHC 935 (Admin), [2010] ACD 55.

### **Should false imprisonment be made a statutory offence?**

- 3.5 Compared with kidnapping, false imprisonment is fairly unproblematic. However, it has so many points in common with kidnapping that it would be anomalous to reform one without the other.<sup>3</sup> Furthermore, at least one of the current uncertainties kidnapping applies to false imprisonment, namely the effect of deception as to lawful authority, or other deceptions as to the practical possibility of V leaving.

### **How false imprisonment should be reformed**

#### ***“False imprisonment” or “unlawful detention”***

- 3.6 Although we are not providing a draft Bill with this report, we recommend that unlawful detention be adopted as a more modern and clearer title for the offence. This would not change the scope or meaning of the offence, but rather would add clarity and assist the understanding of jurors and the public generally. In their response to the CP the Council of HM Circuit Judges said:

We do think that false imprisonment should be renamed unlawful detention. Although the term is an historic one as both a tort and a crime, it is apt to mislead a jury. In ordinary speech “false” means untrue or not genuine rather than unlawful, while “imprisonment” means putting a person in a cell. It usually requires a brief explanation that it does not mean either of these things in legal terms.”

#### ***Other issues***

- 3.7 The elements of the existing offence of false imprisonment, as stated above, are that:
- (1) D’s conduct results in the restraint of V’s freedom of movement from a particular place.
  - (2) D intends the conduct to have this result, or is reckless as to whether it will or not.
  - (3) The restraint is unlawful, in the sense that it was without lawful authority or reasonable excuse. (As with kidnapping, a mistaken belief in the existence of lawful authority or reasonable excuse can be an excuse in itself.)
- 3.8 As noted above, lack of consent does not appear as an element of the leading common law definition, although it is clear that the consent of V (or honest belief in V’s consent on the part of D) to the detention will negate any criminal liability, applying general common law principles. We consider that this is desirable and should continue to be the case, reflecting the position under our proposed new kidnapping offence.

<sup>3</sup> The judicial response to our CP, drafted by Sir John Thomas, President of the Queen’s Bench Division, and Lord Justice Hughes (as they then were), states that “there is, in contrast, no confusion at all in relation to the common law offence of false imprisonment, which is straightforward.” Nevertheless, they accepted that there were so many points in common between the two offences that they should be reformed together.

- 3.9 As explained above, there is a potential problem in cases where D causes V to believe that V is under arrest or otherwise lawfully detained. This is a recognised category of false imprisonment. However it could be argued that:
- (1) V has consented to be detained, albeit under a misapprehension, and
  - (2) the deception does not concern the identity of D or the nature<sup>4</sup> of the act, so as to invalidate that consent.
- 3.10 We consider that the key problem which should lie at the heart of the kidnapping offence (forcible movement in company with D) is absent in the false arrest cases, but it is appropriate that they continue to be caught by false imprisonment, as is the settled common law position.<sup>5</sup>
- 3.11 If a statutory offence was created to replace false imprisonment this would provide the opportunity to expressly clarify the position with regard to false arrest cases. This has been achieved in other jurisdictions and by previous drafts.
- 3.12 In principle, the ingredients of any statutory offence of unlawful detention should be as follows.
- (1) D's conduct results in the restraint of V's freedom of movement from a particular place.
  - (2) D intends the conduct to have this result, or is reckless as to whether it will or not.
  - (3) There is no lawful authority or excuse for the restraint.
- 3.13 Finally, we recommend the offence should be triable only in the Crown Court by a judge and jury..

<sup>4</sup> Or consequences.

<sup>5</sup> *Clerk and Lindsell on Torts* (20<sup>th</sup> ed 2010) p 999, para 15-25.