

Justice Committee

Criminal Justice (Scotland) Bill

Supplementary written submission from Police Scotland

I thank the Committee for affording Police Scotland the opportunity to continue to contribute to the parliamentary consultation on the Criminal Justice (Scotland) Bill and in particular those proposals in relation to the abolition of the absolute requirement for corroboration. I am conscious that the Committee requested that I provide further detail on certain matters discussed during the session of 3 December and would provide the following information.

I would also, on behalf of Police Scotland, thank Sandra White MSP for her intervention on behalf of the Justice Committee and the expression of thanks and condolences to emergency services personnel in light of the difficult and challenging events which transpired in Glasgow last weekend.

To be clear, Police Scotland has consistently maintained its support for the proposal contained within Section 57 of the Bill for the abolition of the absolute requirement for corroboration in Scots Law and remains so disposed. This is not borne out of some form of self-interest, but rather cultivated over years of operational experience of dealing with victims of some of the most serious and vicious crimes who are currently denied access to justice because of a technical legal barrier.

Communities and their concerns remain at the heart of our operational activity, with this reflected in our ongoing commitment and effort to keep people safe. We consider the maintenance of such a technical barrier, and the devastating effect we see it having on the lives of those affected by it, is inconsistent with those efforts and our core values of fairness and respect.

I am conscious that those who oppose the proposal often appear, perhaps conveniently, to abbreviate it, simply referring to the 'abolition of corroboration'. I hope that my evidence to the committee assisted in dispelling this popular misunderstanding and clarified that the proposal is to abolish the absolute requirement for corroboration, not corroboration itself.

Corroboration will continue to have a place in Scots Law and feature within court proceedings. It is simply that our law currently requires that certain particular facts must be technically corroborated before any proceedings can be commenced (e.g. the commission of an offence and identification of a suspect). This is irrespective of the weight or quality of other supporting evidence that has been established during any investigation. Our discussions revealed that Committee members already appreciate that there are often a series of essential facts within an offence that require to be evidenced and I shall therefore not rehearse them further.

It is our view that this technical requirement for corroboration is an unfair bar to justice for the victims of many crimes. We recognise that the term 'access to justice' may have differing meanings to diverse audiences, however within Police Scotland our view is that it simply means that a victim would have the confidence that the

circumstances of their case will continue to be investigated diligently by the police and reported to Crown Office and Procurator Fiscal Service (COPFS) with a prospect that it would be taken forward into court proceedings.

These include, but as revealed during the evidence session, are not limited to, cases of domestic violence and sexually motivated crimes, where the victims are often some of the most vulnerable and/or defenceless members of society who are often preyed upon by those who often seek to exploit the application of this technical requirement as a protection against prosecution. We do not accept this situation as a 'fact of life'; where the necessary evidence in certain crimes is difficult to get, or less likely to be available, but as a 'fact of the legal system' we currently maintain.

We also believe that victims, having failed to clear the technical bar of corroboration, are unlikely to accept or consider an explanation of the Moorov Doctrine and its dependence on a further victim being claimed or identified prior to any action being capable of instigation on the part of the Crown, as a solution to their concerns, or indeed as being reflective of a criminal justice system which supports their desire to access justice.

Police Scotland believes that by abolishing the absolute requirement for corroboration, a significant number of these victims will be able to gain access to our justice system where that might have previously been denied.

While we believe the removal of the requirement will benefit victims, we do not see this to be at the expense of rights of suspects and accused. Fairness remains at the centre of our investigations and reporting, with statutory duties under Disclosure to investigate potentially exculpatory evidence; case law on the interpretation of fairness and admissibility of evidence and core policies to ensure fairness and well-being, all contribute to, promote and protect the rights of the accused.

We have previously demonstrated that we limit, insofar as possible, the time suspects are deprived of their liberty without charge. We make health and fitness assessments initially and continuously and where a detained person requires assistance it is and will continue to be provided. An individual's fitness to be interviewed and detained is regularly examined. We consider these principles and practices demonstrate that our actings are not unfair to an accused person.

If and when a case does go to trial, it is important to remember that the existing and over-riding legal safeguard remains; the prosecution have to prove that person is guilty 'beyond reasonable doubt'.

I note the position of the committee in terms of wishing to support victims and see justice, but consider that in the absence of any changes such as those proposed, there remains a danger that the justice system remains unbalanced against victims of crime and as such prejudices their opportunities. To our knowledge, there are no other measures currently being proposed which are likely to introduce a balance such as that afforded through the provisions of the Bill.

Indeed as highlighted by the Lord Advocate and within the previously reported shadow-marking exercises the numbers involved are not insignificant:

1. An approximate average of 85 additional victims of rape per year would be allowed access to justice - (Lord Advocate – 25th November 2013)

2. Police Shadow-Marking Exercises

(a) During January 2012 police examined a statistically valid sample of cases not previously reported to the Crown Office and Procurator Fiscal Service (COPFS) due to the absence of the technical fulfilment of corroboration

This indicated that the abolition of the absolute requirement for corroboration would potentially increase the number of cases reported to COPFS by the Police by 4.77 %.

(b) During January 2013 a larger statistically valid exercise was undertaken by Police Scotland with support from COPFS which indicated a likely percentage increase of between 1.5% and 2.2% in the number of cases reported to the COPFS by the Police. Further detail is available in the accompanying Financial Memorandum and reported to the Scottish Parliament Finance Committee.

Each previously unreported case is potentially representative of a devastating incident befalling a person and the creation of an associated lifetime legacy of distress for them, their family, friends and associates.

I am conscious that the Committee requested that I provide further detail in relation to the significant number of extra cases that would be reported to the Crown were the absolute requirement for corroboration abolished and to this end I would provide the following information.

The estimated figure I mentioned during my oral evidence was extrapolated from the shadow marking exercise conducted by legacy Strathclyde Police, in conjunction with COPFS, during January 2013 and reflected an anticipated 2.2 % (2,927) increase in number of cases that Strathclyde Police had reported (133,027). These figures (133,027) had not however been scaled up to reflect an estimate of the number of cases reported nationally by the Scottish police service to COPFS during this sample period.

Given that Strathclyde Police reported 133,027 cases during the sample period (which represented approximately 54% of all case reported by the Scottish police service to COPFS), the national total would have been approximately 246,346 cases. A 1.5% to 2.2% increase in this global figure would equate to between 3,695 (1.5%) to 5,420 (2.2%) extra cases that would potentially have been reported by police to the COPFS for their consideration. As I am sure the Committee will recognise these figures were a snapshot in time and our projections are clearly vulnerable to the effects of future statistical fluctuations in demand and performance.

I would also wish to address, on behalf of every officer and member of staff of Police Scotland, the suggestion made from a number of quarters that, as a result of the proposed abolition of the absolute requirement for corroboration, prevailing financial

pressures and performance targets that the quality, depth or intensity of police investigations will be somehow diminished.

I would again emphasise on behalf of Police Scotland that the abolition of the absolute requirement for corroboration in Scots Law will make absolutely no difference to the levels of diligence we currently demonstrate while investigating crime or otherwise discharging our policing responsibilities. Our obligations in this regard are enshrined in law which requires that all our investigations are conducted with diligence and rigour. As such there is absolutely no prospect of Police Scotland diluting our current standards of practice.

As related to Committee, this expectation is reflected in the following:

Smith v HMA 1952

“It is a duty of the police to put before the Procurator Fiscal everything which may be relevant and material to the issue”

McLeod v HMA 1998

“All material evidence for or against the accused must be disclosed”

McDonald, Blair & Dixon v HMA 2008

“All material evidence which either materially weakens the Crown case or materially strengthens the defence case must be disclosed” of whether the suspected party is innocent or guilty”

It is our duty on every occasion to provide the COPFS with the ‘best evidence’ available in support of any prosecution; this will remain unchanged.

We also have a statutory duty in relation to disclosure under the Criminal Justice & Licensing (Scotland) Act 2010. This requires Police Scotland to reveal to COPFS all relevant information and materials collected during the course of an investigation, including that which might undermine the prosecution or otherwise assist any defence. These obligations are non-negotiable.

The proposal to abolish the absolute requirement for corroboration is perhaps best viewed as part of the natural evolution of Scots Law that has been required over centuries to meet the challenges presented by changing public values and lifestyles; by way of example it is within living memory that rape within marriage did not attract criminal sanction and capital punishment was an acceptable criminal justice disposal.

Police Scotland anticipates that current and future advances in technology and science will continue to provide an increasing wealth of supporting evidence to our enquiries and investigations; much of which will emanate from a variety of global jurisdictions. The abolition of the absolute requirement for corroboration will assist in the logistics associated with the legal acquisition of such material evidence and therefore contribute to the collection and availability of supporting evidence

The prospect of securing and presenting such evidence without a corroborative bar would contribute to our enduring efforts and desire to protect both the interests of

suspects and the communities we serve, whilst seeking to protect the latter from some of the contemporary and evolving threats facing society, e.g. sexual exploitation; bullying, harassment and other forms of cyber crime which impact on victims who are often targeted and manipulated due to their vulnerability.

In summary the position of Police Scotland is that it has always been consistent and unequivocal in its support for the broad content of the Criminal Justice (Scotland) Bill, including Section 57 and its proposal to abolish the absolute requirement for corroboration.

It is our view that the proposed abolition of the absolute requirement for corroboration represents a progressive development of our criminal law which will extend access to justice for victims of crime. We consider this notion will benefit a modern society which aspires to keep its citizens safe.

Malcolm Graham
Assistant Chief Constable
6 December 2013