

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from Rape Crisis Scotland

1. Introduction

Rape Crisis Scotland welcomes the opportunity to comment on the Criminal Justice (Scotland) Bill. We welcome the removal of the requirement for corroboration however we still have some areas of concern in improving access to justice for victims of sexual crime.

2. Corroboration, admissibility of statements and related reforms (Part 2 plus section 70 of the Bill)

2.1 Section 57 Corroboration

Rape Crisis Scotland welcomes the move to abolish the requirement for corroboration. In line with recommendations from Lord Carloway's considered review we believe that the evidence should be reviewed based on its quality rather than quantity and that lack of corroboration in itself should not be a barrier to justice.

We do not consider that the removal of the requirement for corroboration will result in significant numbers of prosecutions based on a single source of evidence (in sexual offence cases this would normally be the complainer's statement). The police and prosecution will be continuing to look for all possible supporting pieces of evidence. A case involving a single source of evidence is likely to be rare, as to proceed to court it will still need to be assessed as having a reasonable prospect of conviction.

What we do know is that the requirement for corroboration disproportionately affects complainers in sexual offence crimes, the vast majority of which are committed in secrecy and without witnesses. Lord Carloway's Review was clear in its evidencing of the impact of corroboration on sexual offence case progression. The Review's research examined 141 sexual offence cases dropped in the period July to December 2010. It concluded that 95 (67%), of those cases would have had a reasonable prospect of conviction without the requirement for corroboration. This is significantly higher than for other serious crimes. Whilst clearly not all of these would have secured a conviction this is explicit evidence that abolishing the requirement for corroboration would result in improved access to justice for victims of sexual crime.

Whilst some have raised concerns about a possible increase in miscarriages of justice there remains the considerable safeguard of the requirement to prove 'beyond reasonable doubt' that the offence took place which in our view is a significant protection against wrongful conviction. In addition there is no evidence to suggest that in other jurisdictions which do not have the requirement for corroboration there is a higher incidence of unsafe convictions.

2.2 Section 59

We are disappointed to note however that the removal of the need for corroboration should not apply retrospectively and would urge the Government to reconsider this. This in effect means survivors of historic child sexual abuse or rape will continue to face this barrier to justice and that regardless of the quality and nature of their evidence their case has no chance of being heard. Given that there is a precedent in applying retrospective application as in the Double Jeopardy (Scotland) Act 2011 we would urge the Government to review this.

3. Court procedures (Part 3 plus section 86 of the Bill)

3.1 Section 70 Jury Majority

Rape Crisis Scotland has some concerns about the raising of the majority required for a jury to reach a guilty verdict from a simple majority of 8 to 10 out of 15. Whilst we are aware of the need to ensure adequate safeguards are in place to maintain a fair and robust justice system we are also keenly aware of the prevalence of prejudicial attitudes and misconceptions around sexual violence and the impact this could have. One of the intentions of this Bill, as we understand it, is about improving access to justice; addressing the considerable barriers for victims of sexual crime and addressing the consistently low conviction rate. One concern we have is that in moving to a higher majority requirement the effect will be a lowering of the conviction rate, given what we know about public perceptions around sexual violence and the likely impact this has on jury decision making.

Research consistently shows that public perceptions are significantly negatively biased and victim blaming, particularly towards women, around a number of key issues in sexual violence cases, such as previous consensual sexual contact, alcohol consumption, the nature of clothing and previous sexual history.

Research commissioned by the Scottish Government¹ shows that nearly a quarter of the Scottish public think women are at least partly responsible for rape if they have been drinking, and 27% of people blame women if they are wearing revealing clothing at the time of the attack. Juries are made up of members of the public and at least some of them are likely to hold these kinds of attitudes. We have real concerns about what this means for jury decision making in rape cases, and particularly so where a larger majority is required to reach a decision.

3.2 Judicial Direction

To assist juries in coming to informed decisions Rape Crisis Scotland would urge the Government to implement its previously stated commitment to introduce judicial direction in sexual offence cases, by giving factual information on delayed disclosure and apparent lack of physical resistance.

¹ <http://www.scotland.gov.uk/Resource/Doc/232321/0063563.pdf>

3.2 Research

Given the extensive research on mock juries' decision making and the influence of rape myths on this process² we would also urge the Government to explore the feasibility of conducting research into the factors influencing the jury's decision making process in Scotland. Whilst we appreciate the challenges this presents, in terms of addressing fair access to justice this issue merits further consideration.

3.3 Public Attitudes

On a wider note we would also ask that the Scottish Government commits to continuing to address and challenge prejudicial public attitudes, and thus those contained within juries as members of the public.

3.4 Evaluation

Given some of the thrust of the current Bill is to improve access to justice we would also like to stress the importance of ensuring some form of evaluation to address any unintended consequences, as appeared to be the case with the Sexual Offences Scotland Act 2002 – see below.

4. Further considerations

4.1 Not Proven Verdict

Rape Crisis Scotland welcomes the commitment of the Scottish Government to review the future of the 'not proven' verdict. The not proven verdict is most commonly used in cases of rape and sexual violence. According to the Scottish government statistical bulletin for criminal proceedings 2010-11 the proportion of people receiving a not proven verdict for rape or attempted rape was 26% with sexual assault at 30%, significantly higher than the overall mean of 16%.

Jury members can be notoriously reluctant to convict in rape cases, even in cases where there is significant evidence, and we are concerned that the not proven verdict could contribute to wrongful acquittals.

An argument which has been used in the past for retaining the not proven verdict is that it at least enables complainers to be reassured that the verdict didn't mean that the jury didn't believe them. However, a not proven verdict is still an acquittal, and can be just as devastating as a not guilty verdict. Following an article in the Daily Record about the number of men accused of rape who were acquitted by means of the not proven verdict, a number of rape survivors and their families wrote into the paper to tell of the devastating impact this verdict had on their lives (see for example <http://www.dailyrecord.co.uk/news/scottish-news/mum-who-endured-double-rape-1393744>). We believe that there is no convincing argument for retaining this verdict, and that it's removal would lead to a less confusing jury decision making process.

² For example BRIT. J. CRIMINOL. (2009) 49, 202 – 219 REACTING TO RAPE
Exploring Mock Jurors' Assessments of Complainant Credibility
Louise Ellison and Vanessa E. Munro

4.2 Sexual History Evidence

Whilst it is a matter not expressly covered by the Bill Rape Crisis Scotland would like to highlight our continued concern about the use of Sexual History evidence in Sexual offence cases.

The previous consultation document stated that the provisions of the Sexual Offences (Scotland) Act 2002 relating to sexual history and character evidence “help to ensure that complainers in sexual offence cases cannot be subjected to potentially distressing cross-examination relating to their personal life or sexual history where this is irrelevant to the charge before the court.”

In 2007, the Scottish Government published an independent examination³ of the effectiveness of these provisions, which found that rather than restricting the introduction of this type of evidence, the legislation had actually led to its increase:

- 72% of trials featured an application to introduce sexual history or character evidence
- Only 7% of these applications were refused
- The Crown rarely objected to defence applications to introduce this type of evidence

We are aware from research that the use of sexual history evidence can have a negative impact both on the experience of the complainer and also on the possible outcome of the case. The research mentioned previously⁴ highlights that 15% of the general public believe a woman is at least partly responsible for being raped if she is known to have had many sexual partners.

This evaluation is now 5 years old, and guidance has since been introduced within the Crown Office advocating a ‘robust’ approach to applications to introduce sexual history and character evidence. However, in the absence of any current data about what is happening with the use of this type of evidence, we cannot share the confidence of the Scottish Government in the effectiveness of the legislation in protecting complainers.

We consider that there is a clear need to commission further research in this area, to enable us to obtain an up to date picture of whether or not the legislation is protecting complainers in the manner which the Scottish Parliament intended when it passed the legislation. In the interim we would ask that clear and accurate data is made available on the use of sexual history evidence as well as medical and sensitive records in sexual crimes cases. Research is clear on these and other factors such as mental health concerns or self harm as influential factors in jurors’ perceptions of witness credibility. Having accurate factual information would allow fuller scrutiny of the court process and a clearer understanding of the influential factors in sexual crime cases outcomes.

³ <http://www.scotland.gov.uk/Resource/Doc/197710/0052889.pdf>

⁴ <http://www.scotland.gov.uk/Resource/Doc/232321/0063563.pdf>

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