

## **Justice Committee**

### **Criminal Justice (Scotland) Bill**

#### **Written submissions by the Glasgow Bar Association**

##### **1. Introduction**

1.1 The Glasgow Bar Association ("the GBA") was formed in 1959. The objects of the Association, as contained in its constitution, include the promotion of access to legal services and access to justice and to consider and, if necessary, formulate proposals and initiate action for law reform and to consider and monitor proposals made by other bodies for law reform. The GBA also offers legal education programmes and sponsors and supports legal education and debate at Scotland's Universities and Schools

1.2. Today the GBA remains a strong, independent body. Its current member levels sit at around four hundred, by far the biggest Bar Association in the country. The GBA would encourage the Justice Committee to continue to seek its views on all legislative matters and is grateful to the Justice Committee for inviting our submission.

##### **2. Section 57 Corroboration**

2.1 The most significant and controversial proposal in the Criminal Justice (Scotland) Bill is found in section 57 and relates to the proposed abolition of the requirement for corroboration in criminal trials. The Glasgow Bar Association strongly opposes this proposal. The Scottish criminal justice system has for centuries required corroborated evidence before a citizen can be convicted of a criminal offence. We are strongly of the view that this important element of our justice system must remain.

2.2 The fact that a system is established is not justification in itself for its continued use and we welcome modernisation of the criminal justice system. However this proposal as advanced by Lord Carloway in his review has not been supported by any of the other Senators of the College of Justice and we are aware of widespread opposition to its implementation.

2.3 As the law presently stands it is a common misconception that corroboration in criminal cases means the requirement for two eyewitnesses to a crime. This is entirely inaccurate and it is well established that very little is required to provide corroboration of the testimony of one eyewitness. In addition, in certain circumstances evidence is considered to be self-corroborating. Examples of this are the presence of fingerprints or DNA at a crime scene. To provide an example, an undated but unexplained fingerprint at the scene of a robbery within a house would provide corroborated evidence that the person who left the print was the person who committed the crime.

2.4 It appears that the catalyst for the removal of corroboration is the apparent low conviction rate in sexual offences and in particular in allegations of rape. We are

not convinced that removing the requirement for corroboration would significantly increase the conviction rate. Without any corroborating evidence the jury may be left with two competing accounts without any assistance as to which to believe. It is often the corroborating evidence, found for example in the evidence of a neighbour who heard the complainer's distress which assists the jury in their determination. We are not clear how potentially removing this evidence from the case would assist in increasing the chances of conviction.

2.5 Any change to the present system would require to be workable for criminal cases which are heard by a jury and those which are heard by a single Sheriff or Magistrate. It is well recognised that one of the most effective ways of ascertaining if a witness is telling the truth is to test that person's evidence against the corroborating witness, both of whom may claim to have seen the same conduct. There are many occasions in criminal trials when a witness may appear to be telling the truth until it becomes apparent through cross-examination of the second witness that the former cannot have been truthful in his/her account. It is of great concern to our members who practice in the criminal courts that this ability to test the crown case may be removed. We believe that the requirement for corroboration provides a safeguard for all parties which is essential in the criminal court system.

2.6 We have not been able to ascertain how such a new system of prosecutions would work. Would any allegation of a criminal offence made by one individual require to be proceeded with, no matter how unreliable or incredible that witness was nor how unlikely the chances of a successful conviction? This would significantly add to the workload of the prosecution service while the alternative would be requiring the police to act as judge and jury in assessing the strength of the case pre report to the fiscal. If one person's word against another's were to be the starting point for a criminal prosecution then the courts can look forward to allegations and counter-allegations which could continue indefinitely.

2.7 The requirement for corroboration along with the standard of proof beyond reasonable doubt are the minimum safeguards which must apply in our criminal courts and we have heard no valid argument for their removal.

Glasgow Bar Association  
30 August 2013