

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from the Scottish Parliament Cross Party Working Group on Survivors of Child Sexual Abuse

Response to consultation on the recommendations of the Carloway Report by the Scottish Parliament Cross Party Working Group on Survivors of Child Sexual Abuse

Corroboration:

Sexual crimes – particularly historical cases or cases involving child witnesses – are complex and challenging. The sequelae of behaviour that so often accompanies sexual offending adds additional burdens on the management of these cases within the criminal justice system.

We are of the view that the consequences for civil liberties and the rights of the accused are vital and it is ill-advised to compromise these particularly where there may be an elevated risk of wrongful conviction. We acknowledge that current law on corroboration makes it more difficult to secure convictions in rape cases although we are of the view that a major issue may be the prejudicial views sometimes held by juries and there is no strong evidence to suggest that they would be more likely to convict where it is a case of one persons word against another.

However, we consider that removing the law on corroboration is a sweeping move. We would like much wider definitions of corroboration to be permitted in cases of rape, sexual assault, child sexual abuse and domestic violence where it is regularly a feature that there is unlikely to be witnesses. Widening the definitions and the types of corroboration that could be used would still maintain the principle in fairness to the accused. It seems disproportionate to do away with corroboration for all crimes when it only impedes justice in some crimes.

We would like further consideration of the introduction of more ‘circumstantial’ evidence to support the application of corroboration where this may help to complete the chain of evidence.

We would consider it important (in some cases such as those cited above) for the Court to carefully consider the accused previous offending history (if any) and modus operandii where sexual crimes (including child sexual abuse) are the subject of proceedings. In such cases we advise more systematic and constructive use of expert testimony which can enable the Court to fully understand the complex features of a victim's pattern of behaviour and traumatic reaction as well as the conduct and potential motivating factors of the accused. We have no difficulty with the current law on corroboration but feel very strongly that it's application and definition needs revision and tightening up.

We do understand that the introduction of previous offending histories and modus operandii information to juries may be seen as likely to cause them to become

presumptive and closed minded. Nonetheless we think that, properly managed by the Court, in such cases where an approach of this nature is determined as an effective way to improve the administration of justice, this information should be accessible to the Court in criminal cases.

The Moorov doctrine has offered a real opportunity for justice to many people in Scotland - particularly in crimes of interpersonal violence where the execution of the offences has relied on secrecy and concealment. The difficulty with it however is in its application. In our view the doctrine is generally applied by Fiscals with a 'time period' element - that is, not only do they need to be satisfied that the two separate alleged offences occurred with a similar MO but they also apply a time limit to the period between their occurrence and also the time that has elapsed since. This can dilute the application of the doctrine considerably and may deny justice when otherwise it may have had a chance of proceeding. Supporting circumstantial evidence may strengthen the application of Moorov in such circumstances but equally a more informed and 'flexible' stance by Procurators Fiscal in marking cases may also enhance the administration of justice in such cases.

Furthermore, single eyewitness testimony (where no other corroboration exists), for example, supported by compelling 'circumstantial' evidence in such cases should permit greater flexibility in determining whether proceedings might be taken and how such proceedings are managed by the Court.

We would also like to see the Crown put far more cases of child sexual abuse before juries to let them judge the integrity of victims, adults or children, for themselves rather than deciding that only a small minority of cases should come to court. Child witnesses are heard in a multiplicity of other cases involving serious crime so, in our view, supported by the provisions of the Vulnerable Witness (Scotland) Act 2004, if child witnesses are properly supported and wish to go ahead they should be allowed to.

In our view the Crown should therefore allow more cases to proceed to Court allowing the Judge/Sheriff and Jury to become more protagonist in determining the strength or weakness of particular evidential information. This is a risky strategy of course but we think that where the basic considerations for corroboration exist then the court should be the place to determine - this is far more in the public interest than 'no-proving' cases where corroboration clearly exists but is not perhaps strong enough for a sure fire conviction.

It is our considered view that doing away with the current law on corroboration is "throwing the baby out with the bathwater". As with so many things we do not need to actually change the law of Scotland but improve the ways in which people apply the law. We need instead to take a more proportionate and considered approach. This would greatly improve the chances for victims and survivors to get access to justice in criminal proceedings. A clearer and more modern definition of corroboration would help. Improved regulations on the application of the law on corroboration (including advice on greater flexibility in cases of interpersonal violence or where the MO renders straightforward corroboration less likely such as those where grooming, intimidation, coercion etc. is present) would help. Greater and more informed use of expert testimony by the Court would also be of assistance (for

example where the features of witness or accused behaviour need explanation/clarification and which allow this to be taken into account by the Court).

It is also common police practice for two officers to be present at witness or suspect interviews in order to sustain 'corroboration' for criminal purposes. We are concerned about the burden of trust that this places, without dispute, on the shoulders of the police. While we are certain that in the vast majority of cases, police testimony is above and beyond doubt or reproach, we think it consistent with a modern criminal justice system to ensure that police corroboration in and of itself is not the single determinant in moving the burden of evidence 'beyond a reasonable doubt' when other evidence has no equal impact.

We are further concerned that the removal of corroboration per se could result in a greater preponderance of 'plea bargaining' with a knock-on effect on disposals reached by Courts and on sentencing policy.

In summary, we do not support the abolition of corroboration in criminal cases but recommend better application of the law on corroboration; greater flexibility by the Crown; improved use of expert testimony; greater admissibility of 'circumstantial' evidence to support corroboration where and as necessary; and improved definitions and regulations concerning the application of corroboration.

CPG on Adult Survivors
2 October 2012