

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from Colette Barrie

I am delighted by the fact that the Criminal Justice (Scotland) Bill includes provisions which will abolish the requirement for corroboration in criminal trials.

The Justice committee Stage 1 scrutiny of the Bill has thus far involved 3 meetings and at the first of these – 24 September 2013 – it was agreed to keep my petition open and further discuss my request to incorporate a retrospective component to the new legislation.

Prior to and shortly after the meeting on the 24th September, I was contacted by a clerk to the Committee, and asked if I wished to add anything further to the submissions which I provided when the committee first discussed my petition in September 2012. I updated the clerks regarding the endeavours which I have made in the intervening period to both promote awareness of my petition and garner additional support of its aims. Continuing to waive my rights to anonymity, I have agreed to:

- Submit an article for publication in Rape Crisis News
- An interview with the Daily Record in March 2013
- Speak at a seminar organized by Rape Crisis Scotland in March 2013 and at which Mr MacAskill also spoke
- An interview with BBC 'Good Morning' in April 2013

I have also offered to provide an oral submission to the committee and, following the committee's decision that this would not be required, I have been asked whether I would submit further, supplementary information supporting why I consider retrospective legislation to be so necessary.

Why Retrospective Legislation?

I am disappointed to read in the minutes of the meeting held on 24th September that, with regards to making new legislation retrospective, a committee member feels that 'It seems [...] to be a proposition that will not go anywhere, so [...] wonder whether there is any point in considering it further'. Yet I am heartened by the thoughts of another member who says that 'There are requests to look at making it retrospective, particularly in the case of historic sexual abuse. There is therefore an opportunity to at least give further consideration to the issue' and it is in relation to all sexual abuse cases – historic and current - that I wish to now further elaborate.

Some statistics

Child Sexual Abuse (CSA)

The NSPCC have recently published statistics on the prevalence of childhood sexual abuse (CSA), and two recent World Health Organization (WHO) reports have estimated figures at 20% for women and 5% for men

The 2001 Census records Scotland's adult population as 4,089,946. Of these, 2,155,701 are female and 1,934,245 are male. Using the WHO findings, this means that, in Scotland:

431,140 women may have been sexually abused as children

96,712 men may have been sexually abused as children

The percentage of these women and men who have been able to approach the police about their abuse is unknown. So too is the percentage who may ever be ready to do so.

With over half a million of Scotland's adult population as possible victims of CSA, how many of Scotland's adults are actually perpetrators? One perpetrator can have several victims but some also have a single victim to whom they have unquestioned access. I don't know what ratio to apply to get a meaningful estimate but even if we allow 1:3 (one perpetrator being responsible for three victims) it is feasible that, in Scotland, there are 171,191 perpetrators of Child Sexual Abuse. With Scotland's current prison population being 7845, it may be reasonable to suspect that many of the possible 171,191 CSA perpetrators live undetected within their communities.

Adult Sexual Abuse (ASA)

Available data suggests that nearly one in four women worldwide may experience sexual violence by an intimate partner in their lifetime (WHO, 2002). (Available online at www.who.int)

With Scotland's adult female population being 2,155,701, this 'one in four' translates as a possible 528,925 victims

In 2012/13, 1372 rapes and 90 attempted rapes were reported to the police in Scotland. (Statistical Bulletin Crime and Justice Series, Recorded Crime in Scotland 2012-13). I cannot find any data regarding prosecution and conviction rates regarding these cases. However:

In 2009 / 2010. Rapes recorded by police: 884. Number prosecuted: 92. (10.4%)
Number convictions: 41 (4.6%)

In 2007 /2008. Rapes recorded by police: 821. Number prosecuted: 85 (10.35%).
Number convictions: 26 (3.1%)

Corroboration has been a barrier to justice. Research by the Crown Office found that in 2010, there were more than 458 cases where an accused person was placed on petition but where the case did not go any further because of a lack of corroboration.

Fiscals looked at a further 141 sexual offences not prosecuted in 2010, and found 94 (67%) had a good chance of a conviction had they made it to court. This would have meant that there would have been a total of 135 convictions in 2010, representing 15.3% of cases reported; whereas, as figures above prove, only 4.6% were.

Effects & Impact of Sexual Abuse

People are affected in different ways and to different extents by abuse. Survivors live their lives just like anyone else, but for some there are long-term effects:

- Mental and physical health problems
- Alcohol and drug misuse to cope with trauma
- Homelessness and suicide

Not all survivors go on to have these problems, but many suffer long-term trauma in one form or another. (<http://www.survivorscotland.org.uk/about-sexual-abuse/>)

As the committee will be aware, I am a survivor of childhood sexual abuse and it was many years – and even then only owing to having been in therapy for some time – before I was able to approach the police and make a statement about what had happened to me. Therefore, on a very personal level, I have a clear understanding of the trauma and effects of such abuse.

I also have some professional understanding. During my career as a probation officer, I have worked as the case manager for sex offenders, the treatment programme facilitator for domestic abuse perpetrators – many of whom employ power and control tactics to coerce partners into non-consensual sex – and a Woman's Safety Officer, working to protect abused women.

Within my caseload are also young men who have been sexually abused as children or raped as adults and it is even harder for them to find the courage to seek justice.

I have seen how the trauma experienced by these groups of people has manifested in low self-esteem, powerlessness, stigma, self-loathing, feelings of shame and guilt, unhealthy relationships, substance misuse and self-harming.

A Question of Justice

The statistics which I have quoted in this document suggests that there is a high proportion of Scotland's population who are survivors of Child Sexual Abuse or Adult Sexual Abuse and that current criminal justice legislation is failing them when they seek justice. Abolishing the corroboration requirement is one step towards remedying this but in itself it is not enough.

The current low rate of sexual offence convictions means that there are an unacceptable number of sex offenders living unmonitored within their communities.

When the probation services assess risk of harm posed by perpetrators, we use an evidence base which tells us that 'the predictor for future behaviour is past behaviour'. Therefore, unmonitored as they are, these sex offenders are likely to reoffend and this means new victims.

I know from personal experience how brave one must be to report sexual abuse and what it costs to do so. It took 3 years from initial contact with the police to finally having a court date. I never expected it to take this long and these 3 years were

exhausting. I went through the precognition with the Fiscal and also with my abuser's solicitor, the access to and sharing of my medical and therapy records, a Viper ID and verbal abuse from my abuser's supporters. The whole process was one which re-traumatized me. I could once again taste, feel, smell and hear my abuser and each and every thing that he did to me was as once more as clear as when he first did them. I am certain that my experience is shared by all who take the brave step of seeking justice; we lay ourselves open to reliving the trauma. Yet we do so in the hope that finally there will be an ending to it; an ending only made possible when our abusers are finally held to account for what they have done to us.

By making the new Criminal Justice (Scotland) Bill retrospective, Scotland's legislators will accord to us the opportunity to once again seek justice for the harm caused to us and the pain which we continue to endure. We may once more have hope of healing and an ending to such pain. When one is wounded by something harmful which leaves shrapnel imbedded in the flesh, the usual response by professionals is to remove the shrapnel and thus prevent further pain or injury. Sexual abuse leaves its own unique shrapnel embedded in the very core of the victim and, survive as we do, the wound can never fully heal until the invading presence is neutralized.

What Costs?

I know that there are concerns about how far back is it realistic for retrospective legislation to apply. I am sure that most of the hesitation arises from concerns about the costs involved should hundreds of cases once deemed insufficient to proceed owing to lack of corroboration now be deemed sufficient. The increased workloads for the Crown and Courts obviously has a monetary value.

The committee will be aware of the cases regarding Jimmy Saville and Stuart Hall; the sheer number of victims across a period of several decades. No doubt there is a vast amount of money involved in pursuing justice for their victims yet this is precisely what is happening. Not solely owing to the fact that, in so doing, the prosecutors seek to facilitate healing for the victims – this removal of the ages old shrapnel which blights their lives – but also because it is in the public interest. The message to other abusers must be clear – no matter who you are or how long ago you abused your victim(s), you will be held to account. Such a message will hopefully encourage other victims to come forward and also deter unmasked abusers from further abuse.

It is my belief that my abuser continues to abuse – for why should he not? He has been getting away with it for years, the one chance I had for him to be held to account for this and stopping him from harming another was thwarted by the corroboration requirement. His employment provides him with access to children and another thing which my training has taught me is that when a person is sexually aroused by children, they will always be sexually aroused by children. They don't 'grow out of it' and there is no 'cure'. It is only by engaging in treatment programmes that they learn the strategies to employ to prevent themselves from acting upon the urge to satisfy their sexual cravings. Unconvicted, my abuser has obviously not engaged in such treatment and therefore has no strategies to prevent him acting on his urges. It has been 19 months since the second victim withdrew and my case

against him was dismissed. He was reinstated by his employer almost immediately and has thus had 19 months in which to continue satisfying his sexual deviance. How many more victims might he have claimed? One more is one too many.

The corroboration requirement means that other rapists and abusers have not been held to account and are, in all likelihood, continuing to rape and abuse. So how many more victims? Again, one more is one too many.

Retrospective legislation will incur a cost including additional staffing and court time. When this is determined on a cost per case basis, perhaps it will be several thousand pounds. Are we truly living in a society which is prepared to say to a rape victim or a childhood sexual abuse victim that the harm caused and the pain they endure is not worth such a financial cost? When the psychological and emotion cost to them is incalculable? Is today's Scotland prepared to dismiss the risk which unprosecuted perpetrators pose to future victims?

A reminder of the rape cases recorded by the police since 2007: 3077 in total. Number prosecuted: 177. Number of convictions: 67.

Not all of the cases which failed to satisfy the rule for sufficiency of evidence will suddenly do so once the corroboration requirement is abolished. Referring back to the Fiscals' findings that in 2010, of the 141 sexual abuse cases they re-examined, 94 stood a good chance of conviction if the corroboration requirement had not prevented them getting to court. Although 94 represents 67% of the 141 cases examined, it represents 10% of the 884 reported during 2009/2010. Therefore it might not be several thousand cases which retrospective legislation affords the opportunity to reapply for justice. It may be several hundred.

How far back should retrospective legislation go? I am not going to dismiss the impact which such legislation will have on the criminal justice system and am appreciative of how overwhelming it may be to have hundreds of cases return for consideration. Perhaps the retrospective component of any new Act could be specific to sexual offences.

In making retrospective the legislation which abolishes the requirement for corroboration, the Scottish Parliament is not taking a bold new step. Rather, as this committee will be aware, it will be following the precedent of The Double Jeopardy (Scotland) Act 2011 which itself allows retrospective application. As cited in my petition, the legislators at that time stated that 'it is immaterial whether the conviction or, as the case may be, the acquittal was before or after the coming into force of the Act'.

What was important – what is important – is that victims of crime have access to justice and that perpetrators of the most heinous acts are held to account for their actions and prevented from harming others.

Colette Barrie
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