



BRIEFING

Bonomy review
on
Post Corroboration
Safeguards (2014)



Briefing on the Post Corroboration Safeguards Review Consultation Paper

November 2014

Background Information

In November 2010, the Justice Secretary Kenny MacAskill asked Lord Carloway to undertake a review of Scottish law and practice following what is known as the Cadder ruling. This review recommended that the requirement in Scots law for corroboration be removed. In February 2014, the Justice Secretary announced that Lord Bonomy would head an independent reference group to consider what additional safeguards and changes to law and practice may be needed following the planned abolition of corroboration in the Criminal Justice Scotland Bill. Rape Crisis Scotland has been represented on this reference group.

On 14th October 2014, Lord Bonomy published a consultation paper seeking views on issues relating to the removal of corroboration. The deadline for responses is 28th November 2014. Although the consultation paper seeks views on a broad range of issues, this briefing paper is focused primarily on the question of jury majority, as this is an issue which has the potential to have a significant impact on justice for survivors of sexual offences.

The case for removing corroboration

As most rapes take place in private, with no witnesses and frequently little if any physical injury, the requirement in Scots law for corroboration arguably means that our justice system is ill equipped to respond effectively to the reality of rape (as opposed to the stereotype of a stranger rape involving a significant amount of physical injury). According to figures published by the Crown Office¹, only a minority of rapes reported to the police ever proceed to court. For this reason, Rape Crisis Scotland has supported the removal of the requirement for corroboration. Cases would still need to pass the threshold of having sufficient evidence to have a reasonable prospect of conviction. The removal of corroboration is about improving access to justice by removing a barrier to cases reaching court. It will not in itself necessarily lead to an increase in convictions.

Increasing the jury majority – more rape cases to court but fewer convictions?

The Bonomy consultation paper sets out proposals to significantly alter jury decision making. At present, juries reach a verdict – guilty, not guilty or not proven – by a simple majority i.e. 8 out of 15 members. The consultation paper proposes that this be changed to one of two options: a unanimous verdict, where juries must reach the same decision but could return a verdict by qualified majority (where all but one or two jurors must reach the same decision) or by a weighted majority, where a certain percentage of the members of the jury must reach the same decision.

The proposal for moving to a system of unanimous verdicts is based on the theory that a jury should act as a collective unit seeking to come to an agreed view about truth. However, the reality for rape trials is that jury decision making is influenced by prejudicial attitudes and sexist

¹ COPFS statistics for 2008-09 published in 2011

stereotypes. Research indicates that pre-existing attitudes can negatively affect the way in which jurors interpret evidence in rape trials. Research conducted in England and Wales using mock juries suggests that notions of how a 'real' rape victim would react influences assessments of credibility, for example in relation to delayed reporting or signs of significant physical injury².

Rape Crisis Scotland is very concerned that, in light of what we know about the problematic attitudes which may be affecting jury deliberations on rape cases, increasing the jury majority will not lead to a consensus around truth but instead make it even more difficult to secure a conviction. As much of the debate around removing corroboration has focused on its impact in particular on sexual offences, it would be very difficult to see its removal leading to measures being introduced which actually worsened the prospect of rape survivors being able to secure justice in Scotland.

Related concerns

Jury directions

The Scottish Government has previously given a commitment to introducing judicial directions in sexual offence trials to instruct juries that inferences should not be drawn from delayed reporting or lack of significant physical injury. Implementing this commitment would be a positive step in trying to ensure that jury decision making is based on a factual appraisal of the evidence, rather than on assumptions about how someone is likely to react during or after a rape or sexual assault.

The Not Proven Verdict

Rape Crisis Scotland believes that the 'not proven' verdict should be abolished. The not proven verdict is most commonly used in rape cases. According to the Scottish Government³, the proportion of people receiving a not proven verdict for rape or attempted rape was 15%, the highest for any crime type.

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 complainants 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 moving to two verdicts of guilty and not guilty would lead to a clearer and less confusing jury decision making process.

Summary

The review raises fundamental questions about how our legal system works in Scotland. The outcome of the review has the potential to have a profound impact on our justice system's

² Ellison & Munro, 'Reacting to rape: exploring mock jurors' assessments of complainant credibility' (2009), British Journal of Criminology 202 & 'A Stranger in the Bushes, or An Elephant in the Room? Critical Reflections Upon Received Rape Myth Wisdom in the Context of a Mock Jury Study' (2010), New Criminal Law Review. 13.4: 781-801

³ Criminal Proceedings in Scotland, 2012-13, Statistical Bulletin, Scottish Government

response to sexual offences in particular, and we would encourage all organizations and individuals with an interest in this issue to participate in the consultation.

Copies of the consultation document can be found here:
<http://www.scotland.gov.uk/Resource/0046/00460841.pdf>

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