

## **CORROBORATION: Briefing note**

- The Criminal Justice (Scotland) Bill, introduced on 20 June, seeks to remove the requirement for corroboration in criminal cases, as recommended by **Lord Carloway's Review of Scots Criminal Law and Practice**.
- Lord Carloway could find no other country with a general requirement for corroboration: "*Scotland is the only country in the civilised world—I include in that the whole of western Europe and all the Commonwealth countries—that has a rule that requires corroboration. My view is that the corroboration rule in this country is not reducing the incidence of miscarriages of justice in a narrow sense but creating miscarriages of justice in the broader sense, because perfectly legitimate cases that would result in a conviction are not being prosecuted because of the corroboration rule.*" [Justice Committee [Official Report](#), 24 September 2013]
- He also found that the law on corroboration has been developed to such an extent that it bears no resemblance to its original form.: "*the requirement in its original Romano-canonical form was adjusted or, put more crudely, stretched or bent by the courts over time in an attempt to permit those, against whom there was strong but technically insufficient evidence, to be convicted...the alterations to what was at first a simple but inflexible requirement led to a situation in which the modern law of corroboration became difficult to understand by anyone not schooled in the law of evidence.*" [Carloway Report at 7.1.16]
- His report concluded: "*there is no evidence or even anecdote to support the idea that the formal requirement for corroboration reduces miscarriages of justice*". [Carloway Report at 7.2.56]. He further concluded that the requirement is outdated and unjust, and that the requirement for a case against an accused to be proven beyond reasonable doubt is sufficient protection.

### **Scottish Government Position**

- The requirement can prevent strong cases, which could be prosecuted in other jurisdictions, from being taken forward. This general requirement can, therefore, deny access to justice for victims that would be available in other jurisdictions.
  - **Research** for the Carloway Review by the Crown Office and Procurator Fiscal Service (COPFS) identified 268 out of 458 (58.5%) criminal cases over 12 months (2010) dropped after an initial court appearance that would have had a reasonable prospect of success had there been no corroboration test. It also examined a further 141 cases over 6 months where there had been no court appearance (reported to the National Sex Crimes Unit): 95 (67%) would have had a reasonable prospect of conviction without the corroboration test.
  - A further COPFS exercise [Jan-March 2013, for the Bill's [Financial Memorandum](#)] assessing the potential impact of removing the requirement for corroboration estimated there would be an increase of **6%** in the number of solemn prosecutions and **1%** in summary prosecutions. A

similar police exercise based on Crown Office specifications suggested a further **1.5%** increase.

- The general rule is now outdated, confusing and is no longer appropriate for a modern justice system. The requirement also creates artificial administrative and financial burdens, for example, where CCTV evidence is used in court, two police officers have to each describe the same activity on the same CCTV footage. The requirement of corroboration also means that often two witnesses need to attend court to speak about routine procedures, such as the taking of a DNA sample.
- Lord Carloway's view was that no additional safeguards are necessary if the requirement is removed. The Scottish Government, however, listened to concerns raised in responses to the SG consultation on Lord Carloway's recommendations and undertook a further consultation on possible additional safeguards. This consultation considered the existing simple majority (8 of 15) for jury decision-making; the possibility of permitting a trial judge to remove a case from a jury on the grounds that no reasonable jury could convict on the evidence led; and the function of the not proven verdict.
- As a result, the Bill will **change the jury majority** for conviction, from a simple majority of 8 to two-thirds (10 of 15). This **additional safeguard** is intended to maintain an appropriate balance between protection for accused persons, protection for victims and witnesses, and public protection if the corroboration requirement is removed. The option of extending the **power of a trial judge** to remove a case from a jury was not adopted as a result of concerns expressed by the Senators of the College of Justice and victims' groups [see para. 181 of the Bill's Policy Memorandum]. The Government has agreed in principle with the Scottish Law Commission to undertake a review of the **not proven** verdict once the Bill's changes have bedded in.
- The Bill seeks to remove the **general requirement** for corroboration, **not the need for supporting evidence** in court cases. COPFS and the Police have made it clear that they will continue to seek out the best evidence to support a case, and corroborative evidence will continue to play an important part in criminal prosecutions.
- In written evidence to the Justice Committee, the COPFS has outlined its proposed **new prosecutorial test** to be applied following abolition was published on 12 September. It has two stages:
  - (a) an **evidential** test where the following must be considered:-
    - (i) a quantitative assessment– is there sufficient evidence of the essential facts that a crime took place and the accused was the perpetrator?
    - (ii) a qualitative assessment – is the available evidence admissible, credible and reliable?
    - (iii) on the basis of the evidence, is there a reasonable prospect of conviction in that it is more likely than not that the court would find the case proved beyond reasonable doubt?; and
  - (b) a **public interest** test – is prosecutorial action in the public interest?