

Petition Submission PE 1633

In simple terms, this petition is about access to justice for victims of crime who have been left with no remedy as a result of the reporting agency procedure that underpins our criminal justice system.

As matters currently stand, if a reporting agency decides not to produce a report to the Crown Office Procurator Fiscal Service, then effectively there can be no prosecution unless a private criminal prosecution takes place.

On this basis, when the Health and Safety Executive makes a policy decision that sports workers are to be given less protection than other workers, then effectively no one in Scotland can challenge it. Equally in other areas such as animal welfare, if the relevant reporting agency for this aspect decides not to investigate an incident due to a lack of resources, or perhaps a misunderstanding of the law, then again nothing will happen. It does seem to indicate that part of the problem may be that the Crown Office Procurator Fiscal Service reliance on reporting agencies system is disjointed and no longer fit for purpose.

At the last committee meeting comments were made about what the position is in England and Wales. In their system there is no monopoly reliance on reporting agencies to underpin criminal prosecutions in the manner that operates in Scotland. They also have clear guidelines and procedures, with safeguards against abuse, for alternative private criminal prosecutions. If a reporting agency in England decides not to prosecute, then there are not the same expensive barriers to an alternative remedy as there are in Scotland.

Ultimately this is about control. The Crown Office Procurator Fiscal Service does not want to relinquish control of prosecutions, and if it means that someone is denied access to justice then it appears that this is acceptable. This committee will be well aware of the institutionalised resistance by government agencies to any form of change that has not been put forward by the department itself, or in even getting any form of admission that there might be a valid argument worthy of consideration. All that happens is deflection and delay.

If you look at what was the core reason for the petition, there is a growing body of independent medical evidence that sporting event workers are being harmed with incidents such as concussion and resultant dementia, and life-threatening falls, yet the historical and ongoing failure to carry out the most basic obligations under health and safety law, namely the statutory requirement to carry out risk assessments and to report serious injuries, are being ignored by the reporting agencies. The three relevant reporting agencies in this instance would be the Health and Safety Executive, Local Authority Health and Safety Departments in Scotland, and Police Scotland. For clarity, the committee should be aware that Local Authority Health and Safety Departments in Scotland have been given guidance by the Health and Safety Executive not to investigate sporting event workers injuries so whilst they could, in theory, produce a report, they have been controlled by the Health and Safety Executive not to.

The Health and Safety Executive have, thus far, simply treated this committee with contempt and refused to even recognise its role. Police Scotland have advised that they have a policy of not investigating any health and safety incident, but so far, they will not explain how they have arrived at it. Realistically there are no other reporting agencies who can produce a report for the Crown Office Procurator Fiscal Service on health and safety matters.

Perhaps if the following questions could be asked, then it might help to bring about a greater understanding of whether the remedy that the petition is seeking is actually necessary.

- 1 If the Health and Safety Executive will not be accountable to the Scottish parliament, then can the relevant committee at the Westminster Parliament be asked to enquire from the Health and Safety Executive why they have adopted a different policy in regard to risk assessments and reporting injuries for sporting event workers from all other workers, and what evidence they have to support their decision.
- 2 Can the Crown Office Procurator Fiscal Service demonstrate what affordable access to justice alternatives are in place when a reporting agency refuses to investigate a potential criminal act?
- 3 Does the Crown Office Procurator Fiscal Service agree with the policy decisions of the Health and Safety Executive in regard to risk assessments for sporting event workers and reporting of serious injuries?
- 4 Can the Lord Advocate clarify whether or not the policies of the Health and Safety Executive in regard to sports workers being considered in a different manner to all other workers is compatible with Article 2 of the Human Rights Act
- 5 Has the Crown Office Procurator Fiscal Service carried out a review of the effectiveness of the current system of relying on reporting agencies in order to instigate a prosecution?
- 6 What is the extent of injuries in sporting events and how are they monitored if there is no need to comply with the statutory reporting obligations?

Every person and animal in Scotland should have protection from being subject to a criminal offence. Constantly deflecting the issues is not acceptable in a fair and just society. If it means making it less difficult to bring a private criminal prosecution in situations where the responsible agencies have failed to produce a report, then providing safeguards to prevent abuse, similar to those that have been effective elsewhere in the United Kingdom are put in place, why is this a bad thing.

Article 6 of the Human Rights Act states that you have a right to a fair hearing when prosecuted. Should victims of crime not also have the same right to a fair hearing and have their day in court as well? Under the current system this appears not to be the case. Again, is there an Article 2 issue to be considered. The Equality and Human Rights Commission in Scotland also might be helpful to the committee in these aspects.