

Justice Committee

Civil actions for rape and other serious sexual offences

Written submission from Emma Bryson

In March 2017 I was informed by the Crown Office that it had not been possible to prosecute the man responsible for raping and abusing me over a period of four years during my childhood. The reason given was that although the police investigation had found corroborative evidence of my abuse in social work records, medical records and the statements of other people who had been aware of the abuse at the time, none of this was sufficient to meet the legal specifications of the requirement for corroboration.

I asked the Crown Office to review this decision, which they did, and in June 2017 they informed me again that nothing could be done. Despite my best efforts to move on I am unable to do so. Every day I wake up with the knowledge that my abuser escaped prosecution because the law effectively protected him and my sense of injustice is overwhelming. I cannot accept it because it makes absolutely no sense: Rape victim reports rape to police, police find evidence of that rape, but then the law says the rapist can't be prosecuted. Where is the justice in that?

I am aware that those who defend the requirement for corroboration do so on the grounds that it protects people against false accusation and prevents miscarriages of justice, but I fail to see any logic in this argument. Surely the principal purpose of the criminal justice system is to support victims of crime, to prosecute those responsible and to actively deliver justice? A conviction cannot be secured without any evidence of guilt so can we not trust the courts to establish whether or not an allegation of crime is proven, as is the case for almost every other type of crime? It is incomprehensible that the prevention of a hypothetical miscarriage of justice should take precedence over the prosecution of a sex offender. This is an outdated legal requirement that has no place in a modern justice system, and I completely refuse to accept that something so archaic and manifestly unjust should be allowed to remain unchallenged.

In the aftermath of the investigation I was advised by both the police and the Crown Office that support was available to me through organisations such as Rape Crisis Scotland. It was also suggested that I could look at bringing a civil case, if that was something I wished to consider. I was told that Criminal Injuries Compensation was available to me, if I wanted to apply for it. The one thing that was not available to me was access to justice, and when I voiced my frustration and despair to those who would listen within the police and the Crown Office I was offered sympathy and their own expressions of frustration that they had been prevented from prosecuting the man responsible. I was also told by two police officers and one of the legal advisers at the Crown Office that if this had happened in England then the man responsible would have been prosecuted, because under English law the evidence would have been more than sufficient.

I have considered the option of bringing a civil case but decided against it because I firmly believe that it is the responsibility of the criminal justice system to prosecute

criminals. It should not be left to the victims of crime to seek and fund an alternative source of justice for themselves. I also believe that a monumental injustice is being done to countless victims of rape and other serious sexual offences due to the legal requirement for corroboration.

The current statistics for rape prosecutions and convictions in Scotland should be a source of deep shame for anyone with responsibility for facilitating access to justice for victims of such crimes, and it is widely recognised by those who deal directly with victims and survivors that the requirement for corroboration is the single greatest contributory factor in this. For every reported rape and sexual assault that does not result in a prosecution, there is a survivor who is left to come to terms not just with the rape or assault they have experienced but also the fact that the law has worked *against* them. How many rapists, paedophiles and other sex offenders, who are reported but escape prosecution due to this law, are currently walking free? And how many then go on to reoffend? Because if we accept that the impact of the failure to prosecute is devastating for the victim, what then is the consequence for the perpetrator, who has effectively been told that the criminal justice system is unable to hold him to account?

Reform of this law is long overdue and yet the government has no intention to revisit the issue at any point in the near future. I'm aware that Michael Matheson made the decision to remove it from the Criminal Justice (Scotland) Bill following Lord Bonython's recommendations for safeguards, and that jury research is currently being undertaken, but the expectation is that it will be at least another couple of years before that research is complete and in the meantime the requirement for corroboration continues to fail victims of serious crimes. More victims are being failed and more perpetrators go unprosecuted with every day that passes. There is no justice here.

Emma Bryson
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