

THE JERSEY LAW COMMISSION



REPORT

CORROBORATION OF EVIDENCE IN CRIMINAL TRIALS

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To be laid before the Head of the Legislation Advisory Panel pursuant to the Proposition to establish the Commission approved by the States on 30 July 1996

The Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the States Assembly on 30 July 1996.

The Commissioners are:-

Mr David Lyons, English Solicitor, *Chairman*

Advocate Alan Binnington

Mr Clive Chaplin, Solicitor

Mr Peter Hargreaves, Chartered Accountant

Advocate Kerry Lawrence

Advocate John Kelleher

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To the Chief Minister of the States of Jersey

PART I: Background

1. The Jersey Law Commission was asked by the Chief Minister at the end of 2008 to consider whether or not the current practice of requiring the trial judge to warn the jury, in cases involving sexual offences, of the need to look for corroboration of the evidence of the complainant should be abolished or altered.

2. In our Consultation Paper of December 2008 we provisionally concluded that the mandatory requirement for the corroboration warning in relation to offences of a sexual nature and the rules of practice that have been adopted in conjunction with it should be abolished. We considered whether or not to recommend that the judge is instead given discretion to issue a corroboration warning in cases where he feels it is appropriate to do so. However we noted that experience in Australia suggested that if such a recommendation were to be implemented the existing practice in terms of the form of direction to the jury would in all probability be maintained, with the consequent detrimental consequences to which we referred in our consultation paper. We suggested that this could be remedied by appropriate legislation and we expressed the view that the recommendation of the State of Victoria Law Commission, referred to in the consultation paper, had much to commend it. This was to the effect that the trial judge should be prohibited from giving a corroboration warning unless he was satisfied that: (i) there was evidence that the accused had in fact suffered some specific forensic disadvantage due to a substantial delay in reporting; or (ii) there was evidence that the accused had in fact been prejudiced as a result of other circumstances in the particular case.

3. Six responses were received to our consultation paper, the respondents being listed at the end of this report. Somewhat to our surprise, given the political interest expressed at the time that this issue was raised in the States in October 2008, we received only one submission from an elected member of the States.
4. The respondents were all broadly supportive of our proposal that the requirement for a corroboration warning be abolished. A number of the respondents disagreed with the suggestion that we follow the State of Victoria Law Commission recommendation, pointing out that the trial judge should be left with some discretion to give a warning in circumstances where he felt that the interests of justice required it. Given the difficulty of trying to envisage all the different circumstances that could arise in criminal cases we have some sympathy with that view. It is supported by the fact that there does not appear to be any dissatisfaction with the present position in England and Wales, where the matter is left to the discretion of the trial judge.
5. One of the respondents suggested that abolition of the requirement may lead to cases being prosecuted which might not have been prosecuted were the requirement to be retained and that there could as a result be some resource implications for the police and prosecuting authorities. However it was suggested that the number of cases was likely to be fairly low and whilst we accept that there may be some resource implications, in particular for the States of Jersey Police, we do not feel that they will be significant.
6. Although we were only asked to consider the corroboration warning in the context of cases involving sexual offences a number of the respondents suggested that the requirement for a warning should also be abolished in the other cases to which it applies, namely accomplice evidence and the evidence of children. Although it was not part of our remit we see no logical reason to retain it for those cases. In the words of one of the respondents "the view that children are largely incapable of giving reliable evidence is as outdated as the view that women are prone to lie about sexual offences". It seems to us that the

reasoning that led to our recommendation applies with equal force to other cases in which a corroboration warning is currently required.

PART II: Conclusion

7. We have noted that the respondents to our Consultation Paper were unanimous in their support of our recommendation that the requirement for a corroboration warning in cases involving sexual offences should be abolished. Although, as we have stated above, it was not part of our remit to look at the impact of the corroboration requirement in other cases, namely cases involving evidence from children and accomplices, we note that there is support for a similar removal of the requirement for a warning in these cases. We can see no good reason not to extend our recommendation to these cases and accordingly we recommend that the present obligation to give a corroboration warning should be abolished in all cases.

8. Although we have considered whether to recommend introducing rules as to when a corroboration may be given we are persuaded that this is a matter best left to the trial judge who can take into account all the circumstances of the case.

DAVID LYONS, *Chairman*

ALAN BINNINGTON

CLIVE CHAPLIN

JOHN KELLEHER

KERRY LAWRENCE

PETER HARGREAVES

APPENDIX A

PERSONS WHO COMMENTED ON THE CONSULTATION PAPER

Sir Philip Bailhache , Bailiff of Jersey

Mr. Michael Birt , Deputy Bailiff

Mr W. J. Bailhache, Her Majesty's Attorney General

David Warcup, Acting Chief Officer, States of Jersey Police

Mrs. B. Shaw , Assistant Magistrate

Deputy R. Le Herissier

APPENDIX B

ACKNOWLEDGEMENTS

The Topic Commissioner for this case was Advocate Alan Binnington.