



Inside Time Reports

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The Scottish legal system has for many years ‘rested on their laurels’, claiming to be fairer and more robust in their pursuit of justice than the rest of the UK. However, my son and many others wrongfully incarcerated in HMP Edinburgh would challenge this ‘ideal’ knowing at first-hand that dozens of miscarriages of justice are occurring because, in the words of a committed defence lawyer, the whole system is ‘crumbling’.

It begins with Police Scotland who unlike their southern counterparts works directly on the instructions of the Crown Prosecution Service. By actively seeking to secure prosecutions they do not carry out thorough and independent investigations, therefore they only interview witnesses who are more likely to secure a conviction and ignore relevant key witnesses who would offer support for the accused. In our case we, as parents, and our other son were never interviewed by Police Scotland but more distant family members were. They were of course unable to substantiate any of the claims made by his accusers.

It seems very noble to base a justice system on the need for corroboration, but in practice the police will keep interviewing until they obtain this; sometimes actively seeking individuals outside of the original complaint to corroborate distress or disclosure. The accused can also inadvertently corroborate himself in the initial and subsequent interviews with police. The advice to answer ‘no comment’ is for the purpose of protection of self-incrimination, however flimsy.

Under UK law after an arrest, while on bail, the lawyers of those accused can present a case to the CPS before charges are made; although the period of bail is currently far longer than it should be, this provision is not available in Scotland. Although corroboration is not required to charge or bring to trial, before charging, the CPS in the UK will consider all the evidence provided by the police and the probability of a conviction, based on the burden of proof. This does not happen in Scotland. If corroboration is established in the eyes of the police, the accused is immediately charged, regardless of burden of proof. This is the ‘minimum’ needed for trial. The ‘Moorov Doctrine’, which supports two witnesses coming forward with ‘similar’ stories, dates and time-lines, is used

almost exclusively. Although guidance in the Jury manual suggests ‘caution’, and the relationship of the accusers should be taken into account, this is never done. Siblings and other family members and friends, given the long period between arrest and trial, have time to collude and perfect a ‘script’ for the court, often giving Oscar-winning performances. Once again it cheapens and trivialises genuine cases of abuse – which clearly we all believe should be addressed.

In Scottish law statutes there is provision for the evidence to be looked at periodically to assess whether a trial is required, but this in practice is seldom carried out. If you are charged you will be tried, and usually for historical cases in High Court, you will be convicted. In most courts in Europe the requirement for a conviction is two-thirds of the jury; in Scotland the majority is 8-7.

There are prisoners considered ‘innocent in the eyes of the law’, on remand for months. Where cases should come to trial within twelve months of charges, in my son’s case, it was almost double that time. In prison now for almost six months, he is waiting to appeal, but not before obtaining the Judge’s report in response to our points of law. This should have taken 4-6 weeks, but is not with us now, into week ten. Effectively, the judge is impeding my son’s right to appeal, but there are no sanctions for lateness, unlike those for us should we be late or fail to appear at court.

The Justice system in the UK is flawed. We all read the papers, but if my son had been tried in England I am of the firm belief that he would not have been convicted. Given that his accusers also made allegations about events in England as well as Scotland, and that the CPS in England did not even charge him, he was convicted on the very same evidence in Scotland. He was subjected to two sets of investigations by two different police forces; two sets of bail conditions and we had the cost of two sets of lawyers. Yet he did not go to trial in England but did in Scotland and was convicted on the same evidence where, allegedly, Scotland requires a higher threshold of proof.

The Scottish system (and I speak as a Scot) is not fairer; just much more arrogant; and meanwhile, lives are changed irreparably.

<https://insidetime.org/scottish-system-flawed/>