



The Law Society of Jersey

States Members
States Assembly
St Helier
Jersey

16 March 2018

Dear States Member

LAWYERS URGE STATES MEMBERS TO REJECT KEY AMENDMENT TO SEXUAL OFFENCES LAW

The Law Society of Jersey, which represents the Island's legal profession, urges States Members to reject the **Second Amendment to the Draft Sexual Offences (Jersey) Law 201-**, lodged by the Education and Home Affairs Scrutiny Panel, the impact of which would be, wrongly in our view, to dispose of a defendant's right to a trial by jury in relation to customary law offences such as rape.

The Draft Sexual Offences Law is an important piece of legislation which is welcomed by the legal profession. It is important, however, that the efficacy of this legislation is not adversely impacted by the misconception that a jury of peers is unable, by virtue of ingrained prejudices, to be able to fairly and objectively determine whether a defendant is guilty of the offence of rape or other serious sexual offence.

While we understand the concerns expressed by Jersey Action Against Rape (JAAR) in relation to what they describe as 'the extreme difficulty in securing convictions' in respect of serious sexual offences, the suggestion that the answer to a low conviction rate is to change the mode of trial is, in our view, wholly misconceived.

The justice system in Jersey has been well served by the jury system; the system works and is far from being broken. The success rate in convictions is down to a number of factors, most notably, the strength of the prosecution case and its deployment, the credibility of the complainant and/or witnesses and the strength of the defence case. It is rare – or even unheard of - for the mode of trial to be seen as a reason for a defendant to be acquitted.

It is also worthy of note that, to our knowledge, none of the acquittals in 2017 to which JAAR made reference were as a result of hung juries (where acquittal is automatic). In all cases, the jury acquitted the defendant on the evidence. The suggestion that Jurats are better placed to deal with rape trials is misconceived. Jurats are just as likely to acquit if the evidence is weak. With respect to the concerns raised by JAAR, the issue is not the mode of trial but the evidence before the Court.

It appears that the view of JAAR is that people do not make false allegations of rape. This is fundamentally wrong. Legal history is littered with cases where people have made false allegations or have lied. The recent cases in the UK resulting in a number of acquittals or cases being dismissed because of police non-disclosure of evidence which confirmed the defendant's innocence clearly demonstrates that prosecutions succeed or fail on the evidence, not as a consequence of it being a jury trial. These were not acquittals on technical points but arose because independent evidence which confirmed the defendant's innocence had been withheld. With respect to JAAR, on their analysis, all of these innocent men were guilty of rape.

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The reasons for removal of trial by jury as suggested by JAAR do not stand up to scrutiny; juries do not acquit because of myths but because the prosecution have failed to prove their case.

The views of experienced counsel are that both the judges and counsel (both Crown and Defence Counsel) are alive to the risks of myths affecting the decision-making of the jury, so that clear guidance to avoid myths and speculation is routinely given to juries during the course of such trials.

That is not to say that public education in relation to rape and sexual assault cannot be improved. There is, though, no evidence to suggest that changing the mode of trial will serve to increase the conviction rate. It is a false premise to suggest otherwise, also carrying with it the potential of defendants raising challenges in relation to a breach of their human rights.

Rape is an extremely serious crime in respect of which the impact on the victim is not in dispute. The issue before the States is the right to be tried by one's peers, which is a fundamental principle of our criminal justice system. That right is retained for the equally serious offences of murder and manslaughter but, if this amendment is approved, not for rape. This is illogical. The right of a defendant to be able to choose between jury or Jurat trial for such offences is important and must, in the interests of justice, be maintained.

Significantly, there has been no suggestion of removing rape trial from juries in the UK. Complex technical fraud trials are now heard by a judge sitting alone but, generally, the facts and legal issues in rape cases are not technically complex and with proper directions/guidance (which juries now receive), then juries are more than capable of dealing with rape cases. Juries are more than capable of doing justice: it must not be forgotten that the concept of justice also involves the interests and rights of the defendant as well as those of the complainant/society.

The legal profession welcomes and endorses the Draft Sexual Offences (Jersey) Law 201- which provides an effective framework for prosecuting sexual offences in today's society. However, we urge States Members to reject the proposed Second Amendment to the Draft Law so as to preserve the option of jury trials for customary law offences.

Yours sincerely



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