

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 11th SEPTEMBER 2012**

Question

Will H.M. Attorney General set out the legal position in Jersey on the application of similar fact evidence and in particular what considerations his office would have to take into account when seventeen or more people allege that a particular individual has committed a similar crime against them? Will he also set out any differences between the application of, or criteria used for, similar fact evidence in Jersey and in England and Wales?

Answer

In all cases which are referred to the Attorney General for consideration as to whether it is right to prosecute an individual there is a two stage test. Firstly, the Attorney General needs to be satisfied that the evidence disclosed by the papers provides a realistic prospect of conviction and secondly, but only if a case passes the evidential test, whether a prosecution is in the public interest.

Each case depends on its own particular facts and, in cases where there are several allegations made against an individual, the evidence in relation to each allegation needs to be considered separately. In order to assess the likelihood of proving a case to the criminal standard, one will always need to assess the reliability, credibility and consistency of the evidence. Although as a matter of law there is no requirement for the corroboration of an allegation made by a complainant, if an offence is not admitted by a suspect, in determining whether there is a realistic prospect of a conviction the Attorney General will also look for other evidence which corroborates the allegation. Such corroboration may come from a variety of sources, for example, independent witnesses or forensic evidence.

Evidence which tends to suggest that a defendant has been guilty of misconduct other than that for which he is on trial or that he has a disposition or propensity to commit offences of a particular type is not normally admissible in evidence against him at his trial in Jersey.

The type of evidence which is referred to by the expression "Similar Fact Evidence" may arise in two ways. Firstly, a court in Jersey may grant leave to the prosecution to adduce evidence of a defendant's previous misconduct. Secondly, in circumstances when a judge directs a jury or Jurats that the evidence given by one complainant in a case may provide support to the evidence given by another complainant in the same case. In the first situation there needs to be a strong similarity between the specific circumstances of an allegation against an accused and the specific circumstances of an earlier or separate incident. Before allowing the evidence to be put before the court, the court has to be satisfied firstly that it is relevant and secondly that the probative value of the evidence outweighs the prejudicial effect of permitting a court to hear evidence of other misconduct committed by an accused other than that for which he is on trial. It is not sufficient that an accused has been previously charged with or convicted of the same type of offence.

In the second situation, in considering whether it would be right for a judge to direct a jury or Jurats that the evidence of one complainant in a case may provide support for the evidence of another complainant, the judge must determine whether there is material before the court upon which a jury or the Jurats would be entitled to rely on in deciding that the evidence given by one complainant is so related to the evidence given by another such that the evidence of the first complainant provides strong support for the evidence of the second victim notwithstanding its prejudicial effect. In this type of situation, what is important is not so much the number of complainants but the quality of their evidence, its relevance to the case and the similarity of the allegations which they make.

The Attorney General reiterates, as do all the leading authorities on this topic, that every case will depend on its own individual facts and, in deciding whether to allow the prosecution to adduce evidence of similar fact or in determining what, if any, direction to give to a jury or the Jurats, the judge will take into account the particular circumstances of each case.

That is the position in Jersey. The position in England and Wales is now different. As I understand it, as a result of changes brought about by the Criminal Justice Act 2003, since 2005 courts in England and Wales have been able to admit in evidence the previous conduct and offences of an accused where it is important explanatory evidence or when it is relevant to an important matter at issue in the case. This includes allowing the prosecution, with leave of the court, to adduce evidence that an accused has a propensity to commit offences of the kind with which he or she is charged. It is now not uncommon in trials in England and Wales for a jury to be made aware of some of the previous convictions or conduct of an accused where it is relevant to the case