

19th November 2013

3.10 Deputy M.R. Higgins of the Attorney General regarding new Crown Prosecution Service guidelines relating to prosecution of child abuse cases:

Will Her Majesty's Attorney General be adopting the new Crown Prosecution Service guidelines relating to the prosecution of very difficult child abuse cases, particularly those that make clear that the focus for the prosecutors must be on the credibility of the allegation being made and underline that the task is to build up strong cases by linking evidence rather than failing to bring cases because of a perceived weakness in the victim?

Mr. H. Sharp Q.C., H.M. Solicitor General:

The Law Officers' Department have been considering these guidelines that were published in final form in October 2013 and I can report that the Attorney General is minded to formally adopt them. These helpful guidelines will assist in reinforcing established and best practices in Jersey in dealing with these types of prosecution cases. For example, the guidelines advocate the use of senior prosecution lawyers and the earliest liaison between those lawyers and investigating police officers. That has happened in Jersey for many years. The guidelines also promote support for complainants and witnesses during the criminal trial process and it is right to say that the Police Witness Support Unit has been doing excellent work in this area. The question put to me this morning specifically focuses on the part of the guidelines that states that the focus in a criminal case is on considering the credibility of the particular allegation made and, indeed, ascertaining what evidence exists in a particular case. For my part, that has always been best practice. Again it is useful that the guidelines reconfirm that position. May I finally add these observations? Obviously the guidelines cannot and do not change the rules of evidence in a criminal court. These guidelines will not make prosecutions easier. Very often in these difficult child abuse cases there will be the word of the complainant against the word of the defendant, and there will be no other supporting evidence. In those circumstances the credibility of the complainant is, and will remain, an important consideration when the burden is on the Crown to prove an allegation beyond reasonable doubt. These guidelines will help, however, in ensuring that every effort is made to identify all relevant evidence that exists in a particular case. As I say, this is already existing practice in Jersey and the introduction of these important guidelines will reinforce that position.

3.10.1 Deputy M.R. Higgins:

I thank the Solicitor General for his comments. However, he has moved away from what the purpose of the question was. Keir Starmer has said, for example, in his view that by changing the focus from one that is solely victim-specific to one that more critically tests the suspect as well - and he says that they should be exploring patterns of behaviour and, where appropriate, links to other cases - that we could find an answer. This is as a result of the Savile case, Rochdale and others, where similar fact evidence could have led to convictions of people before. This type of evidence has been excluded in Jersey in the past because we are aware of at least 2 people who have had 17 complaints or 11 complaints for either physical or sexual abuse who were never charged. Sorry if I am going on slightly, I am just trying to put it in context for the rest of the Members here. If a person has a drink problem or did not report it or went back to the person who was perpetrating the offence, those were factors that were taken against the victim. But if you do not take into account other victims who come forward with similar allegations and take it in the whole, as Keir Starmer says, in context, then you cannot possibly bring justice to a lot of people. I am asking whether the Attorney General's office will be pursuing that type of guidance, taking similar fact evidence into account.

[11:00]

The Solicitor General:

The principle of similar fact evidence has been around for a very, very long time and the Law Officers' Department have always taken it into account where it is appropriate to do so. The simple fact that there are a lot of complaints about one person does not necessarily mean that similar fact evidence is in play. That is simply not right. But where similar fact evidence principles can be

engaged we do use them. May I say finally this, that I agree with the Deputy one of the reasons for the guidelines coming out in the U.K. was because of a public review into a decision not to prosecute Mr. Savile in 2009. The position in respect of that decision had nothing whatsoever to do with similar fact evidence. What happened was that a girl contacted the police and informed them of an allegation of an indecent assault that was highly unusual in the sense that she said that Mr. Savile had committed the assault in the TV room of her care home in the presence of other innocent girls. The police then made inquiries as to other residents in the care home at that time and one of the girls they contacted, who had no knowledge of the allegation or the fact that Mr. Savile was under suspicion, when contacted the girl said: "Is this about Mr. Savile in the TV room?" What you had was the coincidence of 2 highly unusual allegations being made by 2 different witnesses, and it was also shown that the 2 girls had never spoken to each other for many decades, so collusion or putting their heads together simply was not an option. Mr. Savile's defence was that both girls independently must have made it up. So you have to look at the particular facts of each case and to simply say that a lot of complaints equals similar fact evidence is just completely wrong.

3.10.2 Deputy R.G. Le Hérisier:

As an extension of the question, I wonder if the Solicitor General could tell us, given that many of the complaints have arisen because of what might be termed the over-robust cross-examination of children, what precautions are in place to ensure that children are not subject to the kind of cross-examination which may or may not be suitable when dealing with adults?

The Bailiff:

I am sorry, Deputy, that is a very valid question but it is moving too far outside. No doubt it could be the subject of a question on its own.

3.10.3 Deputy M. Tadier:

I hope this is within the remit, Sir, but I will leave that to you to judge. Will the Attorney General advise whether it is also an issue that in Jersey time-barring for evidence works differently to in the U.K., and given the fact that when things happened a long time ago, and the vulnerability of the individuals involved, those individuals would not necessarily have made the allegations at the time, or even if they did they were not believed. Is that an issue when it comes to making viable prosecutions, certainly for cases that happened quite a time ago?

The Solicitor General:

It is well recognised that victims of child abuse very often do not come forward for very long periods of time because they are scared or embarrassed or a mixture of both, and there may be any number of other reasons. So it is not a bar on a prosecution, it is a piece of evidence or a consideration among many, in reaching a view about a prosecution. But the thrust of the guidelines is to ensure that prosecutors acknowledge that victims may not come forward, for whatever personal reasons. But the thrust of the guidelines is to ensure that there is a thorough investigation so that all the evidence that might relate to a particular case is obtained so prosecution decisions can be taken with all the evidence that is available today.

3.10.4 Deputy T.M. Pitman:

Could I ask the Solicitor General - I appreciate obviously he cannot mention names or whatever - but Deputy Higgins has touched on a case which I am familiar with where you have more than a dozen different witnesses making very, in my opinion - and I am not a lawyer - detailed complaints which seem to corroborate that someone has a case to answer. My question I want to ask is this: the Solicitor General has just said often children do not come forward, which of course is true, however, in this case many of those children did come forward, they just were not listened to. Can he explain whether that history is also taken into account when these allegations are, as they have been in Jersey, dismissed leaving more than a dozen people with wrecked lives?

The Solicitor General:

The Attorney General took a number of prosecution decisions in 2008 and 2009 as a result of the historic child abuse inquiry. The Attorney General took the decision to publish the reasons for certain decisions not to prosecute and those reasons were made public. Whatever has been said since in the many years that have followed, nothing has been said in a way that we at the Law Officers' Department can understand, that will ever assist us in understanding what, if any, part of the reasons for those decisions is said to be wrong. In fact, so far as I am aware, there has never ever been any occasion when anyone has said that this statement by the Attorney General is wrong, and for this reason. It just has never, ever happened. If I may add, in 2011 I was an advocate in judicial review proceedings in which a former Senator sought to review those Attorney General decisions. That is to say, decisions not to prosecute in respect of child abuse cases. The judge who heard that case is now a Law Lord in the Supreme Court of England and Wales. What the judge concluded was as follows: that the Senator "had provided no grounds either in his order of justice or in his evidence for believing that the Attorney General and his advisers were wrong in the view that they took of the available evidence." I entirely accept of course that complainants in these cases will be understandably upset and frustrated if their particular case does not go to court. I quite accept that. But at the end of the day the Attorney General has to take a decision based on the evidence in a particular case. In these cases that we are talking about - the historic child abuse cases - reasons have been published and no one really has ever come up with a sensible reason why they are wrong.

3.10.5 Deputy M.R. Higgins:

I listened with interest to what the Solicitor General just said there. We know that decisions have been made in the past based on the prevailing view of how to deal with these cases. We now have seen this year an increasing number of concerns expressed following the Savile affair, the Rochdale affair, the Wrexham Care Home affair, and so on, and about the procedures and decision on whether to bring a prosecution or not. We know that cases have to be determined in court and it is one way of giving closure. If the evidence does not stack up the person will be found not guilty. But would the Solicitor General say that they will review the cases they have not decided to go ahead with, in light of a new standard for assessing evidence and bringing cases before the court?

The Solicitor General:

The whole point about the Savile case that I spoke about a few moments ago is that he should have been prosecuted in 2009. There is just no doubt about that, and it is unfortunate that he was not. The purpose of the guidelines is to ensure there is no repeat of that situation. For my part, for the reasons I have just given in my last answer, there is no reason in fact to review any previous decision so far as I am aware. If one looks at the detailed reasons that were given in 2008/2009 one can clearly see that every effort was made by both the police and the lawyers to ascertain what available evidence there was, and a decision was made on that basis.

3.10.6 Deputy M.R. Higgins:

It was not just the Savile case that I was referring to, obviously the Yewtree case which was Savile, but there is Rochdale and the others. It was the fact that other evidence should have been taken into account. They are now reviewing many historic cases in the U.K. Will the Solicitor General say that if, for example, information comes to light during the Committee of Inquiry which throws more evidence on what has gone on and so on, will they then revisit the decision whether to prosecute or not certain individuals?

The Solicitor General:

Yes, I think I agree with the Deputy. But the point is the Rochdale case is the same principle as Savile, what was the additional evidence beyond the complaint itself, it is the same principle. The point is at the moment I am satisfied that all the evidence was taken into account. If some new evidence emerges at some point in the future then no doubt someone will refer that to the Law Officers' Department. But it is important to stress that there is a basic principle that prosecution decisions should have a degree of finality to them and they should not be subject to repeated review many years after the event. But obviously if some new evidence comes up we will look at it.