

Draft Criminal Procedure (Jersey) Law Sub-Panel

Written Submission – Jersey Action Against Rape (JAAR) – 12th January 2018

JAAR is unsurprisingly delighted that the Jersey legislature has taken the important step of putting the prosecution of sexual offences onto a statutory footing. Jersey has been crying out for the law in this area to be modernised and it is hoped that this is the first step, of many, that will ultimately see the complete overhaul and modernisation to the prosecution of sexual offences in Jersey, leading to a system and process that stands up to scrutiny. JAAR is particularly heartened that the notoriously difficult issue of consent has now, for the first time, been clearly defined by statute. It is hoped that the Jersey Courts avoid any wholesale incorporation of English jurisprudence on the topic, seize the opportunity to learn from the difficulties that have arisen in England and develop the law of Jersey robustly and with clarity. JAAR sincerely hopes that the advent of this law will see an increase in successful prosecutions for sexual offences in Jersey.

JAAR is disappointed to learn that despite the obvious advantages of trials before the Jurats, the offences of Rape and inciting sexual acts with young children (inter-alia) will still be heard before juries. JAAR wish to be clear that it has no difficulty in principle with the concept of a trial by jury. However, JAAR remains concerned that the practical impossibility of effectively educating potential jurors about some of the commonly held misconceptions regarding rape and sexual assault in general will mean that it still proves extremely difficult to secure convictions for those indicted for such offences. JAAR feels that there can and should be no objection to the idea that for certain criminal cases a specialist and well-educated tribunal should be empanelled. JAAR cannot see that there can be any sensible objection to empanelling a specialist tribunal to hear a complex fraud prosecution for example, which will potentially involve the tribunal being tasked with making decisions in relation to complicated accounting issues. Taking that example how could it be said that a trial could possibly be fair (either for the Defendant or the Complainant) if there is a risk that the tribunal simply doesn't understand the issues at hand? Similarly with prosecutions for rape or other sexual offences, particularly where the issue of consent is central, there are in fact a myriad of complex issues at the heart of that issue, which the vast majority of people are unfortunately not well-informed about. One only has to reflect on the well-known 'misconceptions' in relation to rape and other sexual offences to realise that this is true. If it was the case that at least some sexual offences, such as rape and indecent assault, were always to be tried by Jurats, it would be eminently possible to ensure that a specialist tribunal was always empanelled to hear these cases. This would ensure that all of the issues that arose, such as those which often arise with questions of consent, would be fully understood by the tribunal. This would also mitigate the risk of any misconceptions resulting in a not-guilty verdict. Ensuring that tribunal is well-informed about difficult issues can only lead to a fair trial for both defendants and complainants; if we cannot be sure that the tribunal is well-informed how can we be sure that the trial process is fair?

JAAR nevertheless notes the likely increase in the incidence of sexual offences being tried by Jurats and would welcome any opportunity to work with the current pool of Jurats.