

7 Sept 2020

Scottish Criminal Cases Review Commission
4th Floor
Portland House
17 Renfield St
Glasgow
G2 5AH

Dear Mrs Govan,

Your Ref: FG 2780

Thank you very much for the Statement of Reasons dated 28 August 2020.

The document exceeded my expectations of the service provided by the Commission.
Thank you for substituting '*accepted*' in place of '*satisfied*' in the Grounds of Review.

However, I would be grateful if you (= the SCCRC) could provide some additional information.
I understand that this may be treated as a FOI request.
To improve clarity I have placed quotations by the Commission in italics.

The current Statement of Reasons refers to paragraph 30 in the October 2006 Statement of Reasons:

"The criminal justice system in Scotland only requires evidence from two independent sources to corroborate a case and convict an accused."

Later on the same page, you suggest that I "*have misunderstood its position as set out in the October 2006 statement of reasons. The aforementioned reference to "independent sources" could have been phrased "separate sources..."*

I accept that I, a person with no Highers to his name, may be prone to misunderstanding certain Scottish sentences and/or concepts.

Accordingly, I would be grateful if you could provide the following additional information about the two quotations shown above:

1) Is there a source or reference for your 2006 statement: "*The criminal justice system in Scotland only requires evidence from two independent sources to corroborate a case and convict an accused.*"?

2) Assuming that the possessive pronoun "*its*", which was used in the sentence ending: "*..have misunderstood its position as set out in the October 2006 statement of reasons*", refers to the Commission, could you confirm that the correct exposition of the Commission's position ought to have been something like:

Two independent sources are required to corroborate evidence given in a case. However, the term "*independent sources*" would have been better phrased as "*separate sources.*"?

3) Independent and Separate are not usually thought of as synonyms, so must convey different meanings.

Accordingly, could you provide me with the definitions you have used for these two adjectives?

4) You used the adjectives "*independent*" and "*separate*" before "*sources*" in 2006 and 2020 respectively.

However, you point out that no adjectives at all are used in Renton & Brown's definition of Corroboration: "*the law is stated clearly at paragraph 24-69 of Renton & Brown's Criminal*

Procedure" that "the *facta probanda* ... must be established by evidence from at least two sources." and "No reference is made to 'independence'".

4a) You appear to be suggesting that your expressions, "two independent sources" and "two separate sources" are both valid components of the law on corroboration. Is that right or wrong?

4b) If your answer to 4a is 'right', can you explain how "the kind of independence suggested by the applicant" is different from the kind of independence described in your expression: "two independent sources"?

4c) If your answer to 4a is 'right', can you explain how Renton & Brown's definition, where there is no reference "...made to 'independence'", is a better interpretation of the law than yours?

4d) If your answer to 4a is 'wrong', why did you use "two independent sources" in 2006 and why are you currently promoting "two separate sources"?

5) For my 2020 application, I relied upon two definitions of corroboration. One was your "two independent sources" statement, made in your 2006 Statement of Reasons; the other is one given by COPFS in its Glossary of legal terms.

This says that "An accused cannot be convicted unless there is evidence from at least two independent sources that the crime was committed and that the accused was responsible for it" (my emphasis).

Can I ask if you believe that the COPFS definition is right or wrong? And why?

I have 4 additional information requests:

6) You write, "...we won't make information about your case public."

Can you tell me if I am permitted to publish the material myself?

7) Your predecessor, Mike Hanlon, told me the unit cost for processing an application was £5000.

Can you give me the current cost of processing this application?

8) What will happen to this missive? Will it be discarded or will it be placed in my file?

9) Finally, I would like further information on your remark that

"it would have been open to the applicant to instruct his solicitor to investigate the matter (of witness independence)"

How do you know I did not do this? Did my solicitor, perhaps, tell you that he had received no such instruction?

Actually, I did instruct my solicitor to do as you suggest. But, perhaps because he was being paid for a basic defence only, he disregarded my pre-trial instructions. (He also ignored all the instructions I gave him in court, including a clear and loud instruction that he was not to offer any plea of mitigation to the Sheriff.)

What can you do when your own solicitor thinks he is still employed as a Procurator Fiscal ("As a PF, I was a rank above a Chief Constable. Some PFs let that go to their heads but not me."), yet with a yearning to be a judge: "If I'd been on the Bench I'd have found you guilty," he declared at the post-trial debriefing.

And: "Anyway, I think you're lying".

Yours sincerely,



Scottish Criminal Cases
Review Commission

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Email: info@sccrc.org.uk
Web: www.sccrc.org.uk

Your Ref:

Our Ref:

Date:

FOI/1139

6 October 2020



Dear Mr Bateson,

FREEDOM OF INFORMATION PUBLICATION SCHEME

I refer you to your letter dated 7 September received by the Commission on 8 September and our subsequent correspondence. You have made nine requests for information in numbered paragraphs. I considered that your request was one made under the Freedom of Information (Scotland) Act 2002 (FOISA). I shall respond using the numbering in your letter of 7 September.

- 1) The Commission does not hold this information. This is a notice in terms of s17 FOISA.
- 2) This is not a request for information that the Commission holds but a request for clarification of the decision issued to you in the statement of reasons dated 28 August 2020. I refer you to that decision. To be clear though the Commission does not hold this information. This is a notice in terms of s17 FOISA. I have previously directed you to the Commission's publicly available materials . you might want to have regard to its position papers in particular the paper entitled "sufficiency".
- 3) This is not a request for information that the Commission holds but a request for clarification of the decision issued to you in the statement of reasons dated 28 August 2020. I refer you to that decision. To be clear though the Commission does not hold this information. This is a notice in terms of s17 FOISA.
- 4) a – d) This is not a request for information that the Commission holds but a request for clarification of the decision issued to you in the statement of reasons dated 28 August 2020. I refer you to that decision. To be clear though the Commission does not hold this information. This is a notice in terms of s17 FOISA.
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HAPPY TO TRANSLATE

Chairman: Bill Matthews

Chief Executive: Gerard Sinclair

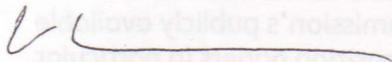
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- 6) This is not a request for information that the Commission holds but a request for clarification of the decision issued to you in the statement of reasons dated 28 August 2020. I refer you to that decision. To be clear though the Commission does not hold this information. This is a notice in terms of s17 FOISA.
- 7) This information is exempt in terms of s25 FOISA as it is publicly (and hence otherwise) available in the Commission's annual reports and annual accounts. This is a notice in terms of s16 FOISA.
- 8) This information is exempt in terms of s25 FOISA as it is publicly (and hence otherwise) available in the Commission's data retention policy. This is a notice in terms of s16 FOISA.
- 9) The Commission does not hold this information. This is a notice in terms of s17 FOISA

If you believe that the decision is incorrect you have the right to request the Commission to review it. Your request should set out why you are dissatisfied with the outcome. Your request should be made within 40 working days of the receipt of this letter, and the Commission will reply within 20 working days of its receipt of your request. The review will be undertaken by Mr Chris Reddick, the Commission's Director of Corporate Services Portland House, 17 Renfield Street, Glasgow G2 5AH, who was not involved in the original decision-making process. If the Commission's decision is unchanged following a review, you have the right to ask the Scottish Information Commissioner to review the decision.

I trust this letter explains the Commission's position.

Yours sincerely



David Fitzpatrick
Legal Officer