



The Law Commission
(LAW COM. No. 202)

CRIMINAL LAW

**CORROBORATION OF EVIDENCE
IN CRIMINAL TRIALS**

REPORT ON A REFERENCE UNDER SECTION 3(1)(e)
OF THE LAW COMMISSIONS ACT 1965

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CORROBORATION OF EVIDENCE IN CRIMINAL TRIALS

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THE LAW COMMISSION
(Report on a reference under section 3(1)(e)
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CORROBORATION OF EVIDENCE IN CRIMINAL TRIALS

*To the Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain*

PART I

INTRODUCTION

1.1 On 7 November 1988 you made a reference to the Commission in the following terms:

“To review the law concerning the corroboration of evidence in criminal proceedings and to make recommendations.”

In this Report we report on, and make recommendations in respect of, that review.

1.2 We have made plain throughout this review, but it is important that we should repeat here, the limited extent of the rules of law or practice with which our recommendations are concerned.

1.3 On occasion, the term “corroboration” is used in a general and untechnical sense, to refer simply to evidence of any kind that may tend to support the evidence of any witness in any kind of case. We are not concerned in this Report with “corroboration” in that broad sense, but rather, as your reference to us makes clear, only with the *law* of corroboration.

1.4 That law consists of a series of limited and technical rules that, in the main, govern the way in which judges must direct juries about certain specific categories of prosecution evidence. As such they represent a limited qualification of the general principle that in an English criminal trial the jury are entitled to convict on the unsupported evidence of one prosecution witness. In a very few cases statutory rules provide that a conviction cannot be obtained unless the prosecution evidence is corroborated.¹ However, the common law rules with which we are principally concerned do not go that far, but are directed at the terms of the judge’s summing-up, by requiring him to warn the jury that it is dangerous to convict on the uncorroborated evidence of any witness who falls within one of two categories. Those categories are: (i) an accomplice of the accused and (ii) a complainant in a trial for a sexual offence. In addition, the judge must tell the jury what other evidence is, as a matter of *law*, potentially corroborative of the evidence under question; the issue of whether it in fact has a corroborative effect being however for them. But, finally, he must go on to direct the jury that if, after heeding the warning, they conclude that the witness is speaking the truth, they are entitled to convict.² Our Report is principally concerned with these rules requiring a warning, to which we shall refer as the “corroboration rules”.

1.5 The fact that this Report is limited to corroboration in this narrow sense entails that it does not deal with two particular legal issues that are often discussed in terms of “corroboration” in the more general sense referred to in paragraph 1.3 above.

1.6 First, the Report is not concerned with the specific problems posed by identification evidence, which are regulated by the “*Turnbull*” guidelines.³ This is because, although in the course of applying those rules questions may arise concerning what should be said to the jury in a case where the testimony of a witness as to identification is unsupported by other evidence, or as to the evidence that can be regarded as supporting such testimony, *Turnbull* neither requires corroboration as a matter of law nor requires the judge to give a *corroboration* warning.

¹ These cases are set out in paras. 2.5–2.7 of Appendix B to this Report, and are further commented on in para. 2.4 below.

² A detailed account of the present law was given in paras. 2.1–2.32 of our Working Paper No. 115, which account is for convenience reproduced in Appendix B to this report.

³ So-called because they were formulated in the case of *Turnbull* [1977] QB 224.

1.7 Secondly, discussion of the conditions under which confession evidence can safely be relied on often makes reference to the desirability of such evidence being "corroborated". Such references are not, however, to the corroboration of testimony given in court by a prosecution witness, with which we are concerned in this Report, but to the different issue of whether it should be possible to convict solely on the strength of a confession made by the accused before the trial. That issue has nothing to do with corroboration in the narrow sense; and in any event it raises far-reaching questions about the inherent reliability of confession evidence, and about whether it should be possible to convict where the only evidence is a confession. Those issues demand separate study, well beyond the scope of what we have undertaken here. For these reasons, we do not deal with the issue of confessions in this Report.

1.8 The recommendation that we make in this Report is that the present corroboration rules should be abolished without replacement. We have been led to that conclusion by the comments that we received on the issues set out in our Working Paper No. 115, *Corroboration of Evidence in Criminal Trials*, that we published in April 1990.⁴ Those comments were directed principally at the illogicality, complexity and inconvenience of the present rules, which led the vast majority of those commenting to us to think that those rules should be abolished. These considerations, and the conclusion to which they lead, are described in Part II of our Report.

1.9 We have however been further concerned to consider whether, if the present corroboration rules were abolished, defendants in the categories covered by those rules would remain adequately protected. We have been conscious throughout our work that the corroboration rules were originally formulated in the interests of the accused, and with the aim of avoiding wrongful convictions in what can be two situations of particular difficulty—namely, where the prosecution adduces either (i) accomplice evidence or (ii) the evidence of the complainant in a sexual case. This has caused us to review in some detail suggestions that have been made for possible replacements of the corroboration rules, and in that connection to consider what the practical position of the accused would be, under existing rules of law, if the corroboration rules were to be abolished without replacement. We set out the result of that consideration in Part III of the Report. We have been led to the clear conclusion that the corroboration rules should be abolished without replacement, and we so recommend.

1.10 Part IV of our Report deals with a number of matters of procedure and interpretation that are ancillary to our principal recommendation; with the application of our principal recommendation to trials in magistrates courts; and with the recommendation that we make for the abolition of the requirement⁵ of corroboration in the trial of certain offences under the Sexual Offences Act 1956. The final part, Part V, of the Report comprises a summary of our recommendations and conclusions.

1.11 The Working Paper evoked considerable interest. A list of those who made comments to us will be found in Appendix D to this Report, and we are grateful to all of them for the help that they gave us, in many cases by submissions in considerable detail. In view of the importance of this issue for the conduct of criminal trials we were glad to have comments from a large number of those with practical experience of such trials, including not only the Criminal Bar Association but also the judges of the Queen's Bench Division (in a joint submission); the Council of Her Majesty's Circuit Judges; a number of judges at the Central Criminal Court, who commented at a meeting arranged by the Common Serjeant; and a number of individual circuit judges from all parts of the country. We also gained great benefit from informal discussion of the issues raised by the Working Paper at seminars for judges and recorders arranged by the Judicial Studies Board.

⁴ We shall refer to Working Paper No. 115 simply as "the Working Paper".

⁵ See n. 1 above.

PART II

THE ABOLITION OF THE CORROBORATION RULES

A. OUR PROVISIONAL PROPOSALS IN THE WORKING PAPER

2.1 In Part II of the Working Paper we gave an account of the most important aspects of the present corroboration rules. No commentator on the Working Paper disagreed with that account. Since it was the almost unanimous view of commentators, and is our principal recommendation, that the corroboration rules should be totally abolished, we do not think it necessary to set out a detailed account of the present law in the body of this Report. However, for ease of reference the account given in the Working Paper is included as Appendix B to the Report.

2.2 In paragraphs 2.33–2.37 of the Working Paper we also made reference to a body of authority, informally referred to as the “*Beck* rule”,¹ which has been developed to deal with certain types of suspect witness falling outside the categories to which the *corroboration* rules apply. The *Beck* rule differs in a number of significant respects from the corroboration rules, not least in that it does not place the judge under any obligation as to the terms in which he must address the jury in respect of evidence of the type to which the rule applies. The *Beck* rule is, however, of some significance to our Report, because it illustrates a way in which the general obligation on a court to protect the accused’s interests has developed more flexibly than under the corroboration rules; and also because that rule represents one strand of the protection that will be afforded the accused once the corroboration rules themselves are abolished.² We have therefore thought it right to investigate this body of authority in some further detail than we adopted in the Working Paper. We have set out the results of that further investigation in Appendix C to the Report.

2.3 In paragraph 4.42 of the Working Paper we provisionally proposed the abolition of the common law corroboration rules, referred to in paragraph 1.4 above, by which the judge is automatically obliged to warn the jury that it would be dangerous to convict the accused on the uncorroborated evidence of a prosecution witness who is either (i) an accomplice of the accused or (ii) the complainant in a trial for a sexual offence.

2.4 We further provisionally proposed the abolition of the statutory *requirement* of corroboration relating to procurement offences under the Sexual Offences Act 1956.³ In paragraph 4.4 of the Working Paper we said that we considered that that requirement would stand or fall according to whether it was thought that the obligation to warn juries in sexual cases generally should continue, and that approach was not questioned by anyone who commented on the Working Paper. Hereafter in this Report we will therefore, in discussing the “corroboration rules”, direct ourselves solely at the common law rules referred to in paragraph 2.3 above.⁴

2.5 The law as to corroboration was criticised in the Working Paper on two grounds: first, that the rules themselves were inflexible, complex, productive of anomalies, and inappropriate to the purpose that they were intended to serve; and second that, whatever the content of the rules, there was no justification for automatically applying the same rules to the evidence of *all* witnesses who fall within one of the two categories to which the rules apply (namely (i) accomplices and (ii) complainants in sexual cases).

2.6 These criticisms were expounded at some length in paragraphs 4.9–4.38 of the Working Paper, but it may be convenient if we recapitulate them more briefly here.

¹ From the case of *Beck* [1982] 1 WLR 461.

² This latter point is further developed in paras. 3.4–3.19 below.

³ The requirement was outlined in the Working Paper: see para. 2.7 of Appendix B to this Report.

⁴ The Working Paper did not consider further, and in this Report we make no recommendations about, two other statutory provisions. The first is section 89(2) of the Road Traffic Regulation Act 1984, which however, for the reasons indicated in para. 2.5 of the Working Paper, does not impose a corroboration requirement properly so called. As to the other provision, s. 13 of the Perjury Act 1911, which does impose a corroboration requirement, we explained in para. 4.2 of the Working Paper that, in relation to perjury in judicial proceedings, we had made recommendations as long ago as 1975 for “tidying up” that section in the context of recommendations for reform of the substantive law (in Law Com. No. 96); and that, as to other forms of perjury, we thought that the corroboration requirement should be dealt with as part of a general review of the law relating to those kinds of perjury.

2.7 The *inflexibility* of the rules springs from the fact that in *every* case that falls within the rules, whatever the trial judge's assessment of the reliability of the evidence or the assistance that the jury needs to be given in assessing it, he is obliged to give them a *standardised* warning (in terms or in effect) that it is dangerous to convict in the absence of corroboration.⁵ The inappropriateness of such a rule, and the extent to which it clashes with the proper purpose and intended effect of the judge's summing up of the evidence, has been well stated by the Court of Appeal:

"The aim of any direction to a jury must be to provide realistic, comprehensible and common sense guidance to enable them to avoid pitfalls and to come to a fair and just conclusion as to the guilt or innocence of the defendant. This involves the necessity of the judge tailoring his direction to the facts of the particular case. If he is required to apply rigid rules, there will inevitably be occasions when the directions will be inappropriate to the facts. Juries are quick to spot such anomalies, and will understandably view the anomaly, and often, as a result, the rest of the directions, with suspicion, thus undermining the judge's purpose. Directions on corroboration are particularly subject to this danger . . ."⁶

2.8 The *complexity* of the corroboration rules is notorious, as are the very great difficulties that that complexity causes both for the judges who have to expound the rules and for the juries who have to try to understand and apply them. Judges of great authority have commented on these problems in strong terms. In *Hester*, Lord Diplock observed that the "complicated formulae about the concept of corroboration and the respective functions of judge and jury are . . . unintelligible to the ordinary laymen";⁷ and, he suggested,⁸ the jury in that case had been "bewildered" by the trial judge's summing up—which had accorded with common practice⁹ and had accurately expounded the law. And more recently, in *Spencer*,¹⁰ May LJ (delivering the judgment of the Court of Appeal) remarked that it was

"our combined experience, both from sitting at first instance and also in this court, that where the full warning has to be given as a matter of law it is very difficult to direct the jury in terms which they can clearly understand, particularly when one has to go on and direct them about which part of the other evidence can or cannot be considered to be corroborative."

2.9 This complexity not only is the cause of unnecessary difficulty at trials but can also be positively detrimental to justice. The rules as to what evidence can and cannot count as corroborative are difficult and complex, and the cause of many actual or alleged errors and of many appeals. The danger of injustice is increased by the irrational terms of the required direction itself. The judge is obliged to start by saying that it is dangerous to convict on the basis of certain evidence, but then to go on and tell the jury that it is possible for them to do exactly that. Those formulae can lead, according to the circumstances of the case, either to the placing of an unfair handicap on the prosecution or to confusion that may be positively detrimental to the accused.¹¹ Far from protecting the accused, the rules, by requiring the jury to be given a complicated and technical discourse about the evidence to be corroborated, may "have the contrary effect [on the jury] to a sensible warning couched in ordinary language directed to the facts of the particular case".¹²

2.10 Finally, so far as the nature of the rules is concerned, the *anomalies* that they produce are equally notorious.¹³ For instance, they only apply to evidence given by prosecution witnesses and not to that given by co-defendants;¹⁴ and the rules in relation to complainants are applied according to a legal definition of the "sexual" offences in trials of which it is obligatory to give the warning, rather than according to the circumstances of the actual case before the court.¹⁵ Some of the anomalies of the present law, and in particular those just mentioned, appear to spring from a reluctance on the part of the courts to see the

⁵ Working Paper, paras. 4.11–4.14.

⁶ *Chance* [1988] QB 932, 941G–942A.

⁷ *Hester* [1973] AC 296, 328C.

⁸ *Ibid.*, at p. 329F.

⁹ *Ibid.*, at p. 328E.

¹⁰ [1985] QB 771, 786B.

¹¹ Working Paper, paras. 4.15–4.17.

¹² Lord Diplock in *Hester* [1973] AC 296, 327G–328A; and see Working Paper, paras. 4.23–4.24.

¹³ Working Paper, paras. 4.18–4.22.

¹⁴ Special provisions, different from and less rigid than the corroboration rules, have been formulated to deal with the latter case: see Appendix C to this Report.

¹⁵ *Simmons* [1987] Crim LR 630, cited in para. 4.19 of the Working Paper.

burden of the corroboration rules¹⁶ extended in any way beyond the comparatively narrow field to which they have traditionally applied.¹⁷ The courts' reluctance to extend the rules from their original categories to situations that might be argued to be analogous to those categories is, however, another reason for looking with increased criticism at the rules themselves.

2.11 Quite apart from these very strong objections to the *content* of the corroboration rules, the rules have been further criticised because they require the judge to take special action, over and above the discharge of his general obligation to put the defence case fairly to the jury, in respect of *every* witness who falls within one of the two corroboration categories; irrespective of whether, in his view, the testimony of that witness in fact requires a warning or other special comment. As we have observed above, the testimony of some accomplices, and of some complainants, will justify special directions, though not necessarily in the difficult and complicated terms required by the corroboration rules. But this second type of criticism directed at the corroboration rules emphasises that they distort the judge's role, and threaten further to confuse the jury, by obliging him to give standardised directions about evidence falling within a particular category, whether or not there is reason for concern about the actual testimony that the jury has to consider.

2.12 The application of the corroboration rules to *accomplices* has long been criticised on this basis. The Criminal Law Revision Committee¹⁸ set out a frequently-quoted passage from a work published as long ago as 1836¹⁹ that attacked the obligation automatically to give the standard warning as "a violation of the principles of common sense, the dictates of morality, and the sanctity of a juror's oath"; and after reviewing the application of the corroboration rule to accomplice cases in some detail the CLRC concluded that it was unjustifiable and should be abolished.²⁰ In its present form the rule requires the trial judge to warn the jury about all accomplices' evidence, even in cases where there is no reason for any warning, or where the only justifiable warning or comment would be couched in terms quite different from those imposed on the judge by the corroboration rules.²¹

2.13 As recently as 1972 the CLRC recommended that a modified version of the rules should continue to apply to the evidence of all *complainants in sexual cases*.²² However, as we indicate below, opinion on this point has altered in recent years; and in any event it is hard to see the justification for the application of the same rigid rule to all cases, and even harder to see the justification for a rule that obliges the judge to tell the jury in every case that complainants can and sometimes do lie, exaggerate or fantasise.²³

B. THE RESPONSE ON CONSULTATION

2.14 Of the 38 submissions (including a number of joint submissions) that commented on the proposed abolition of the corroboration rules, 35 agreed with that proposal. Abolition elicited strong judicial support, in particular from the Judges of the Queen's Bench Division (who responded collectively) and the Council of Circuit Judges.

2.15 The reasons given by consultees for abolishing the present corroboration rules reflected the criticisms set out in the Working Paper, which were endorsed, in particular, by commentators with practical experience of criminal trials. For example, as regards the *content* of the rules, the Registrar of Criminal Appeals considered the system to be "rigid, confusing and anomalous"; and the Criminal Bar Association that the corroboration rules are

"highly technical and complex, potentially confusing for a Judge, calculated to confuse a jury . . . and a fruitful source of appeals."

¹⁶ The burden that the corroboration rules impose on courts and juries was graphically described by Lord Ackner in *Spencer* [1987] AC 128, 140: a passage set out in para. 2.30 of the Working Paper, and repeated in Appendix B hereto.

¹⁷ As to the evidence of co-defendants, see the observations of Ackner LJ in *Beck* [1982] 1 WLR 461, 467G-H, cited in n. 81 to para. 2.33 of the Working Paper. As to sexual cases, see the observations of Watkins LJ in *Simmons* [1987] Crim LR 630, cited in n. 32 to para. 4.19 of the Working Paper.

¹⁸ Eleventh Report, Cmnd. 4991 (1972), paras. 183-185. We refer to the Committee hereafter as "the CLRC".

¹⁹ Henry Joy (Lord Chief Baron of the Court of Exchequer of Ireland), *On the Evidence of Accomplices*.

²⁰ Eleventh Report, Cmnd. 4991 (1972), para. 185.

²¹ Working Paper, paras. 4.26-4.30.

²² Eleventh Report, Cmnd. 4991, para. 188; Working Paper, paras. 4.31-4.33.

²³ See e.g. the direction in *Willoughby* (1988) 88 Cr App R 91, 93; cited in para. 2.10 of the Working Paper.

2.16 Many consultees agreed that the rules must appear confusing and illogical to juries. For example, one experienced Circuit Judge suggested that—

“The corroboration direction itself must seem nonsensical at worst and contradictory at best to most juries. How are they to evaluate a direction that it is dangerous to convict on the uncorroborated evidence of a complainant or an accomplice against the further direction that, providing they bear the warning in mind, they may convict nevertheless if they are convinced that the complainant or accomplice is telling the truth? Where evidence capable of amounting to corroboration exists, the jury’s confusion must be compounded by being told that the Judge identifies such evidence for them but that it is for them to say whether it does amount to corroboration.”

Another experienced Circuit Judge referred to this process as “mental gymnastics”; and The Law Society pointed out that—

“The common law rules can be meaningless in practice in any trial on mixed indictments involving offences to which the rules relate and others not covered by the rules. It is unrealistic to expect a jury to compartmentalise the evidence which they have heard into one part requiring corroboration, subject to a complex warning, and other parts for which there is no such requirement.”

2.17 Many consultees pointed out that the complexity of the rules leads to many mistaken rulings at trials and hence to the unmeritorious quashing of convictions on appeal. For instance, the Council of Her Majesty’s Circuit Judges said that the complexity led to

“mistaken rulings and consequential appeals which have to be allowed no matter how comparatively trivial the mistake.”

2.18 Some consultees agreed that, although the rules are intended to operate for the benefit of the accused, in practice they often operated to his detriment.²⁴ Others—the Judges of the Queen’s Bench Division for example—considered the rules to be too favourable to the accused, in that the judge had to warn the jury that it was *dangerous* to convict on the uncorroborated evidence of the accomplice or, in a sexual case, of the complainant.

2.19 As regards the automatic application of the rules to the evidence of any witness falling within the category of accomplice or of sexual complainant, there was, in contrast to some previous discussions of the subject,²⁵ particularly critical comment on the operation of the rule in the case of complainants in sexual cases. For example, the Judges of the Queen’s Bench Division described the current model direction as “patronising”.²⁶ Such comments reinforced the recent criticism of the rule as applied to complainants in sexual cases to which we had drawn attention in the Working Paper.²⁷ The comparatively few consultees who referred in this connection to accomplice evidence accepted that some accomplices may have the strongest motives for casting the blame on the accused, but pointed out that others may have no motive for lying.

C. OUR CONCLUSION

2.20 We are impressed by the almost unanimous view on consultation that the present obligation to give a corroboration warning should be abolished. We are satisfied that the grounds for that view, which were set out in the Working Paper and amplified by those who commented on that Paper, are well founded.

2.21 Our principal *recommendation* is, therefore, that the present corroboration rules should be abolished. Effect is given to that recommendation by clause 1 of the draft Bill contained in Appendix A to this Report.

2.22 The conclusion that the corroboration rules are wholly unsatisfactory, and ought to be dispensed with, is not, however, the end of the matter. As we have indicated above, we

²⁴ See para. 2.9 above.

²⁵ See paras. 2.11–2.13 above.

²⁶ In the Working Paper (p. 80, n. 1) we also raised, and invited comment on, the question whether the present rules were one reason why victims were unwilling to come forward. Opinion was divided. A number of consultees, including the Crown Prosecution Service, suggested that the rules might so operate; but others expressed a different view, suggesting that most people either have never heard of the rules or, if they have, do not understand them.

²⁷ At para. 4.36.

have also to consider whether the present rules should be replaced, in the two cases of accomplice evidence and the evidence of complainants in sexual cases, by different, but still special, rules. We raised this issue in the Working Paper and received a good deal of comment upon it.

2.23 Our conclusion on this issue is that no such new rules should be created, because (i) the interests of the accused and of a fair trial will be fully and properly protected by the application of the rules and practice that already exist to govern the trial judge's assistance to the jury on matters of evidence; and (ii) the creation of new rules in these, or other particular, cases could have a detrimental effect by reintroducing unnecessary formalism and unjustified categorisation of witnesses. However, these issues demand a full review, to which we turn in the next Part of this Report.

PART III

SHOULD THE CORROBORATION RULES BE REPLACED BY A NEW STATUTORY SCHEME?

A. INTRODUCTION

3.1 We do not underestimate the importance and the seriousness of a recommendation that the corroboration rules should be abolished. The Court of Appeal observed in *Willoughby*¹ that the corroboration rules have evolved from long experience in order to serve the interests of justice. While we respectfully doubt whether the Court was suggesting that the present rules in all their much-criticised detail were necessary to serve that purpose, there is no doubt that the basic origin of the rules is the widely-held belief that the interests of the accused may require certain kinds of evidence to be specially treated.

3.2 It would, therefore, clearly not be enough for us to conclude without further discussion that, because of the manifest difficulties that the *present* corroboration rules cause in practice, the appropriate solution is the abolition of those rules and no more. We have, rather, to go on to consider how the accused will be protected once the rules have been abolished; and, if it is concluded that his protection will be inadequate, to consider what alternatives should be introduced to replace the present rules.

3.3 We have approached this task, as we did in the Working Paper, under two heads. First, we have considered whether, in the event of the corroboration rules being abolished, other rules and practices of the common law will operate to give adequate protection to defendants in cases involving the evidence of accomplices or that of complainants in sexual cases.² Second, we have reviewed possible alternative systems that might be introduced to provide such protection.³ Our conclusion on the first question is that the position of defendants will be fully protected by the general law and practice of criminal trials, and that therefore no new scheme needs to be introduced. However, although for ease of presentation we consider the two questions separately, they are obviously interrelated; and indeed a number of our correspondents urged, on the abolition of the present corroboration rules, the adoption of something resembling the alternative legislative scheme that we sketched out in the Working Paper.⁴ We have had those views well in mind when assessing how, and how adequately, suspect evidence will be handled if the corroboration rules are abolished without replacement.

B. WOULD ABOLITION OF THE CORROBORATION RULES WITHOUT REPLACEMENT LEAVE DEFENDANTS ADEQUATELY PROTECTED?

1. General

3.4 The majority of those who commented on the Working Paper, including a majority of judicial commentators, supported the option there put forward⁵ of abolishing the corroboration rules without replacement. However, other commentators expressed concern at the practical effect of such a change. In particular, the Criminal Bar Association, who were among the minority of commentators who favoured the introduction of a scheme under which the judge would be obliged to give the jury some sort of warning about some categories of evidence, thought a warning to be "an essential safeguard for the defendant", and saw "no reason for altering the present balance in favour of the defendant". We think that we can best address these concerns by considering the present general obligations of a trial judge with regard to doubtful or unreliable evidence, which obligations will remain even if the specific corroboration rules are abolished.

2. The general obligations of a trial judge in directing the jury

3.5 The duty of the judge in summing up the evidence is not merely to remind the jury of the evidence but to use his experience and judgment to assist them to assess and to make sense of it. That duty was clearly stated over a hundred years ago by Sir Fitzjames Stephen,

¹ (1988) 88 Cr App R 91, 96.

² Working Paper, paras. 5.3-5.8.

³ Working Paper, paras. 5.9-5.24.

⁴ Paras. 5.9-5.24.

⁵ Paras. 5.3-5.8.

who emphasised that, contrary to previous practice, the judge's task went beyond merely stating propositions of law to the jury and reading over to them his notes of the evidence.⁶ In the same way, judges more recently have also stressed that a summing up should not consist merely of the judge reciting the evidence without comment on its weight and significance. In *Sparrow*, Lawton LJ, delivering the judgment of the Court of Appeal, explained that—

“The object of a summing up is to help the jury and in our experience a jury is not helped by a colourless reading out of the evidence as recorded by the judge in his notebook. The judge is more than a mere referee who takes no part in the trial save to intervene when a rule of procedure or evidence is broken. He and the jury try the case together and it is his duty to give them the benefit of his knowledge of the law and to advise them in the light of his experience as to the significance of the evidence”⁷

He went on to refer to the judge's duty “always to be fair” and added—

“What is said must depend upon the facts of each case and in some cases the interests of justice call for a stronger comment. The trial judge, who has the feel of the case, is the person who must exercise his discretion in this matter to ensure that a trial is fair. A discretion is not to be fettered by laying down rules and regulations for its exercise”⁸

3.6 Within this basic duty, therefore, the judge has a wide discretion in deciding how to sum up: “every judge must be left to sum up in his own way so long as he does not misdirect the jury in law or fact.”⁹ However, he has a particular duty to put the *defence* case to the jury,¹⁰ a duty that extends even to defences not raised in the accused's own submissions.¹¹ That duty entails, in respect of doubtful prosecution evidence, the use of his judgment as to warning the jury of possible reasons why they should not rely on that evidence, or ways in which they should scrutinise or test it before relying on it. The position was summarised by Lord Ackner in *Spencer*¹² when considering the direction that should be given by a judge in relation to the evidence of certain witnesses outside the corroboration rules.¹³ He explained that the extent to which the judge should refer to material supporting the evidence depended on the facts of each case, but added by way of summary that “The overriding rule is that he must put the defence fairly and adequately.”¹⁴

3.7 This duty of the judge not merely to repeat the evidence but also to make sure that the jury understand the defence case therefore inevitably means that, where items of the prosecution evidence are actually or potentially unreliable or open to criticism, the judge must guide the jury on those matters, provided that he makes clear to them that the final decision on the facts is for them and not for him.

3.8 The primacy of the jury as the tribunal of fact means that the Court of Appeal is reluctant to intervene¹⁵ in matters relating to the treatment of evidence: the court recognises the advantage which a jury has in seeing and hearing the witnesses. However, that Court can and will correct the position where the judge has misdirected the jury (or failed to give a direction where one was required) concerning the credibility of a witness. In *Turnbull*¹⁶ Lord Widgery CJ, giving the judgment of the Court, said that the 1968 Act

“does not authorise us to re-try cases. It is for the jury in each case to decide which witnesses should be believed. On matters of credibility this Court will only interfere in three circumstances: first, if the jury has been misdirected as to how to assess the

⁶ *History of Criminal Law* (1883), Vol. i, at p. 455.

⁷ [1973] 1 WLR 488, 495F–G.

⁸ *Ibid.*, at p. 496C. Lawton LJ was considering the case in which the accused chose not to give evidence; but his comments would seem to be of general application. The judge must however make clear that the *decision* on matters of fact rests with the jury. “As this Court has said on many occasions . . . a judge, when directing a jury, is clearly entitled to express his opinion on the facts of the case, provided that he leaves the issues of fact to the jury to determine.”: *O'Donnell* (1917) 12 Cr App R 219, 221, *per* Lord Reading CJ.

⁹ *Roberts* [1942] 1 All ER 187, 191. “The particular form and style of a summing up, provided it contains what must on any view be certain essential elements, must depend not only upon the particular features of a particular case but also upon the view formed by a judge as to the form and style that will be fair and reasonable and helpful.”: *McGreevy* [1973] 1 WLR 276, 281F–G, *per* Lord Morris (HL).

¹⁰ “There is a principle of our criminal law which we think has been violated in this case—namely, that when a defence, however weak it may be, is raised by a person charged, it should be fairly put before the jury.”: *Dinnick* (1909) 3 Cr App R 77, 79, *per* Lord Alverstone CJ.

¹¹ *Kachikwu* (1968) 52 Cr App R 538.

¹² [1987] AC 128.

¹³ Such cases are further considered in Appendix C to this Report.

¹⁴ [1987] AC 128, 142H.

¹⁵ Under s. 2(1) of the Criminal Appeal Act 1968.

¹⁶ [1977] QB 224, 231D–E.

evidence; secondly, if there has been no direction at all when there should have been one; and thirdly, if on the whole of the evidence the jury must have taken a perverse view of a witness, but this is rare.”

3.9 We conclude that the clear and principal obligation upon the trial judge is to put the defence fairly and adequately to the jury, which obligation includes the making of any comment on the prosecution evidence that fairness demands in the interests of the defendant. Subject to that basic rule, the judge has considerable freedom in directing the jury upon the evidence. However, within that general obligation the Court of Appeal has developed some principles relating to the directions to be given about specific issues, which are virtually rules that bind the judge.

3.10 The corroboration rules themselves, although unsatisfactory in many ways, are an example of the development of such special provisions to deal with what was perceived to be a particular evidential problem. A further example of the development of a special set of rules is to be found in the provisions that now govern cases of witnesses, falling outside the corroboration rules, who are deemed to have “an interest of their own to serve”. In Appendix C to this Report we explain how these, “*Beck*”,¹⁷ provisions, unlike the corroboration rules, have been developed in such a way as not unreasonably to hamper the exercise of the trial judge’s discretion and judgment in the circumstances of the particular case. The *Beck* rules are of importance in the present connection not only because they demonstrate how the courts can develop a set of mandatory rules that are less mechanistic, and therefore less damaging, than the corroboration rules; but also because, as we explain in paragraphs 3.16–3.19 below, we would expect those rules to be applied after the abolition of the corroboration rules to give protection to the accused where the circumstances of the case do give rise to concern about the reliability of evidence given by an accomplice.

3. The effect of abolition of the corroboration rules without replacement

3.11 What, then, in the light of the other rules governing the terms of the summing up, would be the effect of abolishing the corroboration rules without replacement?

3.12 The general rule that the defence must be put fairly and adequately will remain, as will the general control of the Court of Appeal. Witnesses now within the corroboration rules would be treated, as other witnesses already are, on their merits. The Court of Appeal has, and will exercise, the power to quash a conviction where it is satisfied that a direction that the nature of the evidence required has not been given; but given the weight that the Court of Appeal places on the judge’s freedom to sum up as he thinks best, we doubt whether there is any significant danger of unmeritorious appeals directed at the particular words or formulae used by the judge, rather than the overall spirit and effect of his directions.

3.13 We consider, therefore, that the present rules requiring the judge to put the defence fully and fairly to the jury, including if appropriate a critical analysis of the prosecution evidence, will be effective to protect the accused in respect of evidence falling within the present corroboration categories, as it is in other areas of difficulty. We emphasise, however, that the judgment of the judge who actually hears the evidence and can assess its effect and weight in the overall context of the trial is of the greatest importance in determining what, if anything, should be said by him to the jury about that evidence. Whilst the trial judge’s conduct of the trial, and his summing-up of the evidence, should properly remain within the overall control of the Court of Appeal, the corroboration rules themselves stand as a stark warning of the difficulty that is liable to result if it is sought to regulate the judge’s assessment of the evidence by rigid and detailed rules. By contrast, we regard the high degree of responsibility that the general rules described above place on the trial judge as achieving the combination of flexibility and regard for the interests of the defence that is most likely to achieve justice.

3.14 We are fortified in these views by many of the comments that we received on consultation, especially from those with extensive experience of trying criminal cases. A Lord Justice of Appeal explained that—

“In a competent summing up a judge should give appropriate advice as to the reliability of witnesses The appropriate direction will depend on the circumstances of each

¹⁷ See para. 2.2 above.

case and should be tailored to the facts of the case The aim of the summing-up is to be fair and balanced and as such it should reflect the defence criticisms of the quality of the evidence which the judge considers may be justified.”

A Circuit Judge who is an acknowledged expert on the law of criminal evidence commented—

“Judges should be trusted to direct juries appropriately of the dangers in particular cases and juries should be trusted to apply common sense to them. The defendant’s safeguard against conviction on unreliable evidence in these cases (as in others) is to be found in the burden and standard of proof.”

And another experienced Circuit Judge said that—

“The safeguard is that it is the Judge’s duty to sum up the Defence case and the type of danger which might arise is just the point which the Defence is going to make. There is of course the occasional case where the Defence fail to advance its best points, but generally a Judge should and will canvass any obvious problems It is essentially a question of fairness and common sense for which it is impossible to legislate definitively I cannot see why it should not be left to the Judge, subject of course to the overriding supervision of the Court of Appeal”

3.15 It should also be noted that the abolition of the corroboration rules, without the substitution for them of detailed new rules, would not prevent the courts, within the body of general law already referred to, from developing new principles for the guidance of trial judges in relation to particular kinds of witness. With the example of the difficulty caused by the present rigid corroboration rules in mind, the courts are likely to be slow to place obligations of that detailed and mandatory nature on trial judges, but some more general guidance may be developed.

3.16 We can illustrate these latter possibilities by reference to the existing *Beck* line of authority. We have set out this line of authority in some detail in Appendix C to this Report, and conclude there that the present effect of the guidance given by the Court of Appeal (and endorsed by the House of Lords¹⁸) is that the judge should give the jury a warning, in terms to be decided by him, about the evidence of any witness who could incur liability for an offence in connection with the matters at issue in the case being tried. The rule is sometimes expressed as extending to *any* witness “with a purpose of his own to serve”, but that generalisation and extension has not yet been specifically confirmed by authority.¹⁹

3.17 The abolition of the corroboration rules would not affect the *Beck* rule, because that rule does not depend on, and is not formulated in terms of, corroboration; nor would it affect or inhibit any further judicial development of the *Beck* line of authority. It may be instructive, however, to consider how, after the abolition of the corroboration rules, that line of authority would be applied, as a special example of the general rules governing the judge’s summing up, to evidence given for the prosecution by accomplices. The question will directly arise where the accomplice may himself be in danger of conviction, and probably also in any other case where he is identified as having any “interest” in giving false evidence; though it should be noted that, even outside those categories, the judge remains under a duty to put to the jury any other ground on which they should reasonably be wary of the accomplice’s evidence.

3.18 It should be borne in mind that freed from the automatic obligation to give a (corroboration) warning in every accomplice case, judges will form the view in some cases that no warning of *any* kind is needed—

“The reason for the [corroboration] rule is supposed to be the danger that the accomplice may be giving false evidence against the accused in order to minimize his own part in the offence or out of spite against the accused. But although it is clearly right that the attention of the jury should be drawn to these possibilities, if they exist, there are many cases where there is no such possibility. For example, it may be obvious that an accomplice has no ill-feeling against the accused, and he may be repentant and clearly trying to tell the truth about his own part. There may also be many other cases

¹⁸ In *Spencer* [1987] AC 128.

¹⁹ The affirmative answer given by the House of Lords to the certified question in *Spencer* [1987] AC 128 may, however, have extended the ambit of the rule: see Appendix C, paras. 11–13.

where, in the circumstances, there can be no doubt but that the accomplice's evidence may be wholly reliable . . ."²⁰

In such cases it is very unlikely that the application of the *Beck* rule will arise since, in view of the terms of that rule as explained in paragraph 3.16 above, such a witness is unlikely to be a person falling within the description of those to whom that rule applies.

3.19 However, in accomplice cases other than those referred to in the previous paragraph we have little doubt that trial judges would adopt an approach similar to that of the *Beck* rule; and that if judges did not, the Court of Appeal would require them to do so, under the jurisdiction mentioned in paragraph 3.8 above. Judges will continue, after abolition of the corroboration rules, to have an "overriding obligation" to put the defence fairly and adequately to the jury;²¹ and to give no warning about the evidence of an accomplice whom the judge considers to have an actual or possible interest of his own to serve would be a patent failure to comply with that obligation. Therefore, whether by direct application of the *Beck* rule (or of an analogous principle), or by application of the more general obligations binding the judge, we have little doubt that the Court of Appeal would hold that the judges were required to give a warning in relation to the evidence of any accomplice, whether or not a prosecution witness, whose testimony is suspect in the particular case because of his possible interest in giving evidence adverse to the accused.

C. A SUGGESTED STATUTORY SCHEME FOR THE PRESENT CORROBORATION CATEGORIES

3.20 In order further to test the implications of the abolition of the present corroboration rules, the Working Paper²² canvassed a possible scheme to replace those rules, based on proposals made by the Australian Law Reform Commission (the "ALRC"). Under those proposals, the judge would be required at the request of a party to warn the jury that certain categories of evidence might be unreliable, unless there were "good reasons for not doing so".²³

3.21 The categories of evidence to which we suggested in the Working Paper that such a scheme might apply were—

- "(a) evidence the reliability of which may be affected by age, ill-health (whether physical or mental), injury or the like;
- "(b) in the case of a prosecution for an offence of a sexual nature, evidence given by the victim of the alleged offence;
- "(c) evidence by any person who has given material assistance or encouragement to the accused in the commission of the offence charged or of any other offence adduced in evidence against him;
- "(d) evidence in respect of which there is material to suggest that it may be tainted by an improper motive."²⁴

3.22 Our overall conclusion, shared by the majority of those commenting on the Working Paper, is that (even apart from the corroboration rules) the present law is sufficient to meet any particular requirements of evidence falling within the present corroboration categories. On that basis, therefore, the issue of introducing a new special regime for the latter cases strictly speaking does not arise. However, although a majority of commentators, including a majority of judges, opposed the introduction of any such scheme, it attracted support from a substantial minority. We need, therefore, to review the arguments in favour of such a scheme: both as a check on our overall conclusion, set out above; and in order to see whether, in addition to the reasons that have led us to that conclusion, there would be positive objections to the replacement of the present corroboration rules by some such new scheme.

3.23 The reasons given for supporting a system such as that canvassed in the Working Paper were, first, the need to provide some guidance for judges, particularly those who were

²⁰ CLRC, Eleventh Report (1972), Cmnd. 4991, pp. 110–111, para. 183. The matter is referred to in the Working Paper, paras. 4.27–4.29.

²¹ See para. 3.6 above.

²² Paras. 5.9–5.24.

²³ Further details of the ALRC proposals appear at para. 5.10 of the Working Paper. No jurisdiction has yet implemented the ALRC proposals, but the substance of them is contained in the New South Wales Evidence Bill 1991.

²⁴ Working Paper, para. 5.20. (Footnotes omitted.)

inexperienced or part-time, on how to deal with potentially unreliable testimony; second, the need for uniform treatment of similar cases; and third, the need to ensure that the accused's interests are properly protected. We acknowledge the force of all these arguments, but we have concluded that any benefits of such a scheme are outweighed by two particular objections to it.

3.24 First, the cases in which a need for a special warning may arise are too numerous and varied to be listed with any precision, even if it were otherwise desirable to approach the problem of suspect evidence in this way. If the categories can thus only be identified in very broad and vague terms, the main objective of the scheme, of giving specific and uniform guidance to judges, is stultified. That view was borne out on consultation, when the main criticisms of such a system centred on the problem of identifying the categories of evidence or witness to which the system should apply. That objection was given further force by the great variety of views concerning what categories should be included that were expressed by those who supported the ALRC system; and by the fact that others who were attracted to such a system nevertheless doubted whether categories could be laid down by legislation at all.

3.25 A typical comment on the difficulty of definition that might arise from a category-based scheme is that made in *Spencer*,²⁵ where nurses were charged with ill-treating patients at Rampton Hospital. Lord Ackner said—

“... patients in hospital under the Mental Health Acts are not in a category like accomplices or complainants in sexual cases or young children. To create from them such a new category would clearly involve considerable problems of definition. What sort of patients, and patients with what sort of criminal records, are to be included?”

3.26 We also fear that, however it was expressed in legislation, any scheme resembling that of the ALRC would be liable to give rise to unmeritorious arguments about whether or not a case fell within the listed categories and thus to appeals that focused on verbal issues of definition rather than on the substantial question of whether the defence had been properly and fairly explained to the jury. The need to avoid such formalism, which is one of the main defects of the present law, was stressed in our discussions with judges.²⁶ We consider that the danger of argument focusing on verbal definition, rather than on the merits of the case, would however be much reduced if, instead of a legislative scheme, the courts had to apply in the present corroboration cases the general rules governing the trial that we expound in paragraphs 3.5–3.11 above.

3.27 There is however a second, more fundamental, reason why the Commission rejects the ALRC's approach. We believe that to approach the problem of unreliable witnesses in terms of *categories* of evidence would be mistaken in principle. A major criticism of the corroboration rules is, precisely, that it is wrong automatically to adopt a similar approach, irrespective of the circumstances, to the evidence of every witness within a particular category.²⁷ In this particular respect we see no significant difference between the present corroboration rules, which require evidence to be placed in a category as a precursor to a mandatory warning; and the ALRC scheme, which requires the judge to consider whether evidence falls into one of a number of categories that potentially demand a warning, even though it allows him, for “good reasons”, not to give one. We agree with Ms D. J. Birch's comment²⁸ that—

“... the [ALRC] proposal is objectionable because it encourages judges to think in categories instead of applying their common sense to the case in hand: in other words it fosters the very type of thinking from which history tells us we would do better to make a clean break.”²⁹

²⁵ [1987] AC 128, 141B.

²⁶ See para. 1.11 above.

²⁷ See in particular paras. 4.11–4.14 and 4.26–4.33 of the Working Paper.

²⁸ “Corroboration in Criminal Trials: a Review of the Proposals of the Law Commission's Working Paper”, [1990] Crim LR 667, at p. 686.

²⁹ Ms Birch went on to cite “the wise words” of Dixon J in the Canadian case of *Vetrovec* (1982) 136 DLR (3d) 89, 106—

“All this takes one back to the beginning and that is the search for the impossible: a rule which embodies and codifies common sense in the realm of the process of determining the guilt or innocence of an accused on the basis of a record which includes evidence from potentially unreliable sources such as an accomplice.”

Vetrovec was reviewed in paras. 2.9–2.11 of Appendix B to the Working Paper.

In similar vein, a Circuit Judge suggested to us that the ALRC proposals were no more than “an attempt to formalise the Judge’s inherent task of achieving fairness”.

3.28 These objections persuade us that a scheme of new rules to replace the present corroboration rules not only is unnecessary but also would be likely to have a positively detrimental effect, by impeding, or at least making over-elaborate and over-technical, the trial judge’s task of deciding, in the context of the actual trial, how the principles of fairness and common sense require the evidence given at the trial to be handled in his summing-up to the jury.

D. CONCLUSION

3.29 We therefore conclude, and *recommend*, that the present corroboration rules should be abolished without replacement.

PART IV

OTHER ISSUES

A. ARE THERE CASES IN WHICH JUDGES SHOULD BE PROHIBITED FROM GIVING A WARNING?

4.1 Question 7 in the Working Paper asked—

“Are there any categories of evidence as to which judges should be forbidden by statute to give any warning, or where warnings in certain terms should be forbidden?”¹

The question was prompted by criticisms that had been made of the present corroboration rules in relation to the evidence of female complainants in sexual cases.² The question was, however, formulated in general terms; and it asked not only to what type of case such a prohibition should apply but also what *kind* of warning should be prohibited.

4.2 On consultation, a large proportion of consultees opposed the introduction of any prohibition. They included the judges of the Queen’s Bench Division (unanimously), all the judges of the Central Criminal Court whom we consulted, and all the individual judges who replied specifically to the question. In the comparatively few instances where judges gave reasons for their answer, concern was expressed that a prohibition would (or might), fetter the judge’s freedom to make a comment that he considered necessary on the specific evidence in a particular case. That concern was also expressed by The Law Society; the Crown Prosecution Service; the Criminal Bar Association; and in the informal discussions with groups of judges at seminars organised by the Judicial Studies Board.

4.3 Although the Working Paper was sent to groups which might have been expected to be sympathetic to a prohibition, only the Society of Public Teachers of Law and Ms D. J. Birch replied expressing interest in such a course, and both did so tentatively and in general terms. The SPTL indicated the existence of “some support [on their Criminal Law Reform Sub-Committee] for legislative provision modelled on the recent New Zealand enactment”. According to that provision (which was set out in the Working Paper³)—

“The Judge shall not instruct the jury on the need to scrutinise the evidence of young children generally with special care nor suggest to the jury that young children generally have tendencies to invention or distortion.

“[This does not] limit the discretion of the Judge to comment on . . . specific matters raised in any evidence during the trial.”⁴

The SPTL saw this as “a possible way of modifying entrenched attitudes, while allowing for necessary comment in individual cases”. Similarly, Ms Birch suggested⁵ that the New Zealand provision, “suitably adapted for sexual cases, would convey the message that generalisations are unacceptable without putting all complainants in a special class of witnesses who may not be criticised”.

4.4 Notwithstanding commentators’ general lack of support for (or specific opposition to) a prohibition, we have given further serious consideration to the issue, bearing in mind the concern expressed, albeit not on consultation, about the effect and propriety of formulas that have traditionally been used by judges in commenting on the evidence of complainants in sexual cases.⁶ We have concluded that there should be no provision prohibiting judicial comment by trial judges in relation to certain types of evidence, or in certain terms. Our reasons are as follows.

4.5 This issue was included in the Working Paper largely because of a fear that even though the *obligation* to give a corroboration warning in the present terms were to be abolished, judges would nonetheless continue to use formulas that are seen as insulting to women, or to complainants in sexual cases.⁷ Our experience during the consultation process led us strongly to doubt whether that fear is in any way well founded. Quite apart from the

¹ p. 83, para. 6.4. The matter is considered at paras. 5.25–5.29 of the Working Paper.

² Working Paper, para. 5.25.

³ p. 78, n. 26.

⁴ Sect. 23(H)(c) and (d) of the Evidence Act 1908, inserted by the Evidence Amendment Act 1989, s. 3. The provision came into force on 1 January 1990.

⁵ [1990] Crim LR 667, at p. 682.

⁶ See Working Paper, paras. 4.36–4.37 and 5.27.

⁷ See Working Paper, para. 5.27.

disapproval of the present form of mandatory warning expressed in the formal consultation, many judges in the informal meetings referred to in paragraph 1.11 above emphasised their dislike of and embarrassment at the use of the standard direction in sexual cases. We are confident that these attitudes will prevail generally when judges are freed from the obligation to give the present mandatory direction.

4.6 Moreover, as was stressed on consultation, even if such a prohibition were otherwise desirable it would be extremely difficult to express it in legislative terms that did not produce unintended disadvantages. To achieve its objective, the prohibition would have to be in stringent terms, which might have a more general effect of preventing the judge from making statements that the interests of justice demanded for the protection of the accused. At the very least, in some cases the judge might experience difficulty in determining whether or not the legislation, however drafted, prevented him from making a comment that he thought should be made in relation to the evidence of a particular witness. It should also be noted that there is an essential difference between the New Zealand provision referred to in paragraph 4.3 above and a prohibition in sexual cases relating to women and complainants. The New Zealand rule applies to a category of *witness*, consisting of "young children", and is therefore defined and limited by reference to inherent personal characteristics; but a prohibition relating to comments about complainants in sexual cases would be applied by reference to the nature of the offence. We see particular difficulty in formulating a provision limiting the judge's freedom by reference to a particular type of *case* which did not exclude comment that at present he would wish to, and should, make.

4.7 The introduction of a statutory prohibition against judges making generalisations concerning any kind of witness would be a novelty in English criminal procedure; it would run contrary to the principle on which our recommendations are based, that judges are best left free to comment on particular evidence in the way that their experience and judgment suggests will most fairly and effectively assist the jury; it would almost certainly give rise to great difficulties of interpretation; and it might in some cases act unfairly and detrimentally to the accused. We do not recommend the introduction of such a prohibition.

B. THE EFFECT OF ABOLITION ON THE PRESENT TECHNICAL RULES AS TO THE NATURE OF CORROBORATION

4.8 The present law of corroboration, which is summarised in Appendix B to this Report, comprises not only the rules obliging the judge to give the "corroboration warning" in certain cases, but also rules about what the content of that warning must be. As indicated in paragraph 2.9 of Appendix B, the judge must warn the jury that it would be dangerous to convict on the evidence of a witness falling within one of the corroboration categories unless that evidence is "corroborated". Unlike the position under the *Beck* rule,⁸ the judge is constrained as to the content of this corroboration warning and, as part and parcel of the standardised warning that the rules require, he must go on and direct the jury as to what, if any, of the evidence is *capable* of constituting such corroboration; whilst telling them that the decision as to whether the evidence is in fact corroborative is for them.⁹

4.9 "Corroboration" in ordinary usage would seem to mean no more than "confirmation". But in its use in law in relation to the corroboration rules the word has a distinct technical meaning, of independent evidence which implicates the accused in the offence charged in a material particular.¹⁰ That definition excludes from the area of what evidence counts as corroborative for the purpose of the corroboration rules much evidence that would, on the normal meaning of the word, be regarded as confirmatory.¹¹ That is why the judge is obliged to direct the jury as to what evidence is capable of being corroborative in

⁸ See Appendix C to this Report.

⁹ See Appendix B to this Report, para. 2.28.

¹⁰ May, *Criminal Evidence*, 2nd ed. (1990), para. 12-02; "Evidence in corroboration . . . must be evidence which implicates him, that is, which confirms in some material particular not only that the crime has been committed but also that the prisoner committed it": *Baskerville* [1916] 2 KB 658, 667.

¹¹ For instance, there is no doubt that the first item of evidence in *Birkett* (1839) 8 Car & P 732, cited in para. 2.20 of Appendix B, was corroborative in the general sense of being confirmatory; but it was not corroboration in law.

law; that is why that part of his task is regarded as being particularly technical and difficult to discharge.¹²

4.10 These rules as to what evidence can constitute "corroboration" are thus not part of the general law, but apply only to determine the content of the corroboration warning required by the present corroboration rules. It might therefore seem self-evident that with the abolition of the requirement to give the corroboration warning by clause 1(1) of the draft Bill annexed to this Report the rules as to what is "corroboration" will cease to have effect. We are indeed confident that that is the effect of this Bill, as it was of the similar formulation in section 34(2) of the Criminal Justice Act 1988¹³ that abolished the requirement of a corroboration warning in the case of children's evidence; but the issue demands a little more discussion since this point, or something cognate to it, did cause some initial difficulty after legislation in respect of corroboration warnings had been introduced in the Australian State of Victoria.

4.11 The issue can only arise if, after the abolition of the *requirement* to give a corroboration warning, the judge, in the exercise of his discretion as to how to direct the jury, gave them what was intended to be, or could be interpreted as being, a corroboration warning in the old sense; or, even, simply spoke of "corroboration" in the technical sense of the word. Then, it might be said, the judge would have attracted all the old rules as to "corroboration", and thus, for instance, irrespective of the circumstances of the particular case, it would automatically be a misdirection for him to suggest that the evidence of one accomplice is capable of corroborating that of another accomplice.¹⁴ Even on this view however, those rules would bind him only if, in the exercise of his discretion, he chose to direct the jury in a particular way; and it might be difficult to know, in any particular case, whether his direction did in fact address "corroboration" in the technical sense.

4.12 The true position, however, is that, even if the judge invoked corroboration, that would not result, in any case, in his continuing to be bound by the rules as to what is corroboration. With the abolition of the obligation to give a corroboration warning, the rules as to what is capable of being corroboration in law will simply have no standing, no grounding and no purpose,¹⁵ because those rules have been developed for the precise and only purpose of, and solely and only in the context of, deciding what counts as "corroboration" in order to fulfil the requirements of that warning, and the obligations that the form of that warning places on the jury. With the abolition of the obligation to give the corroboration warning, the rules as to the content of that warning simply fall away. The principal such rule is the rule as to what constitutes "corroboration".

4.13 Following abolition of the requirement to give the *corroboration* warning the judge would be free, in the exercise of his general discretion, not only to warn in the strongest terms, but also to make use of any of the concepts and distinctions now embodied in the rules as to what is corroborative. He will, however, have to be careful that the use of such concepts and their application to the particular evidence in the case does not give the jury a distorted or misleading account of the evidence. For that reason, he may wish to be cautious about talking about the "corroboration" of one piece of evidence by another, rather than about the way in which the evidence generally does or does not fit together, since it would (for instance) be a misdirection if the jury were given the impression, prejudicial to the interests of the accused, that evidence that was "corroborative" in the former strict sense continued to have some special legal effect, or should be treated by the jury in some special way.

4.14 These considerations can be demonstrated by the way in which the effects of the

¹² See for instance the observations of May LJ in *Spencer* [1985] QB 771 at p. 786A-B, cited in para. 2.8 above.

¹³ See n. 16, para. 2.9, Appendix B to this Report.

¹⁴ Contrary to the present rule referred to in para. 2.22 of Appendix B to this Report.

¹⁵ It is not *quite* correct to say that rules as to what is capable of being corroborative will have *no* context, since after the passage of our Bill there will remain the special case of perjury, where the requirement that there must be the evidence of more than one witness under s. 13 of the Perjury Act 1911 has been judicially interpreted as generating the technicalities of the law of corroboration: see paras. 3.8-3.9 of the Working Paper. However, to attract the rules from their existence in connection with perjury to other cases (whether or not those cases were limited to accomplice and complainant evidence) would require it to be assumed that "corroboration" in the latter cases continued to have its former meaning of, put broadly, evidence that discharges special requirements of confirmation imposed by law. That will however no longer be the case in any branch of the law apart from perjury.

abolition of a requirement to give a corroboration warning in one particular class of case have been worked out in jurisdictions in Australia.

4.15 In Victoria, legislation enacted in 1980¹⁶ abolished the requirement to give the corroboration warning in respect of the evidence of complainants in sexual cases, but left untouched the obligation to give the corroboration warning in accomplice cases. The provision was tested in *Kehagias*,¹⁷ a case in which three defendants were convicted of the rape and attempted rape of two girls. The judge gave a warning containing some features of the old corroboration warning, and then went on to tell the jury that the evidence of the two girls could constitute mutual corroboration. By a majority of 2-1, the Court of Criminal Appeal held that the convictions could not stand because, having chosen to give what could be analysed as a corroboration warning, the judge had not complied with the rules, at least as they applied in that jurisdiction, governing what evidence might and might not be treated by the jury as corroborative.¹⁸ In particular, he had erred in directing the jury that the evidence of the two complainants could be mutually corroborative.¹⁹

4.16 Insofar as the majority in *Kehagias* determined that the trial judge had been *bound* by a rule that complainants could not corroborate each other, they were in our respectful view mistaken, for the reasons indicated above. In subsequent decisions²⁰ in Victoria the Court of Criminal Appeal and the Supreme Court, while not refusing to follow the majority in *Kehagias*, have emphasised both the freedom of the trial judge from any rules and his obligation not (as may have occurred in *Kehagias*) to use concepts such as that of corroboration in a way that may confuse the jury. As we have suggested in paragraph 4.13 above, this latter consideration is likely to be in the minds of English judges when directing juries after the obligation to talk about corroboration has been abolished.

4.17 Another Australian jurisdiction, South Australia, has taken a fresh look at the question, again in the context of legislation that abolished the obligation to give the corroboration warning in sexual offence cases, but not otherwise. The majority view in *Kehagias* has been consciously departed from, although Victorian precedent is usually highly persuasive in South Australia. In *Pahuja*²¹ the Court of Criminal Appeal held that abolition of the *requirement* to give the corroboration warning had resulted in the falling of the associated rules in sexual cases.²² Following that abolition, a judge who cautioned or warned the jury as to their approach to the evidence of a complainant in a sexual case would do so as part of his general duty to provide guidance to the jury as to the evidence and the facts. He was therefore now free to frame the caution or warning in such terms as he saw fit,

¹⁶ Section 62(3) of the Crimes Act 1958, introduced by the Crimes (Sexual Offences) Act 1980, provides: "Where a person is accused of a sexual offence, no rule of law or practice shall require the judge before whom the accused is tried to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the person with or upon whom the offence is alleged to have been committed"

¹⁷ [1985] VR 107 (Supreme Court of Victoria).

¹⁸ The majority judges, Starke and Hampel JJ, explained (at pp. 112-113)—

"[The legislation] does not have the effect of changing the law in relation to corroboration. It merely dispenses with the requirement for such a direction in a specific class of case leaving the judge a discretion to give the warning in an appropriate case In many cases . . . , despite the dispensation in [the legislation] it may be desirable to give the jury the appropriate warning as to acting on the uncorroborated evidence of the prosecutrix and then to explain what evidence is capable of amounting to corroboration. The rules as to corroboration are essentially based on common sense and experience and in our view if they are to be stated to the jury at all they must be stated correctly and in accordance with settled principles as to what corroboration is and what evidence is capable of amounting to corroboration."

A radically different approach was adopted by Murphy J, the dissenting judge, who said (at p. 128):

" . . . as the law now stands . . . the need to warn is not required of a judge. It would appear to me to follow that unless the credible evidence of one complainant is not capable as a matter of logic of lending support to the credible evidence of another complainant, . . . a statement in a charge that it is so capable could not constitute a misdirection in law or support a submission that there had been a miscarriage of justice."

¹⁹ Murphy J doubted without deciding whether, before the abolition of the requirement to give the warning, there had in fact been in the state of Victoria any rule that the evidence of two complainants in a sexual case could not be mutually corroborative. Two of the judges in the subsequent case of *Rosemeyer* [1985] VR 945 (Supreme Court of Victoria) took the view that there had been no such rule.

²⁰ *Rosemeyer* [1985] VR 945 (Supreme Court); *B* [1987] VR 276 (Supreme Court); *Williams* [1987] 26 A Crim R 193 (Court of Criminal Appeal).

²¹ [1987] 30 A Crim R 118.

²² "I cannot subscribe to the notion that, following abolition of the obligation to give a corroboration warning, there remains a residue of the rule to the effect that if the warning is embarked upon it must be given in the old terms, including the term 'corroboration' which must be defined and ruled upon in the same way": [1987] 30 A Crim R 118, at p. 124, *per King CJ*.

but must not convey the impression that the warning was given as a matter of law, nor that the jury was not free to reject his approach to the evidence.

4.18 It is to be noted that the provisions under construction in *Kehagias* and the other Australian cases merely withdrew one category of case, that of sexual complainants, from a continuing system of mandatory warnings.²³ The background therefore differed from that which will obtain under our Bill, when the whole of the system of mandatory warnings will have been destroyed. Murphy J and the Court of Criminal Appeal of South Australia were however quite clear that even when the requirement to give the warning had been removed in only some cases, in respect of those cases where the requirement had been removed the associated rules fell with it. That approach, and in particular the analysis of the Court of Criminal Appeal in South Australia in the latest case, fortifies us in our conclusion that clause 1 of the Bill in Appendix A to this Report, abolishing as it does the requirement to warn in both the remaining cases under the common law corroboration rules, will have the result of also abrogating in both of those cases the rules as to what constitutes "corroboration".

C. PROCEDURE: DISCUSSION BETWEEN JUDGE AND COUNSEL

4.19 In Part III above we considered, and rejected, the introduction of rules requiring a warning to be given in relation to certain specified categories of evidence, broadly along lines proposed by the Australian Law Reform Commission. However, there is a purely procedural aspect of the ALRC's proposals. In relation to certain categories of evidence, they provide—

- "(2) Where there is a jury and a party so requests, the Judge shall, unless there are good reasons for not doing so—
- (a) warn the jury that the evidence may be unreliable;
 - (b) inform the jury of the matters that may cause it to be unreliable; and
 - (c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it."

4.20 In the Working Paper²⁴ we cited this part of the ALRC proposals, and suggested that it was for consideration

"whether it might be valuable to oblige the court to require submissions, albeit in some cases of a very brief nature, in all cases that fell within the specified categories. An obligation to discuss with counsel the evidential implications of certain categories of testimony, without however binding the judge as to how that evidence shall be handled, may be a valuable way of retaining the trial judge's discretion whilst ensuring that the problems of particular types of evidence are not overlooked; and of ensuring that the judge's exercise of that discretion is properly considered at the trial and, so far as possible, agreed."

4.21 We also referred in the Working Paper²⁵ to *Ensor*,²⁶ a case concerning the present corroboration rules, in which no submissions at the trial were made or invited on the matters that subsequently formed the subject of appeal. Lord Lane CJ, delivering the judgment of the Court of Appeal, observed that—

"... the judge would have been assisted by submissions from counsel, in the course of which there would have been explored... both aspects of the matter, namely, (i) what were the ingredients of the offences in respect of which the jury should be told to look for corroboration and (ii) what evidence was there capable of amounting to corroboration. In almost all cases where a direction on corroboration is required, it is desirable that the judge should, at the conclusion of the evidence, hear submissions from counsel—they will often be very brief—on these two important matters. If this practice is followed, the sort of problems exemplified by the present appeal will usually be avoided."

²³ "[The legislation] does not have the effect of changing the law in relation to corroboration. It merely dispenses with the requirement for such a direction in a specific class of case...": *Kehagias* [1985] VR 107, at p. 112.

²⁴ para. 5.10.

²⁵ n. 11, para. 5.12.

²⁶ [1989] 1 WLR 497, 505G–506A.

4.22 On consultation, the Criminal Bar Association and some of the Judges of the Central Criminal Court favoured the introduction of a procedural rule under which the judge would discuss at the end of evidence (and in the absence of the jury) the nature of the summing up and the problems to be dealt with in it. The Criminal Bar Association thought that the judge should be under a *duty* to consider submissions on the matter, thus helping to identify the relevant issues and ensure “that the approach of counsel in their speeches coincides with the way in which the judge intends to sum up”. The Judges of the Queen’s Bench Division, though they did not think that there should be an obligation in this respect, suggested that “there would be ample opportunity for the judge to discuss [the question whether a warning should be given] in open court in the absence of the jury at the end of the evidence (or at any other stage) and in many cases the appropriate direction may well be agreed.”

4.23 Views were also expressed in a contrary sense. One circuit Judge, while seeing some “attraction in the proposal for a mandatory discussion with counsel after the close of the evidence”, foresaw “a similar sort of formality and the encouragement to a new ritual coming in by the back door”. He added—

“It is always open to the judge to ask for counsel’s submissions on particular aspects of his summing-up and indeed for counsel to make them unbidden. This works well enough in non-corroboration cases now.”

4.24 Having considered all these observations, we venture to think that there would be great advantage, not merely in the present corroboration cases, but in all cases that present points of any difficulty or controversy, for there to be at least a brief review between judge and counsel of the issues and of the form of the summing up, in the absence of the jury. An opportunity would thereby be provided to ensure that relevant issues were not inadvertently overlooked, and for the judge to indicate, and (as the Queen’s Bench Judges suggested to us) often achieve agreement with counsel on, the broad terms of his summing up on potentially contentious issues. We attach particular importance to the usefulness of such a discussion in avoiding unnecessary errors or alleged errors in summing up, and thus in avoiding unnecessary appeals. We also consider that the discussion should take place at the conclusion of the evidence, that is, before closing speeches by counsel, so that they have the benefit when making those speeches of knowing how the judge intends to sum up on such issues.

4.25 The procedure proposed would be a generalisation of the approach urged by the Lord Chief Justice in *Ensor*.²⁷ Since, however, this is essentially a matter of procedure, the details of which are best determined by those experienced in such procedure, we consider that, if this view commands general acceptance, it would be best implemented by means of a Practice Direction. It is not in our view a suitable subject for legislation, and thus it does not feature in the draft Bill contained in Appendix A to this Report.

4.26 The details of the Practice Direction will of course be for those responsible for drawing it up, but we venture to offer two observations about the proposed procedure, both of which flow from the basic purpose of that procedure as a simple and uncomplicated means of assisting courts to implement the present law.

4.27 First, we do not view the Practice Direction as a means of reintroducing any form of the categorisation of witnesses against which we have warned elsewhere in this Report, and we would be concerned if any such practice developed as a result of discussion between judge and counsel. As we have indicated, we hope that this procedure can be introduced generally: it should be used not simply in cases that fall into the present corroboration categories, but in any case in which there are difficulties about particular witnesses. To that extent our proposal is broader than the one set out in paragraph 4.20 above that we originally made in the Working Paper. In the discussion the judge would, we expect, indicate that he was guided by the general rules that we have expounded in Part III of this Report. If counsel sought to suggest that, irrespective of the actual nature of his evidence, a witness falling into a particular category must necessarily be the subject of a special direction, we would expect the judge to resist that suggestion, and the Court of Appeal (subject of course to its general review of the summing-up) to support him in that attitude.

²⁷ [1989] 1 WLR 497, 505G–506A; see para. 4.21 above.

4.28 Second, we would expect judges to take the initiative in holding such a discussion, and not be limited to cases in which counsel proposed it. The discussion, after all, is intended to assist the judge in properly performing his duty of summing up, and it should be for him, not counsel, to decide whether it should take place. At the same time, however, we doubt if it would be necessary or suitable to provide that such a discussion should take place in every case. Many cases are tried in the Crown Court that raise only straightforward issues of credibility, without any complicating factors. In many such cases the judge's summing-up will be very simple, and it would be supererogatory to require him to precede it with a discussion of the type that we favour.

4.29 In our view, therefore, it would be beneficial if it were provided that, in any case that involved issues of fact or the credibility of evidence that needed or might need special treatment in the summing-up, the judge should before final speeches discuss those issues with counsel in the absence of the jury. The purpose of that discussion would be if possible to agree the terms of the summing-up, and if not so possible at least to clarify, and assist the judge on, the points of disagreement. The discussion would not be intended to be elaborate and should not in any event be used as an excuse for the introduction by counsel of arguments or submissions that are not warranted by the present law.

4.30 We think that it would be appropriate for such a scheme to be introduced by Practice Direction, and we so *recommend*.

D. TRIALS IN MAGISTRATES' COURTS

4.31 It is generally accepted that the corroboration rules extend to summary trials: in relation to evidence within a category to which the rules apply, "the magistrates must direct themselves in the same way as juries are directed".²⁸

4.32 We intended that our provisional proposal in the Working Paper for the abolition of the corroboration rules should extend to evidence in summary trials: we cited there²⁹ a suggestion³⁰ that it was

"somewhat odd to require a magistrate to reason as follows on a charge of indecent assault brought by a respectable middle-aged female: 'I believe her evidence, but I must think twice before acting upon it because sex is a mysterious thing', whereas, on a charge for assault brought by a man with numerous convictions for violence, the magistrate can simply say to himself 'I believe his evidence and I need not think twice about acting upon it because there is no particular danger that charges of violence will be made on account of neurosis, jealousy, fantasy or spite'."

4.33 It would be anomalous, in our view, to exclude trials without a jury from the scope of our recommendation for the abolition of the corroboration rules.³¹ We have accordingly concluded that those rules should be abolished in relation to trials in a magistrates' court; and we so *recommend*.

4.34 One matter remains. Section 34(2) of the Criminal Justice Act 1988 abolished the corroboration rules in their application to the sworn evidence of a child (unless the child was a complainant in a sexual case or an accomplice). The subsection is expressed, however, to apply "to a trial on indictment". It is likely that this provision has the effect of abrogating the corresponding requirement in summary trials. In our view, however, it would be desirable to place the matter beyond doubt by means of legislation, the effect of which would be to make clear that no corroboration rule remained applicable to trials in a magistrates' court. We accordingly *recommend* that the effect of section 34(2) of the 1988 Act should be extended to such trials. These matters are dealt with by clause 1(3) of the Bill in Appendix A to this Report.

²⁸ May, *Criminal Evidence*, 2nd ed. (1990), para. 12-01. In *Lawson v. Lawson* [1955] 1 WLR 200 (CA) (an appeal from the decision of magistrates in a matrimonial case) Lord Goddard CJ, who (at pp. 202-203) expounded the corroboration rules in relation to trials on indictment, assumed that justices should direct themselves in terms corresponding to the corroboration rules; and Hodson LJ (at p. 206) cited with approval a reference by Lord Merriman P in the Divisional Court to the "warning which a court must give to itself in these matters".

²⁹ Working Paper, para. 4.22.

³⁰ *Cross on Evidence*, 7th ed. (1990), p. 295.

³¹ The Justices' Clerks' Society was one of the small number of commentators who, on consultation, favoured retaining the corroboration rules; but their support for those rules was not limited to summary trials.

E. THE CORROBORATION REQUIREMENTS UNDER THE SEXUAL OFFENCES ACT 1956

4.35 A person charged with procuring a woman by threats, intimidation, false pretences or false representations to have unlawful sexual intercourse;³² with administering drugs in order to obtain or facilitate such intercourse;³³ with procuring a woman to become a prostitute;³⁴ or with procuring a girl under the age of twenty-one to have unlawful intercourse anywhere in the world,³⁵ cannot be convicted "on the evidence of one witness only, unless the witness is corroborated in some material particular by evidence implicating the accused".³⁶

4.36 As we explained in the Working Paper,³⁷ the considerations relating to the common law corroboration rules apply substantially to the instant requirements as well.³⁸ In particular, similar rules determine what evidence is and is not capable of providing corroboration.³⁹

4.37 In the Working Paper⁴⁰ we provisionally proposed the abolition of the corroboration requirements laid down in the 1956 Act. On consultation there was general support for this proposal. We accordingly *recommend* that sections 2(2), 3(2), 4(2), 22(2) and 23(2) of the Sexual Offences Act 1956 should be repealed.

³² Sexual Offences Act 1956, ss. 2 and 3.

³³ *Ibid.*, s. 4.

³⁴ *Ibid.*, s. 22.

³⁵ *Ibid.*, s. 23.

³⁶ Subsect. (2) of each section. A similar rule applies to an attempt to commit any of these offences: Criminal Attempts Act 1981, s. 2(1) and (2)(g).

³⁷ Para. 4.4.

³⁸ However, in trials for the specified offences under the 1956 Act the judge is under an obligation not merely to *warn* the jury of the danger of convicting in the absence of corroboration; he must *direct* an acquittal, even if the jury believe the evidence requiring corroboration. A further, but minor, distinction between the common law rules and the statutory requirements is that the latter do not in terms relate to the *complainant's* evidence.

³⁹ *Baskerville* [1916] 2 KB 658, 667. See further, Appendix B to this Report, paras. 2.20-2.21.

⁴⁰ Para. 4.42.

PART V

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

5.1 In this Part of the Report we summarise our conclusions and our recommendations for reform. Where appropriate, we identify the relevant provision in the draft Bill in Appendix A that is aimed at putting into effect a particular recommendation.

5.2 We recommend—

- (1) The repeal of the provisions of the Sexual Offences Act 1956 that impose a statutory corroboration requirement relating to certain procurement offences under that Act.

(paragraph 4.36; draft Bill, clause 2)

- (2) In relation to trials on indictment, the abolition of the present common law rule by which the judge must automatically warn the jury that it would be dangerous to convict the accused on the uncorroborated evidence of a prosecution witness who is (i) an accomplice of the accused or (ii) the complainant in a trial for a sexual offence.

(paragraph 2.21; draft Bill, clause 1(1))

- (3) The abolition of the corresponding rule applicable to summary trials.

(paragraph 4.33; draft Bill, clause 1(3))

- (4) The express extension of section 34(2) of the Criminal Justice Act 1988 (which relates to children's evidence) to summary trials.

(paragraph 4.34; draft Bill, clause 1(3))

- (5) The introduction by Practice Direction of a scheme whereby in a case involving issues that might need special treatment by the judge when summing up, before closing speeches the judge and counsel should discuss those issues with counsel in the absence of the jury.

(paragraph 4.30)

5.3 The corroboration rules should not be replaced by a new statutory scheme.

(paragraph 3.29)

5.4 The judge should not be prohibited from giving the jury a warning, or a warning in any particular terms, about the evidence of any particular type or category of witness.

(paragraph 4.7)

(Signed) PETER GIBSON, *Chairman*
TREVOR M. ALDRIDGE
JACK BEATSON
RICHARD BUXTON
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
5 August 1991

APPENDIX A

Draft

Criminal Evidence (Corroboration) Bill

ARRANGEMENT OF CLAUSES

Clause

1. Abolition of corroboration rules.
2. Abolition of corroboration requirements under Sexual Offences Act 1956.
3. Short title, commencement and extent.

DRAFT

OF A

B I L L

TO

Amend the law relating to the corroboration of evidence in criminal proceedings.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Abolition of corroboration rules.

1.—(1) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is—

(a) an alleged accomplice of the accused, or

(b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated.

1988 c. 33.

(2) In section 34(2) of the Criminal Justice Act 1988 (abolition of requirement of corroboration warning in respect of evidence of a child) the words from "in relation to" to the end are hereby repealed.

(3) Any requirement that—

(a) is applicable at the summary trial of a person for an offence, and

(b) corresponds to the requirement mentioned in subsection (1) above or that mentioned in section 34(2) of the Criminal Justice Act 1988,

is hereby abrogated.

EXPLANATORY NOTES

References to "Recommendations" are to the Summary of Recommendations in Part V of this Report.

Clause 1

This clause implements Recommendations (2), (3) and (4).

Subsection (1)

This subsection abrogates any requirement in a trial on indictment to give the corroboration warning in respect of evidence merely because that evidence is given by an alleged accomplice of an accused, or, where the offence charged is a sexual offence, by the person in respect of whom the offence is alleged to have been committed.

Subsection (2)

This subsection is consequential on the change effected by subsection (1). Section 34(2) of the Criminal Justice Act 1988 abolished the requirement to give the corroboration warning in respect of the evidence of a child where the warning was required only by reason that the evidence was the evidence of a child. The provision thus left untouched the requirement to give the corroboration warning where the child is an alleged accomplice or, where the alleged offence is a sexual offence, the person in respect of whom it is alleged to have been committed.

Subsection (2) repeals the limiting words of section 34(2), which can have no application once the corroboration rules are abolished.

Subsection (3)

This subsection abrogates any requirements on summary trial corresponding to those mentioned in subsections (1) and (2). It also expressly extends section 34(2) of the Criminal Justice Act 1988 to summary trials.

Criminal Evidence (Corroboration)

Abolition of corroboration requirements under Sexual Offences Act 1956.

1956 c. 69.

2. The following provisions of the Sexual Offences Act 1956 (which provide that a person shall not be convicted of the offence concerned on the evidence of one witness only unless the witness is corroborated) are hereby repealed—

- (a) section 2(2) (procurement of woman by threats),
- (b) section 3(2) (procurement of woman by false pretences),
- (c) section 4(2) (administering drugs to obtain or facilitate intercourse),
- (d) section 22(2) (causing prostitution of women), and
- (e) section 23(2) (procuration of girl under twenty-one).

Short title, commencement and extent.

3.—(1) This Act may be cited as the Criminal Evidence (Corroboration) Act 1991.

(2) Subject to subsection (3) below, this Act comes into force at the end of the period of two months beginning with the day on which it is passed.

(3) Nothing in this Act applies in relation to—

- (a) any trial, or
- (b) any proceedings before a magistrates' court as examining justices,

which began before the commencement of this Act.

(4) This Act extends to England and Wales only.

EXPLANATORY NOTES

Clause 2

This clause implements Recommendation (1).

Clause 3

This clause contains the short title, commencement and extent provisions.

APPENDIX B

Extract from the Law Commission's Working Paper No. 115, "Corroboration of Evidence in Criminal Trials" (1990)

PART II

AN OUTLINE OF THE PRESENT LAW

A. THE CASES TO WHICH THE CORROBORATION RULES APPLY

1. Introduction

2.1 In general, what matters in an English criminal trial is the quality, rather than the quantity, of evidence. Thus, on the one hand, there is no rule which prevents a jury from convicting on the unsupported testimony of a single prosecution witness,¹ even if it is contradicted by several witnesses for the defence; and, on the other hand, the jury *need* not believe a witness's testimony, even if it is not contradicted by other evidence and is unshaken in cross-examination. "If [a] witness, from want of intelligence, or from any other cause, is incompetent under the rules of law, the Court will not permit him to testify; *but when the evidence of the witness is before the jury, all questions of credibility are for them, and for them alone.*"²

2.2 There are, however, certain categories of evidence to which, by way of exception to the general rule, corroboration rules apply. The rules operate only in favour of the accused, who can always be *acquitted* on the strength of uncorroborated evidence, even where he bears a burden of proof (whether persuasive or evidential).

2.3 In most cases the question of corroboration is governed by common law rules, under which there is no *requirement* of corroboration. In such cases the judge is required to warn the jury that it is dangerous to convict on the uncorroborated evidence of certain categories of witness and to explain why; but he should then go on to direct the jury that if, after heeding the warning, they conclude that the witness is speaking the truth, they are entitled to convict.³ In this paper we are principally concerned with those cases.

2.4 In a few instances, however, statutory provisions have amended the general rule referred to in paragraph 2.1 above, by requiring the presence of corroboration before a conviction can be obtained. We briefly refer to those cases in the next section.

2. Cases governed by statute⁴

(a) Speeding

2.5 Under section 89(2) of the Road Traffic Regulation Act 1984, a person cannot be convicted of speeding "solely on the evidence of one witness to the effect that, in the opinion

¹ *Hester* [1973] AC 296, 315 (*per* Lord Morris of Borth-y-Gest). "The agreement of witnesses on matters of detail is often of the greatest significance, but, if it were invariably required, the testimony of one honourable man could not, as Napoleon observed, prove a single rascal guilty, though the testimony of two rascals could prove an honourable man guilty": *Cross on Evidence*, 6th ed. (1985), p. 208 [7th ed. (1990), p. 225] (citing *Wigmore on Evidence*, vol. IX, p. 256, n. 3).

² Beck J, in *Callahan v. Shaw*, 24 Ia. 441, 444, cited in *Wigmore on Evidence*, vol. VII, 3rd ed (1940), p. 261, para. 2034(3). (Emphasis added.) Wigmore states, of the principle that the testimony of a single witness may legally suffice as evidence upon which the jury may found a verdict, that the fact that in England the principle has rarely been mentioned does not affect its actual acceptance: *op. cit.*, p. 259, para. 2034, n. 2.

³ In *Henry* (1968) 53 Cr App R 150, 153-4 (CA), Salmon LJ explained that, after giving the warning, the judge—

"should then go on to tell the jury that, bearing that warning well in mind, they have to look at the particular facts of the particular case and if, having given full weight to the warning, they come to the conclusion that the [witness] without any real doubt is speaking the truth, then the fact that there is no corroboration matters not at all; they are entitled to convict."

⁴ Formerly, under the proviso to s. 38(1) of the Children and Young Persons Act 1933 a child's unsworn evidence for the prosecution required corroboration; and the proviso was construed as precluding corroboration of a child's unsworn evidence by the unsworn evidence of another child: *Hester* [1973] AC 296, 303B. However, the Criminal Justice Act 1988 (i) repealed the proviso to s. 38(1) of the 1933 Act (except as to the evidence of a child complainant in a sexual offence), and (ii) went on to provide that the evidence of a child, whether sworn or unsworn, may be corroborated by the unsworn evidence of another child: s. 34(1), (3), s. 170(2), Sch. 16.

of the witness, the person prosecuted was driving the vehicle at a speed exceeding a specified limit".⁵ This provision is aimed only at preventing a conviction on the *unaided opinion* of a single witness as to the speed at which the defendant was driving. It does not require that the evidence of a witness in a trial for a speeding offence must always be corroborated: there may be a conviction on the evidence of one witness if it amounts to something more than his opinion.⁶ Nor does the subsection preclude a conviction where the evidence of a single witness includes an expression of opinion as part of his observations and conclusions.⁷

(b) *Perjury*

2.6 Under section 13 of the Perjury Act 1911 a person cannot be convicted of perjury or certain related offences "solely upon the evidence of one witness as to the falsity of any statement alleged to be false". This provision is further considered below.⁸

(c) *Procuration offences under the Sexual Offences Act 1956*

2.7 A person charged with procuring a woman by threats, intimidation, false pretences or false representations to have unlawful sexual intercourse;⁹ with administering drugs in order to obtain or facilitate such intercourse;¹⁰ with procuring a woman to become a prostitute;¹¹ or with procuring a girl under the age of twenty-one to have unlawful intercourse anywhere in the world,¹² cannot be convicted "on the evidence of one witness only, unless the witness is corroborated in some material particular by evidence implicating the accused".¹³

3. Cases in which a corroboration warning must be given

(a) *Introduction*

2.8 By contrast with statutory corroboration requirements, in cases under this head a jury may convict despite the absence of corroboration, provided that the judge has duly warned them about the danger of doing so.¹⁴

2.9 The judge must warn the jury that it would be dangerous to convict on the uncorroborated evidence of any witness falling into one of the following categories—

- (i) the complainant in a trial for a sexual offence (other than procuring¹⁵); or
- (ii) an accomplice.

The list of categories where a corroboration warning is required is closed.¹⁶

(b) *Sexual offences*

2.10 The need for a corroboration warning applies only to the complainant's evidence (and not, for example, to that of an eye-witness of the offence), but the age or sex of the

⁵ Sect. 88(7) contains a similar provision relating to temporary *minimum* speed limits. The requirement does not extend to overall speed limits on motorways: s. 89(3).

⁶ Thus, a police officer's evidence that he followed the accused in a police car and consulted its speedometer may suffice: the speedometer reading is evidence of a fact, not of opinion (*Nicholas v Penny* [1950] 2 KB 466).

⁷ The requirements are reviewed in *Crossland v DPP* [1988] 3 All ER 712, 716g-h, *per* Hutchison J. In that case, the prosecution evidence consisted of evidence given by a single police officer, who based his opinion as to the speed at which the defendant had been driving on a reconstruction of an incident (of which there were no witnesses) drawn from objectively determinable phenomena in the form of tyre burns, skid marks and damage to the defendant's vehicle. The Divisional Court held that s. 89(2) did not preclude conviction, since the purpose of the subsection was to give protection to a defendant only against a single witness's *unsupported* visual impression of a vehicle's speed.

⁸ Paras. 3.8-3.12 and 4.2.

⁹ Sexual Offences Act 1956, ss. 2 and 3.

¹⁰ *Ibid.*, s. 4.

¹¹ *Ibid.*, s. 22.

¹² *Ibid.*, s. 23.

¹³ Subsect. (2) of each section. A similar rule applies to an attempt to commit any of these offences: Criminal Attempts Act 1981, s. 2(1) and (2)(g).

¹⁴ e.g., *Baskerville* [1916] 2 KB 658, 664; *Henry* (1968) 53 Cr App R 150, 153-4.

¹⁵ Procuration offences are subject to a statutory requirement: see para. 2.7 above.

¹⁶ *Spencer* [1987] AC 128, 142H. There are, however, a number of other situations in which the judge may be required to warn the jury of a special need for caution in relation to the evidence of a particular witness: see paras. 2.33-2.37 below. Formerly, a corroboration warning was necessary in relation to the sworn evidence of a child, but (except as to the evidence of a child complainant in a trial for a sexual offence) the requirement was abolished by the Criminal Justice Act 1988, s. 34(2).

complainant is immaterial. The requirement is peremptory; and the judge must explain to the jury why it is dangerous to convict in the absence of corroboration.¹⁷ Since this must automatically be done in every case, irrespective of the actual nature of the evidence or of the witness, there has been a tendency for standard forms of explanation to be adopted. Until recently, the reason given for the warning in trials for sexual offences against a female was commonly based upon the alleged characteristics of women and girls in general. In *Henry*,¹⁸ for example, Salmon LJ stated that the trial judge should point out, in effect, that “human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all”.

In recent years, it appears that a general form of direction is often used which does not distinguish between male and female complainants.¹⁹ However, in cases where the complainant is female, the judge may think it helpful to the jury to particularise by referring to the alleged characteristics of female complainants.²⁰

2.11 Until recently, the corroboration warning had to be given in *all* cases falling into one of the two categories referred to in paragraph 2.9 above, even if the evidence related only to the identification of the accused. However, the Court of Appeal held in 1988²¹ that the guidelines laid down in 1977 in *Turnbull*,²² which are less stringent than the rules relating to corroboration,²³ are to be applied to sexual, as well as to other, offences. Accordingly, the rules as to *corroboration* in sexual cases do not normally apply now in relation to identification evidence. The court explained—

“There may no doubt be occasions when the sexual nature of the offence casts some doubts upon the complainant’s identification evidence or adds to it a further peril, but in our judgment that possibility does not require judges on every occasion to give the usual [corroboration] warning. In the ordinary way a full *Turnbull* direction is sufficient, despite the sexual nature of the case. In the rare case where the sexual nature of the case may have affected the complainant’s identification or where the judge in his discretion thinks it advisable, the *Turnbull* direction should be amplified to include a formal direction as to corroboration, tailored to the particular circumstances of the case.”²⁴

(c) *Accomplices*

2.12 In 1954 Lord Simonds LC stated²⁵ that (for the purpose of the law of corroboration) the term “accomplice” signified:

- (i) a party to the offence, whether as principal or as accessory;²⁶ or

¹⁷ See para. 2.28 below.

¹⁸ (1968) 53 Cr App R 150, 153.

¹⁹ In, e.g., *Willoughby* (1988) 88 Cr App R 91, 93, the trial judge directed the jury that—

“The wisdom of the ages in the courts [has] shown that there are very great difficulties and dangers in regard to sexual crime. The reason is this, that almost invariably there are only two persons involved, no direct witnesses, and complainants can give false or merely mistaken evidence for different reasons. Sometimes they can deliberately invent an occasion, on others they may shield somebody they do not wish to be found a culprit, they may exaggerate or fantasise and it is not always easy for the defendant to prove, as it were, a negative.”

Neither the accused nor the Court criticised this passage on appeal.

²⁰ As, e.g., in the case referred to in the passage cited in para. 4.36 below.

²¹ *Chance* [1988] QB 932.

²² [1977] QB 224 (CA); for the guidelines, see para. 3.7 below.

²³ Thus, e.g., although the *Turnbull* guidelines require the judge to warn the jury of the special need to exercise caution before convicting, he need not go so far as to direct them, either in terms or in effect, that it would be *dangerous* so to convict.

²⁴ *Chance* [1988] QB 932, 943. In our view this decision is of considerable significance in the present context: see para. 4.6 below.

²⁵ *Davies* [1954] AC 378, 400.

²⁶ Accomplices within this category, and possibly those within category (ii), cannot corroborate each other; see para. 2.22 below. Lord Simonds specifically included accessories after the fact (a category applicable only in felonies) within this category of accomplice; [1954] AC 378, 400. Sect. 1 of the Criminal Law Act 1967 abolished the distinction between felonies and misdemeanours, and provided that the former law relating to misdemeanours should prevail, thereby (consequentially) abolishing the law governing accessories after the fact. However, s. 4 of the Act introduced a new offence of impeding the apprehension or prosecution of a person who has committed an arrestable offence. We are not aware of any authority on whether a prosecution witness who has committed an offence under s. 4 is regarded for the purposes of the law relating to corroboration as an accomplice of the person whose apprehension or prosecution he has impeded.

- (ii) a receiver²⁷ of stolen goods, when testifying at the trial of a person alleged to have stolen them; or
- (iii) a party to another offence committed by the accused of which evidence is admitted.

2.13 However, if the accomplice's evidence wholly fails to incriminate the accused, a corroboration warning is not necessary for the accused's protection and need not be given.²⁸

2.14 The corroboration rules do not extend to the evidence of a defendant that, though incriminating his co-defendant, is given on his own behalf: the rules apply only to testimony given by a *prosecution* witness.²⁹

B. EVIDENCE CAPABLE OF CONSTITUTING CORROBORATION

1. Introduction

2.15 It has been judicially stated on innumerable occasions that there is nothing technical about the concept of corroboration. Lord Reid, for example, explained—

“When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter; the better it fits in, the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in.”³⁰

2.16 It is, however, for the judge to determine, as a matter of law, whether a particular item of evidence is *capable* of providing corroboration; and the courts have developed detailed rules to resolve this question.³¹ The issue only loses its “technical” character at a later stage, when, having determined that the item of evidence in question is capable of being corroborative, the judge tells the jury what is meant by corroboration and invites them to assess that item.³² The fact that a particular item confirms (in the ordinary sense of rendering more probable) a witness's testimony does not, without more, suffice to render it capable of being corroborative; and, conversely, evidence that implicates the accused in a material particular may be capable of corroborating a witness's testimony even though it does not relate to any part of such testimony.³³

2.17 At one time there was a view that the judge ought to direct the jury that, before considering the question of corroboration, they should assess the credibility of the witness whose testimony was subject to the corroboration requirement in isolation from other evidence; and that only if thus satisfied of his credibility, should the jury go on to examine

²⁷ It is not clear whether a person who, otherwise than by receiving stolen goods, commits the offence of “handling” (with which the Theft Act 1968 replaced the offence of receiving) falls within this description.

²⁸ *Peach* [1974] Crim LR 245 (CA). In *Royce-Bentley* [1974] 1 WLR 535, an accomplice gave evidence most, but not all, of which was favourable to the accused. In the absence of the jury, the trial judge consulted the accused's counsel, who agreed that a warning would not assist his client; and none was given. Approving that course, Lord Widgery CJ explained (at p. 539B) that a corroboration warning need not be given if the judge concluded that, on the whole, more harm would be done to the defence by giving it than by not doing so.

²⁹ *Davies v. DPP* [1954] AC 378, 399 (*per* Lord Simonds); *Bagley* [1980] Crim LR 572; *Loveridge* (1982) 76 Cr App R 125. However, a warning of some kind must be given in respect of such evidence: see para. 2.34 below.

³⁰ *Kilbourne* [1973] AC 729, 750F–G. Again, in *Hester* [1973] AC 296, 325C, Lord Diplock stated that the word “confirmed”, which was “commoner in ordinary usage”, meant the same as “corroborated”.

³¹ The Advisory Group on Video Evidence, chaired by His Honour Judge Pigot QC, the Common Serjeant of London, observed at para. 5.22 of its Report (December 1989): “Whether a particular piece of evidence is capable of providing corroboration is... often a complex technical question.” For the Advisory Group's recommendations, see paras. 3.13–3.14 below.

³² The question whether evidence does *in fact* constitute corroboration is for the jury. The respective functions of judge and jury are considered more fully at paras. 2.28–2.30 below.

³³ “The corroborative evidence need not relate to the particular incident or incidents spoken to by the ‘suspect’ witness. For example, evidence of an accomplice that he heard the accused planning the robbery charged may be corroborated by forensic evidence linking the accused with the scene of the crime”: *Archbold*, 43rd ed. (1988), para. 16–6, citing *Beck* [1982] 1 WLR 461 (see n. 46, para. 2.20 below).

corroborative evidence.³⁴ This view, that there is a two-stage process, has now been rejected.³⁵ The correct approach is that, in determining whether the evidence requiring corroboration is credible, the jury should take into account the presence or absence of corroborative evidence (as well as evidence that, though not corroborative, goes to credibility).³⁶

2.18 The rules governing the question whether evidence is capable of being corroborative are the same for cases in which corroboration is required by statute as for those cases subject to the common law corroboration rules.³⁷ We first turn to consider the two conditions that evidence must satisfy in order to be capable of amounting to corroboration—namely, that (as well as being admissible in accordance with the general law of evidence³⁸) it is (a) independent and (b) implicates the accused in the offence charged in a material particular. We then go on to consider specific aspects of the corroboration rules.

2. Corroborative evidence must be independent

2.19 A witness cannot corroborate himself. For example, a diary used by a witness to refresh his memory in the witness box cannot corroborate his testimony. Since corroboration must come from an independent source, extraneous to the suspect witness, evidence of a “recent complaint” made by the alleged victim of a sexual offence is not capable of being corroborative of her testimony.³⁹ This rule obtains notwithstanding that both the making and the substance of a complaint are *admissible*, as “evidence of the consistency of the prosecutrix with the story told by her in the witness box and as being inconsistent with her consent to that of which she complains”.⁴⁰ There is a distinction between evidence of a “recent complaint” and that of the victim’s distressed condition⁴¹ shortly after the alleged sexual offence. As a matter of law, the victim’s distress may be capable of amounting to corroboration;⁴² but where (as is commonly the case) the distress accompanies the complaint “the jury should be told that they should attach little, if any, weight to that evidence because it is all part and parcel of the complaint”.⁴³

3. Corroborative evidence must implicate the accused

2.20 Before the leading case, *Baskerville*,⁴⁴ there were two opposing views. The first was that corroboration consisted in independent evidence that verified any part of a witness’s testimony; the other, which prevailed in *Baskerville*,⁴⁵ was that, in addition, the corroborative evidence must implicate the accused in the commission of the offence.⁴⁶ The distinction may be illustrated by the facts in *Birkett*.⁴⁷ The accused was charged with sheep-

³⁴ e.g., *Olaleye* (1986) 82 Cr App R 337, 340. This view was based on, among other judicial statements, that of Lord Morris of Borth-y-Gest in *Hester* [1973] AC 296, 315F, that—

“The essence of corroborative evidence is that one creditworthy witness confirms what another creditworthy witness has said The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible”

³⁵ *Attorney-General of Hong Kong v. Wong Muk Ping* [1987] AC 501.

³⁶ *Turner* (1975) 61 Cr App R 67, 84 (approved in *Attorney-General of Hong Kong v. Wong Muk Ping* [1987] AC 501, 512B–E).

³⁷ *Baskerville* [1916] 2 KB 658, 667.

³⁸ *Scarrott* [1978] QB 1016, 1021.

³⁹ e.g., *Christie* [1914] AC 545. This principle has been justified on the ground that it would otherwise only be necessary for the complainant to “repeat her story some twenty-five times in order to get twenty-five corroborations of it”: *Whitehead* [1929] 1 KB 99, 102.

⁴⁰ *Lillyman* [1896] 2 QB 167, 170; *Osborne* [1905] 1 KB 551, 559–561.

⁴¹ As distinguished from evidence such as visible injuries or torn clothing, which is clearly capable of providing corroboration.

⁴² Provided that the jury are satisfied that the distress was not feigned: *Redpath* (1962) 46 Cr App R 319. In that case a person saw the accused approach the victim, a child, on a lonely road and witnessed the child’s distress after the accused had driven off. Since she was unaware that she was observed, the risk of concoction was minimal; and the witness’s evidence was held, accordingly, to be capable of providing corroboration.

⁴³ *Redpath* (1962) 46 Cr App R 319, 322. See *Wilson* (1973) 58 Cr App R 304.

⁴⁴ [1916] 2 KB 658 (CCA).

⁴⁵ [1916] 2 KB 658, 667.

⁴⁶ However, the evidence that implicates the accused need not specifically confirm any part of the evidence of the witness whose evidence requires corroboration. In *Beck* [1982] 1 WLR 461, the Court of Appeal rejected a submission that if the witness whose evidence required corroboration said nothing to incriminate the accused on a particular aspect of the case, other evidence which implicated the accused in relation to that part of the case could not constitute corroboration.

⁴⁷ (1839) 8 Car & P 732, 173 ER 694.

stealing, and, after evidence of the theft, an accomplice repeated statements made by him to the police concerning the whereabouts of the sheep's skins. Another witness proved (a) that the skins were found where the accomplice said they would be discovered, and (b) that mutton corresponding to the carcasses of the stolen sheep was found in the accused's house. On the first view of the nature of the required corroboration, item (a) would have been sufficient to constitute corroboration. However, on the view that prevailed in *Baskerville*, item (a) was not corroboration. Item (b) sufficed for corroboration according to either view.⁴⁸

2.21 To illustrate further: in one case⁴⁹ the testimony of the complainant in a charge of rape was supported by medical evidence proving that *someone* had intercourse with her at about the time in question. This evidence was held not to suffice as corroboration, since it did not show that *the accused* was a party to the rape (or absence of consent). In another case,⁵⁰ where the accused was charged with attempting to procure a girl to become a prostitute,⁵¹ the complainant gave evidence that the accused had committed another offence, with which he was not charged, as to which there was supporting evidence; but there was no supporting evidence in respect of the offence charged. The (statutory) corroboration requirement was held not to be satisfied, since the evidence relied on as corroboration did not implicate the accused in the offence charged.⁵²

4. Accomplices cannot corroborate one another

2.22 Accomplices who are parties to the offence charged⁵³ are incapable of corroborating one another;⁵⁴ thus, if A, B and C are accomplices within this category, B's evidence against C is not corroborated by anything to which A deposes. By contrast, however, where evidence of an accomplice is supported by independent evidence of an accomplice to *another* offence which is admissible under the similar fact principle,⁵⁵ that evidence is capable of providing corroboration.

5. Corroboration by the accused

(a) General

2.23 In some circumstances corroboration may be provided by the accused. Thus, an admissible extra-judicial confession will suffice, as will admissions made by him when giving evidence.⁵⁶ Again, deliberate lies, told in or out of court, may constitute corroboration, but only if the following conditions are satisfied:

- (1) The lie must relate to the offence in question; evidence merely proving him to be generally untruthful cannot constitute corroboration.⁵⁷

⁴⁸ *Cross on Evidence*, 6th ed (1985), p. 219 [7th ed (1990), pp. 235–236].

⁴⁹ *James* (1970) 55 Cr App R 299 (PC).

⁵⁰ *Goldstein* (1914) 11 Cr App R 27.

⁵¹ Contrary to what is now the Sexual Offences Act 1956, s. 22(1).

⁵² The result would have been different had evidence of the other offence been admissible under the "similar fact" principle: see paras. 2.25–2.26 below.

⁵³ i.e., who fall within the first or second category referred to at para. 2.12 above: *Kilbourne* [1973] AC 729, 748G (per Lord Hailsham).

⁵⁴ e.g., *Kilbourne* [1973] AC 729, 747–748 (per Lord Hailsham of St Marylebone LC). Lord Hailsham considered this old rule to be an aspect of the rule that corroborative evidence must be independent from the evidence that it supports.

⁵⁵ See paras. 2.25–2.26 below.

⁵⁶ The accused's silence when charged by a police officer is not normally capable of corroborating other evidence against him. In its Report, published in July 1989, a Home Office Working Group on the Right of Silence proposed that, in certain circumstances, inferences adverse to the accused may be drawn at his trial from his previous failure to answer questions or to mention a particular fact. However, the Working Group expressed the view (at para. 85) that the present law of corroboration was unsatisfactory, adding that the Law Commission was currently reviewing the topic and that its recommendations should be awaited before "any final decision is reached about the corroborative value of silence". The Group concluded (at para. 86) that, "even when aggregated with other evidence", the previous failure of the accused to answer questions or to mention a particular fact should not be capable of amounting to corroboration. This Report also contains recommendations for advance disclosure of an accused's defence in the Crown Court: failure to disclose, or material departure at the trial from a disclosed defence, would entitle counsel and the judge to comment and the jury to draw inferences, but, again, would not be capable of amounting to corroboration (para. 110).

⁵⁷ In *West* (1983) 79 Cr App R 45, the prosecution alleged that the accused assaulted the complainant in one room and then, some time afterwards, returned and raped her in another room. At the trial the accused at first denied, but later admitted, his presence at the scene of the assault. It was held that since his lie might have been told in relation to the assault, it did not constitute corroboration in respect of the charge of rape.

- (2) The motive for the lie must be realisation of guilt and a fear of the truth; in appropriate cases “the jury should be reminded . . . that people sometimes lie . . . in an attempt to bolster up a just cause or out of shame or out of a wish to conceal disgraceful behaviour from their family”.⁵⁸
- (3) The accused’s statement must be shown to be a lie by evidence other than that of the witness to be corroborated—that is, by admission or by evidence from an independent source.⁵⁹

(b) *Section 62 of the Police and Criminal Evidence Act 1984*

2.24 This section provides for the taking of an “intimate sample”⁶⁰ from a person in police detention. The power is, however, subject to conditions;⁶¹ in particular, it may not be exercised without the written consent of that person.⁶² However, if a request for an intimate sample is refused “without good cause”, the jury “may draw such inferences from the refusal as appear proper”, and, on the basis of such inferences, the refusal may be treated as capable of amounting to corroboration of any other evidence against the accused.⁶³

6. The “similar fact” principle

2.25 As a general rule, evidence of the accused’s misconduct on an occasion other than that which is the subject of the charge is inadmissible. There are, however, exceptions. One is that such evidence is admissible if the similarity between such misconduct and the offence charged goes beyond merely suggesting that the accused is the kind of person to commit the offence charged, and is so striking as to point strongly to the conclusion that the accused is guilty of the instant charge.⁶⁴

2.26 If independent evidence of misconduct on a different occasion is admissible under the similar fact principle, it is *ipso facto* capable of constituting corroboration in relation to the offence charged.⁶⁵ The evidence of such other misconduct need not itself be corroborated.⁶⁶

7. Corroborative evidence may be cumulative

2.27 It is not necessary for each item of evidence tendered as corroboration independently to implicate the accused, without regard to other corroborative evidence. For example, in a rape case in which the accused denies having had sexual intercourse with the complainant, it may be possible to prove (1) by medical evidence that the complainant had had sexual intercourse within an hour or so prior to the examination, (2) by other independent evidence that the defendant and no other man had been with her during that time, (3) that her underclothing was torn and that she had injuries to her private parts. In

⁵⁸ *Lucas* [1981] QB 720, 724F–G (Lord Lane CJ).

⁵⁹ *Lucas* [1981] QB 720.

⁶⁰ Defined as: samples of blood, semen or other tissue fluid, urine, saliva, pubic hair, and swabs taken from body orifices: s. 65.

⁶¹ e.g., authorisation, which can be given only on certain grounds, of a police officer with at least the rank of superintendent must be given for the sample to be taken.

⁶² In the case of a person aged under 17 but over 14, consent must also be given by his parent or guardian; and in the case of someone under 14, only his parent’s or guardian’s consent is required: s. 65.

⁶³ Sect. 62(10). The section applies to summary trials and committal proceedings as well as trials on indictment.

⁶⁴ Proper examples of this principle are “extremely rare”: *Wells* [1989] Crim LR 67, 68. It is for the judge to state what evidence may in his judgment be regarded as strikingly similar, and for the jury to decide whether they find that evidence so strikingly similar as to eliminate coincidence and thus be indicative of guilt: *Maher*, *The Times*, 19 October 1989.

⁶⁵ *Kilbourne* [1973] AC 729, and in particular Lord Cross at p. 760. *Lanford v. General Medical Council* [1989] 3 WLR 665 (PC) is a recent illustration. In proceedings before the General Medical Council (governed by rules largely identical with those applied in a criminal trial), a medical practitioner was charged with professional misconduct in the form of improper language and behaviour in his examinations of two female patients on occasions 6 days apart. On both occasions the accused’s examination was accompanied by “heartily obscene and sexually suggestive” language, which was strikingly similar (though his *behaviour* was not). The evidence of one patient was, it was held, capable of corroborating the other’s when (as in the instant case) the complainants gave independent evidence of separate visits and the circumstances excluded the possibility of a jointly fabricated account.

⁶⁶ In, e.g., *Sanders* (1961) 46 Cr App R 60, A’s complaint of homosexual assault was supported by “similar fact” evidence from B, who claimed to have been similarly assaulted by the accused a few weeks before. The Courts Martial Appeal Court considered that a corroboration warning as to B’s evidence was unnecessary.

combination, these items are capable of providing corroboration of the complainant's evidence, although no item on its own would suffice.⁶⁷

C. PROCEDURE

1. Judge and jury

2.28 The question whether particular evidence is *capable* of providing corroboration is a question of law for the judge,⁶⁸ and he must explain to the jury the meaning of corroboration; but the question whether evidence is in fact corroborative must be left to the jury.⁶⁹ Where corroboration is required by statute, but is plainly not present, the judge must direct an acquittal.⁷⁰ In the cases at common law, where merely a corroboration *warning* is required, the procedure is somewhat complex. The judge should: (i) warn the jury that it would be dangerous to convict without corroboration, and explain why; (ii) direct the jury as to what evidence is and is not capable of providing it;⁷¹ and (iii) explain that if nevertheless, after giving full weight to his warning, they are satisfied without any doubt that the testimony of the witness who gave the uncorroborated evidence is truthful, the absence of corroboration does not matter, and they may convict.⁷² The judge need not use any particular form of words;⁷³ but his directions must be clear and forceful.

2.29 In some cases, particularly those in which there are several accused and several charges, the question whether a prosecution witness *is* an accomplice may be difficult to resolve. If there is a dispute as to this issue, the matter must be left to the jury. Accordingly, the judge's directions in such a case are even more complex than where that issue does not arise: before giving directions relating to corroboration, he must direct the jury on the meaning of the term "accomplice" and on the evidence relating to that issue, and invite them to consider whether the witness is in fact an accomplice.

2.30 It follows that the judge's task in a case that raises corroboration issues can be one of some complexity. It was summarised by Lord Ackner in *Spencer*⁷⁴ in the following terms:

"Where there is no corroboration, the rule of practice merely requires that the jury should be warned of the danger of relying upon the sole evidence of an accomplice or of the complainant in the sexual case The warning to be sufficient must explain why it is dangerous so to act, since otherwise the warning will lack significance. The jury are, of course, told that while as a general rule it is dangerous so to act, they are at liberty to do so if they feel sure that the uncorroborated witness is telling the truth. Where, however, there is evidence before the jury which they can properly consider to be corroborative evidence the position becomes less simple. The trial judge has the added obligation of identifying such material, and explaining to the jury that it is for them to decide whether to treat such evidence as corroboration. He should further warn them against treating as potential corroborative evidence, that which may appear to them to be such, but which is not so in law, e.g. evidence of a recent complaint in a sexual offence.

⁶⁷ *Hills* (1987) 86 Cr App R 26, 26.

⁶⁸ Where there is no evidence capable of amounting to corroboration, the judge must so direct the jury: *Anslow* [1962] Crim LR 101; *Nagy* [1990] Crim LR 187.

⁶⁹ It is improper for the judge to direct the jury that, as a matter of law, corroboration exists: *Tragen* [1956] Crim LR 332 (CCA).

⁷⁰ *Davies* [1954] AC 378.

⁷¹ This was said by Lord Widgery CJ to be "quite vital": *Reeves* (1978) 68 Cr App R 331, 332. In cases where there is a risk of the jury thinking, erroneously, that a particular item of evidence is capable of amounting to corroboration, the judge must warn them that it cannot do so: *Goddard* [1962] 1 WLR 1282.

⁷² See, e.g., *Henry* (1968) 53 Cr App R 150, 153-4. It is desirable that at the conclusion of the evidence the judge should hear submissions from counsel (i) on the matters of which the jury should be directed to look for corroboration (e.g., in a rape case, of the complainant's evidence that intercourse took place *and* that she did not consent, if both elements are in issue), and (ii) on what evidence is capable of amounting to corroboration: *Ensor* [1989] 1 WLR 497, 505H-506A (CA). In *Nagy* [1990] Crim LR 187 (which concerned a sexual offence), the Court of Appeal allowed an appeal on the ground that the trial judge had not made clear that there was no corroboration of the complainant's evidence. The Court added however (at p. 188) that, possibly, a discussion between the trial judge and counsel on the question of corroboration (which did not take place) might have led to his directing the jury that a certain matter as to which the complainant had testified was capable of providing "potent corroboration".

⁷³ e.g., in *Spencer* [1987] AC 128, 141C-E, Lord Ackner explained, as to the warning of the danger of convicting upon uncorroborated evidence, that there are no set words which must be adopted to express the warning, but, rather, that the summing up should be tailored to suit the particular case. Again, Lord Hailsham of St Marylebone LC suggested in *Kilbourne* [1973] AC 729, 741A, that since the word "corroboration" was slightly unusual in ordinary speech, it might be better not to use it.

⁷⁴ [1987] AC 128, 140.

Moreover where the prosecution are relying, as potential corroborative material, upon lies alleged to have been told by the accused, a particularly careful direction is needed. A special direction is also often needed where evidence of complainant's distress is relied upon by the prosecution in sexual cases as potentially corroborative material. The trial judge has further the additional obligation of directing the jury that accomplices, who are parties to the same charge, cannot corroborate each other."

2. Appeals

2.31 In the absence of a full corroboration warning, including directions on what evidence is and is not capable of constituting corroboration, a conviction will generally⁷⁵ be quashed on appeal:⁷⁶ although there is no hard and fast rule⁷⁷ against the application of the "proviso",⁷⁸ it is applied only in exceptional cases.⁷⁹

3. Summary trials

2.32 In summary trials a magistrates' court must take into account the matters on which, had the trial been on indictment, the judge would have directed the jury.

⁷⁵ Though not inevitably, quite apart from the proviso to s. 2(1) of the Criminal Appeal Act 1968 (whereby the Court of Appeal may dismiss an appeal if satisfied that "no miscarriage of justice has actually occurred"). If, e.g., the judge failed to direct the jury on what items of evidence could and could not provide corroboration, the conviction will not be quashed where there was no evidence that the jury might mistakenly have thought could amount to corroboration: *Gill, unreported*, 18 October 1988.

⁷⁶ *Trigg* [1963] 1 WLR 305, 309. ("In principle this court feels that cases where no warning as to corroboration is given where it should have been should, broadly speaking, not be made the subject of the proviso..."); *Birchall* (1985) 82 Cr App R 208, 211; *Willoughby* (1988) 88 Cr App R 91, 96.

⁷⁷ *McInnes* (1989) 90 Cr App R 99, 103.

⁷⁸ i.e., the proviso to s. 2(1) of the Criminal Appeal Act 1968, whereby the Court of Appeal may dismiss an appeal if satisfied that "no miscarriage of justice has actually occurred".

⁷⁹ *Willoughby* (1988) 88 Cr App R 91, 96.

APPENDIX C

SUSPECT WITNESSES OUTSIDE THE CORROBORATION RULES

1. A rule has developed that requires the judge to give a warning to the jury of the need for caution in assessing the evidence of certain witnesses. The courts have been at pains to distinguish this rule from the corroboration rules, from which it differs in important respects.

2. The rule is that, where a witness has or may have an "interest or purpose of his own to serve" in giving evidence adverse to the defendant, the judge is obliged to warn the jury about the testimony of that witness. Many of the authorities concern the evidence of a defendant whose evidence, given on his own behalf,¹ is adverse to a co-defendant.²

3. In practice, the range of witnesses to whom the rule has so far been applied is less extensive than its purely verbal formulation might be thought to indicate. Although in many cases the Court of Appeal has referred, in general terms, to the witness having an "interest" or "purpose" of his own to serve, the rule appears to have been actually applied only to cases involving the witness's own possible liability for an offence—commonly, but not necessarily, the offence with which the accused is charged.³

4. Although the judge is obliged to give *some* warning about the evidence in question,⁴ unlike in cases falling within the corroboration rules the form and content of the warning are for him. Thus, the judge may choose simply to warn the jury of the need to examine the evidence of the suspect witness with care, explaining that the witness has or may have an interest of his own to serve; or he may in his discretion go further, and advise the jury to look for corroboration of that evidence.⁵ Lord Ackner has explained that—

"in a case which does not fall into the three established [corroboration] categories and where there exists potential corroborative material, the extent to which the trial judge should make reference to that material depends upon the facts of each case. *The overriding rule is that he must put the defence fairly and adequately.*"⁶

5. The rule is well illustrated by *Beck*.⁷ The case concerned a charge for conspiracy to defraud a finance company by securing payment against bogus satisfaction notes. The directors of the allegedly defrauded company gave evidence for the prosecution. They had themselves claimed substantial sums from their insurers in respect of the alleged frauds. The defence suggested that the directors had known throughout that the notes were not genuine; that this exposed them to risk of prosecution for attempting to defraud their insurers; and that therefore they had a purpose of their own to serve. (This would not make them accomplices to the offence charged: if the allegations were true, the finance company would not have been defrauded.) The trial judge advised the jury to pay particular care and attention to the directors' evidence, and the weight (if any) they attached to it; but he

¹ Notwithstanding that he is an accomplice of the co-defendant, the corroboration rules do not apply to his evidence, because he is not a *prosecution* witness. At one time, indeed, the evidence of a co-defendant appears to have attracted a corroboration warning. In *Prater* [1960] 2 QB 464, 466, Edmund Davies J, delivering the judgment of the Court of Criminal Appeal, stated that it was "desirable" that a corroboration warning be given, though, he added, every case must be looked at in the light of its own facts: subsequent cases have made clear that *Prater* did not lay down a rule of law: see, e.g., *Stannard* [1965] 2 QB 1; *Russell* (1968) 52 Cr App R 147; *Whitaker* (1976) 63 Cr App R 193.

² As, for example, where there is a "cut-throat" defence, each defendant blaming the other or others for the commission of the alleged offence.

³ The learned author of one textbook suggests that a judge might feel obliged to advise the jury to proceed with caution "where there is evidence to suggest that a witness is acting out of spite or malevolence, has a financial or other personal interest in the outcome of the proceedings, or is otherwise biased or partial": Keane, *The Modern Law of Evidence*, 2nd ed. (1989), at p. 151.

⁴ The Court of Appeal suggested in *Bagley* [1980] Crim LR 572 that there was no rule that *any* warning had to be given; but this is contrary to subsequent judicial statements. For example: in *Beck* [1982] 1 WLR 461, 469, the Court referred to the "*obligation* upon a judge to advise a jury to proceed with caution" (emphasis added); and in *Knowlden* (1983) 77 Cr App R 94, 100, the Court stated that the judge is

"at the least to be expected to give the customary clear warning to a jury where defendants have given damaging evidence against one another . . ."

⁵ e.g., *Knowlden* (1983) 77 Cr App R 94, 100 (CA). The Court suggested, however, that the need to advise the jury to look for corroboration should "rarely arise in our experience since the simple customary warning will suffice to ensure that the jury regards the evidence in question with proper and adequate caution.": *ibid.*

⁶ In *Spencer* [1987] AC 128, 142G-H. (Emphasis added.)

⁷ [1982] 1 WLR 461, approved in *Spencer* [1987] AC 128 (which is considered at paras. 8-13 below).

stopped short of giving a full corroboration warning. The Court of Appeal approved his approach, referring to

“the obligation [in cases not falling within the corroboration categories] upon a judge to advise a jury to proceed with caution where there is material to suggest that a witness’s evidence may be tainted by an improper motive, and the strength of that advice must vary according to the facts of the case.”⁸

6. Another distinction between the instant rule and the corroboration rules is that, even where the trial judge fails to give an appropriate warning, the Court of Appeal will not upset a conviction if it concludes that the suspect witness’s possible motive was obvious to the jury.⁹ In *Knowlden*,¹⁰ for example, a father and his two sons were charged jointly with murder. At the trial each defendant gave evidence adverse to the others. Watkins LJ, who delivered the judgment of the Court of Appeal (which upheld the convictions), observed that the Court had to take into account

“the outstandingly obvious nature of the attack made by sons upon father and vice versa. No sensible and reasonable jury, even if there had been no warning given by the [judge], could possibly have escaped appreciating that they had to beware of the evidence of one son as it affected another son and of the evidence of the sons as it affected the father. Here was an outstanding example of a breakdown of family loyalty.”¹¹

7. *Bagshaw*¹² and *Spencer*¹³ bear upon the instant rule. Both cases concerned the convictions of members of the nursing staff at Rampton Hospital for ill-treating mental patients. In both cases the evidence of the patients was uncorroborated, and the trial judge warned the jury of the need to treat that evidence with the greatest caution, but stopped short of directing them (as he would have been required to do in a case governed by the corroboration rules) that it was dangerous to convict in reliance on it. In *Bagshaw* the Court of Appeal, which quashed the conviction, held that this direction was insufficient, and that a full corroboration warning was required:

“Patients in hospital under the Mental Health Act 1959 are not a category like accomplices or complainants in sexual cases, nor would we wish to make them into a additional category. [Nevertheless,] [p]atients detained in a special hospital after conviction for an offence or offences, even if they are not a category, may well fulfil to a very high degree the criteria which justify the requirement of the full [corroboration] warning in respect of witnesses within accepted categories.”¹⁴

8. In *Spencer*,¹⁵ by contrast, the Court of Appeal held that the direction had been entirely adequate. The Court applied *Beck*, and suggested that, had *Beck* been drawn to the attention of the Court in *Bagshaw*, a different conclusion might have been reached. The Court appreciated that—

“there is a difference between telling a jury that it is dangerous to convict on the uncorroborated evidence of a particular witness or witnesses on the one hand and warning them that for fully explained reasons they should approach and consider that evidence with great caution on the other. From a practical point of view however we wonder whether to a jury the one is any more forceful or restraining than the other. It is our combined experience, both from sitting at first instance and also in this court, that where the full warning has to be given as a matter of law it is very difficult to direct the jury in terms which they can clearly understand, particularly when one has to go on and direct them about which part of the other evidence can or cannot be considered to be corroborative. To warn a jury appropriately of a special need for caution in respect of the evidence of a particular witness, explaining to them if necessary why such caution is required, is in our respectful opinion a clearer and better way of approaching this problem than, in effect, creating an additional category of witness in respect of whom

⁸ [1982] 1 WLR 461, 469A. This passage was cited with approval by Lord Ackner in *Spencer* [1987] AC 128, 140C-D.

⁹ e.g., *Knowlden* (1983) 77 Cr App R 94; *Lovell* [1990] Crim LR 111.

¹⁰ (1983) 77 Cr App R 94.

¹¹ (1983) 77 Cr App R 94, 101.

¹² [1984] 1 WLR 477.

¹³ [1985] QB 771 (CA); [1987] AC 128.

¹⁴ [1984] 1 WLR 477, 484D-E. Before s. 34 of the Criminal Justice Act 1988 came into force, children constituted a third category of witness within the corroboration rules: see para. 4.34 above.

¹⁵ [1985] QB 771.

the full [corroboration] warning must be given, with all its complications and which, if not given, will of itself lead to the quashing of the conviction concerned.”¹⁶

9. The House of Lords¹⁷ dismissed the nurses’ further appeal. Lord Ackner, with whom the other Law Lords agreed, confirmed that the complainants’ evidence did not call for a full corroboration warning to be given;¹⁸ and he agreed “with the Court of Appeal that [the trial judge] gave the emphatic warning which was required to meet the justice of the case”.¹⁹ Lord Ackner also confirmed²⁰ that patients in hospital under the Mental Health Acts

“are not in a category like accomplices or complainants in sexual cases or young children. To create from them such a new category would clearly involve considerable problems of definition. What sort of patients, and patients with what sort of criminal records are to be included?”²¹

10. The Court of Appeal in the instant case, Lord Ackner observed, was “fully entitled to conclude”²² that if the Court in *Bagshaw* had had the benefit of full argument and if *Beck* had been brought to its attention, it might have reached a different conclusion.

11. Some uncertainty about the extent to which the ambit of the *Beck* rule has been widened by *Spencer* would seem to arise from the affirmative answer given by the House of Lords in that case to the question certified by the Court of Appeal as amended by the House of Lords—namely:

“In a case where the evidence for the Crown is solely that of a witness who is not one of the accepted categories of suspect witnesses, but who, by reason of his particular mental condition and criminal connection, fulfilled [analogous] criteria, must the judge warn the jury that it is dangerous to convict on his uncorroborated evidence[?]”²³

Presumably, the House of Lords, had it intended to do no more than confirm *Beck*, would have given a negative answer to this question, since, by contrast with the corroboration rules, *Beck* did not impose an obligation on the trial judge to warn the jury (in terms or in effect) that it is danerous to convict on the uncorroborated evidence of a suspect witness.²⁴ However, in view of Lord Ackner’s clear statement that the complainants in the instant case did *not* fall within the corroboration rules²⁵ the House cannot have intended to recognise a further category of witness to which those rules apply; quite apart from the fact that the question was (unlike the corroboration rules) limited to cases where the suspect witness was the *only* witness for the prosecution.

12. Nevertheless, the precise extent to which *Spencer* has affected the *Beck* principle is unclear. It is possible that *Spencer* is limited to its particular (and unusual) facts; but if it is of general application, it would seem to have extended *Beck* (i) by requiring a particularly strong warning to be given where the prosecution case rests *solely* on the evidence of a suspect witness; and (ii) by applying the *Beck* principle to a witness who has an “interest” in a form other than that of escaping liability for an offence.²⁶

13. However, it may be stated with confidence, first, that the affirmative answer given by the House of Lords to the certified question does not *detract* from the judge’s obligation

¹⁶ [1985] QB 771, 786A–C.

¹⁷ [1987] AC 128.

¹⁸ At p. 142A–E.

¹⁹ At p. 142E–F.

²⁰ This was accepted by the Court of Appeal in *Bagshaw*, even though holding that a full corroboration warning should have been given by the trial judge: see the passage cited in para. 7 of this Appendix above.

²¹ At p. 141B. This view was accepted by the appellants.

²² [1987] AC 128, 140H.

²³ [1987] AC 128, 142E–F.

²⁴ The warning that the judge must give is that the jury should proceed with caution, the precise form and the content of the warning being for him; para. 4 of this Appendix, above.

²⁵ See in particular the observations cited in para. 9 of this Appendix, above.

²⁶ See n. 3, para. 3 of this Appendix, above. The issue did not arise for determination in either *Bagshaw* or *Spencer*, since in both cases the Crown accepted that *some* warning was necessary.

under *Beck* to warn the jury of the need to treat the evidence of certain witnesses with caution;²⁷ and, secondly, that trial judges now have the authority of the House of Lords for their freedom in cases falling within the *Beck* rule from the technicalities of the corroboration rules.

²⁷ Lord Ackner commented, obiter, in *Spencer* on the reason why the corroboration rules differ from the *Beck* rule: he suggested ([1987] AC 128, at p. 142A) that a warning was necessary in relation to a witness within the corroboration rules because his inherent unreliability might well not be apparent to the jury, whereas in other cases the potential unreliability of “the sole or principal witness for the prosecution was obvious for all to see”. However, Lord Ackner’s primary concern was to explain why the corroboration rules did not apply to the instant case; and we doubt whether in practice his dicta have affected the approach of the Court of Appeal to which we have referred in para. 6 of this Appendix, above.

APPENDIX D

List of individuals and organisations who commented on the Law Commission's Working Paper No. 115, "Corroboration of Evidence in Criminal Trials" (1990)

His Honour Judge Brodrick
Ms D. J. Birch, Reader in the Law of Evidence, University of Nottingham
Cardiff Centre for Criminal Justice
Judges of the Central Criminal Court
His Honour Judge Coles QC
Council of Her Majesty's Circuit Judges
The Criminal Bar Association
Crown Prosecution Service
His Honour Judge Gower QC
Holborn Law Society
His Honour Judge Herrod QC
Mr R. Hunt CBE, Deputy Assistant Commissioner, New Scotland Yard
Justice
Justices' Clerks' Society
The Law Society
Mr D. A. Leonard, Deputy Chief Constable, Sussex Police
His Honour Judge Lymbery QC
The Judges at Manchester Crown Court
His Honour Judge May
Master McKenzie, Registrar of Criminal Appeals
Detective Superintendent Newbury, West Midlands Police
His Honour Judge Pitchers
Police Federation of England and Wales
Polytechnic Criminal Law Group
The Queen's Bench Division Judges
His Honour Judge Rant QC
His Honour Judge Stephenson
Society of Public Teachers of Law
The Hon. Mr Justice Steyn, Presiding Judge, Northern Circuit
The Rt Hon. Lord Justice Stuart-Smith
His Honour Judge Taylor
The Hon. Mr Justice Swinton Thomas, Presiding Judge, Western Circuit
The Hon. Mr Justice Tucker and the Hon. Mr Justice Owen,
Presiding Judges, Midland and Oxford Circuit
His Honour Judge Tucker QC
His Honour Judge Waley QC
His Honour Judge Williams TD QC
His Honour Judge Wilson
Mr John Wood CB, Director, Serious Fraud Office
The Hon. Dr Zelling, Chairman, Law Reform Committee of South Australia



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