

PRIME MINISTER

c.c. Mr. Gow
Mr. Pattison

Law of Rape: Contributory Negligence

When you had your meeting with Dame Rose Heilbron last week, you said that you thought that we should get an authoritative statement on the law of rape and contributory negligence on the record in Hansard, and you invited the Lord Chancellor to produce a suitable draft Question and Answer.

Lord Hailsham has now submitted the following form of words which has been agreed with the Home Secretary, Attorney General and Lord Advocate:-

Question To ask Mr. Attorney General whether an allegation of contributory negligence can be advanced as a defence to a charge of rape or any mitigation of sentence.

Answer No. Contributory negligence is a legal concept relevant only in an action for damages for negligence in the civil courts and is not relevant to a charge of rape in the criminal courts.
I understand from my noble and learned Friend the Lord Advocate that this is also the law of Scotland.

Are you content with this Question and Answer? If you are, arrangements will be made to get the Question put down as soon as possible.

Yes
mr
JAW.

3 February, 1982.



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10 DOWNING STREET

From the Principal Private Secretary

5 February 1982

Dear Jim,

LAW OF RAPE AND CONTRIBUTORY NEGLIGENCE

Michael Collon wrote to me on 29 January 1982 enclosing a draft Parliamentary Question and Answer on contributory negligence and rape. Christine Duncan also wrote to me on 3 February letting me have the Lord Advocate's comments on the draft Answer.

I have now been able to consult the Prime Minister and she is content with the draft Question and Answer suggested by the Lord Chancellor, as amended by the Lord Advocate. These in their final form then are as follows:-

QUESTION To ask Mr Attorney General whether an allegation of contributory negligence can be advanced as a defence to a charge of rape or any mitigation of sentence.

ANSWER No. Contributory negligence is a legal concept relevant only in an action for damages for negligence in the civil courts and is not relevant to a charge of rape in the criminal courts. I understand from my noble and learned Friend the Lord Advocate that this is also the law of Scotland.

Although I said in my letter of 27 January 1982 to John Halliday recording the outcome of the Prime Minister's meeting with Dame Rose Heilbron that we here would arrange for the Question to be put down to the Attorney General, you and I subsequently agreed that it would be simpler if you did this. I should be grateful if you would now go ahead as soon as possible.

I am sending copies of this letter to John Halliday (Home Office), Michael Collon (Lord Chancellor's Office), Christine Duncan (Lord Advocate's Department) and David Wright (Cabinet Office).

Jim Nursaw Esq.,
Law Officers' Department.

Yours ever,
Anne Whitman.

AH