



**CRIMINAL VERDICTS (SCOTLAND) BILL
EVIDENCE TO THE JUSTICE COMMITTEE**

Victim Support Scotland (VSS) is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime within each local authority and every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. Victim Support Scotland welcomes the opportunity to provide our views on the Criminal Verdicts (Scotland) Bill, as introduced in the Scottish Parliament on behalf of Michael McMahon MSP.

Section 1 – Removal of the not proven verdict

Victim Support Scotland supports the removal of the third verdict from the Scottish criminal justice system. The introduction of the not proven verdict into the Scottish system in 1728 was perhaps considered necessary at a time when the death penalty was still in use. The case which introduced the verdict appears to have been one where the accused was ‘proven’ on the facts, but the jury did not wish to see him hung. Since the abolition of the death penalty it is hard to justify a three verdict system.

VSS finds it unsettling that juries neither seem to understand the not proven verdict, nor use it in the way in which they should. For example, research cited by the Academic Expert Group of the Bonomy Review¹ suggests that jurors wrongly believe that a not proven verdict permits a subsequent retrial, regardless of instructions received on this. We are further concerned by the findings that thorough debate is inhibited once the not proven verdict has been raised during deliberations; this suggests to us that we would see different outcomes for the same cases using a two verdict system in comparison to a three verdict system. This certainly seemed to be the case in another study which found that mock jurors were more likely to acquit in sexual abuse cases using a three verdict system than compared to a two verdict system².

There is a real possibility that “the not proven verdict...may contribute to wrongful acquittals in cases of domestic and sexual abuse”³, an argument that is supported by the fact that juries are more likely to choose a not proven verdict in cases of rape and attempted rape than in cases overall (the proportion of people receiving a not proven

¹ Hope et al. (2008) cited in the Academic Expert Group Report, p.159

² Ibid. p.158

³ The Post-Corroboration Safeguards Review: Final Report, April 2015 paragraph 12.19

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verdict in 2013-14 for rape or attempted rape was 20%, compared to only 1% for all crime types)⁴.

Most significantly, it is our experience that many victims and witnesses find the third verdict to be confusing and disappointing. Finality and certainty are crucial elements of an effective criminal justice system. With the added option of the not proven verdict, and how it is understood in the context of standing alongside 'guilty' and 'not guilty' options, many victims are left without the conclusive answer they were looking for from the justice system. The three verdict system, with its two different forms of acquittal, "suggests two differing degrees of innocence. This is neither acceptable for the victim or the accused."⁵ It can also be argued that giving the jury two acquittal verdicts but only one conviction verdict to choose from favours the accused.

Following the removal of the third verdict, there are several options for the names of the remaining verdicts. Victim Support Scotland acknowledges that there are benefits to retaining the verdicts of 'guilty' and 'not guilty', but believes that the fairest option both for victims and accused persons is to return to a two-verdict system of 'proven' and 'not proven'. These labels most clearly reflect the purpose of a criminal trial, that being to establish whether the Crown has proved its case 'beyond reasonable doubt'. From a victim's perspective a 'not proven' verdict (within the context of a two-verdict system) can also signal an important message to the victim that the acquittal verdict was reached due to insufficient evidence to convict. By contrast, a verdict of 'not guilty' may send a message to the victim that they were not believed, or that they were perceived by the court to have been lying or to having made false accusations.

Section 2 – Jury verdicts

VSS does not accept that it would be necessary to increase the jury majority if the not proven verdict were to be removed. In a system that requires corroboration of the essential facts of each case, we believe that rather than address a "possible bias against the accused"⁶, increasing the majority required to convict would in fact create an additional barrier to justice for victims of crime, and lead to a bias in favour of the accused. The number of jurors required to reach a guilty verdict should not be so high as to act as an impediment to justice, recognising that miscarriages of justice do not only occur when an innocent person is wrongly convicted, they also occur when the guilty are acquitted.

⁴ Scottish Government (2014), 'Criminal Proceedings in Scotland, 2013-14', Statistical Bulletin, p.9 and Table 2a

⁵ McMahon (2007), 'Criminal Procedure (Reform of Verdicts) (Scotland) Bill Public Consultation', p.8 http://www.scottish.parliament.uk/S2_MembersBills/Draft%20proposals/ReformOfVerdictsConsultation.pdf

⁶ Criminal Verdicts (Scotland) Bill (2013), Policy Memorandum, p.5

The Scottish Government has made a commitment to research on jury decision-making as recommended by the Bonomy Review, and Victim Support Scotland agrees that “simultaneous changes to several unique aspects of the Scottish jury system should only be made on a fully informed basis.”⁷ It is not appropriate for changes to be made to the Scottish jury system without full consideration of how these changes would sit with the abolition of the corroboration requirement.

⁷ The Post-Corroboration Safeguards Review: Final Report, April 2015 paragraph 12.24
www.gov.scot/Resource/0047/00475400.pdf