



Victim Support Scotland

Victim Support Scotland Response

THE NOT PROVEN VERDICT

Question 1: Which of the following best reflects your view on how many verdicts should be available in criminal trials in Scotland?

- Scotland should keep all three verdicts currently available
- Scotland should change to a two verdict system

Please give reasons for your answer:

The arguments for keeping the not proven verdict, which were detailed in the consultation report, were that “the not proven verdict is an important safeguard that reduces the risk of wrongful conviction”, and that “the current system works well and there is no evidence that it requires to be changed”.

From the perspective and experiences of not only VSS as an victim-support organisation, but from its service users who have experienced crime, this has overwhelmingly not been the case.

The existence of a not-proven verdict does more harm than good; and to have not only one, but two opportunities for a perpetrator to be acquitted of a crime, where a victim only has one verdict that would work to protect them, is already a sign of an archaic and not-fit-for-purpose verdict system.

“I don’t believe in the not proven verdict. The reason being that if someone is innocent, they have to live with this hanging over them for the rest of their life and it could be viewed by some people as if the person is guilty, but it just hasn’t been proven. The same can be said if someone is deemed guilty and is in fact guilty but got the not proven on technicality or misrepresented. From a victim point of view, if indeed the person is guilty but there is not sufficient evidence or misrepresented by lawyer on the day, the victim has no closure. They have to live the rest of their life passing their perpetrator in the street, with the anguish that justice has not been done and they got away with their crime. The not proven protects the perpetrator.”

Despite the majority of people affected by crime calling for the abolition of the Not Proven verdict, others suggest **reform**. ***Yara, who studied Criminal Justice and was a witness to her relative’s murder trial (but says she does not have personal experience with the Not Proven Verdict), felt that “the NPV should remain in place with the view of bringing an accused back to court in light of new or undiscovered evidence. The NPV does not exonerate an accused person in fact all too often it leaves a questionable stain upon them.”***

Question 2: If Scotland changes to a two verdict system, which of the following should the two verdicts be?

- Guilty and not guilty
- Proven and not proven
- Other

Please give reasons for your answer. If you have selected “other” please state what you think the two verdicts should be called:

The not proven verdict needs to be abolished and replaced with a two-verdict, guilty and not guilty system. People affected by crime have previously criticized “the use of a not proven verdict when jurors need to compromise on a verdict, considering this to be a 'cop out' and questioned the appropriateness of two acquittal verdicts and of allowing jurors to ‘sit on the fence” (page 17). Merie, a VSS service user, agreed: **“You’re either guilty or not guilty. Seems to me and others that judges and jurors haven’t got the bottle to make a decision”.**

Ella, whose brother was murdered and his killer acquitted on a not-proven verdict, stated that she felt like “the not proven verdict was a scapegoat for the jury members.” Ella also believes there should be a two-verdict system: Guilty and Not Guilty. “It allows the family of not only the victim, but the accused, to move on.”

Question 3: If Scotland keeps its three verdict system, how could the not proven verdict be defined, in order to help all people including jurors, complainers, accused and the public to better understand it?

That there isn’t even a set case law of generally-accepted definition of the not proven verdict, despite the overwhelming trauma it causes victims, witnesses and their families and the escape from justice it gives to perpetrators, is alarming. Furthermore, as stated in the report, the difference between the not proven and not guilty verdicts is not even made clear to jurors. As it says, “there have been occasions where judges have attempted to explain the significance of the two acquittals, but this has resulted in appeals on the grounds of misdirection. Jurors therefore receive no instruction from a judge on the meaning of the verdict and how it differs from not guilty.” (page 13)

If the criminal justice system has, for all this time, not given a clear definition to the verdict to help people understand it better, the time to start should not be now, after it is already clear that the existence of the not-proven verdict is harmful. There should not be an instance where Scotland keeps its three-verdict system.

“The not-proven rule is being used as an escape mechanism. It’s on the side of the accused rather than the victim.”-Scott, VSS service user

Question 4: Below are some situations where it has been suggested a jury might return a not proven verdict. How appropriate or inappropriate do you feel it is to return a not proven verdict for each of these reasons?

Not answered.

- 1 – Appropriate
- 2 – Inappropriate
- 3 – Don’t know

- The jury returns a not proven verdict because they believe the person is guilty, but the evidence did not prove this beyond a reasonable doubt.

- The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to publically note some doubt or misgiving about the accused person.
- The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to indicate to complainers and/or witnesses that they believe their testimony.
- The jury returns a not proven verdict as a compromise, in order to reach agreement between jurors who think the right verdict should be guilty and others who think it should be not guilty.

Question 5: Do you believe that the not proven verdict acts as a safeguard that reduces the risk of wrongful conviction?

Yes/**No**/Unsure

Please give reasons for your answer and explain how you think it does or does not operate to prevent wrongful convictions.

Though it has been suggested that the not-proven acts as a safeguard that reduces the risk of wrongful convictions, there is no concrete evidence of such. The not proven verdict does indeed act as a safeguard, but one that reduces the likelihood that a perpetrator is convicted of a crime, and increases the likelihood that the victims and their families do not receive justice.

Question 6: Do you believe that there is more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict?

Yes/No/Unsure

Please give reasons for your answer:

Not answered

Question 7: Do you believe that the not proven verdict can cause particular trauma to victims of crime and their families?

Yes/No

Please give reasons for your answer:

VSS strongly believes that the not proven verdict can have detrimental effects on victims of crime and their families, who often have to wait years before the court date only to hear that they will not receive justice. There are superfluous personal stories, case studies and evidence that the not-proven verdict can cause extreme and particular trauma to victims of crime and their families. It is important to note that sexual assault cases have incredibly high rates of acquittal due to the not proven verdict; more than any other crime (page 14). Lisa, who was the victim of sexual assault, said, ***"It [the not-proven verdict] stopped me coming forward. It's so unjust and too much trauma to risk as an outcome. Would have been more likely to give a statement if it didn't exist. Also being raped and impregnated, no one in any service understood that my child's safety was my first consideration. Why would I make statements putting my child's security, mental health and identity in jeopardy for a not-proven verdict? We would have no safeguard after taking a stand against the perpetrator. I did not want my son to be evidence and risk his life and future for a not-proven verdict. In practice, the not-proven makes sure there is not only zero justice but also zero safeguarding. It fails not just the victims***

and accused in stopping moving on from the crime but fails communities as well. It's futile. It acts against any healing and any restoration.

The impact of the not proven verdict on Ella and her family meant that they were *“massively concerned about our safety and security. VSS provided stuff for this, alarms and such. I had to receive counselling. The police had to step in and give us security. The person who did it is dangerous.”* Furthermore, of the verdict, Ella said, *“they’re not cleared of the crime, we all still have that over our head. For our family, my brother didn’t get justice, and our family have to live with that. It’s unjust. We’re left in limbo.”*

JURY SIZE

Question 8: Which of the following best reflects your view on jury size in Scotland?

If Scotland changes to a two verdict system:

- **Jury size should stay at 15 jurors**
- Juries should change to 12 jurors
- Juries should change to some other size

If you selected “some other size”, please state how many people you think this should be:

Please give reasons for your answer including any other changes you feel would be required, such as to the majority required for conviction or the minimum number of jurors required for the trial to continue:

The removal of the not proven verdict should not have an impact on the jury size. However, making sure that there is not a lack of jurors is important. When jury size was discussed, Ella gave the example of how, though the jury for her relative’s murder case was meant to be 15, it ended up being 14 because a juror was kicked off for using their phone. The jury opinion, then, was split straight down the middle (7/7), so if there had in fact been 15 jury members, ***“it would have changed the entire verdict”***.

JURY MAJORITY

Question 9: Which of the following best reflects your view on the majority required for a jury to return a verdict in Scotland?

If Scotland changes to a two verdict system:

- We should continue to require juries to reach a “simple majority” decision (8 out of 15).
- We should change to require a “qualified majority” in which at least two thirds of jurors must agree (this would be 10 in a 15 person jury, or 8 in a jury of 12).
- We should reduce the jury size to 12 and require a “qualified majority” of 10 jurors for conviction as in the system in England and Wales.
- We should change to some other majority requirement.

If you selected “some other majority requirement”, please state what proportion of the jury you feel should have to agree to the decision:

Please give reasons for your answer including any other changes you consider would be required such as to the minimum number of jurors required for the trial to continue:

VSS Reference Group members stressed that there were aspects of the jury to consider that went beyond size and majority. Ella thought that there should be a test for common-sense skills conducted before jury members are chosen, just to make sure they understand the basics and can comprehend the impact their decision has. Language was brought up again—“If the jury cannot comprehend the language, which can be quite difficult, then how are they supposed to come to a verdict? There should also be a mixed range of people in a jury that are trauma-informed, and do some tests to make sure they are emotionally able to carry it out.” Another member, Leena, had a similar remark: “I think it's more about suitability of jurors and trial education of trauma.”

A common theme service users brought up was ensuring that there were people on the jury who understood what it was like to be a victim of crime, or at least someone from the same background. Casey, who lived in a rural town, was frustrated that *“the jury members don't know what its like, coming from a small town in the middle of nowhere. Everybody knows everybody. When he [the perpetrator] got off on a not-proven, they aren't going to understand how easy it's going to be to just bump into him on the street.”*

Scott, who lost his child to homicide with the perpetrator acquitted on a not guilty verdict, says: *“My issue is that jury members need further exploration and communication and understanding of the jury system, to convey to them what it actually means, the impact that has on accused and victims. My views is that if they decide to keep the not proven, the jury members need to ask to give a written statement to justify their decision, between 50 and 2000 words.”*

Yara adds: “Jury members are lay people with little or no knowledge of the CJS or its proceedings. Depending on whether or not the jury can comprehend the legalities and legal jargon is also a point to consider, words that are used by the actors within the proceedings may or may not resonate with jury members. Some terminology used in the court can be misleading for jury members. They can be intimidated and pressured by their peers into following the lead of the rest. 15 people who are randomly selected to make a decision about an accused is undoubtedly a major responsibility, what if they get it wrong?” She goes on to “propose an independent legal advisor be assigned to each Jury when they retire to consider their verdict. The main purpose of a legal advisor would be to assist the jury with guidance or understanding the legal terminologies used in court.”

Question 10: Do you agree that where the required majority was not reached for a guilty verdict the jury should be considered to have returned an acquittal?
Yes/No/Unsure

Please give reasons for your answer:

THE CORROBORATION RULE

Question 11: Which of the following best reflects your view on what should happen with the corroboration rule in the following situations?

- If Scotland remains a three verdict system and keeps the simple majority:

- Scotland should abolish the corroboration rule
- Scotland should reform the corroboration rule
- Scotland should keep the corroboration rule as it is currently

Please give reasons for your answer:

- If Scotland changes to a two verdict system and keeps the simple majority:
 - Scotland should abolish the corroboration rule
 - Scotland should reform the corroboration rule
 - Scotland should keep the corroboration rule as it is currently

Please give reasons for your answer:

- If Scotland changes to a two verdict system and increases the jury majority:
 - Scotland should abolish the corroboration rule
 - Scotland should reform the corroboration rule
 - Scotland should keep the corroboration rule as it is currently

Please give reasons for your answer:

Question 12: If the corroboration rule was to be reformed, rather than abolished, what changes do you feel would be necessary?

In all of the above questions, Scotland should reform the corroboration rule. The corroboration requirement as it now stands is a barrier to justice for victims of sexual crimes and domestic violence—crimes that are often hidden from view.

If reform is chosen over abolition, there needs to be thorough and deep research and collaboration between the criminal justice system and victim support organisations to ensure that victims of sexual assault and domestic violence are not disproportionately harmed by the corroboration rule. Additionally, there needs to be assurances that jury members do not have misunderstands or misinterpretations about sexual assault and domestic abuse, as this has been shown in research to affect what decision they make.

Question 13: Do you feel further safeguards against wrongful conviction should be in place before any reform or abolition of the corroboration rule? Yes/No

Please give reasons for your answer, including what other safeguards you believe would be appropriate and why:

Question 14: If the corroboration rule was kept or reformed, what else could be done to help people, including those involved in the justice system and the general public, to understand it better?

There needs to be public access to information on the rule that is available in multiple formats (web and non-web content) that is stated in accessible language, reviewed by victim support organisations, and clearly states the impacts the corroboration rule has on the public, on perpetrators, and on victims of crime and their families.

EQUALITY AND HUMAN RIGHTS

Question 15: Considering the three needs of the public sector equality duty – to eliminate discrimination, advance equality of opportunity and to foster good relations – can you describe how any of the reforms considered in this paper could have a particular impact on people with one or more of the protected characteristics listed in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation)?

Question 16: Are there any other issues relating to equality which you wish to raise in relation to the reforms proposed in this paper?

In regards to how the jury is made up, it is important to always test for unconscious bias before assigning jury members to trials. If, for example, the victim is a person of colour, an all-white jury could hold implicit racism. If the victim is a woman and the jury are made up of all men, there could be implicit sexism, and so forth. It is very important to keep in mind not only jury size but what it is made up of and how that will directly impact victims of crime.

Question 17: Do you feel that any of the reforms considered in this paper would have an impact on human rights?

The removal of the Not Proven verdict will undoubtedly cancel out one of the many barriers victims of crime face in the justice system.

Question 18: Do you feel that any of the reforms considered in this paper would have impacts on island communities, local government or the environment?

As there are island communities within Scotland, the reforms considered would impact them because they are included within the Scottish jurisdiction. As for local governments, there is potential impacts from these reforms through justice social work.

Question 19: Do you have any other comments about the content of this paper?