



Scottish Women's Convention response to the Scottish Government's:

The Not Proven Verdict and Related Reforms

March 2022

Premise

This consultation seeks views on the three-verdict system in Scottish criminal trials and, if the not proven verdict were to be abolished, whether any accompanying reforms would be necessary to other aspects of the Scottish criminal justice system including jury size, majority required for verdict and the corroboration rule.

After the publication of the Scottish Jury Research in October 2019, the Scottish Government held engagement events involving stakeholders from a range of sectors. The discussions highlighted the complexity of the issues and the lack of agreement about next steps.

Ministers recognise the strong case that can be made for the abolition of the not proven verdict but also understand that there are many who have principled and informed objections or highlight the complex impact that moving to two verdicts could have. It is hoped the consultation will capture the views of a broad range of stakeholders including legal professionals, the third sector and those with lived experience of the system, to inform any potential next steps for the three-verdict system and any associated reforms that may be required.

The Scottish Women's Convention (SWC)

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at both a Scottish and UK level.

The SWC engages with women using a range of methods, including roadshow events, thematic conferences, and regional contact groups. This submission provides the views of women, reflecting their opinions and experiences in key areas relevant to women's equality.

The SWC is currently engaging with women through digital roadshows, online surveys, asking women to comment by email, and by telephoning those who want to talk. We are also using our wide network to ask women to collate views in their local communities and forward these to us on a regular basis. We are continuing to review innovative ways of engaging with women throughout Scotland using whichever medium is appropriate to them.

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 change to a two-verdict system

Please give reasons for your answer:

The women we spoke to were very divided on this topic. 57% said that Scotland should change to a two-verdict system, and 43% said Scotland should keep all three verdicts, so it was very close.

The main reasons for changing to a two-verdict system would be:

- Brings the system in line with those of other countries
- Simplifies the system
- Avoids confusion around what the not proven verdict means

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

- Proven and not proven

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

The women we spoke to were very divided on this topic. 57% said Proven and Not Proven, and 43% said Guilty and Not Guilty, so it was very close.

The main reasons for changing to a two-verdict system would be:

- It makes clearer the fact that the verdict is a reflection of the court’s capacity to *prove* what has happened rather than being a reflection of someone’s culpability/guilt.
- This may help people in understanding the role and purpose of the judicial system (i.e., that it is more of a bureaucratic process than a system for justice).
- Guilty is a very heavy word that can put jurors off using it.

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?

Here are some suggestions from the women we spoke to.

- “If doubt remains, no matter how little, guilt cannot be wholly attributed.”
- “Insufficient evidence or similar.”
- “The prosecution's evidence was insufficient to demonstrate that the accused was definitely guilty.”
- “It should be absolutely clear that not proven simply means there was insufficient evidence to make a not guilty verdict, and not that the accused was innocent. The accused should not be acquitted, and it should be possible to retry the case if further evidence became available.”

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?

- 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.
 - Inappropriate
- The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to publicly note some doubt or misgiving about the accused person.
 - Inappropriate
- 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.
 - Inappropriate
- 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.
 - Inappropriate

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

No

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

- "I think it actually makes more wrongful convictions since jurors misunderstand it as a middle ground and are more lenient on people who should be convicted guilty."
- "It is just yet another way in which violent men are systemically protected from taking responsibility for their actions. We do not need any more safeguards for these men as society is already set up in their favour."

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?

No

Please give reasons for your answer:

- "A lot of people do not understand the not proven verdict well enough to make this association. I think a lot of people think they're interchangeable."
- "For those of us women who know how the system works, we know that the male perpetrators are guilty regardless of whether they are given a not proven or a not guilty verdict."
- "The stigma is more to do with people who are already stigmatised. For example, rich men are always going to have the power to be able to cover up their history of any convictions, whereas any conviction is going to do more damage to working class or ethnic minorities people's lives."

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

Yes

Please give reasons for your answer:

- “All involved in any way suffer. It is not possible to alleviate trauma and people naturally see everything through their own prism.”
- “Yes, victims of sexual offences.”
- “I know it does as the victim feels they have failed and been failed.”

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

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:

Of the women we spoke to, 71% thought the size should stay at 15 jurors, and 29% thought it should change to 12 jurors.

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 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).

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:

Of the women we spoke to, 57% favoured a ‘qualified majority’ of two thirds, 29% favoured a ‘simple majority’, and 14% favoured 10 out of 12 as in England and Wales.

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

Please give reasons for your answer:

Of the women we spoke to, 57% responded yes, 29% responded no, and 14% responded don’t know.

Most women felt it was important to ‘err on the side of caution’.

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?

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

o Scotland should keep the corroboration rule as it is currently

b) If Scotland changes to a two-verdict system and keeps the simple majority:

o Scotland should reform the corroboration rule

c) If Scotland changes to a two-verdict system and increases the jury majority:

o Scotland should reform the corroboration rule

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

Women made some suggestions for reforms:

- There would have to be alternative ways found to verify the evidence.
 - o “Evidence would have to prove to be substantiated in clear terms.”
- There would need to be consideration of whether it could be removed for certain types of crimes.
 - o “It is an abomination to have this rule for crimes which rely on secrecy such as rape.”

However, many of the women we spoke to felt that they did not know enough about the corroboration rule and would need more information to be able to make suggestions.

Question 13: Do you feel further safeguards against wrongful conviction should be in place before any reform or abolition of the corroboration rule?

No

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?

Generally, women felt that the concept is confusing and there needs to be more clear, accessible information about it. Some practical suggestions included:

- “A series of questions could be made into a help list e.g., Was the witness present?”
- “A clear definition in plain English.”
- “Give lots of examples where corroboration was key to getting a sound evidential verdict.”

However, some women felt that it is inherently confusing and beyond explanation, saying “it is too complex for the public to grasp.” This paves the way for broader arguments around the viability of decision by jury as many legal concepts are so widely misunderstood.

EQUALITY AND HUMAN RIGHTS, OTHER IMPACTS AND COMMENTS

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)?

As a women's organisation, we would emphasise the ways in which these reforms may affect women, especially around issues such as violence against women and girls. We hope that changing the corroboration rule and the not proven verdict will make the process less traumatising and see more women successfully get justice.

- Many forms of violence against women and girls, such as domestic abuse, psychological abuse, or sexual violence, happen behind closed doors and therefore corroboration is not possible. For this reason, many abusers are acquitted before the case even reaches the court, and many women are denied justice.
- Often women who have experienced abuse can struggle to articulate their experiences as trauma can affect memory or it may be too retraumatising to relive the experience when giving a statement. Having to make changes to statements or slight deviations between statements is often misinterpreted as unreliability which means women are not believed and their abusers are acquitted. A more trauma-informed practice needs to be at the heart of judicial processes and how they are implemented to improve outcomes for women.
- There is still a lot of prejudice and victim-blaming of women who have experienced sexual violence or abuse. For example, a lot of people do not understand what constitutes rape and are judgemental of women coming forward, claiming that they are exaggerating. Studies show that women jurors can often be more judgemental. Either they may have had a similar experience but do not want to admit to themselves that it constituted rape, or conversely a woman juror who has not been raped may think 'I've managed to keep myself safe, why can't she manage?' For these reasons, there is a strong argument that juries should not be used in these types of cases or, if they are, there should be substantial training to help jurors understand the topic. There also need to be better safeguards in place to ensure that men who have previously been accused of these types of offences cannot sit on juries for these cases.
- These prejudices often mean that the system is rigged against women who are married to their abuser because there are pervasive beliefs that women should tolerate certain behaviours from their husbands as part of the 'marriage contract'.
- Disabled women, especially those with learning disabilities, are less likely to be successful in achieving justice because there is often not enough support for them to be able to give their stories that takes account of their individual needs and does not retraumatise them. Also, unconscious bias often means that juries see disabled victims as more vulnerable and less reliable so are more likely to be lenient to perpetrators.
- Ethnic minority women are also disadvantaged by the current system because there is a lack of cultural understanding which means they are often not believed, or may resist bringing in other witnesses for fear of backlash from within their community which means they are disadvantaged by the corroboration rule.

Finally, women reflected that any reforms could have unanticipated consequences, and it is hard to say with certainty how they will affect different groups. They also highlighted that the political motivations for these reforms and the unconscious bias ingrained in our society need to be considered, asking "Who is to know any hidden agendas against any of the above?"

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

On the whole, women did not think that the reforms would have an effect on human rights, but they did reflect that it is sometimes hard to balance the rights of the victim and the defendant.

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?

The women we spoke to did not generally think that there would be any impacts. The only suggestions made were:

- In small, tight-knit communities there can sometimes be difficulties with victims of domestic abuse not being believed already so changes to the corroboration rule may affect this further.
- Also, the isolated nature of life in some island communities may have implications for the corroboration rule.

Conclusion

The SWC is grateful for the opportunity to respond to the Scottish Government's consultation on the Not Proven Verdict and Related Reforms. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to this topic and its effects on women's equality.

For further information, please contact

The Scottish Women's Convention

Email – info@scottishwomensconvention.org

Telephone – 0141 339 4797

www.scottishwomensconvention.org

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to women's equality.

Scottish Women's Convention is a charitable company limited by guarantee. Registered in Scotland No. SC0327308. Registered office 2nd Floor, The Albany Centre, 44 Ashley Street Glasgow G3 6DS.

The Scottish Women's Convention is a Charity registered in Scotland No. SC039852.