

Criminal Justice Committee

33rd Meeting, 2023 (Session 6), Wednesday 6
December 2023

Victims, Witnesses, and Justice Reform (Scotland) Bill

Note by the clerk

Background

1. The Committee is taking evidence on the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) at [Stage 1 of the Parliament's legislative process](#).
2. The Bill proposes changes to the law to try to improve the experience of victims and witnesses in the justice system. The Bill also proposes changes to the criminal justice system to try to improve the fairness, clarity and transparency of the framework within which decisions in criminal cases are made.
3. The Committee is adopting [a phased approach](#) to its consideration of the Bill, to divide the Bill into more manageable segments for the purposes of Stage 1

Topics to be covered

4. At today's meeting, the Committee will begin taking evidence as part of the second phase of its scrutiny. This will cover the following provisions in Part 4 of the Bill, namely—

Part 4

Criminal juries and verdicts

Contains measures reforming criminal trials.

- Removes 'Not Proven' as a verdict in all criminal trials, leaving verdicts of 'Guilty' and 'Not Guilty'.
- Changes the size of a jury in a criminal trial from 15 to 12 members.
- Changes the majority of jurors required for conviction from being a simple majority (where there is a full complement of jurors) to a two-thirds majority.

5. The Committee's scrutiny of Part 4 of the Bill will continue until the end of the year. Further details of the Committee's phased approach [can be found online](#).

Today's meeting

6. At today's meeting, the Committee will take evidence from the following witnesses.

Panel

- **Sandy Brindley**, Chief Executive, Rape Crisis Scotland
- **Joe Duffy**

7. Mr Duffy is attending on behalf of the Duffy Family. The written submission from the Duffy Family explains that—

“The Duffy Family have lobbied for the removal of the Not Proven Verdict for over 30 years following the verdict being returned in the Trial of Francis Auld for the Murder of Amanda Jane Duffy at Glasgow High Court in October 1992. Joe Duffy his wife Kate Duffy and Nan Cox founded Petal Support in October 1994 to support families affected by Murder and Culpable Homicide. We severed our association with Petal in 2014 and subsequently founded The Manda Centre and continue to provide practical and emotional support, counselling and holistic therapies to those affected and bereaved by crime from our Support Centre in Quarry Street Hamilton.”

8. The relevant sections of written submissions from Rape Crisis Scotland and the Duffy Family covering Part 4 of the Bill is reproduced at the Annex. The full submissions can be found online at the following links.

- [Rape Crisis Scotland](#)
- [The Duffy Family](#)

9. Today's evidence session will only cover Part 4 of the Bill. The Committee will be taking evidence on Parts 5 and 6 of the Bill in January and February.

Further reading

10. A SPICe briefing on the Bill [can be found online](#).
11. The responses to the Committee's call for views on the Bill [can be found online](#).
12. A [SPICe analysis of the call for views](#), covering Parts 4, was circulated with the committee papers for last week's meeting.

Previous evidence sessions

13. At previous meetings the Committee has taken evidence from a range of witnesses on Parts 1-3 of the Bill.

14. On 29 November 2023 the Committee took evidence on Part 4 of the Bill from—

- Eamon Keane, Lecturer in Evidence and Criminal Procedure, School of Law, University of Glasgow
- Professor Fiona Leverick, Professor of Criminal Law and Criminal Justice, School of Law, University of Glasgow

15. The Official Reports of these meetings [can be found online](#).

**Clerks to the Committee
December 2023**

ANNEX

Extract from [Submission from Rape Crisis Scotland](#)

What are your views on the proposal in Part 4 of the Bill to abolish the not proven verdict and move to either a guilty or not guilty verdict?

‘Out of every proposed change... I feel that the most important is the Not Proven, I think it despicable that we still deem this to be acceptable.’ (a survivor commenting on the Bill)

We fully support the proposal in the Bill to abolish the Not Proven verdict. The Not Proven verdict is used disproportionately in rape cases. In 2019/20, only 43.48% of rape and attempted rape cases resulted in convictions, the lowest rate for any type of crime. Not Proven made up 44% of rape and attempted rape acquittals, compared with 20% for all crimes and offences. Statistics from 2019/2020 show that on average only 1% of accused persons in all summary trials received a verdict of not proven but in sexual offences cases this was delivered in 12% at summary level in. In the same year, in solemn cases, a not proven verdict was delivered in 5% of all crimes and offences, in 14% of sexual assault cases and 25% of rape cases.

There is considerable evidence that juries can be reluctant to convict in rape cases, and that preconceived notions of how someone should react to rape may impact on their decision making. There are real worries that the existence of the Not Proven verdict gives juries in rape trials an easy out and contributes to guilty people walking free.

The distinction between the Not Proven and not guilty verdicts is unclear, and the explanation frequently given to survivors is that it means the jury believed you but didn't want to acquit the perpetrator for some other reason. We have spoken to many survivors who received a verdict of 'Not Proven' and hear that it left them feeling confused and let down. The uncertainty was distressing and impacted on their ability to recover.

Survivors feel that it gives the jury an easy way out to make decisions which allow them to 'sit on the fence'.

‘After three years of fighting the trauma of this attack and a four day trial my cases verdict was ‘not proven.’ It felt horrific, I have never been more let down by anything in my life. After all that pain to be told nothing will be done about it just made me regret reporting it in the first place. This is why more women don't come forward.’ (A survivor)

‘I'm essentially being believed about what happened but that there will be no consequences. Got the same consequences as a 'not guilty' verdict. I feel like I've wasted my time. Feeling not protected is a big thing, feels like I have to wait until he does something until the police protect me. He's getting to live a life of not guilty

even though the jury believed it happened but there just wasn't forensic evidence.'
(A survivor)

'The not proven verdict would have the greatest positive impact going from my own experience. When you have to give evidence and relive the trauma you suffered to then have it come back as a not proven can leave a person confused and unsettled...All these questions but no full explanations or answers.' (A survivor)

We concur with the opinion of the Scottish Government that the evidence is overwhelming that the Not Proven verdict does not serve the interests of justice. We should also highlight that not all survivors share a common experience, whilst we have had overwhelming support for the abolishment of the not proven verdict there are some survivors who have expressed some feeling of 'comfort' from the Not Proven verdict being better than a not guilty verdict. This points to the need for improved confidence in the integrity of decision making in sexual crime cases.

5. What are your views on the changes in Part 4 of the Bill to the size of criminal juries and the majority required for conviction?

We are concerned about the impact of the proposed changes to the size of criminal juries and the majority required to reach a conviction.

At present, there would be 15 members on the jury and 8 of these would need to be persuaded to return a guilty verdict however under the new proposals of a jury size of 12, still 8 would need to be persuaded. The recent figures, discussed above, show that the not proven verdict was only used in 1% of summary cases and 5% of solemn cases, it is difficult to imagine that such a drastic change is needed to counterbalance any perceived prejudice to an accused person.

The Not Proven verdict is disproportionately used in rape and sexual offences cases and this change to the jury majority will have the most significant impact on survivors of sexual violence and lowers their odds of receiving a guilty verdict. If the Not Proven verdict potentially contributes to wrongful acquittals, it makes no sense to then put in place a measure which will make it more difficult to get a conviction.

If this provision is implemented, it could mean that the overall impact of this bill is to lower convictions in sexual offence cases.

Extract from [Submission from the Duffy Family](#)

What are your views on the proposal in Part 4 of the Bill to abolish the not proven verdict and move to either a guilty or not guilty verdict? (Section 35 and 36)

What are your views on the changes in Part 4 of the Bill to the size of criminal juries and the majority required for conviction?

We support the proposal in the Bill to abolish the not proven verdict in solemn and summary criminal trials and changing the law on what constitutes a majority of jurors

for the purposes of returning a verdict of guilty. The default criminal jury size consisting of 12 jurors. With the necessary provisions made for majority verdicts.

The only verdicts available to a jury are guilty or not guilty with a verdict of not proven no longer possible.

A jury can return a verdict of guilty only if a majority of them are in favour.

We agree that where a full jury of 12 is involved, or where one juror has died or been discharged, then at least 8 jurors are required to be in favour of a guilty verdict. In any other case (so where the jury consists of 9 or 10 jurors), at least 7 jurors are required to be in favour of a guilty verdict. New section 90(3) provides that if a majority (as defined in subsection (4)) is not in favour of a guilty verdict, then the jury must return a verdict of not guilty.

We agree with New section 99A, being concerned only with the verdicts available to the jury, and the number of jurors who must, depending on the size of the jury, be in favour of a guilty verdict, has no effect on the ability of a jury to deliver a verdict on a part of a charge (after deleting elements of it).

THE NOT PROVEN VERDICT

Scotland should change to a two-verdict system

The Scottish Legal System is recognised as the only legal system in the world with 3 verdicts.

This is an outmoded, outdated and unnecessary system.

What is required is a legal system, which correctly finds guilty those who are guilty of an offence and acquits those who are not guilty.

This should be with respect to what they did or didn't do rather than with respect to an outmoded legal process.

The two verdicts should be Guilty and not guilty

These two verdicts are universally understood, universally accepted as the acceptable outcome.

Transparency is provided to the accused and the complainers and to juror's.

The Not Proven Verdict is an offence to natural justice since we have a long-standing principle in this country of being innocent until proven guilty.

Not: Innocent until found Either Not Guilty OR Not Proven

The Not Proven verdict should be removed since it leaves everyone in limbo, with the defendant being neither innocent nor guilty.

Scotland should have two verdicts as this is clearer for both the accused and the complainant, it also provides a clear framework for juror's.

Furthermore, it removes the safety net for defence counsel, as currently they have an unfair 66.3% outcome option.

The vast majority of people are totally unaware of the court system and do not know that the Not Proven Verdict exists. Only those that have experience of the court system know what it is. The majority of victims and victims' families are not made aware of the

Not Proven Verdict prior to attending court. When a Not Proven Verdict is returned they are stunned since they didn't even know that that was a possibility.

There are those within the legal establishment that maintain the Not Proven verdict was well understood by juries and that it should be retained.

However, this is contradiction since both Sheriffs and High Court Judges are instructed not to explain Not Proven to Juries.

It is undoubtedly true that it is difficult to provide a clear and authoritative account of what the not proven verdict means with the clear lack of a formal definition to distinguish it from not guilty.

The Not Proven verdict should be removed since it leaves everyone in limbo, with the defendant being neither innocent nor guilty.

The not proven verdict can cause particular trauma to victims of crime and their families.

The majority of the population of Scotland are not aware of the Not Proven Verdict. They have never been through the Criminal Court System and have never been in any trouble, so they didn't even know that it exist.

To victims and victims' families the rationale for the verdict looks like a cop out from making the 'wrong decision' and does cause confusion and anger - particularly when the fact the verdict does not differ in any legal sense from the other acquittal 'Not Guilty' is realised.

From personal experience and my professional experience of working with other victim's and victim's families for over 30 years it is evident that they like myself and my family, were not prepared or informed of the possibility of a Not Proven Verdict during the investigation and subsequent Trial process.

The process and the outcome including even the existence of A Not Proven Verdict are not explained and the subsequent return of a Not Proven Verdict exacerbates the trauma and loss for victim's and victim's families.

The victim and victims' families have no recourse to an appeal system for what they see as a wrongful acquittal, unlike an accused who has the right to appeal what they perceive to be a wrongful conviction.

Victims and victims' families only recourse is a very long and expensive option of a Civil Case. This is not available to everyone due to personal or financial situations and even if they are successful it may provide a financial award and a degree of satisfaction, however, it will not lead to a custodial sentence.

The knowledge that the perpetrator is free to continue with their life, without a stain on their character, since they have no criminal record courtesy of the not proven verdict, is extremely difficult for victims and victims' families.

Victims and victims' families did not receive justice and carry the 'not proven' verdicts to their grave.