Justice Committee

Criminal Verdicts (Scotland) Bill

Written submission from the Scottish Justices Association Executive Committee

1. Thank you for the opportunity to submit evidence on the Criminal Verdicts (Scotland) Bill which proposes to remove the “Not Proven” verdict as one of the available verdicts in criminal proceedings. The Scottish Justices Association (SJA) was invited to express its views on 25th November 2015 and the deadline for responses was 5th January 2016. This provided a very limited consultation period, constrained further by the Festive Season, for an organisation that represents over 400 Justices of the Peace (JPs). Consequently, it has not been possible to survey all our members’ opinions and JPs have been invited to respond individually.

2. Nonetheless, the SJA Executive Committee felt that it might be helpful to respond as the current elected leadership of the Association. It is emphasised, however, that the balance of opinion shown below is very much a “straw poll” and should not be extrapolated as the opinion of the SJA membership as a whole.

3. The 14 Executive Committee members who provided evidence were split 64:36%; 9 favour retention of the ‘Not Proven’ verdict while 5 favour its removal. It is to be noted that the Justice of the Peace courts in Scotland deal with less serious summary offences which do not involve a jury at trial and therefore this submission only makes reference to summary criminal cases.

4. Key reasons for each view are summarised as follows:
   4.1. Supporting retention of the “Not Proven” verdict:
   - JPs saw the “Not Proven” verdict operate in cases where the defences were very good. The vast majority of those cases seemed to merit a guilty verdict on the balance of probabilities. However, due to various reasons the Crown’s submissions are not strong enough to prove the case beyond reasonable doubt.
   - Some JPs believe that flaws with the “Not Proven” verdict may be found with the jury system rather than the verdict itself.
   - The “Not Proven” verdict may serve a purpose when a case may be easily proved within the balance of probabilities, but more evidence is needed to bring it to higher evidential standard of proof beyond reasonable doubt.
   - One of the JPs gauges a sizeable majority view would seek to retain the “Not Proven” verdict and he knows very few JPs in his own Sheriffdom who would seek its abolition.

   4.2. Supporting removal of the “Not Proven” verdict:
   - Some JPs believe that the “Not Proven” could be seen as stating that while the Crown has failed to prove guilt beyond reasonable doubt, the accused person is not innocent. For these JPs, an accused person is innocent in the eyes of the law unless and until he/she is found “guilty”.

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The three verdict system as it stands results in a lack of clarity and allows stigma to be attached to someone when the Crown has been unable to prove their guilt.

If a Guilty verdict is properly based on an objective finding, beyond reasonable doubt, and within the constraints of corroboration, then surely the corollary is that anything else is not guilty. Not Proven is potentially dangerous, because it will almost always be based on considerable subjectivity.

5. The Justice Committee should also be aware that a significant proportion of respondents expressed preference for “Proven” and “Not Proven” as replacements for “Guilty” and “Not Guilty” verdicts. Indeed, several who supported retention of the current Not Proven verdict would be content with only two verdicts, provided they were “Proven” and “Not Proven”.

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