Justice Committee
Criminal Verdicts (Scotland) Bill
Written submission from Scottish Women’s Aid

Foreword

Scottish Women's Aid (“SWA”) is the lead organisation in Scotland working to end domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to our 37 member groups and to a wide variety of stakeholders. Our members are local Women’s Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need and an appropriate response from the civil and criminal justice systems.

SWA welcome the opportunity to comment on this Bill.

Section 1- Removal of the not proven verdict

With reference to the Carloway Review and the Academic Paper accompanying the Post-corroboration Safeguards Review, the “not proven” verdict causes confusion and uncertainty amongst the judiciary and juries, has not been demonstrated to act as a safeguard for the accused and disproportionately affects women experiencing sexual violence and domestic abuse.

As we stated in our response to the Scottish Government’s 2013 consultation “Reforming Scots Criminal Law and Practice: Additional Safeguards Following the Removal of the Requirement for Corroboration”, we would support the removal of the “Not Proven” verdict. It serves no useful purpose, regardless as to whether the requirement for corroboration is abolished. For clarity, only two verdicts are needed.

This is the simplest option in that if “not proven” is removed; the remaining verdicts will be those of either Guilty or Not Guilty. Retaining any reference to terminology of “proven” and “not proven” would only replicate current problems caused by the existence of the “not proven” verdict.

The standard of proof required is that the judge or jury must not convict unless convinced of guilt beyond reasonable doubt and the Crown must prove the guilt of an accused person beyond reasonable doubt.

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Use of “guilty” and “not guilty” would be compatible with Article 6.2, which provides that everyone is presumed innocent until proved guilty.

The final Report of the Post-corroboration Safeguards Review\(^3\), noted “12.19 One additional argument that is on occasion advanced in support of the abolition of the not proven verdict is that it may contribute to wrongful acquittals in cases of domestic abuse and sexual abuse. It was submitted in a response to the Consultation that jury members can be reluctant to convict in rape cases even where there is significant evidence and may feel reassured, in a way that it is not easy to express clearly, by being able to return a verdict of Not Proven. Some support for this view can be found in statistics which show that the Not Proven verdict is more frequently applied in cases of rape than it is in all cases in general (164 Criminal Proceedings in Scotland, 2013-2014 p 3.2.4 www.gov.scot/Resource/0046/00469252.pdf )

It went on to say “ 12.20 While a significant number of those who responded to the Consultation Document supported the view that there should be two verdicts rather than three, those who responded to the question about what those two verdicts should be were equally divided between Guilty/Not Guilty and Proven/Not Proven. Since the ultimate issue in any criminal trial is whether guilt has been proved beyond reasonable doubt, the logical case for the latter is obvious. This also reflects the historical position in Scotland. On the other hand, adopting the latter would involve a departure from universal practice elsewhere in the common law world and the abandonment of verdicts with which the Scottish public are currently familiar.”

Section 2- Jury Verdicts
We are against any tinkering with the jury majority required to reach a guilty verdict and this should remain at the existing number, being a majority of eight, until, and if, a decision is made on the removal of the requirement for corroboration and the matter is further addressed at that point.

The discussions around changing the majority to nine or even ten was predicated solely on the removal of the requirement for corroboration and specifically in terms of “additional safeguards” required for the protection of an accused should the requirement be removed. Consequently, since the requirement for corroboration remains, it is wholly inappropriate that the jury majority for a guilty verdict be increased. It should also be noted that, in recognition of this fact, section 70 of the Criminal Justice (Scotland) Bill, which also addressed this issue, was deleted at Stage 2 of that Bill’s passage through the Scottish Parliament.

This qualification was explicit in both the Scottish Government’s 2013 consultation paper “Reforming Scots Criminal Law and Practice: Additional Safeguards Following the Removal of the Requirement for Corroboration” and the final Report of the Post-corroboration Safeguards Review, which clearly states this point ”… 12.3 It was agreed that conviction on the basis of a simple majority of 8 out of 15 jurors would not be an adequate reflection of the principle that guilt must be established beyond reasonable doubt in a system in which the essential elements of the commission of a crime do not require to be proved by corroborated

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evidence…12.4- The Academic Expert Group went on to suggest that “the simple majority verdict may, exceptionally, be justified because of Scots law’s equally exceptional requirement of corroboration”… 12.5... The general view was that in the absence of the corroboration requirement it is necessary to increase the majority required for a guilty verdict to guard against miscarriages of justice and maintain public confidence in the criminal justice system.”

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