Justice Committee

Criminal Verdicts (Scotland) Bill

Written submission from Police Scotland

What are the Police Scotland key messages in relation to this subject?

- Police Scotland considers that the views of victims groups are paramount to this consultation.
- Police Scotland maintains its’ support for the change to a 2 verdict system in criminal trials, based on the research undertaken to date.
- Police Scotland do not consider it appropriate to specify which verdicts should be adopted.
- Police Scotland are less persuaded of the need to change the jury majority threshold, to be considered a safeguard against wrongful conviction.
- Police Scotland have previously submitted that this proposal represents a disproportionate reform in light of the decision to continue with the existing corroboration requirements.
- Any change to the jury majority threshold would only provide a safeguard in the relatively small number of Solemn trials.
- Reports submitted by other Specialist Reporting Agencies will face similar restrictions in the direct application of the safeguards suggested.

Please provide a narrative/summary of the subject area, including reference to the key messages and supporting evidence.

Victims, who are reported to feel dissatisfied with the availability of 3 verdicts, and the implications and inferences of Not Guilty or Not Proven verdicts, perhaps have the key voice in this area of the Bill. A move from 3 available verdicts to 2, provides an opportunity to address this issue without detriment to the rights of an accused person.

Police Scotland support the research undertaken so far and would be in favour of the proposed change to a 2-verdict outcome in criminal trials.

Should a 2-verdict system be introduced, Police Scotland do not consider it appropriate to specify which verdicts, or nomenclature, should be adopted. A clear distinction in language between the prosecution case, and the accused themselves would be helpful, ie it is the case against an accused that is proven beyond reasonable doubt or not; and that as a result of that finding by the jury, the accused is found to be guilty or not. The Bill presents an opportunity to offer that level of clarity in the directions to the jury and to the language of the presiding Judge/Sheriff.
Police Scotland are less persuaded of the need to change the jury majority threshold that could be considered a safeguard against wrongful conviction.

Confidence in jury findings is critical and the existing safeguards against wrongful conviction, through the retained corroboration requirement and a simple majority threshold of the larger than usual jury, provide that confidence. Retention of the current corroboration requirement will continue to restrict the number of prosecutions brought, through the “sufficiency of evidence” test. An increase in the jury majority threshold may well make it more difficult to reach a finding of guilt by the weighted majority of 2/3rds, resulting in a reduction in those found guilty.

Removing the Not Proven verdict is reported\(^1\) to be the driver to adjust the jury majority threshold. It continues to say that any possibility of more findings of guilt, through the removal of that specific acquittal option, must be made more difficult to reach, to retain safe convictions. There is no reported confidence in how the unusually large Scottish juries will behave with only 2 verdict options.

It must be emphasised that changes to jury majority thresholds would only provide such safeguard in a relatively small number of cases. Less than 10% of reported cases are prosecuted under Solemn procedure. Around half of cases resolve prior to trial, resulting in these safeguards applying to even fewer trials – albeit of higher tariff offences.

90% of caseload, prosecuted at Summary level, would have no comparable safeguard that a change in jury majority threshold may bring. The 2 verdict change would of course apply equally to Summary as to Solemn trials.

Police Scotland suggest that reform of the jury majority threshold, initially proposed as part of the reforms to the corroboration requirement, could be a disproportionate proposal in light of the decision to continue with the existing corroboration requirements.

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Police Scotland
15 December 2015

\(^1\) Post Corroboration Safeguards Review, Report of the Academic Expert Group, August 2014