Justice Committee
Criminal Verdicts (Scotland) Bill

Written submission from Lieutenant Colonel N D Morrison OBE JP

1. Thank you for the opportunity to contribute to this consultation. This response is solely in respect of the Not Proven verdict rather than any Jury matters.

2. By way of background, soundings with other Justices of the Peace (JPs) illustrate that some conflate the terms Guilty/Not Guilty with Proven/Not Proven. In my view, the former clearly apply to the Accused Person, while the latter apply to the complaint, charge or indictment. Thus the former verdicts pronounce as to the guilt or otherwise of a person, while the latter apply solely to the facts relating to a set of circumstances and should, in turn, lead to a Guilty or Not Guilty verdict. A verdict of Not Proven, therefore, should not reasonably apply to a person since it relates to circumstances alone. In reality, it is a verdict of “I don’t know” which implies reasonable doubt, which should in turn lead to a Not Guilty verdict.

3. If a Guilty verdict is properly based on an objective finding, beyond reasonable doubt, and within the constraints of corroboration, then the corollary is that anything else is should lead to a Not Guilty verdict. I know that I am not alone among JPs in sometimes finding the human outcome of that less than palatable, but it appears to me to be the proper test.

4. Most JPs have heard highly compelling single witnesses who speak to an Accused’s guilt with great credibility, but without corroboration; the case cannot be proved and a Not Guilty verdict should result. In such circumstances a Not Proven verdict is sometimes used, but I would suggest that such an outcome undermines to a degree the requirement and intent of the requirement for corroboration. Many JPs have also seen the Accused who appears to “get away with it” because the Crown does not follow up an obvious line of questioning that would prove a case decisively. Instinct can suggest that the individual is guilty, but if the Crown fails to prove the case beyond reasonable doubt, the outcome should only be a Not Guilty verdict.

5. There is also a possibility that a Not Proven verdict is used when JPs consider that a case is proved on a balance of probability, rather than beyond reasonable doubt. I suggest that this practice carries risk due to the lack of benchmarking and consequent additional subjectivity involved. While any judicial decision should be as objective as possible, some degree of subjectivity is inevitable; however, I suggest that such a degree is likely to become unhealthily and randomly multiplied unless the test of beyond reasonable doubt is the only one applied in criminal proceedings.

6. Finally, I think the Not Proven verdict is potentially dangerous, not only because it will almost always be based on considerable subjectivity, but also because its uncertainty can carry with it stigma, which can often lead to mental health problems. The Justice system should avoid the risk of that outcome.
7. For these reasons, in my opinion the Not Proven verdict is an anachronism that carries no merit and considerable disadvantage. I believe that it should be removed from Scottish Law.

Lieutenant Colonel N D Morrison OBE JP
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