OFFICIAL REPORT
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Criminal Justice Committee

Wednesday 26 March 2025

Session 6

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Wednesday 26 March 2025

CONTENTS

	Col.
VICTIMS, WITNESSES, AND JUSTICE REFORM (SCOTLAND) BILL: STAGE 2	1

CRIMINAL JUSTICE COMMITTEE
11th Meeting 2025, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)
*Sharon Dowey (South Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Karen Adam (Banffshire and Buchan Coast) (SNP)
Angela Constance (Cabinet Secretary for Justice and Home Affairs)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 26 March 2025

[The Convener opened the meeting at 09:30]

Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 2

The Convener (Audrey Nicoll): Good morning, and welcome to the 11th meeting in 2025 of the Criminal Justice Committee. We have received no apologies.

Agenda item 1 is continued consideration of the Victims, Witnesses, and Justice Reform (Scotland) Bill at stage 2. I ask members to refer to their copy of the bill, the marshalled list of amendments and the groupings document.

I welcome Angela Constance, the Cabinet Secretary for Justice and Home Affairs, and her officials. I remind the officials that they are here to assist the cabinet secretary during the stage 2 debate and that they are not permitted to participate in the debate. For that reason, members should not direct questions to them. I also welcome Karen Adam to the meeting.

We will stop during the morning to allow for a comfort break.

We now begin consideration of amendments.

Section 34—Jury size and quorum

The Convener: The first group is on jury size and verdicts. Amendment 146, in the name of the cabinet secretary, is grouped with amendments 147, 72 to 74, 92, 148 to 150 and 268. I point out that, if amendments 74 or 92 are agreed to, I cannot call amendments 148, 149 and 158, due to pre-emption.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning. I acknowledge that members have taken significant time and great care to scrutinise the evidence and consider their positions on part 4 of the bill, and I will take some time to set out my position on the amendments in the group.

We all want to ensure that, in embarking on reform to abolish the not proven verdict, we do so in a way that protects the integrity of our criminal justice system and its effectiveness in delivering justice. I am well aware that, when reforming fundamental aspects of our system, we want to do so in a way that is considered and with as much consensus as possible. It is our role, as parliamentarians, to face the challenges in ensuring that our justice system is fair and can command confidence. We must diligently and carefully consider the evidence, the complexities and the interests involved. That is how we have all approached the matter to date, and I am sure that we will continue in that vein this morning.

I turn to amendments 146 to 150, in my name. Independent research suggests that reducing the jury size from 15 to 12 would improve the process of jury deliberations, so the bill sought to introduce that change. However, the committee's stage 1 report expressed reservations about such a change, and I note that Ms McNeill lodged an amendment some time ago that would keep the jury size as it is. I am satisfied that the abolition of the not proven verdict does not require an associated change to jury size. Therefore, I confirmed in my letter to the committee in October that, to build consensus on the issue, I would lodge an amendment to retain a jury size of 15. Amendment 146 does that.

Liam Kerr (North East Scotland) (Con): You have just said that you are "satisfied" that the jury size can go back to 15 and that that will not make a material difference. Could you tell us on what evidence you base that statement?

Angela Constance: Yes. Mr Kerr and other committee members will be aware of the substantial jury research that was undertaken in 2019. That was a significant piece of scholarship on a range of matters. As I said, that research demonstrated that reducing the jury size from 15 to 12 would improve the process of jury deliberations. That reference to "the process" related to issues such as the fact that, in a larger jury of 15, more people would dominate conversations and more people would be more passive. The evidence pointed to a reduced jury size improving the process of deliberations.

However, I have reflected very carefully on the matter, particularly in the light of the evidence that was subsequently presented to the committee. In the Government's consultation, most people favoured the retention of a jury of 15, and then the senators of the College of Justice said in evidence to the committee that they favoured the retention of a jury of 15. Others added their voices to that, including the Faculty of Advocates and the Scottish Solicitors Bar Association.

To go back to the original evidence that I cited, the other aspect of that research is that, although it spoke about a smaller jury improving the process of deliberation, it found that there was no difference between a jury of 12 and a jury of 15 when it came to things such as the number of evidential issues that were discussed—in other words, there was no disparity in that regard between a jury of 12 and a jury of 15. There was

also no variation in the extent or the accuracy of the discussion of legal issues.

That has led me to the view that the size of the jury is not as interconnected with other parts of the reform process as I previously thought. It is the case that I have changed my position on the jury size, but I think that my position aligns with the original research.

In summary—forgive me, I am just getting warmed up—the research pointed to a jury of 12 resulting in a more effective process of deliberation from the point of view of the dynamic process between people. However, with regard to the quality of discussions in and around evidential issues and the extent and accuracy of the discussion of legal issues, the research found that there was no disparity between a jury of 12 and a jury of 15.

I hope that that gives some reassurance to Mr Kerr.

My other amendments in the group arise as a consequence of the change to the bill that I seek to make with amendment 146. They maintain the current position of a minimum of 12 jurors out of 15 being required for a trial to proceed. They also set out the thresholds for conviction in juries of 15, 14, 13 or 12. Those thresholds have been set so that the requirement for a majority of at least two thirds remains constant, even if one or more jurors have to be discharged—for example, due to illness.

As a result of those amendments, a larger number of people will need to be in favour of conviction in order to find an accused person guilty—10 out of 15, rather than eight out of 12, as was initially proposed in the bill.

I turn to Pauline McNeill's amendments 72, 73 and 74. Amendment 72 is broadly similar to my amendment 146, which will also retain a jury size of 15. However, taken together, Ms McNeill's amendments 72, 73 and 74 would mean that the removal of the not proven verdict was a stand-alone reform.

The abolition of the not proven verdict is a historic reform; I am pleased that it has broad cross-party support and that it had the support of the committee at stage 1. However, it is important that we recognise that moving to two verdicts will change the balance of our system.

Independent research indicates that convictions are more likely in a two-verdict system. As a reminder, the independent Scottish jury research was the largest and most realistic mock jury study undertaken in the United Kingdom. It was carried out in 2018 in response to Lord Bonomy's "Post-Corroboration Safeguards Review", which recommended that research should be carried out to ensure that any changes to Scotland's jury system were made on a fully informed basis.

The study involved 863 mock jurors in 64 juries, testing 16 different combinations of jury size, majority, number of verdicts and case type. It modelled the impact of changes to the jury system on jurors' deliberations and decision making. One of its key findings was that removing the not proven verdict was likely to lead to more jurors favouring a guilty verdict. The meta-analysis that was published last year also found that

"the results are quite unambiguous: there is a statistically significant effect towards lower conviction rates under the Scottish three-verdict system than under an Anglo-American two-verdict system".

The not proven verdict is one aspect of an interconnected system, and the evidence tells us that abolishing it is likely to have an impact on jury behaviour and case outcomes, leading to more convictions in finely balanced trials.

As parliamentarians, it is our responsibility to ensure that the reforms for which we legislate are fair, have integrity, and command confidence. I do not believe that legislating to remove the not proven verdict as a stand-alone reform that maintains the simple majority can achieve that. If Scotland becomes a two-verdict system, my assessment, which is shared by others whom the committee has heard from—including prominent legal academics, the legal profession and the judiciary—is that simple majority decision making cannot be retained. Put simply, it will risk miscarriages of justice. There are no comparable jurisdictions where people can be convicted by a simple majority of jurors.

Consultation responses showed a clear preference for increasing the majority required for conviction if Scotland moves to a two-verdict system, and most respondents—most victims, victims' family members and jurors—supported a qualified majority of some kind.

Katy Clark (West Scotland) (Lab): Will the cabinet secretary give way?

Angela Constance: I will after one sentence.

The qualified majority option with most support, including from the senators of the College of Justice, was one in which at least two thirds of jurors must agree to convict. That is what we are proposing, with a majority of 10 needed from a jury of 15.

Katy Clark: You might well be coming on to the point that I will put to you, which is the evidence that the Lord Advocate gave to the committee.

The Lord Advocate wrote to us on 18 March and said:

"In relation to the provision to alter the jury majority required for a guilty verdict I would draw the committee's attention to the submissions made by the Crown at Stage 1 and my observation during my evidence session that '…if we are going to increase the percentage of individuals that we require to vote for a guilty verdict, we will make it far more challenging to secure a guilty verdict in a system that requires corroboration.'"

What is your response to that?

Angela Constance: It goes without saying that I am very aware of the Lord Advocate's position on the issue, which she outlined to the committee. However, I must also be mindful of a range of voices on that matter. The Lord Advocate is one voice—albeit a very important one—and I appreciate that members and other stakeholders support her in her view.

09:45

When I survey all the evidence and views on the matter, it is clear to me that the majority of stakeholders align with the Government's position. As Lord Matthews said, the not proven verdict is a counterbalance to the simple majority—they are interconnected—so if you remove the not proven verdict and go from a three-verdict to a two-verdict system, you must address some of the issues and dangers with having a simple majority requirement.

It is the Government's considered position that we must move to a two-thirds majority, notwithstanding our respect for, and the consideration that we gave to, the Lord Advocate's position.

I urge members to support my amendments and I ask Ms McNeill not to move amendments 72, 73 and 74.

Amendment 92, in the name of Ms Dowey, seeks to introduce a requirement for unanimity or near unanimity. My view is that that would be too high a threshold to deliver fairness for all. The committee has heard evidence from witnesses, including the Lord Advocate and victim support organisations, that makes clear how deeply concerned they are that such a system would not effectively hold perpetrators to account and deliver justice for victims.

It is important to recognise that Scotland has additional safeguards that other jurisdictions with two verdicts do not have, such as corroboration. The Lord Advocate's recent letter to the committee made it clear that the outcome of her recent references did not remove the requirement for corroboration and that prosecutors continue to have to satisfy the court of proof beyond reasonable doubt by corroborated evidence. That requirement is not placed on prosecutors in other jurisdictions. That is why the bill would require that two thirds of the jury are in favour of a conviction, rather than moving to unanimity or near unanimity. I believe that that is a proportionate and balanced approach that is mindful of the unique nature of the Scottish system.

Only 13 per cent of respondents to our consultation supported requiring a qualified majority of 10 out of 12 jurors for conviction, which is what Ms Dowey is proposing. Further, because amendment 92 would require the threshold to be met for both guilty and not guilty verdicts, it would introduce hung juries, where juries cannot agree a verdict, into the Scottish system. Although the amendment does not explicitly set out what should happen in that situation, it is likely that it would introduce the possibility of retrials. That would be a significant departure from key safeguards in Scots law in relation to the presumption of innocence, the finality of verdicts and the rule against double jeopardy.

The suggestion was included in our consultation and was significantly unpopular, with twice as many opposed to it as in support of it. In their consultation response, the senators said:

"In our view, if the required majority is not reached for a guilty verdict the jury should be considered to have returned a verdict of acquittal. The onus of proof is on the Crown to prove guilt and if the Crown cannot persuade the requisite majority of the jurors of proof beyond reasonable doubt then acquittal is the appropriate verdict."

Finally, Pauline McNeill's new amendment 268 would require ministers to

"conduct a review of jury size and ... majority"

in the event that a court

"delivers a judgement which changes the law relating to corroboration in Scotland".

I cannot support the amendment for a number of reasons. I will set out my concerns before reflecting on them in more detail. The amendment is unclear on the threshold that would trigger a review, how the review would be conducted or who would be consulted. The courts will inevitably continue to refine and evolve their understanding of corroboration as is consistent with their role, and the law does not remain static.

We will, of course, hear from Ms McNeill on the intention behind her amendment, but I am sure that it will be to ensure that the Parliament is responsive to significant changes to the operation of the corroboration rule by the courts. I do not, however, think that requiring a statutory review following what might be a subjective assessment of the impact of a court decision is the right way forward, and we must be mindful that that could establish precedent for how the Parliament responds to the decisions of our independent courts. Ministers must not interfere with the independence of judicial decision making, and

requiring a statutory review of the impact of specific decisions would risk a perception that they sought to do just that. However, I acknowledge what I think is Ms McNeill's underlying concern and her desire to ensure that there is still parliamentary scrutiny and consideration of the matters that we have been debating in recent months.

When we get to the final group of amendments, we will debate amendment 169, which would require ministers to review the operation of the bill. That will provide an opportunity to look in the round at the issues that Ms McNeill has identified. I would be happy to work with Ms McNeill to develop an amendment for stage 3 that ensures that any review includes appropriate consideration of developments of the requirement relating to corroboration. I therefore ask Ms McNeill not to move her amendment, but, if she does, I ask the committee to oppose it.

I move amendment 146.

Pauline McNeill (Glasgow) (Lab): Good morning. In case it is not obvious, I should say that my amendments in this group were submitted some time ago, pretty much right after stage 1. If I am honest, I have been struggling to remember what was in my mind back then—I am only kidding; I do know what was in my mind. This is the most difficult part of the bill, in my opinion. No one has come to it lightly, because we are making a significant change. I realise that and I am only trying to scrutinise what the Government will do after it has removed the not proven verdict.

We know from victims' organisations that removal of the not proven verdict has widespread support, but not everyone supports its removal. It is fair to say that some people in the legal profession do not. However, people might not have considered what will happen afterwards. How do we rebalance a system that is so connected? If we did not know it before, we know now that the elements of the Scottish system are so connected and unique that it is difficult to extract elements of other judicial systems and insert them into the Scottish system.

In its response to the stage 1 report, the Government said, among other things, that whatever we decide must command confidence. That is a really important statement. What we do now will certainly have to have some consensus, but it must also command confidence.

I do not think that it commands confidence that the bill started off with a jury size of 12, although I know that the cabinet secretary was doing something else back then. It bothers me slightly that, at this stage, we are having to look again at the numbers. However, I am glad that the Government has decided to look at the numbers—it is the right direction to take.

We went from being an outlier in having the not proven verdict to being an outlier in having a jury size of 12. That was obvious to me when the bill was drafted, and I wonder whether conclusions were drawn too quickly. It was pretty obvious when we scrutinised it that the Government was trying to keep everything else the same and then work out the balance, which is what I know the cabinet secretary is trying to do here. I sought to remove the number 12 in order to consider what we would do after keeping the jury size at 15. Therefore, I will not move any of my amendments in the group. I think that the Government is going in the right direction and that it is right not to look at having a simple majority. That is where I was coming from.

It is really difficult to examine this aspect of the bill. Professor Chalmers spoke to the committee about the mock jury research that the Government has partially, but not solely, relied on, with respect to a preference for a jury of 12. The research does not sit easily with the numbers that the Government has chosen, which slightly bothers me, but the lack of any research involving real jurors bothers me most of all. We do not have any insights at all into how juries arrive at their decisions, which I think is a major flaw. I know that we will discuss that during the debate on another group of amendments. The most important message that I want to put forward today is that most of the work that needs to be done is to get this bit right. What research are we going to conduct, what will it cover and when is it going to be done?

Katy Clark mentioned the Lord Advocate's letter. I appreciate that the Lord Advocate was only reminding us of what she had already said, but it was a little bit unnerving for me to receive the letter last week, reminding us that it would be more difficult to secure a guilty verdict. I agree with the cabinet secretary that the Lord Advocate's opinion is important and that we have to take it into account alongside other opinions.

Liam Kerr asked where the evidence is. Although I am minded to support the Government's proposition for a majority of 10 to five, there is no evidence at all to support that—it is a shot in the dark, and we have to assume that it is the right direction to head in.

One of the major flaws of the legislation is that we have been asked to make too many changes at once. If the committee and the Parliament had been asked to look only at the removal of the not proven verdict, we could have looked at some of the issues that Karen Adam will raise about communication with jurors, their treatment and their payment. Sustaining a jury of 15 is obviously

more difficult than sustaining a jury of 12, and people do not always want to serve on a jury, although they are compelled to do so unless they have a reason not to. We also have another big group of amendments coming up that is on the establishment of a sexual offences court.

If there is a not proven verdict with a jury of 15, which is what we have at the moment, we know that eight jurors—we have to assume that it is at least that number—considered the verdict to be not proven but we do not know whether the other seven jurors favoured a guilty verdict. For all that we know, in cases in which there is a not proven verdict, the jurors might have voted for either a not proven verdict or a guilty verdict. Lifting the bar on asking juries how their members voted, as the Government is proposing to do, will be fundamental.

I know that the Government has indicated the order in which it will do things, but I cannot remember whether that is on the record. With my amendments in this group and the next—it is hard to not discuss the same issue in debating this group—I want to know how soon after the bill is passed the not proven verdict will be removed. I imagine that that will not be done immediately. I would think that the Government—whoever was in power—would want a few years to consider the matter and do some proper research.

Lastly, on my amendment 268, I am grateful that the Lord Advocate addressed the issue of corroboration and the recent Supreme Court decision. Given what she said, although we do not know what the full impact of that decision will be on future judgments, I do not have major concerns about it. However, a former Lord Advocate proposed the wholesale removal of corroboration, and it would obviously have to be replaced by something. In my opinion, we need to consider the fine balance between the independence of the judiciary and the Crown and parliamentary oversight to ensure a fair and just criminal justice system, which is fundamental, too. We, in the Parliament, would have every right to say that we were not satisfied if the courts removed corroboration and we felt that that was not fair to accused persons. We need to get the balance right between that independence and the role of parliamentary oversight.

10:00

I will not move amendment 268, but I just wanted to say where I was coming from with it. If there were more substantial changes to corroboration, which have been called for, we could not just keep the jury size the same. In those circumstances, it would be right for Parliament to review that—that would be pretty valid, and it is all that I am asking for.

My view is that the Government is going in the right direction, but I am exercised about the lack of research. Before stage 3, I want to hear more on exactly how the Government will go about commanding the confidence that it says it wants in the change to the jury size and the majority, and what research we will do with juries.

I know that everyone, no matter where they come from, is worried about this change. In case we get it wrong, a future Parliament must be able to review the matter again. For example, the number of convictions might rise or fall, which could indicate that something was not right with the jury system.

Sharon Dowey (South Scotland) (Con): Good morning. My amendment 92 would require a jury to deliver a unanimous guilty conviction or, where that threshold was not met, allow a supermajority of 10 out of 12 jurors. That is the approach that is taken in England and Wales, and it has been tried and tested in jurisdictions around the world. In comparison, the Scottish Government proposes that we require a two-thirds majority with a jury of 15, which would make Scotland an outlier as the only jurisdiction in the world to follow that approach.

Lord Renucci, a former vice-dean of the Faculty of Advocates and a senator of the College of Justice, said:

> "If we are going to change the numbers, we should be striving for unanimity. In all jurisdictions that operate a jury system of 12, either unanimity or a majority of 10 to two is required. No system falls below 10 to two."—[*Official Report, Criminal Justice Committee,* 13 December 2023; c 7-8.]

My amendment is in line with that and is modelled on the amendment on jury verdicts that the Law Society of Scotland published in December. Time and time again, the committee has heard legal professionals express support for unanimity and a 10 out of 12 supermajority verdict. That proposal has been endorsed by the Faculty of Advocates, the Law Society, the Scottish Solicitors Bar Association and the Edinburgh Bar Association. The Law Society wrote to the committee to support the amendment and reminded us that, although the Government's proposal follows the position of the senators of the College of Justice, who have indicated support for a 15-person jury with a two-thirds majority, that was with the safeguard of a two-verdict system in which the rules on corroboration remained in place.

The Lord Advocate's letter last week denied that this is the case, but the Law Society has said that the corroboration requirement was radically changed by the Lord Advocate's reference decision in November. That is concerning and should lead us to question whether the

Government's proposal now comes with the safeguards that are required to meet the needs of our criminal justice system.

As we all know, there are four cornerstones of Scotland's criminal justice system: the not proven verdict, the jury size of 15, the eight out of 15 majority and the corroboration rule. Three of those four cornerstones are impacted by the bill and the other has been significantly changed. I have deep concerns about whether those changes are based on hard evidence. We must ensure that any changes are made with the care and due diligence that we owe to everyone who is involved with and affected by the criminal justice system.

The Scottish Government has gone back and forth on its position on jury size and majority. First, it wanted a simple majority with 12 jurors. Then it changed that to a two-thirds majority with 12 jurors. It has now changed its mind again and wants a two-thirds majority with 15 jurors.

Angela Constance: Forgive me for intervening, but I should say, for clarity, that, although we have changed our position on the size of the jury, we have not at any point changed our position on the qualified majority that would be required. Our position has always been that there should be a two-thirds majority for a conviction.

Sharon Dowey: Thank you for that clarification. It still does not fill me with confidence that the Scottish Government has a clear vision, supported by concrete evidence, that would justify radical changes to the justice system of the kind that it is now proposing at stage 2. Indeed, the cabinet secretary told the committee on 26 February that

"the research ... led us to support a jury size of 12 in the first place."—[*Official Report, Criminal Justice Committee,* 26 February 2025; c 13.]

Katy Clark: Will the member take an intervention?

Sharon Dowey: I will just finish this paragraph, and then I will come back to you.

If the research led the Government to support changing the size of the jury, does it not stand to reason that you are now acting against the research by changing it back?

Katy Clark: I agree with Sharon Dowey that the Scottish Government is coming forward with proposals without what she calls "concrete evidence"—I would call it a lack of evidence—but does she not accept that her proposal to require a unanimous verdict is not evidence based either?

Sharon Dowey: I would say that, at the moment, none of us can put forward a proposal that is completely based on concrete evidence, because of the lack of evidence that we had at committee. Pauline McNeill said as much in her contribution—we needed a lot more evidence on this. We could have done with seeing the research before we lodged our amendments, but we do not have it. I will come on to this, but I do not think that the mock juries gave us the research that we needed either.

Actually, I am going to come on to it now. I am deeply concerned that no real research is available to us on jury deliberations in Scotland. We have no idea how juries reach their decisions or what the split is between those who believe the accused is guilty or not guilty. Alisdair Macleod, from the Crown Office and Procurator Fiscal Service, made the point that

"It might well be that every jury in the land comes back with a unanimous 15 to nil verdict or a 14 to one majority verdict. There is no way of knowing how many cases are decided on an eight to seven verdict".—*[Official Report*, *Criminal Justice Committee*, 13 December 2023; c 46.]

Moreover, Lord Renucci made the point, which I agree with, that

"we should not change our whole legal system based on research with mock juries, which, in no way, mirrored what happens in courts."—[*Official Report, Criminal Justice Committee,* 13 December 2023; c 9.]

He said that the mock trial in the Scottish jury research lasted one hour, but he had never in his career experienced a rape trial that had lasted less than a day. That is not the way to build an evidence base for reform of the system.

The Convener: The mock jury research, which the cabinet secretary alluded to this morning, was an extensive bit of work. I also point out that, at stage 1, we not only took quite a bit of evidence from academics who had been involved in the mock jury research, but tried to introduce a sort of counter-narrative, if you like, or a counter-position from another academic in an effort to enable members to consider and perhaps make their own minds up about the robust nature or otherwise of the mock jury research. It might be a wee bit unfair to criticise that research—I am simply pointing out that we did have an opportunity to consider it.

Sharon Dowey: I agree that we had the opportunity to consider it, but we are making radical changes to the whole legal system in Scotland, and the fact is that mock juries arenae real. People know that they are no real. The people involved are actors. Of course, I was not involved in them, but you know that the decision that you are making is not based on somebody actually losing their liberty. It is not a real-life comparison. The research was not done on real-life juries, and I still think that it is not enough to base changes to the full system on.

Given the lack of concrete evidence, it is hard to justify the claim that there is an evidence base for the radical changes affecting jury size and majority

that the Government is proposing. If research into jury deliberations had been available before the bill was introduced, we would all be in a much better position to make decisions on these issues.

In criminal cases, guilt must be proven beyond reasonable doubt. That is a high threshold, and there is doubt about whether a two-thirds majority meets that standard. Allowing a criminal conviction when one third of jurors believe that the accused person is innocent does not show that guilt has been proven beyond reasonable doubt.

I want to make it clear to everyone in the committee that what we decide today could make the difference between someone's freedom and someone's imprisonment. We need to remember that. We all want those who have committed an offence to be found guilty, but we should not create a system in which it is possible for an innocent person to be sent to prison.

We need to take the advice of legal professionals who work in our courts every day and who understand the impact and magnitude of changing the jury size and majority. Do not take my word for it—take the word of the Law Society, the Faculty of Advocates, Lord Renucci KC of the senators of the College of Justice, the Scottish Solicitors Bar Association and the Edinburgh Bar Association. My amendment 92 does that.

The Convener: I open up the debate to other members.

Katy Clark: Thank you, convener, for giving me the opportunity to contribute to the debate. I agree with the cabinet secretary that, when we make changes of this nature, it is important that we get as much consensus as possible, not just in the committee but in the Parliament and across society.

We must strive to ensure that changes are evidence based. At the moment, as has been said, we have no information about how juries vote in Scotland, so we are working with a very limited evidence base. We do not know whether most juries provide a unanimous verdict, as Sharon Dowey's amendment 92 would require, or whether most juries are split eight to seven, nine to six or, indeed, 10 to five, which is the majority that the cabinet secretary has proposed. We also do not know whether jury splits are very different in different kinds of cases. For example, in assault cases, there might tend to be unanimous verdicts whereas, in rape cases, there might often be very small majorities. We can speculate, but we simply do not know.

It would be very unsafe to make substantial changes to our system without that evidence, given that it would be possible to get it. That is relevant to today's discussion, because the committee has been looking at the issue for well over a year. We have considered in as much detail as possible all the evidence that the Scottish Government has provided and any other evidence that we have been able to find. We looked at the detail of the mock jury research. I am not criticising the academics who were involved in that work, or the work itself, but it is simply an underwhelming basis on which to make substantial changes to the system. It would simply be unsafe to proceed on the basis of evidence from four cases that were heard by juries, with two of the scenarios being truncated versions that were watched on a television screen.

I know that we will continue the discussion in a debate on a later group of amendments about how research can be conducted. However, on the basis of what we have seen so far, I simply will not be able to support any of the changes to jury majority that are being proposed today. I will, of course, continue to listen to what is said as the bill progresses, but I would argue that, until we have better research and information about what juries do now, it would be unwise for the Parliament to decide changes of this nature.

Liam Kerr: I am genuinely very interested in what you are saying. What do you suggest that we do? We are faced with a bill that will do things and with various amendments that will change what the bill will do, but you are deeply uncomfortable—as, I suspect, we all are—with some of the proposals, because you do not think that there is sufficient evidence. So, what should we vote for today? If we vote for nothing, we will nevertheless be voting for change.

10:15

Katy Clark: Pauline McNeill spoke earlier about some of the work that could be done over the next few years if some of the amendments that we will consider later today are passed. The Parliament needs to have proper information about what juries are doing. We might be unable to get it retrospectively—I presume that we are unable to get it, although I might be wrong—but we need proper information as to what juries are doing before we make changes of this nature.

We know that there is already a great deal of concern about low conviction rates in certain types of cases, in particular rape, attempted rape and serious sexual assault cases. We need to understand more about what juries do in those types of cases, because there would be a concern that jury majorities might be narrower in those types of cases in particular. Therefore, some of the proposals today could make a real difference on conviction rates.

Given what the Lord Advocate has said to us and the amount of time that the committee has

already spent looking at and being concerned about low conviction rates in rape cases—which I know is a great concern of the Scottish Government—we should be particularly alert to the issue.

Liam Kerr: I thank all my colleagues and the cabinet secretary for their guidance this morning. I am very worried about the decision that we have been asked to make, which is to choose between competing jury sizes and majorities, because I have no idea which one will ensure that justice is done—that the guilty are convicted and that the innocent go free.

Members might recall that the 2015 final report of the post-corroboration safeguards review indicated that our unique system—let us remember that it is unique; nowhere else in the world runs our system—has unique features that

"form important parts of a balanced system."

Those features—the corroboration requirement, the 15-person jury, the three verdicts and the simple majority—have been in place for hundreds of years; all four were in place from the mid-18th century. The bill will make fundamental changes to that system: it will remove the third verdict and move to a two-verdict system, and the requirement for corroboration has already changed. What impact will those changes have on a hitherto balanced system? I do not know, but neither does the Lord Advocate.

Katy Clark rightly drew our attention to the Lord Advocate's letter to us last week. The cabinet secretary suggested that corroboration is still there, but we know from His Majesty's Advocate v PG and JM that there has been at least a degree of dilution. In her letter, speaking specifically to corroboration, the Lord Advocate concedes that

"the full implications of these decisions are still being considered".

Indeed, in her evidence to us on 26 February, the cabinet secretary conceded that the changes that we are making might impact "the balance of fairness" in the criminal justice system.

Colleagues, no one can tell us what the correct evidence-based system should be in order to preserve the safeguards. For example, Rape Crisis Scotland has said that we should not change the simple majority, but it concedes that there is insufficient evidence to back that position. I think that the cabinet secretary spoke persuasively earlier as to why a simple majority should not be preferred. We heard from the senators of the College of Justice, who suggested a two-thirds majority but, as has been articulated throughout our sessions, they were not sure and had a number of caveats.

Pauline McNeill: You have outlined a position that is broadly similar to mine, which is that you do not want to go with a simple majority. Would it make sense for the Government not to draw down the not proven verdict for a period of time, to allow research to be done with juries after lifting the restriction in the Contempt of Court Act 1981? Otherwise, we would make the change right away, the research would be done in the new configuration, and there would be nothing to compare it with. I have wrestled with the question of when to do the research and what value it has. Have you given that some thought?

Liam Kerr: I absolutely share Pauline McNeill's concern about the lack of research. To go back to my intervention on Katy Clark, whatever we do today, we are making a decision—even if we do nothing on the amendments, things will happen, because the bill has been drafted in a certain way. I am interested to hear what the cabinet secretary says in response to the debate as to when the provisions will come in and whether there is a role for doing research prior to that. I will wait to see what the cabinet secretary says.

Because we are being required to make a decision today, I would like to say why I will vote the way that I am going to vote, because I feel that I am—well, I am—required to do so. We all are. I hope to persuade members that my position is the correct one.

Victim Support Scotland wrote to us—again, very persuasively—and said that this is a highly complex area. It conceded that there is an absence of research to validate the rationale to change jury size and majority verdicts. Colleagues, you heard all the evidence when you were producing your stage 1 report—I did not, as I was not on the committee at the time—and you concluded:

"we have not heard convincing evidence which would support the adoption of any specific alternative model for jury size and majority."

You went on to say that there was

"no compelling or definitive evidence presented which would give us sufficient confidence to endorse any of them."

However, today, we have to make a choice and select a change, notwithstanding that evidential vacuum.

My view in deciding how to vote—bearing in mind that I was not on the committee and did not hear or interrogate the evidence—is heavily influenced by the representations that have been made to us by the Law Society of Scotland. For transparency, I remind colleagues that I am a practising solicitor and a member of the Law Society.

The Law Society, which deals with the issue day in and day out, has told us over and over that the unique Scottish system uses its four limbs as a balance. With the abolition of not proven and changes to corroboration, it has consistently suggested that rebalancing to ensure that the guilty are convicted and the innocent go free is achieved by the proposals set out in Sharon Dowey's amendment 92. That makes sense because, as was pointed out earlier, Scotland is an outlier—it is utterly unique. If we vote for anything other than the Sharon Dowey amendment, we will replace one unique system with another system that is completely unique and is also completely untested and completely unevidenced, with unknown impacts.

Pauline McNeill: I appreciate that you were not on the committee, but a couple of things came out in evidence in relation to the English judicial system. That system involves 12 jurors agreeing unanimously, or, with the agreement of the judge, it can go down to 10. However, there are at least two aspects that we are aware of that are different. One is the ability to have a retrial, and the other is the way in which cases are prosecuted in England and Wales.

That is why we cannot compare convictions. In Scotland, as long as the Crown is satisfied that it can provide evidence for a prosecution, it will proceed, whereas that is not the basis of English prosecutions, which are based on the chance of success. That is the conundrum for everyone. Even if you look at New Zealand, Australia or other jurisdictions, you realise that Scotland is unique. I totally understand where you are coming from, but those are two points that stuck in my mind.

Liam Kerr: I hear that, and I freely concede that the committee's report looks at the retrial issue and says that further evidence and consultation is needed. Indeed, the Scottish Government conceded that we need more evidence on retrials before making that substantive change.

I come back to Pauline McNeill. We are being asked to make a change today, one way or another. We either vote for one of the amendments or we default to the position that is set out in the bill. We have to come to a decision.

For reasons that I will shortly finish up on, the only decision that we can make to be as safe as possible is to agree to Sharon Dowey's amendment 92. Let me continue to say why. The cabinet secretary proposes a slightly different model in her amendment 146. In previous weeks, she has suggested that she has little time for what she calls Scottish exceptionalism. In that, we find common ground indeed.

I submit that, without compelling evidence, we should not be the exception. We should not be the test bed, and this is a test. In proposing a different model, the cabinet secretary is rejecting the model that was proposed by the Law Society. However, on Monday, I received a response to a parliamentary question that reveals that the cabinet secretary has not met the Law Society to discuss the bill since July 2023. The last time that she met representatives of the Law Society to discuss the bill was as part of a round table in September 2023, which was a long time before the committee took evidence on it.

Furthermore, on 20 March, I received a response to another of my questions, in which the cabinet secretary said that the 138-page policy memorandum for the bill

"set out the reasons the Scottish Government proposed to reduce jury size to 12",

including evidence, as the cabinet secretary talked about earlier, from the independent Scottish jury research. The cabinet secretary's answer goes on to say:

"In its Stage 1 report the Criminal Justice Committee did not support the reduction in jury size. I therefore confirmed ... I would bring forward amendments to retain a jury of 15, in line with the Committee's position."—[*Written Answers*, 20 March 2025; S6W-35546.]

In short, when building the bill, and I presume not long after the cabinet secretary met the Law Society, the evidence suggested that changes that are in line with those proposed by Sharon Dowey were the right way forward. However, in response to the committee's report, which said that there was

"no compelling or definitive evidence presented which would give us sufficient confidence"

to endorse any of the proposed options, the cabinet secretary has lodged the amendment that we see today.

I intervened earlier, and the cabinet secretary conceded that the jury research shows the benefits of a jury of 12. She said that it showed the benefits of the process, but I have been through it, and "process" is a catch-all term for an awful lot of benefits that are set out—although I concede that that is my view. However, the cabinet secretary then said, in contrast, that there is no disparity between 12 and 15 jurors when it comes to the issues discussed or the verdict. That is fine, but the cabinet secretary conceded that a jury of 12 has demonstrable benefits, according to the jury research. A jury of 15 does not change the position. A jury of 12 is good, and 15 is no different on some other things. I therefore submit that it is better to go with the thing that the jury research has suggested has benefits—that is, a jury of 12.

We should not be a test. We should not be exceptional. We should not risk the innocent being jailed and the guilty going free. Pauline McNeill was right that we have to get more evidence. We should not take a shot in the dark. We must take the safest way.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I go back to an earlier intervention that my colleague Katy Clark made on Sharon Dowey, who talked about a lack of evidence. Would you not concede that your position on a supermajority would be a radical change without evidence? You are saying that we cannot make a change because we do not have evidence, but you are proposing a radical change with a supermajority.

You referred to the bill at stage 1 proposing a jury of 12. We now need to accept that we are talking about a jury of 15, with a majority of 10. Getting rid of the not proven verdict is universally popular. Given that, do you not agree that the Government is striking the right balance by keeping the jury size at 15 but requiring a majority of 10? I think that your solution presents a much greater risk of making it much harder to get convictions. It is far more radical than what has been suggested.

10:30

Liam Kerr: I say to Ms Mackay, with respect, that there is no evidence for the assertion that she has just made.

Rona Mackay: There is no evidence for your position, either.

Liam Kerr: On the contrary. First of all, I am not proposing anything. I am simply outlining why I will be voting in support of Sharon Dowey's amendment 92. I have no amendments in this group. I have come to the issue cold, and I have considered all the positions.

However, I do not concede that there is no evidence here. I say that because it seems compelling, given everything that I have said, that we need to align most closely with similar systems where they exist. That would address Pauline McNeill's point about the need to take the safest way in order to preserve justice.

In England and Wales, as we have heard, a two-verdict system operates, with 12-person juries. In that system, unanimity, or a supermajority, is required for a conviction. Similar systems operate in the USA, Canada, Australia, New Zealand and Ireland.

Colleagues, today we are being asked to make—

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Will the deputy convener take a short intervention?

Liam Kerr: I shall.

Ben Macpherson: I am sorry to interrupt Liam Kerr as he was concluding. I appreciate the point that he makes about other jurisdictions, but I highlight the challenge that we face, collectively, as a result of the fact that Scotland has a system of corroboration, which makes us distinct. We must consider all the different aspects of what makes Scotland's current system distinct when we consider what changes we may or may not wish to make.

Liam Kerr: That is a good point, and it is well made. However, as the member knows, corroboration, which makes us distinct, has changed. As I said at the outset of my submission, the Lord Advocate does not yet know what the implications of that are. In her letter, she specifically says:

"the full implications of these decisions are still being considered".

The problem, it seems to me, is that we have to make a decision today. I absolutely concede that, because we have things such as corroboration, we will not be absolutely mapped to the system in England and Wales. However, I come back to the fact that the safest way to achieve justice is, surely, to mirror as closely as possible systems that are already in place and which we know operate—at least, on paper—well.

Pauline McNeill: I make this intervention for the sake of completeness, to cover all the points.

I am not a practising lawyer, but I know a little, as I have studied law. In Scots law, there is the concept of tholed assize—I think that that is what it is called. That is why the double jeopardy legislation was quite difficult for the Parliament. In Scots law, once someone has been tried in a court of law, they cannot be tried again—well, they can under certain conditions, but retrial is another concept that England has, but which is alien to Scotland.

The Lord Advocate told the committee that, if we went for a supermajority, she would ask the Parliament to consider the power of retrial. I am really against that. I think that a good feature of the Scottish system is that someone is tried in a court of law, the case is put against them and they have the right to defend themselves. The idea that someone could be retried for the same offence, unless there were very unusual circumstances, concerned me, and it made me head in the other direction, so to speak. We need to consider that point as part of our considerations in the round.

I take the point that Liam Kerr is making—at least the English system is tried and tested—but we must consider these other issues that keep cropping up.

Liam Kerr: Pauline McNeill is absolutely right. As I said earlier, I agree with the committee and the Scottish Government that much more needs to be done on the issue of retrials before we change the current position. However, that said, today we will make, one way or another, fundamental and foundational changes to Scotland's criminal justice system, and we will do so in a data and evidence void. The only conclusion, in my view, that is consistent with the facts that I have set out is that the safest way to ensure that justice is done is to mirror, as closely as possible, established systems elsewhere in a manner that is recommended by experts at the Law Society.

For that reason, I shall support Sharon Dowey's amendment 92 when I am asked to vote on the amendments in this group.

Rona Mackay: I have already said, in my intervention on Liam Kerr, some of what I was going to say, but I have a question for Sharon Dowey. On amendment 92, you talked about how unsatisfactory the mock jury research was. Do you know how many people were involved in that? I know that it was quite extensive. I acknowledge what you said about it being a mock jury trial, but there was a lot of research and evidence.

Sharon Dowey: The point that I was making was that it was still mock jury research, so, regardless of how much work was done, it was not a real-life situation; it was still a mock jury trial. If we are going to make radical changes to the Scottish legal system, we need to have live jury or real jury research. That would put us in a much better position to make an informed decision, which is important, because we are making big changes that could have an impact in somebody losing their freedom.

Rona Mackay: Just for context, those trials involved 900 people and 64 juries. That is pretty extensive—

Sharon Dowey: It was still not a live setting.

Rona Mackay: I hear your point, but I come back to the point that I made to Liam Kerr. The amendment that you are proposing is far more radical, and there is no evidence of its benefits. We are saying that there should be a balance. We have come to a sensible balance with a jury of 15, so the jury size will not change, and I think that that is a safe road to go down. I think that common sense—let alone any evidence that there may or may not be—tells us that your supermajority idea would make convictions harder to get, so I cannot support your amendment 92.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, and apologies for the state of my voice this morning.

I start with the not proven verdict. We have established that the not proven verdict had to go. As others have said this morning, not everybody took that view, but the evidence for it was pretty strong. Unless someone is saying today that we should retain the not proven verdict, and I do not think that there are any amendments to that effect, that brings us to where we are.

Like others, personally, I have found this to be by far the most difficult part of the bill to grapple with, because we need to acknowledge that we are moving into the unknown.

I completely agree with the Government lodging an amendment the effect of which is to retain a jury of 15, and I thank the cabinet secretary and her officials for taking on board the committee's consideration of all the evidence that was given to the committee and directly to Government. The most difficult issue, therefore, has been to do with the verdicts themselves.

I have to say that I agree with Sharon Dowey regarding the jury research, and, although I also accept that it was a good piece of work, ultimately, it involved mock juries, and flaws in the process were outlined quite persuasively by people who appeared before the committee. However, I do not agree with the premise that the Government proposed changes on the basis of that research alone. The cabinet secretary has already outlined the position in her opening remarks.

We have heard the opposing stances on the size of majorities. The Lord Advocate's letter has been mentioned. It clearly says that she feels that not having a simple majority any more would make it more difficult to get a conviction. We have also heard Sharon Dowey, backed up by Liam Kerr, outlining her amendment and providing evidence to support near unanimity—that is easy for me to say.

I go back to something that Rona Mackay said a minute ago. It is our job to find a balance. That is why I am happy to support the Government's amendments. I am concerned that it might be made even more difficult to get a conviction in such a system, as Pauline McNeill outlined, but the simple fact is that we do not know. We do not know how juries currently act and, as I already said, we are moving into an unknown space. Of course, we have corroboration, which other members and the cabinet secretary mentioned.

Pauline McNeill: We are all in the same position. Does the member agree that it is a shot in the dark? We take one position or another and point to certain research that says certain things, but we do not know what we are doing for sure. I

put the same question to Liam Kerr. Would it not be better to try to understand exactly what we might be doing or to have some insight into how juries arrive at their majorities at the moment by asking them over a period, during which we lift the restriction in the Contempt of Court Act 1981? That would allow a future Parliament to review whether a majority of 10 to five is indeed the right balance.

Fulton MacGregor: I thank the member for that intervention. I prefer the phrase "moving into the unknown" rather than "shot in the dark", but I take the general premise of what she says. However, the committee has already made decisions and we need to take responsibility for that.

As a committee, we agreed that we wanted to move away from the not proven verdict. We put that in our stage 1 report and we have moved on from that point. We are now in a position where, as Liam Kerr said—although I do not agree with where he was going with it, I agree with what he said—we need to make a decision. Although we are moving into the unknown, the cabinet secretary's proposals are the most balanced. They try to take the majority of views and bring them together into as balanced an action as possible.

Liam Kerr: I am listening carefully to what Fulton MacGregor says. He is right that we are being asked to take a step into the unknown, but surely the logical conclusion is that we should try to do something that is known. As the Law Society of Scotland says, we should have unanimity and 12-person juries. That would mirror as closely as possible other jurisdictions that, as Pauline McNeill said, are tried and tested. Is that not the best way to get to a known and, indeed, safe situation?

Fulton MacGregor: Liam Kerr made a good argument for arriving at that position, and he made it well, demonstrating his legal background. However, I do not agree with him, because the Scottish system remains unique. As my colleague Ben Macpherson said in an intervention on Liam Kerr, corroboration remains as well. Simply copying another system is not the right way forward. That is why I will support the Government's amendments. They bring the most balance and juggle all the various factors of Scots law.

I will say that, whatever decision we take today in going forward into stage 3, we all remain uncomfortable about the impact that it might have. As Pauline McNeill said, it is unclear whether there will be an increase or a decrease in the number of convictions and what the scale of that increase or decrease will be. What is really important is that the bill is reviewed. I understand that there will be later amendments that we will probably get to next week—

10:45

Katy Clark: Fulton MacGregor is aware of the Lord Advocate's views, which have been shared with the committee, and of the concerns about low conviction rates, particularly for rape and other sexual assault cases. It seems to me that one of the risks of the proposals that have been put forward by the Scottish Government is that we will see lower conviction rates in rape and other sexual assault cases. Does he agree that that is a risk that we are facing?

Fulton MacGregor: We do not know if that will be the case. I do not believe for a minute that the cabinet secretary and the Government would bring forward proposals if they knowingly believed that that would be the case.

What I was about to say will probably answer Katy Clark's intervention: I believe that this aspect needs to be reviewed. We will come to amendments on that later, but I also believe that the terms of any review should be clear and that stakeholders should understand that there will be a process that tests whether there is an increase in concerns or in achieving convictions. All those different factors can be looked at, and the Parliament will have a chance to scrutinise them. I believe that that will be a very, very important part of the bill in allowing us to move forward.

I will be supporting the cabinet secretary's amendments at this stage.

Ben Macpherson: I really respect the discussion that we have had this morning and all colleagues' deliberations on these very significant changes. Like colleagues, I feel the weight of responsibility heavily today and have done throughout this process. I joined the committee after stage 1, and it is this change that has been most on my mind since joining the committee.

Some may argue that we should not have considered these changes to the criminal justice system at all. I do not agree with that. Many stakeholders have been arguing for change for a long time, and there is an electoral mandate to consider these issues. That is why the Government has introduced the legislation. It has done so to respond to the calls from different quarters to change our legal system. Both in the committee stage 1 report and throughout the stage 2 process, we have agreed to remove the not proven verdict because it is felt to be unsatisfactory by different parties. That has been debated and articulated, so we have already embarked on a process of change.

Colleagues have talked about how the proposition from the Government has an element of the unknown and about how we need to pick between that and what has been argued is the known position in Sharon Dowey's amendments,

which reflect the Law Society submission and much of the system in England and Wales. However, a jury of 15 is a known element as well, because, as Liam Kerr articulated in his thoughtful contribution, we have had a jury of 15 for several centuries.

Scotland's system is unique in the world. We have drawn on a variety of evidence—the Parliament has taken a substantial amount of evidence, and a substantial amount of evidence has been submitted—so, although I respect colleagues' points of view, I do not think that it is fair to say that there is not an evidence base for the decision that we are considering today.

We are in a position in which we are an outlier, and in which we are trying, with a deep sense of responsibility, to improve the criminal justice system for all involved. My mind, therefore, has tried to settle on the issue of how we consider both what is safe and what is effective. I do not think that we will ever get a perfect outcome. There is no way of analysing and coming to a perfect position. This is all about a balance and, as has been articulated, considering the four pillars of the criminal justice system in Scotland.

I have come to my view after much deliberation, probing and engagement. I am grateful for the engagement that I have had with the Law Society of Scotland and I remind colleagues that I am on the roll of Scottish solicitors. I have listened carefully to the evidence from the Government and other witnesses at stages 1 and 2. After weighing everything up, I am reassured by the two-thirds majority proposition from the Government, because a jury of 15 is a known. If we move from a simple majority to a two-thirds majority—if Parliament agrees to that—we are settling on a position that has an additional degree of safeguard. Sharon Dowey's amendment 92 proposes a five-sixths majority or unanimity, but that is not significantly more than the two-thirds majority that is proposed in the Government amendment.

The Government amendment sets the balance as well as it can be set between, on the one hand, going forward with a known—a jury of 15—and adding the additional safeguard of moving from a simple majority to a two-thirds majority.

Katy Clark: I know that Ben Macpherson is aware of how difficult it is to get convictions in rape cases. He is also aware of the Lord Advocate's view that it will be far more challenging to secure a guilty verdict in the system that is being proposed. Does he agree that, before we change the system, it would be helpful to get information on the jury breakdown in cases such as rape, attempted rape and other serious sexual assaults? It may be that the balance of verdicts is different in juries in those cases from the balance in other types of case.

Ben Macpherson: I have listened carefully to the points from Katy Clark, and those from Pauline McNeill about the Contempt of Court Act 1981 and seeking a fuller understanding of the breakdown of jury decision making in the current system. However, I am not in a position to give a view on the practicalities of getting that understanding before enactment and implementation. That would be for the Government to articulate.

We are all balancing a difficult decision. How do we arrive at a position where the justice system performs in a way that delivers justice, whether that is for the victim, the complainer or the accused? We are all seeking to build a justice system that is more effective than the present one. That is not me implicitly stating that the current system is not effective, but we are in a process of trying to make improvements, having been called to do so by a number of stakeholders in different ways and having had an electoral mandate, communicated by the public in the 2021 Scottish Parliament elections, to see change in this area.

I will conclude by saying that the evidence that was given by the senators—and which is repeated somewhat verbatim in the cabinet secretary's amendments—on the requirement for a majority of "at least 10", is persuasive.

All things considered, I will be voting for the Government's amendments.

The Convener: I want to make some final points. I agree with colleagues on the committee that this has far and away been the most difficult decision on the bill. It has felt like a conundrum, as Pauline McNeill described it. I am not ashamed to admit that I have been grappling with the issue for the past year, as I am sure my colleagues have, and I am grateful to them for considering the provision in what I feel has been a thorough, robust and respectful way. Ultimately, we all want to do the right thing, because we do not underestimate the implications of the decision and, indeed, other decisions that the committee will make for our constituents and the people of Scotland.

I agree with Ben Macpherson that we took a significant amount of evidence from stakeholders at stage 1. My sense, then, was that they wanted change; as we know, the system as far as the experience of victims is concerned is not good enough. We considered some evidence on this matter.

Following the publication of our stage 1 report, I read with interest some commentary on the committee's position on jury size and majority requirements. I do not know whether it was meant as criticism, but there was commentary about the way in which we had reached our decision, and our feeling that there was not enough research on

which to base a position. A view was expressed with regard to committee members' willingness to come to a decision on a matter of personal principle, and that stuck with me. The question is: what do we feel is the right thing to do?

I have listened to the points that have been made and agree with many of the comments about the implications of corroboration and the removal of the not proven verdict. We will be making this decision shortly, and perhaps we do so with some blind spots, but we are all in that position together.

I want to comment on other points that committee colleagues have made. I am not comfortable with Liam Kerr's point about mirroring another jurisdiction, no matter how close that system feels. I have always been anxious about making comparisons where the models that we are comparing are not aligned, even if they are only slightly not aligned. That concerns me.

With regard to Sharon Dowey's amendment 92, I note the comments that the cabinet secretary made to the committee at the end of February on the supermajority proposal. They stuck with me, and I find myself agreeing with them. On her concern about a supermajority, she said:

> "When we consulted on the bill—I appreciate that that was some time ago—there was low support for near unanimity in a reformed system. It was something like 13 per cent. It also feels disproportionate to go from a system that requires a little bit more than 50 per cent to convict to one that, in the context of a majority of 13 out of 15, would require 87 per cent."—[*Official Report*, *Criminal Justice Committee*, 26 February 2025; c 5.]

I find myself aligned with that concern.

11:00

With regard to Pauline McNeill's points and her amendments on research, I am comforted and reassured that provision is made on research in amendments that we will consider later. I am reassured by that provision, and I think it right that it is included.

In conclusion, I have found myself moving from a position of being quite troubled by the magnitude of the decision to feeling more comfortable and reassured and to thinking about my decision as a matter of principle. I feel more at ease with the Government's proposal of retaining a jury size of 15 but with a majority requirement of 10. I feel that that is an additional safeguard, and I am persuaded by it.

I call the cabinet secretary to wind up.

Angela Constance: It has been evident in today's discussion and debate that each and every one of us has been engaging and wrestling with the issue on an intellectual and emotional basis. At the end of the day, we will all have to come to conclusions based on our individual positions and perspectives and come to a collective voice that is informed by all voices.

I remind the committee that part 4 is one of the cornerstones of the bill and that it will make changes that apply to all cases in all courts. It is important to remember that.

I will say a few brief words about research without speaking at length. Overall, we have had the Scottish jury research and our own consultation. There has been substantial engagement with all those with an interest in the bill. I assure Liam Kerr that my officials have met the Law Society of Scotland regularly on the bill. I do my best to meet the many stakeholders in the world of justice, but there is always a limit to that, I am afraid.

International comparisons are also important, whether they are comparisons with our nearest friends and neighbours south of the border, with our European colleagues or with Australia, New Zealand or North America. We cannot cut and paste anybody else's solutions. We need to look at the experience at home and elsewhere and apply what we learn to a Scottish context.

On the quantum of research, I know that we have spent a lot of time focusing on the Scottish jury research, but it is worth bearing in mind that the meta-analysis that was published last year considered studies involving almost 1,800 jurors and found statistically significant divergence in the verdicts that jurors delivered in a three-verdict system versus a two-verdict system. The odds of a jury convicting were 40 per cent lower in a three-verdict system. That points to the fact that, if we embark on the historic reform of removing the not proven verdict—I believe that the majority of us want to do that—we have to make decisions.

Pauline McNeill: Will you clarify whether the not proven verdict will be removed as soon as the bill is passed and receives royal assent? In some cases, the Government has to attach a timescale to such provisions, but my reading of the bill is that the not proven verdict would be removed right away. That is an important point, because I am trying to understand where the Government is coming from in relation to what kind of research it would want to do and what it would be researching. I know that we are going to have a discussion about that but, if the not proven verdict was removed right away, the research would be based on the new system, so it would be helpful to know whether there would be a period in between.

Angela Constance: This part of the bill would require a commencement order. I will correct the record if I get my dates wrong, but I am confident that, during stage 1, I provided the committee,

either verbally or in writing, with indicative sequencing for the different parts of the bill coming into force. That was on the back of a debate about the pilot; it was in that context that I gave an indicative timetable.

The reforms to verdicts and jury majorities in part 4 are, in essence, stand-alone ones, and our thinking is that they could be made earlier in the overall implementation of the bill. I am not making any rash commitments to do a carte blanche U-turn on that sequencing, but we will reflect further on the matter, although I would be concerned about kicking decisions down the road.

Pauline McNeill: It is probably a case of my not understanding how the bill is written—it is always difficult to read legislation, even if you have done it for a long time—but I cannot see anything in the bill about a commencement order. It just says:

"The 1995 Act is amended as follows."

It would be useful to know whether, if we voted for the bill at stage 3, that would just happen.

Angela Constance: Section 71(2) states:

"The other provisions of this Act come into force on such day as the Scottish Ministers may, by regulations, appoint"

and so on.

Pauline McNeill: Thank you.

Angela Constance: I will pick up the point about research. There is always an argument for more research, and I am very open to that. However, without delving too deeply into a future group of amendments that we will, I hope, debate this morning, I point out that using mock juries is the only way in which to see the impact of varying jury size, jury majorities and the number of verdicts. That cannot be done with real juries. A real trial cannot be run 64 times with different jury sizes and different decision-making rules. There are advantages to using mock juries. For example, the jury's deliberations can be recorded and analysed in a way that would not otherwise be possible just now.

I accept that different research gives us different dimensions and perspectives. I was struck by the comments from Professor Chalmers last year, when he said, rightly, that there is

"a danger in making changes without adequate research, but there is also a danger in believing that an ideal, perfect body of knowledge can be attained. There will always be a limit to what realistically can be known."—[*Official Report, Criminal Justice Committee,* 24 January 2024; c 25-26.]

At the end of the day, research does not make decisions for us, although it informs our decisions. Ultimately, therefore, we are all wrestling—as Ben Macpherson eloquently described it—with the weight of responsibility in and around making this decision.

I will reply briefly to Sharon Dowey's points. She makes a radical proposition, and Mr Kerr was valiant in his defence of that course of action but, for me, after much consideration, the bottom line is that the threshold would be simply too high for fairness, in the context that we still have corroboration.

The requirement for corroboration, although the courts will refine it, is still with us. That refinement does not necessarily mean that we will see more convictions returned in such cases—I am thinking about the Lord Advocate's successful references that colleagues have mentioned—as the jury still requires to be satisfied beyond reasonable doubt. The balance of proof is the same; that is an important point. However, it means that more cases are capable of being prosecuted and that the jury can rely on a greater range of evidence. Of course, the courts will continue to refine the application of those judgments; we will probably discuss that more in a wee while.

I come to my final point. I know that we are all guilty of quoting one voice when, at the end of the day, we are trying to come to a rounded and balanced view, but once again I quote Lord Matthews. He said:

"We thought that 10 out of 15 would be an appropriate majority for a verdict ... England, for example, requires unanimity at first, and then the judge can tell the jury that they will take a majority of 10 to two or whatever. We do not want to go down the route of having to explain to the jury, 'You've got so long, and then I'll tell you that you don't need to be unanimous'."

We do not have a history in Scotland of instructing juries to strive for unanimity. Finally, Lord Matthews said:

"we thought that a qualified majority is possibly the safest and best approach."—[*Official Report, Criminal Justice Committee,* 31 January 2024; c 35-36, 38.]

I will leave my remarks there, convener.

The Convener: The question is, that amendment 146 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Against

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 2, Abstentions 2.

Amendment 146 agreed to.

Amendment 147 moved—[Angela Constance].

The Convener: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 147 agreed to.

Amendment 72 not moved.

The Convener: The question is, that section 34 be agreed to.

Ben Macpherson: For clarity, did you mean section 34?

The Convener: What did I say?

Ben Macpherson: I think that I heard 44.

The Convener: To confirm for the record, I meant section 34.

Section 34, as amended, agreed to.

The Convener: That might be a clue that we should have a short break.

11:16

Meeting suspended.

11:26

On resuming—

After section 34

The Convener: The next group is on jury affirmation. Amendment 154, in the name of the cabinet secretary, is the only amendment in the group.

Angela Constance: Before a trial begins, jurors have the option of either taking an oath, which is religious, or making an affirmation, which is non-religious, to try the accused and give a verdict according to the evidence.

At present, the wording prescribed in existing legislation means that jurors who choose to take the oath may do so collectively and without having to state their names, and jurors who choose to affirm must do so individually and name themselves in court. Amendment 154 will enable jurors who affirm to do so collectively and without having to declare their names in court. That would make the process for jurors making the affirmation consistent with the process for jurors taking the oath. The amendment would apply to all criminal juries.

The Criminal Courts Rules Council highlighted that inconsistency to us. The current wording means that affirmations are procedurally inefficient, and the Humanist Society Scotland has raised concerns that the differences in wording mean that jurors who choose to affirm are treated differently from those who take the oath.

Jurors should be able to expect to be treated with consistency and parity in front of the court, regardless of their religious or non-religious beliefs. The amendment will create that consistency for all jurors.

I move amendment 154, and urge the committee to support it.

Amendment 154 agreed to.

The Convener: The next group is on communication supporters for jurors. Amendment 233, in the name of Karen Adam, is the only amendment in the group.

Karen Adam (Banffshire and Buchan Coast) (SNP): Amendment 233 aims to remove the barriers that prevent individuals with disabilities from serving on criminal juries.

The goal of amendment 233 is to ensure that jurors with communication differences who are deaf and require a British Sign Language interpreter can fully participate in jury deliberations. That would foster more inclusive and accessible justice systems for all.

The current challenge is that only jurors are allowed to be present during jury deliberations, which excludes people who need communication support such as BSL interpreters from fully participating.

For a bit of background, in 2018, a group chaired by Lord Matthews recommended considering the issue; the Scottish Courts and Tribunals Service echoed that call in December 2023, recommending that legislation be amended to allow approved persons, such as BSL interpreters, to support jurors during deliberations.

11:30

The amendment seeks to insert the proposed section 88A into the Criminal Procedure (Scotland) Act 1995, enabling the court to appoint a communications supporter for jurors who need assistance due to a physical disability. The supporter would be present during deliberations, ensuring that the juror can participate effectively. The amendment also seeks to ensure that multiple supporters can be appointed if needed, and that they can take an oath to preserve the integrity of the trial.

Before appointing a supporter, the court would have the opportunity to hear from the prosecution and defence on whether the case was appropriate for the juror—for example, if the case involved audio recordings where hearing the tone was important, a deaf juror might not be suitable.

Amendment 233 seeks to empower judges to decide on a case-by-case basis, which ensures flexibility and judicial discretion. It does not mandate the appointment of a supporter in every case but provides the option for judges to consider communications support where appropriate. That ensures fairness and accessibility when needed.

The SCTS's letter to the committee raised concerns about space constraints in courtrooms. If operational difficulties arise, such as the size of the courtroom, and the court cannot accommodate supporters, the court will not appoint a communication supporter, and the juror could be excused. Although operational concerns are valid, the vast majority of courtrooms cannot accommodate multiple communications supporters during deliberations. The flexibility in the amendment ensures that, if a court faces any difficulties, the judge can decide to excuse the juror, or the juror can be informed in advance of any issues with that accommodation.

Liam Kerr: I am listening carefully and am very much in support of what the member is trying to achieve. She raised the SCTS letter, and it is absolutely right that she focuses on that. The SCTS said that there might be "significant costs associated" with meeting the proposal. If I assume that the amendment passes today, how has the member quantified those costs, and how will she ensure that the Government properly funds that welcome change to ensure that it happens?

Karen Adam: There might be concerns about the financial cost of providing interpreters, as well as that space, for jurors. However, although providing interpreters comes with some costs, those costs were found to be manageable in England and Wales. The number of cases that require such support is expected to be small and the costs can be calculated to ensure sustainability. More important, investing in accessibility and inclusion absolutely brings long-term benefits by ensuring that our system is fair for all, regardless of disability.

Amendment 233 matters because everyone, regardless of disability, should have the right to serve on a jury. The amendment seeks to ensure that deaf jurors and others with communication impairments are not excluded from fulfilling that vital civic responsibility, and reflects our commitments to an equal justice system, where everyone can participate fully in legal processes without discrimination. The amendment is a step forward in ensuring that Scotland's justice system is inclusive and accessible to all, by empowering jurors with disabilities to serve effectively and reaffirming our commitment to equality and fairness.

On a personal note, I am a child of a deaf adult—I am a CODA. For almost 50 years, my father has often relied on me or others to interpret for him, as he is a BSL user. Throughout my life, I have seen him and other members of the deaf community being excluded from various aspects of society, the access to which we, as hearing people, take for granted—we do not note it in our everyday lives.

That exclusion is regardless of their intellect or their good character. It is a shame that that happens. My amendment is not just about deaf people being included in society. Our justice system will benefit by including deaf people, and it will give us more access to a broader demographic within our society. I urge members of the committee to support this important amendment, because it will make our legal system more just and inclusive for all.

I move amendment 233.

Rona Mackay: I fully support amendment 233 and am glad that Karen Adam lodged it. Do you agree that the amendment could include Makaton and deafblind communicators?

Karen Adam: Yes, absolutely. It is for anybody who has a physical disability that impairs their ability to communicate and who needs to have supporters present with them. The supporters

would have to take an oath during the deliberations and fully accept the inclusion of all signed support.

The Convener: If no other members want to come in, I invite Karen Adam to wind up and—I beg your pardon, cabinet secretary. I am jumping the gun.

Angela Constance: Thank you, convener. Widening the pool of people who are available for jury service will better represent society and recognise the contribution that those with sensory impairments have to make in all areas of public life, so I am pleased to support amendment 233.

As Ms Adam touched on, it takes forward recommendations made by a judge-led group in 2018. The Scottish Courts and Tribunals Service convened a working group in 2023 to consider some of those recommendations further, and it recommended that legislation should ensure that different forms of support could be rolled out to jurors in future.

Amendment 233 is consistent with that, allowing the court to decide what kind of communication supporter to appoint, depending on jurors' needs and on what is operationally feasible. The flexibility also helps to ensure that the provisions are future proofed.

Scottish Government officials have engaged on the issue with stakeholders, including the British Deaf Association, Just Sign, freelance BSL interpreters and Deafblind Scotland, and they are all very supportive. The measure was introduced in England and Wales in 2022, since when 70 jurors in England and Wales have required to use BSL interpreters.

It is in all our interests to pave the way for as many people as possible to serve on juries. I therefore urge the committee to support amendment 233.

The Convener: I call Karen Adam to wind up and indicate whether she wishes to press or withdraw amendment 233.

Karen Adam: In winding up, it is important to say that our step towards a more equal society is not something additional or added on at the end of anything. It is step by step that we make a more inclusive society. Whenever there is an opportunity to be more inclusive, we should take it. We should empower people with disabilities to serve effectively and fully in our society. I press amendment 233.

Amendment 233 agreed to.

Section 35—Verdict of guilty or not guilty and majority required for guilty verdict

Amendment 73 not moved.

The Convener: I call amendment 74, in the name of Pauline McNeill. I remind members that, if amendment 74 is agreed to, I cannot call amendments 148, 149 and 150 because of pre-emption.

Amendment 74 not moved.

The Convener: I call amendment 92, in the name of Sharon Dowey. I remind members that if, amendment 92 is agreed to, I cannot call amendments 148 to 150 due to pre-emption.

Amendment 92 moved—[Sharon Dowey].

The Convener: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 2.

Amendment 92 disagreed to.

Amendments 148 to 150 moved—[Angela Constance]—and agreed to.

Section 35, as amended, agreed to.

After section 35

Amendment 268 not moved.

Section 36 agreed to.

After section 36

The Convener: The next group is on jury research. Amendment 152, in the name of Angela Constance, is grouped with amendments 153, 62, 63, 63A, 75, 151, 269 and 271.

Angela Constance: I recognise that there is not enough support for the pilot of single-judge rape trials to progress at this time. In the interests of building as much consensus as possible, I will support amendments to remove the pilot from the bill, which we will come to in a later group. However, I remain deeply concerned by the substantial evidence that the current approach to decision making in rape trials is denying women justice.

A wealth of studies has demonstrated that jurors, just like the wider public, hold false and prejudicial beliefs—often known as rape myths—about how rape victims should behave, both before and during an attack, and later to the police and in court. Research with mock juries has found evidence of jurors relying on or referencing rape myths during deliberations. The evidence that we already have should give us real concern that verdicts in such cases are being influenced by jurors' misconceptions about rape, rather than being based solely on the facts and the law.

Current legislation, specifically section 8 of the Contempt of Court Act 1981, limits the research that we can carry out into jury deliberations. Such research could help us to better understand whether and how rape myths affect verdicts, and what measures could effectively address them.

Amendment 152, in my name, would modify section 8 to allow for research to be carried out into jury deliberations in criminal proceedings. It would no longer be contempt of court for a juror to disclose, or for a researcher to obtain or publish, details of what had been said during deliberations or details of how jurors had voted, as long as the disclosure or publication was for research purposes and permission had been granted by the Lord Justice General.

Those are important safeguards to limit the circumstances in which the content of jury deliberations can be disclosed and to ensure that there is judicial oversight. Ms Clark's amendments 62 and 63 do not include such safeguards. Amendment 62 would disapply section 8 of the 1981 act in Scotland entirely. That would go far beyond enabling research—it would decriminalise the disclosure of jury deliberations much more widely.

Although amendment 63 limits the disapplication of section 8 to research purposes, and Ms Dowey's amendment 63A limits it further, they do not require any kind of advance authorisation, therefore anyone could simply claim that they were gathering the details of jury deliberations for research purposes and those details could be published. Amendments 62, 63 and 63A could create risks for the administration of justice, so I do not support them.

11:45

Amendment 153, in my name, provides that if Scottish ministers conduct or commission research with juries that has been approved by the Lord Justice General, then ministers must publish a report on the research and lay a copy of it in the Scottish Parliament. They must also publish and lay their response to the research, including any recommendations. That will ensure that the Parliament can consider the research findings and the Government's response to it and that we can continue the important debate on the effectiveness of our criminal justice system. It is important to note that my amendments would not limit research to sexual offence cases. In principle, research could be conducted into any kind of case, if that was approved by the Lord Justice General.

Pauline McNeill's amendments 75 and 151 would require ministers to conduct research on criminal juries, including different jury sizes, majority thresholds, and

"the impact of abolishing the not proven verdict",

and to make recommendations on whether changes should be made to jury size and majority. There is no way to test the impact of varying jury size, majority and number of verdicts with real juries—that can be done only with mock juries. In order to identify the impact of altering one part of the process, all other aspects must be kept constant, so to assess the impact of varying the number of verdicts on trial outcomes, other variables in a trial must be kept constant. That means that the evidence, the presentation of witnesses, the prosecution and defence advocacy, judicial directions and so on must all be the same, which is only possible to do with mock juries. We have already carried out the largest and most realistic mock jury study that has ever been conducted in the UK to look at exactly those questions, and the jury reforms that are proposed in part 4 of the bill are informed by the study's findings.

Ms McNeill's new amendment 269 would require ministers to make use of my amendments to seek the Lord Justice General's permission to conduct research on the use of the not proven verdict, juries' reasons for using that verdict, jury splits and their views on pre-recorded evidence. We are already exploring our own research project on the impact of pre-recorded evidence on conviction rates. We are prioritising that important piece of work, but I am happy that we consider whether further research opportunities would be opened up following my proposed amendments to the Contempt of Court Act 1981.

I will speak to the other areas that are included in amendment 269. As debated in an earlier group, campaigners have been calling for the abolition of the not proven verdict for far longer than any of us have been in the Parliament. The committee has heard compelling evidence about the devastating impact that a not proven verdict can have on victims, and that it can leave a lingering stigma for the accused. I agree with the concerns that the committee expressed in its stage 1 report that a verdict that cannot be defined risks undermining public confidence, and I agree with its conclusion that the verdict

"has had its day and should be abolished."

We cannot delay that reform any further.

The evidence that we already have tells us that removing one verdict of acquittal will alter the balance of our system. That means that we need to introduce reforms to jury majority at the same time as abolishing the not proven verdict. Commissioning more research to look at the same question does not relieve the Parliament of its responsibility to make those important decisions now. Therefore, I urge the committee to support my amendments and oppose the others in the group.

I move amendment 152.

Katy Clark: My amendments 62 and 63 relate to the Contempt of Court Act 1981 and seek to remove provisions that currently prevent jury research in Scotland. My amendments were lodged last summer after stage 1 and prior to the cabinet secretary lodging her amendments 152 and 153. I welcome the fact that the cabinet secretary has lodged those Scottish Government amendments and that the committee is considering them today.

I welcome the cabinet secretary's indication that the Scottish Government intends to undertake further research, particularly on jury splits, which have been a live concern and consideration today. I appreciate that there are those who believe that research of that nature is already possible within the current legal framework. However, the Scottish Government's view is that it is not possible, and the relevant provisions for England have already been repealed from the Contempt of Court Act 1981 to enable research to take place there. I welcome the fact that there will be legal certainty that, in certain circumstances, it will be possible to undertake research.

The cabinet secretary spoke about some of the mock jury research that has been carried out, and I agree with the important point that she made that certain factors can be researched only with mock jury research. However, the committee has looked at the mock jury research and the meta-analysis that has been provided to us and, as I said earlier, I am concerned that the evidence is not substantial enough to give us an understanding of what might happen to conviction rates or to the proportion of guilty and not guilty verdicts if we proceeded with the proposed legislation that is before us.

I have already referred to the concerns that were raised by the Lord Advocate and many others. We know that the conviction rate for rape and attempted rape remains the lowest of any type of crime in Scotland. As the cabinet secretary said, that is no doubt due to preconceived biases and myths that surround victims and survivors. I hope that we would all agree that we need far greater insight into the breakdown of jury outcomes and the jury split, and an understanding of jury majorities in real-world situations. The committee has already heard how research can be a vital tool in building up a sophisticated evidence base on the factors that might inform how juries reach verdicts. We all accept that the existence of the Contempt of Court Act 1981 has heavily restricted the research that can be, or is being, carried out.

I hope that the cabinet secretary will take part in the discussion on how we take forward the research. We need to look at all categories of cases, but there are specific concerns about particular types of cases. I hope that any research and work that is carried out will focus on that, so that we have a better understanding. I also hope that the cabinet secretary will be willing to engage on some of the issues in the lead-up to stage 3 to ensure that we can build up data and information to allow us to make informed decisions that deliver the Scottish Government's policy intent, which I believe all members of the committee share.

At the appropriate stage, I will not move my amendments 62 and 63, because the Scottish Government has lodged other amendments on the issue.

The Convener: I call Sharon Dowey to speak to amendment 63A and other amendments in the group.

Sharon Dowey: My amendment 63A would have been supplementary to Katy Clark's amendment 63, which would have allowed for research into jury deliberations. My amendment would have prevented jury deliberations from being compromised by ensuring that that research could be conducted only after the jury had delivered its verdict. However, given that, as Katy Clark said, those amendments were lodged in advance and the Government has now lodged different amendments, I will not move my amendment, either.

The Convener: I call Pauline McNeill to speak to amendment 75 and other amendments in the group.

Pauline McNeill: I strongly support amendment 152, which the cabinet secretary has lodged. I strongly agree that we need to know more about jurors' approach to rape cases, and I think that there is full agreement that that would be extremely useful insight.

Like Sharon Dowey's amendment, some of mine were submitted some time ago. I was trying to resolve in my mind what type of research would be useful to inform us about the implications of removing the not proven verdict. I acknowledge that, as we have discussed, the committee has

seen some useful research, but that has limited value compared to research on actual juries.

Amendment 75 was an attempt to ensure that research on juries would be conducted immediately after the bill received royal assent, and amendment 151 proposed a three-year period for such research. However, I acknowledge what the cabinet secretary said about the need for certain variables to remain the same in any research that is undertaken, so I might need to give further thought to what would be useful in that regard.

As I established earlier, the part of the bill that removes the not proven verdict will still require a commencement order. I do not know whether there is a period in which direct research could be carried out, which would involve lifting the bar on asking juries questions about their opinions on how they voted in particular cases and looking at the balances in cases in which the not proven verdict was reached.

It is crucial that we gather as much information as we can, because we are stepping into the unknown. Although I have said that I am more supportive of the 10 to five majority, I accept that we are stepping into the unknown. One way or another, we must try to have some research carried out to ensure that we have done the right thing. Members in a future session of Parliament might need to do that if conviction rates were to change in one direction or another. There is no way that we can avoid having to review what we do so that we can say whether we did or did not do the right thing. Therefore, it is very important to have such a provision.

Finally, I acknowledge that the Government is already doing research on the question of evidence by commissioner, which is really important. The use of evidence by commissioner is fundamental to getting more victims to come forward and give evidence, but we need to be satisfied that, when victims volunteer or opt to do that, there are no downsides, such as juries perhaps taking that evidence less seriously.

There are lots of questions—perhaps too many—that could be asked in research. Before stage 3, it would be valuable to have a full discussion about how we can ensure that we get the best information available to inform the decisions that we take.

The Convener: As no other member wishes to comment, I invite the cabinet secretary to wind up.

Angela Constance: I will not repeat what I said at length earlier. In short, I remain of the view that the right thing to do is to abolish the not proven verdict and to implement the associated reforms. The amendments in my name are enabling. They seek to remove the legislative barrier to research, rather than specifically providing for the Scottish ministers to undertake research.

That said, we are committed to undertaking research. I have outlined our intentions in that regard in relation to pre-recorded evidence. We will certainly carefully consider commissioning further research, but I hope that the academic community will have considerable interest in carrying out research in the area, to which it would bring diverse perspectives and approaches.

Amendment 152 agreed to.

Amendment 153 moved—[Angela Constance]—and agreed to.

Amendments 62, 63, 75, 151 and 269 not moved.

12:00

The Convener: The next group concerns the establishment of a sexual offences court. Amendment 76, in the name of Pauline McNeill, is grouped with amendments 155, 156, 26 to 52, 56 and 58.

Pauline McNeill: Fundamentally, I agree with the Government that there needs to be a significant shift in the way that we deal with sexual offences cases. Those cases are predominantly what the High Court is dealing with now, and the situation is alarming, with the rate of sexual offences against women and girls going up, not down. The Government has, commendably, already put in place many measures in relation to the issue, and I think that Parliament as a whole is pretty united on the fact that the issue has to be a primary focus not just of legislation but of practice and resources.

Sometimes, achieving change does not require legislation, as some things can be done without it. However, we are faced with a proposal in the bill to create a new sexual offences court.

My first concern about the idea of putting all solemn cases in a single court is that that will create an extremely large court. There is a bit of an unknown here. I accept that, in the proposal to create that new court, to give it additional sentencing powers and to allow sheriffs to sit in that court—approved by the Lord President, obviously—there is an attempt to do something different and to try to address the delays that exist, which affect too many victims of sexual assault. However, I have a concern that what is a significant change in the court system might not achieve what the Government has set out to achieve, because of the volume of cases that would probably be in the new court.

I am concerned about the cost of such a large court and the ability to ensure that it runs

smoothly. I acknowledge that the court can sit in many places—I think that up to 38 courts could be used.

I have a slight concern that, depending on how the new court operates, it could look like there would be a downgrading of the status of rape as a crime. At the moment, because it is one of the most serious crimes that can be committed under Scots law, it therefore goes to the highest court. I maintain that the High Court will still be the highest court and, although the new court could be a significant court with the power to impose long sentences, it will not be the High Court. The High Court is a feature of the Scotland Act 1998; it is a requirement under that act to have a High Court, and it is the highest court, although, obviously, there is an appeal court as well.

I suppose that we might be satisfied that, in order to get the delay down, it is worth using sheriffs and changing the structure, but I cannot pretend that I do not have concerns about how rape cases not going to the High Court might be seen.

Also, because we have been so busy considering the proposal for the new court, we have not had time for much discussion about what happens to the High Court. The figures show that sexual offences cases make up just under 70 per cent of High Court cases, which means that, if the proposal is agreed to, only 30 per cent of the current volume of cases will be in the High Court.

Liam Kerr: The discussion about how things could be seen is interesting. Have you taken any soundings or evidence from the victims groups such as Victim Support Scotland, Rape Crisis Scotland and so on that back up your concern about how things could be seen?

Pauline McNeill: My understanding, from speaking to Rape Crisis Scotland, is that its big concern—as you know, it has many concerns—is delay in the courts. If you believe that delays will come down as a result of this change, I understand and sympathise with that view. However, you would have to accept that, while the High Court has High Court judges and advocates represented in it, that may not always be the case in the proposed new court. I will come to that. It is one of these balancing acts, I suppose.

My primary concern is that the new court will require a lot of organisational change. I know that the Government will say, “Well, we’re not going to do it all at once”—of course it is not, and I think that it is important to hear the cabinet secretary’s comments as to how that change is going to be achieved. Nevertheless, there are many problems to be solved, of which the Government is aware.

One such problem to be solved is what happens in relation to rights of audience. At present, rape and murder must be prosecuted in the High Court; those cases cannot go to any other court. Any serious sexual offences that would be likely to attract more than a five-year sentence would also usually go to the High Court, but the Crown has the discretion to send those cases to the sheriff court.

In the High Court, certain things are determined. There are rights of audience for advocates, and the High Court has its own procedures, preliminary hearings and so on. The Government accepts, and it will speak to this in relation to the amendment, that rights of audience would have to be amended to ensure that we do not downgrade—I am sorry for using that word; I am not sure which word should be used—rape cases in particular. It is still important that there are the same senior prosecutors and that the accused has the right to be represented by an advocate or solicitor advocate, as is currently the case. I am pleased that the Government has now tried to address that. However, the Law Society of Scotland has said that it has not addressed all the points, so that is something that could be sorted out at stage 3.

My amendments seek to go about this in a different way, which I believe can be done. On the question of specialism, we can legislate for trauma-informed practice regardless. We could still have all the features of a different structure, and still compel all those who sit in the court to practice or make decisions to be trauma informed.

However, I think that the easiest way in which to resolve the outstanding questions of rights of audience, where cases are prosecuted and so on would be to create a division of the High Court that would be a specialist court on sexual offences, and a division of the sheriff court. We have done that for drugs courts and for domestic violence. Those courts were created without legislation—however, we can do it by legislation. I think that that would be the easiest, and the best, way to tackle the question of delay and to keep the status of very serious crimes as it is. That is what my amendments seek to do.

In conclusion, it is important to have the discussion. If we vote for a change to create a large court, we really need to be satisfied that it is going to do what it says. The system will require a lot of reorganisation, and it will look different from the current court system. If we are interested in balance and ensuring fairness for victims and accused persons, we need to ensure that we get it right.

If this part of the bill is passed, I think that we will be partially getting to the point at which the system could look right, but we would want to make sure, at stage 3, that we have not altered the balance of who is represented in court, and

that we ultimately allow courts to make the right decisions and, importantly, ensure that the constant delays that victims see in our court system begin to reduce substantially.

Liam Kerr: I just want to be absolutely clear on what we are being asked to do. You are suggesting that we should set up a sexual offences division rather than the proposed sexual offences court, because that would better achieve the outcomes that you are seeking. Am I understanding you correctly?

Pauline McNeill: Yes. The High Court could have a division that specialises in sexual offences. Of course, probably two thirds of judges' cases are sexual offences cases. The sheriff court could also create such a division. The sheriff court is a large court as it is.

My concern with the approach in the bill is that all solemn cases would go to a single court. With the level of change that will be involved, I am not convinced that delays will lessen. That is my fear.

I move amendment 76.

The Convener: I believe that Sharon Dowey will speak to amendments that have been lodged by Russell Findlay.

Sharon Dowey: I share the concerns that Pauline McNeill has just outlined, and I support her amendments.

Russell Findlay's amendments 26 to 52, 56 and 58 would remove the establishment of the sexual offences court from the bill. Everyone on this committee agrees that victims of sexual offences deserve justice, that offenders must be punished and that the experience of victims needs to be improved. However, having sat on the committee throughout this process and having heard evidence from survivors, lawyers, victims organisations and various experts, I am not convinced that the establishment of the new court, although well intentioned, would deliver meaningful improvements to the experience of victims. The costs and complications are not justified when we can concentrate resources and funding more efficiently, such as on improved trauma-informed practice.

I agree that there is a need for more specialisation in the court system. Since 2020, sexual crimes have increased by 11 per cent, rape and attempted rape have increased by 25 per cent and sexual assault has increased by 15 per cent. We should never forget that behind every one of those statistics are victims and their families who have been through a traumatic experience and deserve justice. We all want to help them, but we disagree on how to do so. I believe that the best way would be the creation of specialist divisions of the High Court and sheriff court.

That proposal is supported by the Faculty of Advocates, which made it clear that

"there is no single feature of the proposed court which could not be delivered rapidly by introducing specialism to the existing High Court and Sheriff Court structures".

Simon Di Rollo KC put it more concisely when he said that creating an entirely new court

"would be just a bit of window dressing".—[*Official Report*, *Criminal Justice Committee*, 24 January 2025; c 39.]

The Law Society of Scotland also supports the approach and has said that a new court would serve only to overcomplicate the existing criminal justice system. It has argued for specialist divisions in existing courts that follow the example of the domestic abuse courts in Edinburgh and in the Glasgow sheriff court. It is also notable that Lady Dorrian, whose report recommended establishing this new court in the first place, said that the bill does not reflect the model of the court that she had suggested.

One of my key concerns is the unclear and unpredictable costs of creating the new court. The Government has said that it cannot fully anticipate the costs of the new court at this stage. Given the Government's track record of introducing legislation that then goes unimplemented, namely the Children (Scotland) Act 2020, we cannot be sure that the sexual offences court will avoid a similar fate.

The bill's financial memorandum estimates that the Scottish Courts and Tribunals Service will incur one-off costs of £1,444,000 and annual recurring costs of £492,000 associated with the new court. When those costs are compared with the estimated costs of delivering trauma-informed practice—£350,000 in one-off costs and £62,500 in annual recurring costs—there is a huge difference in the funding required. I know that those figures are not entirely comparable, but, when we look at the figures that we have, it is difficult not to conclude that we could prioritise investment and resourcing in our current courts for the benefit of victims and witnesses.

12:15

It is not surprising that some people who support the sexual offences court in principle are sceptical that it will actually deliver in practice if it is created. Emma Bryson of Speak Out Survivors expressed those concerns, and Sandy Brindley from Rape Crisis Scotland said:

"my concern is that we do not want there to be a courtroom in Glasgow High Court that has a label on the door that says, 'Specialist Sexual Offences Court', but there is literally no difference other than that the people involved have maybe been on a day's training."—[*Official Report, Criminal Justice Committee,* 17 January 2024; c 56.]

The committee has heard from victims groups and survivors themselves about the different changes that are required for the court estate to deliver better trauma-informed practice. Those changes include informing witnesses about their choices of how they provide evidence, ensuring that victims and witnesses are distanced from the accused in court buildings and setting up screens or allowing remote evidence to be given, while also affording the opportunity to victims who wish to see the accused when testifying against them.

Those are all changes that we could make in the current court estate through an investment in trauma-informed practice to support victims in practical and realistic ways, and we should be making them whether or not the new sexual offences court is introduced. We need to maximise the benefit of trauma-informed practice instead of introducing something that makes big changes in theory but cannot necessarily live up to them in reality.

There is already a substantial backlog in our court system. Tony Lenehan KC told us:

"It is a struggle to resource the courts that are currently sitting."—[*Official Report, Criminal Justice Committee,* 24 January 2024; c 48.]

My fear is that we are proposing to create a new court that could worsen that backlog and put further strain on court staff. That would not be a good outcome for victims in the long term.

Rona Mackay: I am listening carefully to what you are saying, but my fear is that if we do not do this, nothing will happen. We all agree on the need for sexual crimes to be dealt with by specialists and recognise the horrific rise in the number of those crimes. Do you not think that it is a step in the right direction to recognise that and to say that we are going to do something about it? I hear what you are saying, but nothing will happen if we keep the situation as it is.

Sharon Dowey: My fear is that we are trying to put something into legislation that sounds good but that will not do any good for the victims. Many small changes could be made that would have a huge impact on victims, but we are trying to make a huge change that, if not implemented properly, could end up having a detrimental impact on victims and make the court system worse rather than improve it, which is obviously what we intend to do.

Rona Mackay: You are supposing that. You are not basing that on any facts or any evidence.

Sharon Dowey: We do not even have the costs or a correct financial memorandum. The initial cost for the set-up of the court was £1.4 million, and there are recurring costs. We have already agreed to the victims commissioner, but it was going to cost £640,000 to implement that and the recurring costs would be around £615,000. For the court, there is a one-off cost of £2 million and recurring costs of around £1 million. If that is, indeed, new money coming into the system rather than being taken off victims charities, which has been raised as a concern, how many bairns' houses would we be able to buy with £2 million? The recurring costs of £1 million would keep them going. Taking that measure would make a huge difference to victims of sexual offences. Given the recent statistics on sexual offences against under-16s, that would be a better use of our money, because it would provide support and trauma-informed practice in dealing with youngsters, which would help them to provide solid evidence to get those who are guilty of those horrible crimes convicted and put in jail.

That, in my opinion, would be a better use of money, and I have real concerns about the sexual offences court. It sounds great, but how will it work in reality, and how will it be put into practice for solicitors, lawyers and everyone else who works in the system? Concerns have been raised about the practicalities of defence solicitors being available to meet the national jurisdiction of the sexual offences court. Simon Brown of the Scottish Solicitors Bar Association pointed out that fewer than 500 defence solicitors are working in Scotland and called it "a dying profession". It seems to me highly unlikely that enabling the courts to sit at 38 locations across Scotland could be made to work in practice when defence solicitors already have demanding workloads and would face increased travel and other expenses if they were to attend the new court.

The same would apply to sheriff court staff, who would likely be transferred or redeployed to the new court. The costs associated with redeploying 25 clerks, as well as other court staff, to support the sexual offences court is estimated at £235,000, and the cost of regrading sheriff court clerks to work in High Court procedure for the new court is expected to be around £465,000. I do not believe that those costs are justifiable when it is perfectly possible to achieve the same aims by integrating trauma-informed practice in the existing court structure and creating a new division in our existing courts.

As will be discussed in more detail later, survivors of sexual crime have made it clear to the committee that they have real concerns about the perceived downgrading of rape trials if they are moved from the High Court to a new sexual offences court. Rape survivor Ellie Wilson said:

"Rape is one of the most serious crimes in Scots law; such cases are only ever heard in the High Court. That solemnity is sacred, and it is important that we maintain it."—[*Official Report, Criminal Justice Committee,* 17 January 2024; c 4.]

Rape survivor Sarah Ashby similarly told us:

> "I would not like for such cases to be dismissed or for us to be made to feel that they are any less significant than they are. When you get the information through that the trial is going to the High Court, there is an element of realising how important that is."—[*Official Report, Criminal Justice Committee,* 17 January 2024; c 43.]

If that is how survivors feel, we should listen to them.

That is also the position of the Faculty of Advocates and of experienced lawyers such as Tony Lenehan KC. We have a hierarchical court system for very important reasons, and I am greatly concerned that creating a crossover between two distinct levels in that system might have unintended consequences that will cause more harm than good.

It is also unclear how the divisions between High Court and sheriff court cases will operate in the new court. The bill provides for the merging of High Court and sheriff court cases, to be heard by judges and sheriffs collectively as judges of the sexual offences court. Concern was raised by the Law Society of Scotland, which highlighted the impact that that could have on the sentencing process by potentially increasing the sentencing powers of sheriffs sitting in the new court.

My concern is that the creation of a new sexual offences court sounds good on paper but would do little in practice to address the real issues in our court system or to deliver the changes needed to help victims, particularly regarding the delivery of improved trauma-informed practice. That is despite survivors such as Anisha Yaseen telling us:

> "It does not matter how much legislation you throw at this, because the issue is the culture. Nothing will change—no matter how many things you put into place—without a change in culture."—[*Official Report, Criminal Justice Committee,* 17 January 2024; c 41.]

I agree with that, which is why I do not support the creation of the new court and will move the amendments in Russell Findlay's name.

The Convener: As no other members wish to speak, I call the cabinet secretary.

Angela Constance: I begin by reflecting on the evidence that the committee heard at stage 1. I list just some of those who told the committee that they supported the proposal to establish a stand-alone sexual offences court: Lady Dorrian; the Lord Advocate; Lord Matthews; sheriff, now Lord, Cubie; the chief executive of the Scottish Courts and Tribunals Service; the chief executives of Rape Crisis Scotland, Victim Support Scotland and Scottish Women's Aid; and a number of victims of sexual offences. The persistent theme of the evidence was the experience of the current courts—whether the current High Court or the current sheriff court—and the witnesses' articulation of how those courts and their processes were failing.

Although the witnesses all painted a picture of the challenges that complainers experience in their interactions with the court system, they also offered hope that a new stand-alone court could transform that experience.

Given the overwhelming support for establishing a stand-alone sexual offences court, which was a clear feature of the evidence heard by this committee at stage 1, and the cumulative knowledge and experience of those who provided that evidence, I cannot support the amendments that seek to change that or remove the court from the bill entirely.

Liam Kerr: I am genuinely listening very carefully to the debate to work out what best to do here. You talk about the stand-alone court. Do you think that when those many voices spoke in support of a stand-alone sexual offences court, they might have had in their minds that it would be a new building with new people in it, with sufficient resources to deal with backlogs and to deal with cases timeously? Am I not right that, in fact, when we talk about a stand-alone court, it would be in part of the same building and would use the same people, the same processes and the same information technology, such that the outcomes that people are, rightly, desperate for might well not be achieved?

Angela Constance: In the same way that the High Court sits the length and breadth of Scotland, the sexual offences court should sit the length and breadth of Scotland. I know that some people—certainly, some members—thought that the sexual offences court involved the construction of a stand-alone building in one city in Scotland. I contend that that would not be in the interests of complainers, bearing in mind that we want to see the administration of justice happen as locally as possible.

Although it is fair to narrate the importance of the investment that we have made, and continue to make, in court recovery, it is also fair—I will come on to this—to speak about using existing resources, whether those are financial, personnel or buildings, more efficiently. However, there is also the very legitimate question of how we support this financially, bearing in mind that, in the here and now, we are talking about the more effective and humane distribution of current business, notwithstanding that there is a projected increase in sexual offences cases—in fact, we have been dealing with an increase over the past decade or so—which necessitates different ways of working.

We all agree that reforms to the management of sexual offences cases are needed. Now is the

time for us to make them. A stand-alone court is necessary to deliver improvements to the experience of complainers, and the specialist court is vital to enabling trials to be conducted in a manner that recognises the impact of trauma on complainers.

Specialism has shown itself to be an effective way of improving the management of sexual offences cases internationally. It is at the heart of sexual offence courts established in both New Zealand and South Africa, which have been credited with achieving significant improvements to the experience of complainers. We have specialism in other parts of the justice system—specialist police and specialist prosecutors—and a specialist court is a logical next step.

The effect of specialism manifests in two ways. First, it places cases in the hands of specially trained judges, whose effectiveness in presiding over such cases improves over time as they build their experience and develop better judicial case management. That delivers a number of benefits, including the swifter resolution of cases, as well as increased awareness of the needs of complainers and where intervention might be required to support them to give their best evidence.

Secondly, specialism also offers the opportunity to develop and implement bespoke processes and procedures at a national level that are specific to the management of sexual offences cases and that are purposely designed to improve the experience of complainers. I acknowledge that we have existing specialist courts for domestic abuse and drugs—problem-solving courts—but they are not universally used and there are many examples of inconsistent practice.

Katy Clark: It has been mentioned that Lady Dorrian said that the model that the Scottish Government is proceeding with is not the model that she proposed. Will you respond to that and outline any differences, as you see them, between the Government's model and the model that was proposed by Lady Dorrian?

12:30

Angela Constance: I have met with Lady Dorrian on a number of occasions, and she is the biggest advocate of a stand-alone sexual offences court. She certainly—as she narrated to the committee—had some different views with regard to how some of the bill's provisions were drafted when it was introduced. The one that comes to mind was about how judges would be appointed to the sexual offences courts; we will come to that in discussing the amendments in group 24.

Principally, and crucially, the benefits of specialism can, in my view, be realised only by bringing together all cases of the same type, from both the High Court and the sheriff courts, in a single forum. That will foster the development of bespoke processes that are informed by best practice drawn from across the High Court and sheriff courts, and ensure that those processes are applied consistently to the benefit of all complainers in serious sexual offences cases across the country.

Another key reason why the court must be a distinct court with a national jurisdiction is to ensure that it has access to the combined resources of the High Court and sheriff courts. That will allow it to draw on a much wider pool of court and judicial resources and to use those flexibly in the scheduling of trials. That has the potential to reduce the length of time that it takes for cases to reach trial, which sexual offence complainers consistently tell us is one of the main challenges that they experience in their interactions with the court system.

Lady Dorrian, in evidence to the committee, stated:

> "we felt quite strongly that simply creating another division of the High Court, for example, would not achieve the necessary end. What was needed was a court of full national jurisdiction".

The ability to use the combined resources of the High Court and sheriff courts flexibly is crucial to creating a sustainable model for the management of these cases. Data from 2022-23, which is the most recent that we have available, shows that 1,966 people were proceeded against for a sexual offence in Scotland—a 29 per cent increase since 2013-14. That growth shows no sign of abating, and we must expect that the numbers of sexual offences cases that are heard in the courts will continue to rise. We must be prepared for that growth by putting in place a system that is capable of managing increased demand.

I remain committed, therefore, to establishing a sexual offences court and will continue to persuade people to back it. I have listened to members' views on aspects of the court and lodged a number of amendments, to be discussed in later groups, to address the issues that are raised by those concerns.

I turn to the specifics of Pauline McNeill's amendments 76, 155 and 156. The idea of establishing specialist divisions of existing courts in place of a stand-alone court was carefully considered in some detail by the Lady Dorrian review group and the specialist sexual offences courts working group, and roundly rejected by both of them. While both groups identified several reasons for rejecting the idea of specialist divisions, their concerns can be distilled down to the fact that it would represent little more than a continuation of the piecemeal change that has been characteristic of the past 40 years, and it is

therefore incapable of delivering reforms that are commensurate with the scale of change that is needed in the management of sexual offences cases.

Another key challenge with Pauline McNeill's suggested approach is that it would require the courts to establish not one division but seven separate divisions: one for the High Court and separate divisions for all six sheriffdoms. That would inevitably create a significant, yet totally unnecessary, additional layer of complexity and bureaucracy. It is also of note that the courts already have the power to establish specialist divisions should they wish to do so.

Pauline McNeill's amendments in this group, therefore, fall well short of the scale of change that is needed to reform the management of sexual offences cases, and I urge the committee to reject them.

I urge the committee to also reject Russell Findlay's amendments, proposed by Ms Dowey, which would remove the proposed sexual offences court from the bill.

However, I will support amendment 47 for technical reasons. That is because it provides the foundation for amendments in my name that will be debated in group 27. Those amendments seek to ensure that there is alignment in the implementation of the presumption in favour of pre-recorded evidence across the High Court and the sexual offences court. I would have lodged a similar amendment, but amendment 47 was lodged first.

The evidence that the committee heard, including from many victims of sexual offences who made passionate pleas for reform, means that no one should be supporting Mr Findlay's amendments, which seek to make no change to the way that we manage sexual offences in our courts.

I will end by reiterating the warning that Lady Dorrian gave members of the committee at stage 1, when she said:

"if we do not seize the opportunity to create the culture change from the ground up ... there is every risk that, in 40 years, my successor and your successors will be in this room having the same conversation."—[*Official Report*, *Criminal Justice Committee*, 10 January 2024; c 4, 22-23.]

Let us end the conversation and take action.

The Convener: I invite Pauline McNeill to wind up and to press or withdraw amendment 76.

Pauline McNeill: I find Sharon Dowey's contribution very helpful, because it mirrors my feelings about something that sounds like quite dramatic and necessary change but which involves lots of issues that remain unresolved. I maintain that a lot of the specialist judicial management can be done without legislative change. It would be wrong to say that other quite radical changes to the system have not been supported by the committee, different parties or the Government and that everything rests on the creation of a very large sexual offences court.

I remind the committee to consider whether it is satisfied that the result of every single solemn case in the High Court and the sheriff court will be what the cabinet secretary is saying that it will be—although she did not address the question of delay, which is one of the significant issues in the court system. Sharon Dowey addressed that issue, and the costs. Is the committee content that we can achieve what the sexual offences court sets out to achieve?

Although we are talking of cases that are of the same type—they are all sexual offences cases—they are not all of the same level of seriousness. I agree with Tony Lenehan, who was quoted by Sharon Dowey, when he says that we have a hierarchical system, in that we have the High Court for the most serious crimes, and then we have lower courts. There is nothing in the bill that prevents a sheriff from sitting in a rape case. I cannot sign up to that, and I have lodged an amendment that we will come to later that might change it. There is no doubt that more sheriffs will be used—that is how this will be done. The sexual offences court will use more sheriffs—whether or not the Lord President is satisfied that they are trauma-informed and able to do the job. That is something that the cabinet secretary has to accept.

I would have had more respect for the change, or been more supportive of it, had the question of how rape cases will be dealt with in the new sexual offences court been addressed. Liam Kerr quite rightly asked the question. Nothing about how the court looks, physically, will really change—it will still be a court somewhere in Scotland. There might be procedural changes, but I am arguing that those can be made without legislation.

Given the widely drawn powers of the sexual offences court, which mean that the cases that it could consider could include murder—I will come on to address that concern—we would be creating a lot of changes at the same time that we do not know the outcome of.

Why would we not still try someone for murder in the High Court as a matter of absolute certainty? Why would we not argue it the other way so that, if they felt that it was appropriate, the Lord Advocate could say that a murder case with a sexual offences element should go to another court? As it stands, the sexual offences court would have complete discretion to go beyond sexual offences cases.

Liam Kerr: I want to clarify that matter. The cabinet secretary put a number of arguments. I did not find the argument about extra bureaucracy particularly persuasive, because what is being argued for is the creation of a whole new tier, so we would be creating extra bureaucracy anyway.

However, the cabinet secretary spoke persuasively towards the end of her remarks about a number of expert groups that have been surveyed. They said that creating a new court is the right thing to do, because we cannot leave things the way that they are, as we will spend 40 years not getting it right. Will the member address that point by the cabinet secretary? I found it quite powerful.

Pauline McNeill: Yes, it was a powerful point—it was made by Lady Dorrian. The question that we have to ask ourselves is this: although we all want dramatic change—I want that too—are we satisfied that, just because there is a report that says that change will happen in a particular way, the proposed sexual offences court will achieve it? Are we satisfied that the Government will put the resources in? Are we satisfied that there will be a smooth transition from the current court structures and that there will not be a few years of delay? When we get to the end of the process, I would have thought that some future committee will have to review whether or not the proposal has achieved what the Government said it will achieve.

I am arguing that we can still achieve similar aims, or the same aims, by approaching this in a different way. Do not forget that there are still problems to be resolved—for example, rights of audience have not fully been resolved. I thought that the way to resolve that is to keep some of the elements that are already there, but it is for Liam Kerr to decide whether he is persuaded by that.

There is a lot of change that has to happen regardless of whether there is a sexual offences court. That includes the way that victims are treated in court, the points in Katy Clark's amendment on a single point of contact for victims and those in my amendment on the right for a victim to sit down with an advocate to understand their case. We have to look at the issue as a whole. If we want this transformation—and we all do—it cannot be achieved simply by the creation of one single court. Pretty much all those things have to happen. I agree with the cabinet secretary and Lady Dorrian that we have to make sure that we make transformational change when we have the chance to do so.

On that basis, I will withdraw amendment 76.

Amendment 76, by agreement, withdrawn.

Amendments 155 and 156 not moved.

Section 37—Sexual Offences Court

Amendment 26 moved—[Sharon Dowey].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 2.

Amendment 26 disagreed to.

Section 37 agreed to.

Section 38—Jurisdiction and competence: general

The Convener: I call Sharon Dowey to move or not move amendment 27, in the name of Russell Findlay.

Sharon Dowey: Amendment 26 was not agreed to. The cabinet secretary said that complainers want a better experience of the court system. I still think that small practical changes would make a huge difference. I also still have concerns about the practicalities for the legal profession of using up to 38 courts and about the costs, the implementation and whether this will make a difference. However, I will not move the other amendments.

The Convener: We will have to work through the amendments one by one, but I acknowledge the update that you have provided.

Amendment 27 not moved.

Section 38 agreed to.

The Convener: The next group is on the jurisdiction of the sexual offences court. It is a group of 10 important amendments and, given the time, I am minded to finish consideration of amendments for today.

We will resume consideration of amendments next week, and I give notice to the cabinet secretary and members that we may have a 9 am start. I thank the cabinet secretary and officials for attending the meeting this morning.

Meeting closed at 12:45.

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