Scottish Government - jury research engagement events (November 2019 - March 2020)

Summary of Discussions

December 2020

Scottish Government
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Background

1. The independent jury research published in October 2019 is the largest and most realistic of its kind ever undertaken in the UK and it is the first large-scale mock jury research project to consider the unique Scottish jury system with 15 jurors, three verdicts (including not proven) and the simple majority.

2. It was undertaken over two years, using case simulations with nearly 900 mock jurors. It used high-quality filmed trials, presided over by a former High Court Judge and reviewed by Scottish legal practitioners to ensure their realism. The work was conducted by a team of research and legal experts from Ipsos MORI, Professors James Chalmers and Fiona Leverick from the University of Glasgow and Professor Vanessa Munro from the University of Warwick.

3. The work addressed two overarching questions:

- What effects do the unique features of the Scottish jury system have on jury reasoning and jury decision making?

- What are jurors' understandings of the not proven verdict and why might they choose this verdict over another verdict?

4. The findings of the study, which were published in October 2019, suggest that if elements of the jury are changed there may be potential impacts on the verdicts in finely balanced trials:

- reducing jury size from 15 to 12, as is the norm in most English language jurisdictions, might lead to more individual jurors switching their position towards the majority view;
- asking juries to reach a unanimous or near unanimous verdict might tilt more jurors in favour of acquittal;
- removing the not proven verdict might incline more jurors towards a guilty verdict in finely balanced trials; and
- furthermore, there are inconsistent views on the meaning of not proven and how it differs from not guilty.

5. Several other potential misunderstandings of legal concepts arose relatively frequently across the mock juries. For example, there was a belief that the accused needs to prove their innocence, a belief that the accused can be retried following a not proven verdict, and misunderstanding of the fact that self-defence is a legitimate defence to an assault charge, even when the fact that the accused inflicted the injury is not in dispute.

6. In addition to these key points, a range of other findings can be seen in the main jury research report **here**.

7. Following the publication of the report, the Cabinet Secretary for Justice committed to undertake further discussions on the findings, including the possibility of moving to a two verdict system, while noting that he had an open mind on whether further changes may be required and would not prejudge the outcome of those conversations.

Engagement sessions

8. Between November 2019 and March 2020, the Scottish Government arranged events involving a broad range of stakeholders across the country from sectors including legal professionals (defence, prosecution and members of the judiciary), third sector organisations, survivors, academics, people with experience of the criminal justice system, and officials from various public bodies. Sessions were held in Aberdeen, Ayr, Dundee, Edinburgh, Glasgow and Inverness, as well as an online virtual discussion, and a number of bilaterals with individuals with experience of the criminal justice system. A full list can be seen in **Annex A[1].**

9. Attendees with further comments and those who were unable to attend were advised that they could write in with views. A submission was received from JUSTICE Scotland – an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom and can be read in full at https://justice.org.uk/justice-submits-consultation-on-the-scottish-jury-research-findings/

10. One of the members of the jury research team, Professor Vanessa Munro carried out subsequent interviews to explore the experience of being a complainer in a criminal trial that results in an acquittal verdict, with particular focus on the experience of receiving a not proven verdict. This research is available at http://wrap.warwick.ac.uk/137857/1/WRAP-91104-Law-Research-Report-Munro-2020.pdf

11. Although efforts were made to attract a broad range of participants, the majority of those who attended the sessions were from the legal profession, predominantly from defence backgrounds, with smaller numbers from other sectors, which will have had an influence on the matters discussed and the views expressed. Consequently, this summary aims to present the range of views held by participants, rather than focusing solely on the strength of opinion.

12. While this summary relies on a relatively small sample of some sectors and so cannot purport to offer a statistically representative sample, the qualitative data yielded through these discussions provides important insight into the views held within these sectors, across which a number of substantive themes were present. It has been highlighted throughout the report where there were differing views within and between sectors.

[1] The work was due to be concluded in March 2020 but was unavoidably delayed by the immediate demands of the Covid-19 pandemic.

13. Participants were encouraged to read the report before they attended the events and at the outset of each session a short introduction on the research and its findings set the scene for the discussion. The sessions consisted of interactive table discussions (facilitated by Scottish Government officials) to hear participants' views on the implications of the jury research findings, how these accord with their own experiences of the criminal justice system and whether they are in favour of potential criminal justice reforms[2]. As well as considering the findings from the jury research report, these events also provided an opportunity to hear participants' views on related reforms such as corroboration.

14. The following questions were discussed by participants:

- Based on the research findings and your own experience do you consider that any reforms are needed to jury size? If so, what and why?
- Based on the research findings and your own experience, do you consider that any reforms are needed to jury majority? If so, what and why?
- Based on the research findings and your own experience, do you consider that any reforms are needed to jury verdicts? If so, what and why?
- The jury research was recommended as part of Lord Bonomy's post - corroboration safeguards review. Do you think that any reforms should also consider abolition of the corroboration rule? If this was considered, what other reforms would need to be considered alongside?

15. After early engagement with a campaign group[3] who had specific corroboration reform proposals, including that corroboration of penetration should not be required, and corroboration should not be necessary for historic sexual offences, it was decided to take the opportunity to raise these more specific reforms during the engagement events.

Summary of discussions

Q. Based on the research findings and your own experience do you consider that any reforms are needed to jury size? If so, what and why?

- "Juries are now made up of older individuals of retired age…it is not uncommon to lose one or two jurors to illness etc. If you reduce size there will become a point where that is an issue" - legal professional.
- "I find it impossible to see [the] case for keeping 15, [it is an] unnecessary number of people to wrangle and to have in the room to decide one single point" - legal professional.

[2] Although this was the general format of events there was some variation to reflect the expertise and experiences of the audiences – for example, the survivors session was facilitated by Rape Crisis Scotland rather than the Scottish Government and members of the judiciary did not receive a presentation.

[3] https://speakoutsurvivors.co.uk/

In favour of 15 person juries

16. The discussion sessions made clear that jury size is an aspect of the Scottish system that there were less strong opinions on, relative to verdicts and majority, and therefore there was much less discussion on this point. This was common across all the sectors in attendance and most participants were of the opinion that the size of the Scottish jury should remain 15, although did not appear to have particularly strong feelings about this. The main reasons provided were that:-

- larger juries are more representative of the population.
- larger juries are safer in case a number of jurors drop out or are dismissed.
- the impact of dominant or 'rogue' jurors is likely to be minimised in larger juries.
- larger juries are more likely to ensure that particular pieces of evidence are considered over the course of lengthy and complex trials – although the argument that larger juries will be more likely to consider aspects of the evidence than smaller ones wasn't particularly borne out in the jury research.

In favour of reducing jury size

17. However there were some participants that felt the jury size should be reduced, highlighting that:

- 12 jurors works well in other jurisdictions.
- there are better ways to ensure that juries are representative of the wider population than simply having three extra jurors.
- it is harder to participate in larger groups, as highlighted in the jury research.
- there are additional costs and practical difficulties in mustering 15 jurors.

18. The difficulties of considering any one feature of the jury system in isolation were repeatedly highlighted and when asked 'if the jury size was reduced should there be other changes to the system?' by far the most common view was that there should be consideration of changing the jury majority with some going as far as to say these features are 'inextricably linked.' Others argued that if the jury size was reduced it should remain an odd number so the simple majority could be retained.

19. The jury research suggested that jurors in 15-person juries were less likely to change their minds on the verdict than jurors in 12-person juries, and also that smaller juries might lead to more jurors participating more fully in the deliberations. These findings were occasionally referenced by participants. When they were, there was some debate as to whether changing of minds and increased juror participation were necessarily beneficial.

> *"it may be good to have some passive jurors, who may be thinking over the issues while others are debating"* - academic.

Q. Based on the research findings and your own experience, do you consider that any reforms are needed to jury majority? If so, what and why?

- "the great virtue of our system is that it is decisive. You get a decision and people's lives move on" - legal professional
- It is "difficult to see how it can be justified for a collective judicial body to make decisions on something so serious where only just over 50% are satisfied" - legal professional
- "unanimous verdicts will almost never get convictions in rape cases – I would be very concerned if reform went that way" - third sector

20. Views were very mixed on the issue of the simple majority and there was no clear preference amongst sectors who participated. The main reason given for retaining the simple majority was a general lack of desire for changing a system that participants believed worked well and should not be "tinkered" with, although some specifically stated that the simple majority was appropriate when considered alongside safeguards such as the corroboration rule or the third verdict, or raised concerns that raising this would make it harder to get convictions.

In favour of increased majority

21. The main reason given for increasing the jury majority was that in cases where around seven out of 15 jurors opt to acquit, this arguably shows that there is a reasonable doubt in the conviction (although there is no legal basis for this view and it is not possible to say how frequently this happens).

> *"8-7 does not have much room for error or one person's prejudice*." - legal professional

> *"Seven people could think you're innocent but you're sent to prison for life."* - legal professional

22. Others had related concerns, arguing that a jury split in this way is demonstrably not a unified group coming to a decision, and furthermore, increasing the majority required could increase engagement as jurors would "have to argue it out". A small number of attendees suggested that the simple majority can be difficult for jurors to understand, particularly if the acquittals are split between not guilty and not proven.

Concerns around increasing the majority

23. Despite some support for increasing the majority, there was near consensus that requiring unanimity would be too high a standard, as a sole 'recalcitrant' juror with unusual views or beliefs could prevent verdicts being reached. By far the most common suggestions were a) that Scotland should emulate the English system where juries must first attempt to reach a unanimous verdict, and only after deliberating for at least two hours may they deliver a verdict by a majority of 11-1 or 10-2 and b) that the majority should be increased to require 10 out of 15 for a conviction - although one respondent did raise a concern that since this would be different from any other jury system internationally there would inevitably be an evidence gap on what the implications of such a system may be.

24. There were concerns that increasing the majority would make it more difficult to obtain convictions, particularly in rape trials. Views were regularly expressed that

any reforms should not lead to a system that allows hung juries and/or retrials, with a substantial majority of participants suggesting that if the majority is increased, a failure to reach the new threshold should result in acquittal.

25. Although it was very common for those who wished to amend juries' size stating that this would need accompanied by a change to the jury majority, very few attendees made the converse argument that if you change the majority there would need to be reforms to jury size, or linked it with reform of the third verdict.

Q. Based on the research findings and your own experience do you consider that any reforms are needed to jury verdicts? If so, what and why?

- "I don't see any reason for removing not proven" – legal professional
- "How hard is it to say guilty or not guilty – that's the whole point of a jury – to make a decision" – survivor
- "It is understood to mean we think you did it but don't think the Crown have proven the case beyond reasonable doubt - in any other jurisdiction that would be a not guilty" – third sector
- "the price of removing the three verdicts must be to change the majority" – legal professional

<u>The case for retaining three verdicts</u>

26. The substantial majority of participants from the defence sector argued that Scotland should retain its three verdict system, however in the discussions that contained more representatives from the third sector, academia, the public sector and prosecutors, a slight majority of participants favoured moving to two verdicts.

27. The main situation in which it was suggested the not proven verdict is appropriately used by a jury was when the Crown's case is not quite strong enough to prove guilt beyond reasonable doubt but the jury think the accused is probably guilty. Participants who made this argument were typically asked by the facilitator whether they felt that this usage could be squared with the presumption of innocence i.e. should juries be allowed to signal that someone is 'probably guilty' if the evidence does not show this beyond reasonable doubt – however generally they did not feel this labelling was problematic.

28. Other reasons for suggesting that the third verdict should be retained included that:-

- The case for moving to two verdicts has not been made / the research is insufficient to warrant such changes.
- The third verdict allows jurors to signal to the complainer that they don't think he/she lied, or to the accused that they didn't agree with his/her behaviour.
- The not proven verdict better reflects jurors' uncertainty, and gives them the chance to say 'I am not sure.'
- The not proven verdict should be used when there is a lack of corroborative evidence.

- The not proven verdict is perceived as a safeguard against unsafe convictions and some participants argued that this feature "balanced out" the simple majority and/or the corroboration rule. This was sometimes explicitly linked to the finding in the jury research report that the combination of features that produced the most jurors in favour of a guilty verdict after deliberating was 15-person, simple majority, two-verdict juries, which is what the Scottish system would become if the verdicts were reduced with no other accompanying changes.

The case for two verdicts

29. Those who raised concerns with a three verdict system, typically cited the lack of understanding and perceived stigma associated with the verdict. Concerns around fairness, and trauma were also raised.

Lack of understanding

30. In many of the engagement sessions, participants from all sectors expressed views that jurors do not understand the third verdict. This included survivors with direct experience of the verdict who described how confused they had been about its meaning and implications and that they were unaware of, or unprepared for, the possibility that a not proven verdict might be returned in their case.

31. It was frequently highlighted that jurors could not be blamed for any such lack of understanding as in some participants' view there is no rational explanation.

> "*The question being asked, has the crown proved their case beyond reasonable doubt? [This] can only have two answers - yes or no – so why are there three verdicts?"* - legal professional
>
> "*Nobody would design this system – we have a verdict that nobody knows what it means*" – public body
>
> *"If you give three verdicts jurors will assume one is the in-between option, that is logical and [you] can't fault them for that"* legal professional
>
> *"I genuinely don't understand the reasons for or purpose of not proven. I don't see the space for a third option."* – legal professional

32. One of the most frequent suggestions was that jurors' understanding of the third verdict should be improved using various approaches including jury directions, general education, and most frequently, defining the verdict. However, there is no statutory, case law or generally accepted definition of the not proven verdict, nor of the difference between the not proven and not guilty verdicts, and when probed on what jurors should be told about the third verdict given the lack of an agreed definition, there were no suggestions provided other than it is "a matter of emphasis."

Stigma

33. There were mixed views about whether the not proven verdict comes with stigma. Members of the defence sector frequently suggested that defendants are just happy to be acquitted and that even with two verdicts there would be stigma just from being charged. However, others argued that not proven can cause stigma within families and small communities - particularly for sex offences - and gave

specific examples of a not proven verdict causing difficulties with PVG checks and licensing applications. It was suggested that stigma may not be immediately apparent to legal professionals as it may occur over time, potentially long after the person has been acquitted.

> *"We haven't got a single client who is in receipt of a not proven that is happy with it and that's not just their instant emotional reaction but their considered reaction."* - third sector

> *"If you ask anyone who has had not proven for rape then they are still branded a rapist. Other jurisdictions don't suffer this they just have a finding of guilt or not"* - legal professional

Fairness

34. The jury research suggested that some juries may opt for the not proven verdict when jurors need to compromise to decide on a verdict. Some participants considered this to be a 'cop out' and questioned the appropriateness of allowing jurors to 'hedge their bets' or 'sit on the fence' with this verdict.

> *"How hard is it to say guilty or not guilty – that's the whole point of a jury – to make a decision"* - survivor

35. Survivors and third sector participants in particular outlined their view that having two acquittals is biased towards the accused - *"why should the defence have two bites of the cherry?"* - and that in their opinion, jurors' lack of understanding of this verdict can be manipulated by defence counsel to imply it is the appropriate verdict if jurors are not 100% sure of guilt.

Trauma caused by third verdict

36. The survivors who participated in the engagement process gave powerful testimony about their anger that the not proven verdict exists and the impact it had on them:-

> It was *"like an exam pass mark was 50% and you have just been told you reached 49% [...] I would have rather failed at 10% than be told that."* - survivor

> *"It felt like I had failed at being raped."* - survivor

37. Survivors and their representative organisations also disputed the benefits of jurors signalling to complainers that they were believed while simultaneously opting to acquit:-

> *"some people say not proven is better because at least you can say you were believed, however it is important to listen to the survivors about this, and they say - in no way does the not proven verdict make them feel better than a not guilty."* - third sector

38. When this view was put to a legal professional who had suggested that the third verdict may provide consolation to victims, he conceded the point, reflecting that, "maybe it's more of a solace to prosecutors."

Two verdicts

39. Most participants from the legal profession thought that if Scotland moves to a two verdict system, those verdicts should be proven and not proven. The same explanation was provided virtually every time, that a jury's role is not to determine *a person's* guilt or innocence, but rather to assess whether the Crown has proven *the charge.* Many people also expressed concern around what they considered to be the moral and emotive language around guilty and not guilty.

40. This was not well supported in groups with fewer legal professionals, where there was more support for the two verdicts being guilty and not guilty. These were considered to be verdicts that juries understand, and there was also recognition that proven/not proven may be too "lawyerly" a distinction that may not be satisfactory to the public.

> "*proven/not proven takes the emotion out of it"* – legal professional
>
> "*proven/not proven is not acceptable to the public – there is a public demand to know if an accused is guilty or not guilty"* - public body
>
> *"it has to be guilty not guilty - you can't abolish not proven and then bring it back."* - legal professional

41. A small minority of participants put forward alternative verdicts including "convict or acquit" and "has the case been proven beyond a reasonable doubt? Yes or no."

Links with jury majority

42. It was frequently highlighted, particularly by legal professionals, that since some people regard the not proven verdict as a safeguard, if Scotland moves to a two verdict system, the jury majority should be increased.

> *"If you remove the third verdict you must increase the simple majority. Victims groups should be careful what you wish for, as this would lead to more acquittals not less."* – legal professional

43. Others argued that if you removed the not proven verdict, logically these verdicts will become not guilty.

Q. The jury research was recommended as part of Lord Bonomy's post corroboration safeguards review. Do you think that any reforms should also consider abolition of the corroboration rule? If this was considered, what other reforms would need to be considered alongside*?*

- "Corroboration is always spoken about as a bad thing rather than a safeguard ... it is something to be proud of and be jealously guarded" – legal professional

- "if there is no reasonable prospect of conviction, the right thing... taking account of trauma informed training, is to not prosecute them and explain to the complainer why" – legal professional
- "the technical requirements of corroboration are problematic and the law still fails many victims" – survivor
- "there is a legal theory of corroboration but the application of it is different – [there is] inconsistency and lack of clarity of what constitutes corroboration" - survivor

44. The possibility of abolishing the corroboration rule was opposed by the substantial majority of those who participated in the engagement sessions, including legal professionals, public sector, and academia. Even in groups who were open to other reforms such as moving to two verdicts, there was very limited support for this position and opposition was particularly strong amongst legal professionals. There did not appear to be any movement towards more support for this reform than when it was last proposed in the Criminal Justice (Scotland) Bill (introduced in 2013).

45. The small number who backed the abolition and/or reform of corroboration – primarily, although not exclusively survivors - based this on a belief that the corroboration requirement prevents strong cases with good quality evidence from getting to court, that the rule fails victims, that it is overly complex, hard to understand and not consistently applied and that it is hard to justify why Scotland alone, uniquely needs the corroboration rule.

> *"the corroboration requirement prevents good quality evidence from getting to court" – survivor*

46. The main reasons provided for retaining the corroboration rule were that it is a fundamental safeguard that the Scottish legal system is built on, and that its application has been significantly altered in recent years due to the Moorov doctrine.

<u>Fundamental safeguard</u>

47. Throughout the discussion sessions, the corroboration rule was frequently referred to, typically by legal professionals, as an important legal safeguard, cornerstone or pillar of the Scottish justice system without which the integrity of the whole system could be brought into question.

48. Examples were given by legal professionals of situations where they believed something initially and then another piece of evidence changed the whole picture. In their view, without the corroboration rule, you may not get that additional piece, as the police and the crown would do just enough to get it into court. Some also made the argument that corroboration is important to stop cases with weak evidence getting to trial. In their view if this safeguard was abolished it would lead to more acquittals which would further delegitimise the justice system for victims of sexual abuse.

49. Legal professionals were focused on the importance of avoiding miscarriages of justice and sometimes contended that it is better for guilty people to go free than for the innocent to be convicted:

"You could create a system that leads to many more convictions… but I'm not sure you would want this." – legal professional

The Moorov Doctrine

50. At most events legal professionals commented that there was no need to abolish the corroboration rule because recent judgements by the High Court on the Moorov doctrine had led to this requirement being "diluted," "chipped away," or "watered down" with some going as far as to say "it no longer exists" or is "only there in name."

51. Some went as far as to say that not only should corroboration be retained, but that there is a need for additional stronger safeguards to compensate for its dilution.

"We pretend that we have this great safeguard but it doesn't really exist. We should accept that and have some intellectually honest safeguards" - legal professional

Complexity

52. The main criticism of corroboration raised during the engagement sessions – across sectoral groups including legal professionals and survivors was that it has become overly complex and hard to understand, with a lack of information given to victims on what corroboration and other legal terms mean.

53. This was one area where there was more widespread agreement from groups outwith the third sector and survivors -

"I've never understood corroboration and don't know how juries are meant to go from zero to full understanding in the course of a direction" - public body

"*I feel confused when I hear the charge so how could a jury understand? Directions on course of conduct would not be fully understood by a room full of lawyers and academics*." – legal professional

Reform of the corroboration rule

54. At many of the events, attendees were asked about the proposal by a campaign group to reform, rather than abolish, the corroboration rule. The two proposals that were discussed in most detail were those that may require legislative change: removing the requirement to corroborate penetration and removing the rule for historic cases.

Removing the requirement to corroborate penetration

55. The overwhelming majority of attendees, particularly amongst the legal profession, were against these proposals. Many considered that corroboration for penetration should remain, as it is an essential element of the charge or questioned how such a change could work in practice.

"If there is no penetration – then it is not rape, it is a sexual assault." - public body

56. Others suggested that without corroboration of penetration you could still get a conviction for assault with intent to rape or highlighted that, there are many ways to prove penetration including eye witness, injury, confession and forensics, although it was accepted that for a historic offence with a single complainer, most of these forms of evidence would not be likely to exist.

57. A small number of participants took a different position and suggested that if you accept the complainer's evidence then there should not have to be corroboration of penetration and these issues should be heard in court, while others drew a parallel with aggravators for hate crimes that do not require to be corroborated.

Removing the corroboration requirement for historic offences

58. There was also widespread opposition, primarily but not exclusively from legal professionals, to removing the corroboration requirement for historic cases, with some attendees commenting that it is wrong to have different evidential standards for different cases and others questioning the need for reform by suggesting that many historic cases are successfully prosecuted under current conditions.

59. The potential for miscarriages of justice was highlighted, particularly as the quality of the evidence for the defence can be poor through no fault of their own, so to remove the corroboration requirement would be "stacking it against the accused."

Related reforms

60. When attendees were asked if abolition of corroboration was to go ahead what other changes may be required, most reiterated their opposition to abolishing the rule but when pressed, considered the whole system would need to be considered. For example a move to unanimity, the retention of not proven and the implementation of all of Lord Bonomy's recommendations[4] were suggested, particularly allowing a judge to remove a case from a jury on the basis that no reasonable jury could be expected to convict on the evidence before it.

Other issues raised

Jury research methodology

61. Throughout the engagement events, some participants, including legal professionals and academics, raised concerns about the jury research methods, arguing that *real* jurors would behave differently, a different range of cases (rather than the rape and assault cases used in the jury research) may have produced different results, or that the artificial time constraint may have influenced jury dynamics. However, when asked to suggest an experiment that did not have these, or other problematic limitations, they were unable to do so.

Juror understanding

[4] Lord Bonomy's Post Corroboration Safeguards Review set out recommendations, in the context of provisions in the Criminal Justice (Scotland) Bill which proposed the removal of the general requirement for corroboration in criminal cases, to consider what additional safeguards and changes to law and practice would be necessary to maintain a fair, effective and efficient system, to report, and to draft any legislation required to give effect to these changes - https://www.webarchive.org.uk/wayback/archive/3000/https://www.gov.scot/Resource/0047/00475400.pdf

62. Although there was no question asked about juror understanding in the engagement events this was raised consistently in almost every session. The importance of educating jurors and improving their understanding of the process was by far the most frequent suggestion across all sectors.

> *"we are playing a high stakes game here where people's liberty is at stake and can't do so where jurors don't understand what they are being asked to do"* – third sector

> *"one of the most important things to come out of the research is the need for more effective communication with jurors and this has to be in a manner and style that the average person can understand"* – legal professional

63. Others pointed out that the trials in the jury research were relatively simple yet there was still substantial confusion, so there is likely to be even more misunderstanding with a more complex case where there are more factors to consider as well as lengthier speeches from the legal professionals involved.

64. Three main recommendations were provided to help improve jurors' understanding:-

- Written directions – were most frequently suggested as a particularly useful way to improve jurors' understanding of proceedings – some suggested specific areas that could be included such as corroboration, the Moorov doctrine, standard of proof, and legal tests.
- Routes to verdict could be helpful, particularly for complex cases.
- Opening statements were suggested as one way to help jurors follow proceedings although there was an acceptance that they would need to be set out in the jury manual.

65. Other recommendations less frequently made included:-

- Using modern technology, e.g. slides and video clips, to explain legal concepts. This would ensure the same information was given consistently across trials and jurors could watch these before they come to trial or remind themselves throughout.
- Learning about the legal system at school would help ensure that jurors had a general level of understanding that they could build on during the trial.
- An independent legal assessor in the jury room could help ensure discussions were appropriate and clarify misunderstandings, although others suggested that such a move would require safeguards to be carefully considered.
- It was suggested by survivors that jurors should have to give reasons for their decision-making.

66. It was occasionally argued that it may be best not to have juries in complex financial cases, serious organised crime, or particularly lengthy trials, although there was not much appetite for such a reform and others contended that the practice note on serious and complex cases combined with proper case management should help resolve these issues.

Jury Attitudes

67. Third sector participants and survivors questioned whether the best way of getting to the truth in rape trials is by using a jury, primarily due to their concerns about jury attitudes and the prevalence of rape myths.

68. Survivors were clear that in their view lay juries can lack empathy and can be easily manipulated by defence counsel due to lack of understanding and prejudice. This was said to reflect wider problematic attitudes in society – as manifested in 'rape-culture', easy access to pornography, and old-fashioned attitudes.

69. Some suggested that rape cases may be better dealt with by members of the judiciary, although others pointed out that relying on one judge could have issues also, and they would not necessarily be free of "problematic attitudes."

Motivation for any reform

> *"the starting point should be, does the system actually need to change at all – it works fine as it is."* - legal professional

> *"complainers feel very let down by the current system."* - third sector

70. It was clear that third sector participants and survivors were approaching these discussions from a very different starting point than participants from the legal profession. Third sector participants and survivors made clear that they feel the current system is fundamentally flawed and repeatedly highlighted concerns around low conviction rates, disproportionately high use of the not proven verdict in rape cases, as well as the attrition rate from report to conviction, and issues around corroboration.

71. This contrasted with the general view from defence participants who frequently disputed the premise that any reform was necessary, and highlighted suspicions that a desire to increase convictions lay behind the jury research and subsequent engagement, despite being informed that this was not the case.

72. Legal professionals, in particular, also had concerns about considering any individual features in isolation, emphasising the interconnectedness of the system and highlighting the importance of a holistic approach.

Criminal Justice Reform
Justice Directorate
Scottish Government
December 2020

ANNEX A

List of engagement events

Victims Groups
Session with survivors facilitated by Rape Crisis Scotland
Law Society and Rape Crisis Scotland roundtable discussion Attendees included representatives from the third sector - Victim Support Scotland, Scottish Women's Aid, Break the Silence, Manda and Speak Out Survivors, as well as legal and academic stakeholders from the Crown Office and Procurator Fiscal Service, the Scottish Sentencing Council and the Faculty of Advocates
Regional events
Primarily defence with some attendance from prosecutors, third sector and academia, held in the following locations: • Dundee • Ayr • Edinburgh • Inverness • Aberdeen • Glasgow
Judiciary
3 separate sessions with sheriffs held in: • Dundee • Inverness • Aberdeen
Senators of the College of Justice
Single stakeholder sessions
Royal Faculty of Procurators
Faculty of Advocates
Crown Office and Procurator Fiscal Service
Bilaterals
(former) Dean of the Faculty of Advocates
Professors Fiona Leverick, James Chalmers and Vanessa Munro
Miscarriages of Justice Organisation (MOJO)
Equality and Human Rights Commission
People with experience of experience of criminal justice system
Survivors
Written submission
Justice Scotland – written submission

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