Reforming Scots Criminal Law and Practice: Additional Safeguards following the Removal of the Requirement for Corroboration

Analysis of Consultation Responses
REFORMING SCOTS CRIMINAL LAW AND PRACTICE: ADDITIONAL SAFEGUARDS FOLLOWING THE REMOVAL OF THE REQUIREMENT FOR CORROBORATION

ANALYSIS OF CONSULTATION RESPONSES

Shona Mulholland and Jo Fawcett
Why Research

Scottish Government Social Research
2013
# Table of Contents

EXECUTIVE SUMMARY  
   Background  
   Summary  

INTRODUCTION  
   Background  
   Overview of responses  
   Analysis and reporting  

CORROBORATION  

SAFEGUARDS AROUND THE DECISIONS OF THE JURY  
   A qualified majority system  
   Majority size  
   Whether it should be open to the prosecution to seek a re-trial  
   Other comments on safeguards around the decisions of the jury  

THE NOT PROVEN VERDICT  
   Whether the not proven verdict should be retained  
   Guilty/ not guilty or Proven/ not proven  

SUBMISSION FROM ACCUSED FOR THE JUDGE TO WITHDRAW THE CASE  

OTHER COMMENTS  

SUMMARY  

APPENDIX 1: LIST OF ORGANISATIONS  

APPENDIX 2: THE CONSULTATION QUESTIONNAIRE
ACKNOWLEDGMENTS

Thanks to the individuals and organisations who responded to the consultation and to all at the Scottish Government Justice Analytical Services Division who provided input and offered advice as required.
EXECUTIVE SUMMARY

Background

1.1 On 19 December 2012, the Scottish Government published the consultation paper “Reforming Scots Criminal Law and Practice: Additional Safeguards Following the Removal of Requirement for Corroboration”. The consultation sought views on proposals for additional safeguards following the removal of the requirement for corroboration and ran until 15 March 2013.

1.2 Thirty-two consultation responses were received, 18 from individuals and 14 from organisations.

1.3 The consultation posed seven questions relating to: increasing the jury majority required to return a verdict; consideration of whether the not proven verdict should be abolished; and widening the trial judge’s power to rule that there is no case to answer.

1.4 The following paragraphs present the responses to each question and highlight the main themes that emerged in relation to each of the questions in the consultation document.

Corroboration

1.5 Many respondents took the opportunity to give their views on corroboration. The largest proportion of these respondents voiced concern over the removal of the requirement for corroboration.

Safeguards around the decisions of the jury

1.6 Twenty-two respondents supported a move to a qualified majority verdict system in the event of the removal of corroboration, four did not (the remainder did not specify).

1.7 The main theme to emerge was that respondents see a move to a weighted majority as necessary or essential; some believe it is necessary regardless of the removal of the requirement for corroboration. Respondents felt that a qualified majority system would provide a safeguard against an accused person being convicted by a simple majority on testimony from a single witness or piece of evidence.

1.8 Opinions differed over the size of a majority; most of those who specified favoured a majority of 10 or more out of 15 jurors. The main themes to emerge on this issue were: the need to ensure that there is justification for the number that is chosen; and that the majority should be in line with other countries.

1.9 In relation to the need for a majority for acquittal, many respondents felt that failure to convict should automatically result in acquittal.

1.10 Fifteen respondents agreed while nine disagreed that, in the event that a jury is unable to return a verdict, it should be open to the prosecution to seek a re-trial. There was some concern over the possibility of hung juries and respondents stressed that people who are not convicted should be presumed innocent.
1.11 Other comments in relation to the jury system included the need for more research and consideration of the criminal justice system in general and/or on the decisions of juries in particular.

The not proven verdict
1.12 There was broad support for the removal of the not proven verdict. The main reasons given for this view were: that the not proven verdict is difficult to explain to a jury; that the not proven verdict is incompatible with the presumption of innocence; and that the not proven verdict causes a lack of credibility for the justice system.

1.13 Respondents were almost evenly split over whether, in a two verdict system, the results should be proven and not proven (13 respondents) or guilty and not guilty (12). The main themes to emerge from responses were: that the terms proven/not proven are logical and best reflect the actual situation; or that the terms guilty and not guilty are well known.

Submission from accused for the judge to withdraw the case
1.14 Respondents were asked to consider whether, after all the evidence has been led and following an application from the accused, judges should have the power to rule that considering the evidence in totality, no reasonable jury could convict. Responses showed support for this proposal with 20 agreeing and three disagreeing. There were comments that the appeal court already uses a similar test. However, respondents did point out that this proposal would be similar to the „no case to answer” test that is no longer allowed.

Other comments
1.15 Respondents raised one other main issue and this related to dock identification. A number of respondents were concerned that, following the removal of corroboration, this would no longer be allowable in relation to Article 6 of the European Convention on Human Rights.

Summary
1.16 There was majority support for the proposals discussed in the consultation paper but a range of views on their implementation.

1.17 Findings from analysis of responses to this consultation will be used to help refine the Scottish Government proposals.
2 INTRODUCTION

Background

2.1 In October 2010, the Supreme Court ruled in the case of Cadder v. HMA that that the right to a fair trial would be infringed if a prosecutor made use of admissions, obtained during the interview of a suspect in police custody, before that suspect had the opportunity to obtain access to a lawyer. This led to an evaluation of the Scottish justice system and Lord Carloway was asked to undertake a review of Scots law and practice. In November 2011, the Carloway Report was published with some far-reaching recommendations. One of these was the removal of the requirement for corroboration.

2.2 The requirement for corroboration has been a unique feature of Criminal Law in Scotland for hundreds of years. It is the requirement for two different and independent sources of evidence to prove each crucial fact in a case. The Carloway Report found no evidence that corroboration protects against unsafe convictions and suggested that corroboration could be a barrier to justice by creating an additional obstacle to the prosecution of some offences, such as rape, where corroboration may be difficult to obtain.

2.3 Between July and October 2012, the Scottish Government ran a consultation on the proposals in the Carloway Report. Findings from the consultation “Reforming Scots Criminal Law and Practice: The Carloway Report” in relation to corroboration showed many respondents had doubts about removing the corroboration requirement unless other safeguards were put in place. When asked whether additional changes should be made to the criminal justice system in the event of the removal of corroboration, most respondents felt there should be additional changes, including consideration of the majority verdict. In his report, Lord Carloway had noted that if there were a move to a qualified majority system, it would also be necessary to look at the three verdict system.

2.4 From 19 December 2012 to 15 March 2013, the Scottish Government ran the consultation “Reforming Scots Criminal Law and Practice: Additional Safeguards Following the Removal of the Requirement for Corroboration”. This consultation sought views on additional safeguards proposed to balance the removal of corroboration and contained seven questions relating to:

- Increasing the jury majority required to return a verdict.
- Consideration of whether the not proven verdict should be abolished.
- Widening the trial judge’s power to rule that there is no case to answer.

2.5 Findings from analysis of responses to this consultation will be used to help refine the Scottish Government proposals.

Overview of responses

2.6 Responses were submitted by email or in hard copy. In total, 32 responses were received, 18 from individuals and 14 from organisations. As part of the analysis process, responses were assigned to groups. This enabled analysis of whether differences, or commonalities, appeared across the various different types of organisations and/ or individuals that responded. As can be seen in
the following table, most organisational responses came from advocacy organisations (six) or from within the legal sector (five). Individuals who responded included many working within the court system or in university law departments (13 legal/academic individuals).

Table 1.1 Consultation responses

<table>
<thead>
<tr>
<th>Respondent group</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal/academic individuals</td>
<td>13</td>
</tr>
<tr>
<td>Other individuals</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total Individuals</strong></td>
<td><strong>(18)</strong></td>
</tr>
<tr>
<td>Advocacy</td>
<td>6</td>
</tr>
<tr>
<td>Enforcement</td>
<td>2</td>
</tr>
<tr>
<td>Legal</td>
<td>5</td>
</tr>
<tr>
<td>Other organisation</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total Organisations</strong></td>
<td><strong>(14)</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>32</strong></td>
</tr>
</tbody>
</table>

2.7 A list of all those organisations who submitted a response to the consultation is included in Appendix 1.

Analysis and reporting

2.8 Comments given at each question were examined and main themes, similar issues raised or comments made in a number of responses, were identified. In addition, we looked for sub-themes such as reasons for opinions, specific examples or explanations, alternative suggestions or other related comments.

2.9 Some questions contained yes/no or other tick box options to allow respondents to indicate their response. Results from these questions are presented in table format. Where respondents did not use the questionnaire format for their response but indicated within their text their answer to one of the closed questions, these have been included in the relevant count.

2.10 The main themes were examined in relation to respondent groups to ascertain whether any particular theme was specific to one particular group, or whether it appeared in responses across groups. When looking at group differences however, it must be also borne in mind that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups do not share this opinion, but rather that they have simply not commented on that particular point.

2.11 While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to the wider population.

2.12 The following chapters document the substance of the analysis and present the main views expressed in responses. Appropriate verbatim comments, from those who gave permission for their responses to be made public, are used throughout the report to illustrate themes or to provide extra detail for some specific points.
3 CORROBORATION

3.1 In his introduction to the consultation paper, the Cabinet Secretary for Justice acknowledged that “the removal of the requirement for corroboration will represent a significant change to existing legal practice”. He went on to say “However, I believe that Lord Carloway has made a compelling case for its abolition. The rule of corroboration stems from another age, it has become highly technical and confusing to apply and it can preclude prosecutions that would, in another legal system, seem entirely appropriate”.

3.2 The consultation paper detailed existing safeguards which guard against miscarriages of justice and which protect the rights of victims and witnesses through the court process. It then went on to discuss additional safeguards that could be put in place following the removal of the requirement for corroboration. The questions in the consultation document asked respondents to consider the proposals in the light of this removal.

3.3 In considering responses to the questions posed, it should be borne in mind that 19 out of 32 respondents took the opportunity to state, or restate, their views on the removal of corroboration per se. Of these 19, 13 either voiced concerns about the removal or specifically disagreed with this removal.

3.4 Five respondents said they disagreed with the removal of the requirement for corroboration (two legal organisations, one from the enforcement group and two individuals). For example:

“In taking part in this consultation process it should be understood that [the respondent] does not accept the necessity, desirability or inevitability of the removal of the requirement for corroboration. [The respondent] considers that the Scottish Law Commission should examine all of the issues set out in this consultation paper, along with and not as a result, of the abolition of corroboration.”

(legal)

3.5 Reasons given by respondents for disagreement with the removal of the requirement for corroboration included that corroboration provides safeguards for victims and accused, that the reasons given for removal lack merit or that there is no need for its removal.

3.6 In addition, eight respondents voiced concern over the removal saying that they remain unconvinced, or that more detailed consideration is required (two legal organisations and three legal/academic individuals, two advocacy and one enforcement organisation). One advocacy organisation commented:

“In its response to the Scottish Government’s earlier consultation on Reforming Scots Criminal Law and Practice, [the respondent] expressed its view that corroboration acts to safeguard the quality of evidence. It is a means by which the reliability and credibility of evidence can be tested by the fact finder. Corroboration plays an important role in Scots law in preventing an accused from being convicted on evidence of insufficient quality. Thus it assists in preventing violations of fundamental rights.”
3.7 Concern over the effect of the removal of the requirement for corroboration in relation to Article 6 of the European Convention on Human Rights (the right to a fair trial) was raised in two responses (legal and advocacy).

3.8 One legal/academic respondent commented solely on corroboration in relation to sexual abuse cases. This respondent pointed out that corroborative evidence is not, strictly speaking, required for these cases, as courts look on the distress of the victim as corroboration, and that the Scottish Government may be rushing through changes to the judicial system that will not have an effect on conviction rates.

3.9 There was also concern that the removal is going ahead without a much more intensive review of the necessity and consequences. In addition, in responses to questions throughout the consultation, respondents pointed out that the proposed changes would not be required if corroboration was retained, and that the fact that additional changes or safeguards are required indicates that corroboration does ensure safe convictions.

3.10 Six respondents voiced their support for the removal of the requirement; two individuals (although one voiced concern over the number he understood were opposed to removal), three legal/academic individuals and one advocacy organisation. For example:

“[The respondent] fully supports the Scottish Government”s move to abolish the legal requirement for corroboration which we regard as a significant impediment to justice.”

(advocacy)

3.11 Respondents in favour of the removal of the requirement for corroboration commented that the proposed safeguards will join those already in place to guard against miscarriages of justice. Some also suggested additional safeguards and these will be discussed in the relevant chapters of this report.

3.12 The remaining thirteen respondents did not comment on the issue of removal but simply answered the questions as asked (one individual, seven legal/academic individuals, three advocacy, one legal and one other organisation).
4 SAFEGUARDS AROUND THE DECISIONS OF THE JURY

4.1 Scottish juries have 15 members and, at present, a majority verdict of 8 of the 15 jurors is needed for a guilty verdict. In the previous consultation, respondents were concerned over the possibility of a verdict which came from only 8 jurors and which was based on uncorroborated evidence.

4.2 The consultation paper presented details of jury sizes and majorities in other countries and discussed the majority size, including unanimous verdicts and the issue of hung juries and concluded that the best solution lies in a move to a qualified majority system, retaining the current 15-member jury.

4.3 Respondents were asked for their views on a move to a qualified majority system and on whether the majority required for both a guilty verdict and acquittal should be 9 or 10 out of the 15 members.

A qualified majority system

4.4 The first question in the consultation asked: „Do you agree that, if the requirement for corroborative evidence is removed, the simple majority jury verdict system should be replaced with a qualified majority system?“

Table 4.1 Whether agree that, if the requirement for corroborative evidence is removed, the simple majority jury verdict system should be replaced with a qualified majority system

<table>
<thead>
<tr>
<th>Respondent group</th>
<th>Yes</th>
<th>No</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal/ academic individuals (13)</td>
<td>9</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Other individuals (5)</td>
<td>2</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Advocacy (6)</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Enforcement (2)</td>
<td>2</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Legal (5)</td>
<td>5</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Other organisation (1)</td>
<td>1</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Total (32)</td>
<td>22</td>
<td>4</td>
<td>6</td>
</tr>
</tbody>
</table>

4.5 As can been seen from the table above, most of those who gave a response (22) agreed and four disagreed that the simple majority verdict should be replaced by a qualified majority in the event of the removal of the requirement for corroboration.

4.6 However, the figures in the table do not quite tell the full story. Some respondents said yes even though they were only in agreement with a majority verdict for guilty and not for acquittal; others did not specify an answer for the same reason. Comments and reasons for the answers given are discussed below.

4.7 Twenty-six respondents took the opportunity to comment on the issue of a qualified majority.
4.8 One main theme to emerge from responses was that this safeguard would be necessary if corroboration is removed in order to ensure that an accused person is not convicted by a simple majority on testimony from a single witness or piece of evidence. A legal respondent said that they strongly believe “that a criminal justice system which would allow an accused to be convicted on a single piece of evidence which failed to satisfy 7 out of 15 jurors would be regarded as a criminal justice system which lacked a meaningful safeguard against a wrongful conviction.”

4.9 While a number of respondents acknowledged that moving to a majority verdict would mitigate the removal of corroboration, others, from the legal, legal/academic, individual and advocacy groups, agreed a move to a majority verdict but said that this was necessary regardless of corroboration. Commenting on an 8-7 guilty verdict, a legal respondent observed: “How can it sensibly be explained that the vote of those 7 jurors does not of itself create a reasonable doubt as to guilt?”

4.10 There were comments that the qualified majority system works well in other countries or that this move would bring the Scottish system in line with others.

4.11 Comments on a requirement for a unanimous verdict included an advocacy respondent who said there was no basis for not considering this. A legal/academic respondent felt that jurors should be tasked with reaching a unanimous verdict in the first instance. Conversely, a legal respondent said they did not support a requirement for unanimous verdicts.

4.12 While one legal/academic agreed that the jury size should remain 15, another from the same group said they would prefer a jury of 12 with a majority of eight for a guilty verdict. A legal respondent also felt it would be acceptable to reduce the jury size and pointed out that the majority system still works in England even if jury numbers fall to 12. They said: “Reducing the size of the jury would have the benefit of a reduction in the number of jurors who would require to be cited to attend and selected and thus result in a financial saving.”

4.13 In relation to whether a majority should be required for acquittal, an advocacy group commented: “we support retaining the current system where insufficient “guilty” votes from jurors results in an acquittal. The relatively large size of juries in Scotland (compared to other jurisdictions) means that requiring unanimity among jurors is likely to present a considerable obstacle to justice.”

4.14 A legal respondent felt that the consultation had given no justification for a majority acquittal and commented: “It is difficult to see why the abolition of the requirement for corroboration and a consequent shift to a qualified majority system should also require the introduction of a rule which has never formed part of Scottish criminal procedure. In addition, the proposal would introduce for the first time into Scottish procedure the possibility of a hung jury.” A legal/academic respondent also expressed concern over the possibility of hung juries.
4.15 There were also comments on issues of perverse jurors or jury intimidation. A legal/academic was concerned that members of a majority jury may be more susceptible to intimidation. A legal respondent felt that majority verdicts would be more able to counter small numbers of perverse jurors. An advocacy respondent also commented on this issue, citing Pullar v. United Kingdom where many felt that a majority verdict from 15 jurors was a safeguard against an impartial or independent juror.

4.16 A legal respondent suggested that the need to introduce a majority verdict suggests that abolishing corroboration would increase the possibility of unsafe convictions. A similar comment was put forward by a respondent from the advocacy group: “It seems to us to be a circular argument that removing corroboration ….. would necessitate yet further adjustments to recalibrate the system. We are concerned that this would risk perpetuating the very difficulties that corroboration’s removal was designed to overcome.”

4.17 Other comments included:

- That the simple majority should remain.
- That existing safeguards along with a “no reasonable jury” test at the conclusion of a trial would be preferable to a majority verdict.
- A query as to whether there should be similar safeguards for summary cases.
- An advocacy respondent did not think that there would be any cases based on only one source of evidence and that if it did occur the case would still have to be proved beyond reasonable doubt.

Majority size

4.18 The second question in the consultation asked: „If a qualified majority system is adopted for jury decisions, do you favour a majority of 9 or 10 of 15 jurors to return a verdict?”

4.19 As can be seen in the table below, 12 respondents favoured the option of 10/15 jurors and four respondents felt the majority should be 9/15. A number of respondents (seven) thought the majority should be higher (most suggested it should be 12/15). Six respondents made other comments.

Table 4.2: Whether favour a majority of 9 or 10 of 15 jurors to return a verdict if a qualified majority system is adopted for jury decisions

<table>
<thead>
<tr>
<th>Respondent group</th>
<th>9</th>
<th>10</th>
<th>Over 10</th>
<th>Other</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal/ academic individuals (13)</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Other individuals (5)</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Advocacy (6)</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Enforcement (2)</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Legal (5)</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Other organisation (1)</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total (32)</strong></td>
<td>4</td>
<td>12</td>
<td>7</td>
<td>6</td>
<td>3</td>
</tr>
</tbody>
</table>
4.20 Twenty-four respondents took the opportunity to expand on their answer.

The main themes to emerge from responses were:

- The need to ensure that there is justification for the number that is chosen.
- That the majority should be in line with other countries.
- That failure to convict should automatically result in acquittal.

4.21 One of the main themes to emerge was the need to ensure that any number chosen is suitable, for instance for instances where a jury member is excused lowering the number of jurors. However, a number of respondents felt that choosing any number would be guesswork or that no justification or explanation for any particular majority had been given.

4.22 Respondents also commented on the lack of research into jury decisions or the need for such research to be carried out, perhaps by the Scottish Law Commission, before making a decision.

4.23 A number of respondents again commented that there is no need or justification for a move to a majority verdict system and expressed concern over the possibility of hung juries. For example:

“We note that there is no attempt in the consultation paper to explain why such a change is needed. For our part, we can see no need for such a change at all. We also note that such a change would introduce the concept and practice of hung juries to Scotland for the first time. Hung juries of course create a range of difficulties for all concerned. We not understand the rationale for deliberately introducing unnecessary additional difficulties into our already burdened criminal justice system. Moreover, we believe that such a change is wrong in principle. “

(legal)

4.24 One respondent, from the legal/academic group, was concerned about the majority being a larger number, for example where jurors were discharged, this could lead to a requirement of 10 out of 12 or 13. They suggested that one solution might be to vary the required majority. Another organisation suggested that the majority should always be two-thirds of the jury, this would normally be 10 out of 15 but if the jury number fell to 12, the required majority would fall to 9. This respondent supported the two-thirds (10 from 15) majority.

4.25 An enforcement respondent also supported a 10 out of 15 majority but acknowledged that this may lead to fewer convictions.

4.26 There were several comments that the majority should be higher than 10 and also suggestions that a sliding scale be used when the number of jurors decreases, for example a legal respondent suggested 11 from 13, 10 from 12.

4.27 Other respondents, mainly legal or legal/academic, supported a majority of 12 from 15. These respondents wanted to see a similar proportion to that used in England and other countries. There were also comments that a higher number would give more protection to the accused.
4.28 There was some discussion of the 15 member jury with suggestions that a move to 12 jurors as in the English system should be considered. In addition, one legal respondent commented that

“The proposal in the Consultation Paper would mean that in Dumfries the Crown would only require to persuade 60% (in the case of a majority of 9 to 6) or 66% (in the case of a majority of 10 to 5) of the jury to secure a conviction. In England for the same offence, with the same rules of evidence, they would require to persuade 83% of the jury. This is illogical. There is no explanation given for the desire to adopt a weighted majority verdict in Scotland which provides fewer safeguards than are provided in an adjacent jurisdiction subject to the same European jurisprudence.”

4.29 An individual wanted to see the jury number for and against the verdict made available, at least to the judge and counsel. A legal/academic respondent also thought this change should be made.

4.30 An advocacy respondent said: “To ensure the accused”s rights under Article 6.1 of the European Convention on Human Rights, to a „fair and public hearing‟, we support the increase of the majority required to return a verdict, either a conviction or an acquittal.” This respondent did not have a view as to whether the majority should be 9 or 10, but said that it should not be more than 10.

4.31 A respondent from the legal/academic group commented: “A majority of 9 or even 10, when taken alongside the abolition of corroboration and the absence of other safeguards against wrongful conviction in Scots law, would leave Scotland with a disgracefully low level of protection against wrongful conviction compared to other modern criminal justice systems.”

4.32 On the subject of a majority verdict for acquittal, a number of respondents did not want to see this introduced and expressed concern that this was being considered:

“What is suggested here is that even though the Crown may have failed to prove guilt, the accused may not go free because the Crown has persuaded a sufficient minority of jurors of the guilt of the accused. And therefore the Crown should have a second opportunity to attempt to prove its case.”

(legal)

“This proposal radically changes the Scots law on jury verdicts and introduces for the first time a rule from English law that the majority required for a not guilty verdict is the same as that for a guilty verdict. Now, there is absolutely nothing wrong in borrowing from English law provided, of course, the rule is worth borrowing. But this rule of English law is not only unprincipled, it has never received a coherent justification and can only be explained as a matter of the history of the jury system in that country.”

(legal/academic)

“It is obvious that requiring a greater than simple majority for a guilty verdict provides a stronger procedural safeguard. However requiring
the same greater majority for an acquittal does not in any way operate to safeguard a fair trial.”

(advocacy)

4.33 Other comments included:

- That a unanimous verdict was not supported.
- A number of respondents agreed that there was no need to change the overall size of the jury.

Whether it should be open to the prosecution to seek a re-trial

4.34 Respondents were then asked „Do you agree that, in the event that a jury is unable to return a verdict, it should be open to the prosecution to seek a re-trial?“

4.35 Table 4.3 shows a difference of opinion across most groups. While 15 respondents agreed, nine disagreed. All of the advocacy and enforcement organisations that answered said they agreed while all the legal organisations that answered disagreed.

<table>
<thead>
<tr>
<th>Respondent group</th>
<th>Yes</th>
<th>No</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal/ academic individuals (13)</td>
<td>6</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Other individuals (5)</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Advocacy (6)</td>
<td>5</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Enforcement (2)</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Legal (5)</td>
<td>-</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Other organisation (1)</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total (32)</td>
<td>15</td>
<td>9</td>
<td>8</td>
</tr>
</tbody>
</table>

4.36 Twenty-two respondents provided comment explaining their answers or providing additional information. It should be noted that three respondents did not specify an answer as they were concerned about another aspect of the verdict, the possibility of a hung jury.

The main theme to emerge from responses was that people who are not convicted should be presumed innocent.

4.37 Twenty respondents commented on this issue and this included five respondents who answered yes. Their comments included:

- That a retrial should only be allowed once.
- That a retrial would be preferable to a not guilty verdict and that courts should have discretion as to how many are permitted before the case is deserted.
- That there must be an assurance that the jury has been unable to reach a majority verdict.
- Concern over potential damage to the criminal justice system if consecutive juries fail to reach a majority verdict.
- That a re-trial should be an automatic right.
4.38 The main theme, from the respondents who said no, centred around the presumption of innocence.

4.39 Respondents commented that if a jury fails to reach a majority decision it means that the Crown has not proved their case and that, therefore, the presumption of innocence should apply. For example:

“The accused is innocent until proven guilty according to the requirements of the law. If the accused is not convicted, then he remains innocent in the eyes of the law. It would be highly unsatisfactory for an accused to be in a position where he is treated neither as having been convicted nor as having been acquitted.”

(legal)

4.40 There was concern that this proposal could lead to repeated retrials (perhaps without any verdict at the end) and also concern that it would lead to uncertainty for the victim and the accused.

4.41 Respondents pointed out that the Crown can use the Double Jeopardy legislation in order to re-prosecute. There were also comments that the prosecution should not bring their case until or unless they can prove it beyond reasonable doubt.

4.42 There were comments from a legal professional with experience of retrials. This respondent commented that: “The evidence led a second time seems stale and references to earlier proceedings can confuse the jury. There are enough re-trials where a miscarriage has occurred due to a mistake and there is the prospect of re-trials in the light of fresh evidence.”

4.43 A number of respondents commented again that there should not need to be a majority verdict for acquittal. Conversely, a legal/ academic respondent felt: “Anything else would mean that persons were acquitted when the majority of a jury considered them to be guilty and I suggest that such an approach would bring the system into disrepute, although it should be noted that that can happen at present in Scotland in cases where jurors have been discharged during the trial.”

4.44 Other comments included:

- Again, there was concern over the possibility of hung juries.
- A query as to how this would affect trials with multiple charges or multiple accused.
- “In relation to the question whether, in the event of a hung jury, the prosecution should be able to seek a re-trial, the Commission would draw attention to the right to private and family life under Article 8. A prosecution constitutes an interference with that right and must be justified. In particular, a decision to allow a re-trial must be proportionate in terms of Article 8(2).”
  (advocacy)
- The need to examine all aspects of the legal system before making changes.
Other comments on safeguards around the decisions of the jury

4.45 Finally, in this section, respondents were asked: „Do you have any other comments concerning the issues under discussion in this section?“ Fifteen respondents commented, these were mainly legal and advocacy organisations and legal/academic individuals.

4.46 One individual commented that there is no indication of safeguards that will be necessary in summary cases. They pointed out that there are an increasing number of serious summary cases being heard in the Sheriff Courts and that sheriffs now have increased penalties available to them.

4.47 There was a comment that it may be preferable to ask a jury to try to reach a unanimous decision, at least in the first instance. However, a legal/academic respondent pointed out that this may mean juries taking longer over deliberations, posing management issues for things like jury rooms.

4.48 An advocacy respondent made a number of points:

- The respondent agrees with the consultation paper that it is not appropriate „to create a test in statute that could only be adjusted by further primary legislation and in common with other jurisdictions the setting and application of the prosecutorial test must be matters for the Lord Advocate.“
- The respondent does not believe „that the provisions in the Victims and Witnesses Bill to extend the use of special measures to certain categories of vulnerable witnesses, will, in isolation, „provide additional protections that will balance any effect on cross-examination arising from the removal of the requirement for corroboration.““
- The need to ensure that vulnerable complainers and witnesses are able to give their best evidence, as there will be more focus on their evidence following the removal of corroboration.
- The need for judges to intervene more when there are aggressive or intrusive cross-examinations; this respondent suggested information and training to help with this.
- That there should be no requirement on a judge to warn the jury of any issues that arise because of the removal of corroboration; such matters should be left to the courts rather than legislation. A legal/academic respondent also made a similar point.

4.49 A legal/academic respondent voiced concern over cases that rest on hearsay evidence (section 259 of the Criminal Procedure (Scotland) Act 1995) and whether these should proceed, as this evidence cannot be challenged at trial.

4.50 Legal and legal/academic respondents again stressed the need for consultation and research into juries and jury verdicts before making any changes.

4.51 Respondents from the legal group commented again on the need for careful consideration of the whole legal system rather than just some parts of it, as well as the need to involve the Scottish Law Commission in any reforms. One commented on the need for any evidentiary test used by the Crown Office to decide whether to proceed with a case to be articulated by Parliament. This
respondent had doubts and queries about the qualitative test that would be used, in terms of how the test would be accomplished as well as resource implications. There was also a concern that police may no longer seek corroboration (due to resource pressure) if it is no longer required. This respondent also voiced concern over the prospect of hung juries and resultant retrials and asked how these would be funded.

4.52 An advocacy group saw the additional safeguards proposed as potentially beneficial to children and young people involved in cases, but cautioned that their interaction with other parts of the justice system would require careful thought. They also commented that there should be consideration and guidance around any retrials involving children and young people, especially consideration of whether a retrial would be in their best interests. The need for consideration of the proposals in relation to new rights and duties, for example on child witnesses in the Victims and Witnesses Bill, was also mentioned.
5 THE NOT PROVEN VERDICT

5.1 Under the three-verdict system, Scottish juries can return verdicts of guilty, not guilty and not proven. The additional acquittal verdict of not proven is seen by some as offering additional protection to the accused.

5.2 The consultation explained that some see a connection between the requirement for corroboration and the not proven verdict; it may be that a jury is convinced of the accused’s guilt but is not satisfied that they have seen acceptable corroborative evidence.

Whether the not proven verdict should be retained

5.3 Question 5 in the consultation asked, “What if any view do you have on whether the not proven verdict should be retained?” and most (30 respondents) commented.

The main theme to emerge was that most respondents, across respondent groups, would like to see the not proven verdict abolished.

5.4 Respondents gave three key reasons for their view that the not proven verdict should be abolished.

5.5 Respondents felt that the not proven verdict is difficult to explain to a jury and one legal/ academic respondent added: “the High Court has seriously discouraged any attempt to explain to a jury what it means, other than that it is an acquittal.” There were also comments that explaining the not proven verdict to a jury is regarded as misdirection. A legal respondent felt that unless not proven could be clearly defined it should be removed.

5.6 Another legal/ academic respondent who thought the not proven verdict confusing for juries also saw no logic in having three verdicts when not proven and not guilty are explained to juries as being the same.

5.7 Another key reason given for abolishing the not proven verdict was that it is incompatible with the presumption of innocence.

5.8 A legal/ academic respondent and an advocacy respondent who felt that the not proven should be abolished commented on the European Convention on Human Rights in relation to the presumption of innocence:

“Jurisprudence of the European Court of Human Rights has extended this central protective notion to preclude expressions of suspicion by the courts after acquittal.” (legal/ academic)

“It may be that the rationale for the Not Proven verdict set out in the Consultation paper is not correct or not well phrased. The Not Proven verdict in and of itself is not incompatible with ECHR. However the system must not allow for lingering doubts about the acquitted person’s innocence when such a verdict is returned.” (advocacy)
5.9 A legal/academic respondent felt there should be a two verdict system and added that there should not be a verdict which implies guilt.

5.10 There was also a comment that the not proven verdict causes a lack of credibility for the justice system.

5.11 An advocacy respondent described the not proven verdict as confusing and disappointing for victims and witnesses saying: “Finality and certainty are crucial elements of an effective criminal justice system. With the added option of the not proven verdict, and how it is understood in the context of standing alongside guilty and not guilty options, many victims are left without the conclusive answer they were looking for from the justice system.”

5.12 Another advocacy respondent said that the verdict should be abolished. They pointed out that it is most commonly used in rape cases and that it has a devastating effect on victims and their families.

5.13 Again, a legal respondent felt that the issue of the verdicts available should be considered as part of a review of the whole justice system. This respondent said that if corroboration is removed and the simple majority retained, then the not proven verdict would have to remain; they added that this should also be the case with a move to a 9 or 10 majority. In addition, they said that there is no evidence to explain how jurors use the verdicts and that juries do understand that both not guilty and not proven are verdicts of acquittal.

5.14 The need for a full review of the legal system was requested by a respondent from the legal group who said that the not proven verdict is used often.

5.15 Another organisation felt the not proven verdict should be retained, seeing it as an option for a jury who are not convinced of a person’s innocence but feel there is not enough evidence to convict.

5.16 A legal/academic respondent felt that the proven and not proven verdicts would better reflect the trial process. Another from the same group saw not proven as an appropriate verdict while another felt that not proven provides a safeguard for the accused.

5.17 Two individuals felt that not proven should be retained.

5.18 A legal respondent commented: “We consider that no change should be made to the verdicts at this stage. It would be better to allow the system to settle down in the light of the abolition of the requirement for corroboration and the introduction of the other safeguards before addressing the issue of the three verdict system.”

5.19 A legal/academic respondent commented on potential issues in directing a jury as to which of the three verdicts to return, depending on the number who vote guilty where a majority verdict is required.
Guilty/ not guilty or Proven/ not proven

5.20 The consultation went on to ask „If there were to be only two verdicts, do you have any view on whether the two verdicts should be proven and not proven or guilty and not guilty?“

5.21 Respondents were almost evenly split over the two choices. As can be seen in the table below, 13 favoured guilty/ not guilty while 12 favoured proven/ not proven. Again, this split in opinions was evident in most of the respondent groups. In the legal/ academic group, many practitioners favoured retaining the guilty verdict.

Table 5.1 Whether, if there were only two verdicts, these should be proven and not proven or guilty and not guilty

<table>
<thead>
<tr>
<th>Respondent group</th>
<th>Proven/ Not Proven</th>
<th>Guilty/ Not Guilty</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal/ academic individuals (13)</td>
<td>5</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Other individuals (5)</td>
<td>3</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Advocacy (6)</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Enforcement (2)</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Legal (5)</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Other organisation (1)</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Total (32)</td>
<td>13</td>
<td>12</td>
<td>7</td>
</tr>
</tbody>
</table>

5.22 Twenty-seven respondents commented on the issue of verdicts.

The main themes to emerge from responses were:

- The terms proven/ not proven are logical and best reflect the actual situation.
- The terms guilty and not guilty are well known

5.23 Eleven of those who favoured the guilty/ not guilty verdict commented and the main reason given for favouring these verdicts was that they are familiar.

5.24 Some respondents also felt that retaining the not proven terminology would lead to the issue of this verdict being seen not as an acquittal but as an implication of guilt.

5.25 There was also a feeling that the guilty/ not guilty verdicts are more compatible with the presumption of innocence. An advocacy respondent said: “Use of “guilty” and “not guilty” would be compatible with Article 6.2, which provides that everyone is presumed innocent until proved guilty.”

5.26 There were also comments that the proven and not proven verdicts would be the logical choice as they reflect the legal position, however respondents went on to conclude that guilty and not guilty would provide more certainty, be more understood and/ or be compatible with the presumption of innocence.

5.27 All 13 who said they favoured the proven/ not proven verdict commented. The main reason given was that these verdicts are logical and best reflect the actual situation. There were comments that the jury cannot know if the accused is guilty, they can only know if the case has or has not been proven.
5.28 There was a feeling that the proven and not proven verdicts should be retained as they are traditional or distinctively Scottish.

5.29 Other comments included that it makes little difference what verdicts are used and that detailed research is needed before a decision is made.

5.30 A respondent from the enforcement group felt that it did not matter what the verdict was called so long as it meant that the person had been found guilty beyond reasonable doubt.
6 SUBMISSION FROM ACCUSED FOR THE JUDGE TO WITHDRAW THE CASE

6.1 The final section of the consultation looked at whether the trial judge's power to rule that there is no case to answer should be widened.

6.2 Respondents were asked to consider whether, after all the evidence has been led and following an application from the accused, judges should have the power to rule that considering the evidence in totality, no reasonable jury could convict. At present, a judge can only allow an application that there is no case to answer in the absence of corroborated evidence of the essential facts.

6.3 Question 7 asked: „Do you think that the circumstances in which the accused can apply to the judge to have the case withdrawn from the jury should be expanded to include circumstances in which the judge is of the view that no reasonable jury could convict the accused on the basis of the evidence led during the trial?“

Table 6.1 Whether circumstances in which accused can apply to have case withdrawn from jury should be expanded

<table>
<thead>
<tr>
<th>Respondent group</th>
<th>Yes</th>
<th>No</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal/ academic individuals (13)</td>
<td>9</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Other individuals (5)</td>
<td>3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Advocacy (6)</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Enforcement (2)</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Legal (5)</td>
<td>3</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Other organisation (1)</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total (32)</strong></td>
<td><strong>20</strong></td>
<td><strong>3</strong></td>
<td><strong>9</strong></td>
</tr>
</tbody>
</table>

6.4 The table above shows that far more respondents agreed with this suggestion (20) than disagreed (three). Advocacy groups were split on this question, with two saying yes, two saying no and two who said they were undecided.

6.5 There were comments on this subject from 25 respondents, some simply stated their agreement.

The main themes to emerge from responses were:

- That the appeal court already uses a similar test.
- That this is similar to the „no case to answer“ test that is no longer allowed.

6.6 A number of respondents, especially from the legal/ academic group, pointed out that the Appeal Court already uses the „no reasonable jury“ test and saw no reason why the trial judge should not do the same.

6.7 Another main theme was the issue of „no case to answer“ which, respondents said, had been altered to remove from the judge the power to direct a jury to return a not guilty verdict on any charge on the ground that no reasonable jury would convict. One legal organisation explained:
“We consider that if the corroboration rule were abolished, the present formulation of the no case to answer submission would have little if any practical application. That is because the present test, which is whether there is a sufficiency in law, means in effect a decision as to whether there is sufficient evidence corroborating the crucial facts, and not whether the evidence would be accepted.”

6.8 Allowing a trial to go ahead based on poor evidence means it may not be a fair trial. An advocacy respondent pointed out that a judge has to ensure proceedings are fair and protect the rights of accused. Another from the same group described the power to allow a judge to withdraw a case from the jury on the reasonableness text as “a good procedural safeguard. It is a safeguard that addresses the quality of evidence, which in the absence of corroboration, is particularly important.”

6.9 A number of respondents disagreed with a suggestion in the Carloway Report that a judge should not be able to override a jury. For example, one legal/academic respondent said:

“With respect, it is suggested that overlooks that while the jury is primary fact finder not all relevant evidence is admitted to the jury, on the basis of fairness to the accused and other public policy goals. Extending the ability of the judge to withdraw a case is an expansion of the usual rules of evidence.”

6.10 Another legal/academic respondent said: “If the requirement for corroboration were to be abolished, there is no need for any further change to the existing law on sufficiency of evidence at the trial stage. The issue for the trial judge would be the same as it is at present, except that there would be no need for corroboration.”

6.11 Other comments from those supportive of this power included:

- That this should also be allowed earlier in the trial, for example after the Crown has led its evidence.
- That the Scottish Government should find a way to embed relevancy in the trial process.
- That there is no guarantee the Appeal Court will overturn an erroneous conviction.
- That this proposal should also apply to summary cases.
- That this feature is already a safeguard in countries with no corroboration.
- That allowing judges this power could prevent miscarriages of justice.
- That preventing such cases going to trial could save time (for the courts and for jurors) and money.

6.12 Comments from those opposed to allowing judges this power commented that:

- A single judge should not have the power to overturn a jury.
- This could be used as a stalling tactic by the defence, which would delay proceedings and prolong the ordeal for the victim.
- That the respondent is persuaded by the consultation that there is no evidence to support the need for this power.
6.13 An advocacy respondent was undecided in relation to cases involving children or young people. On one hand, they felt it would lead to better collection of forensic evidence in order to prove a case. On the other hand, they were concerned that in cases that rely on the testimony of children “their credibility could increasingly be called into question in terms of providing sufficient, good evidence on which to convict.” They asked for guidelines on the credibility of witnesses and that all involved in cases involving children are fully trained in their needs and interests as both victims and witnesses.

6.14 Another from the advocacy group was concerned that this proposal could be used by lawyers to prolong a case and therefore prolong “a very difficult experience for the complainer.”

6.15 Comments from a legal respondent included that many judges think trial judges should not have the power to take a case away from the jury. They also felt that this power might lead some judges to “apply his or her own personal, and perhaps idiosyncratic, view as to the quality of the evidence rather than leave the question to the jury.” They also said that a minority of judges do support this proposal.
7 OTHER COMMENTS

7.1 Nineteen responses contained additional information or addressed other issues. Information provided by respondents included:

- Background information on, or credentials of, respondents.
- Supporting material such as previously published articles.
- Technical issues around court cases.

7.2 Many of the other comments provided by respondents relate to the removal of the requirement for corroboration and these have been described in an earlier chapter of this report.

7.3 Comments from a number of respondents related to dock identification. Respondents were concerned that this will no longer be allowable in relation to Article 6 of the European Convention on Human Rights:

“...If corroboration is abolished, consideration will require to be given to the continuing viability of dock identification: corroboration was relied upon as one of the safeguards which meant that dock identification was considered to be convention compliant.” (legal)

7.4 Other comments included:

- That the issue of the removal of corroboration had not been presented well; the Scottish Government must make the case more vigorously.
- That the issue of corroboration and the issue of sufficiency of evidence are not linked; the removal of corroboration should be dealt with as a separate issue.
- In a lengthy response, an advocacy respondent considered various issues and stressed the need for any changes to the legal system to be compliant with Article 6.
- There were comments that any changes must not skew the balance in favour of the Crown. There were also similar comments that the balance must not be skewed in favour of the accused.
- That the absence of corroboration will make it more difficult for prosecutors to decide to prosecute.
- That the removal of the corroboration requirement is an opportunity for the Scottish legal system to do “something fresh.” (legal/ academic)
8 SUMMARY

8.1 There were 32 responses to the consultation and this included 18 from individuals and 14 from organisations.

8.2 Over half of the respondents took the opportunity to state or restate their opinion on the removal of the requirement for corroboration. Many of these respondents voiced concern over or opposition to the removal of corroboration.

8.3 There was majority support for the proposals discussed in the consultation paper.

8.4 Many respondents agreed that if the requirement for corroborative evidence is removed, the simple majority jury verdict system should be replaced with a qualified majority system.

8.5 There were differences of opinion over the size of any majority; many of those who commented favoured a majority of 10 or more out of 15 jurors.

8.6 Many respondents also agreed that the circumstances in which the accused can apply to the judge to have the case withdrawn from the jury should be expanded to include circumstances in which the judge is of the view that no reasonable jury could convict the accused on the basis of the evidence led during the trial.

8.7 More agreed than disagreed that, in the event that a jury is unable to return a verdict, it should be open to the prosecution to seek a re-trial.

8.8 In relation to the three verdict system, many respondents wanted to see the not proven verdict abolished. Opinion was fairly evenly divided over whether, in a move to a two verdict system, the verdicts should be guilty and not guilty or proven and not proven.

8.9 A recurring theme across many of the questions was the need to ensure compliance with Article 6 of the European Convention on Human Rights.

8.10 Findings from analysis of responses to this consultation will be used to help refine the Scottish Government proposals.
APPENDIX
APPENDIX 1: LIST OF ORGANISATIONS

<table>
<thead>
<tr>
<th>Organisation name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Association of Scottish Police Superintendents</td>
</tr>
<tr>
<td>Children 1st</td>
</tr>
<tr>
<td>Faculty of Advocates</td>
</tr>
<tr>
<td>Her Majesty's Revenue and Customs</td>
</tr>
<tr>
<td>Justice</td>
</tr>
<tr>
<td>Rape Crisis Scotland</td>
</tr>
<tr>
<td>Scottish Human Rights Commission</td>
</tr>
<tr>
<td>Scottish Justices Association</td>
</tr>
<tr>
<td>Scottish Police Federation</td>
</tr>
<tr>
<td>Scottish Women’s Aid</td>
</tr>
<tr>
<td>Senators of the College of Justice</td>
</tr>
<tr>
<td>Sheriffs’ Association</td>
</tr>
<tr>
<td>The Law Society of Scotland</td>
</tr>
<tr>
<td>Victim Support Scotland</td>
</tr>
<tr>
<td>18 responses from individuals</td>
</tr>
</tbody>
</table>
APPENDIX 2: THE CONSULTATION QUESTIONNAIRE

REFORMING SCOTS CRIMINAL LAW AND PRACTICE: ADDITIONAL SAFEGUARDS FOLLOWING THE REMOVAL OF THE REQUIREMENT FOR CORROBORATION

SAFEGUARDS AROUND THE DECISIONS OF THE JURY

Question 1

Do you agree that, if the requirement for corroborative evidence is removed, the simple majority jury verdict system should be replaced with a qualified majority system?

Yes ☐ No ☐

________

Question 2

If a qualified majority system is adopted for jury decisions, do you favour a majority of 9 or 10 of 15 jurors to return a verdict?

9 ☐ 10 ☐

________

Question 3

Do you agree that, in the event that a jury is unable to return a verdict, it should be open to the prosecution to seek a re-trial?

Yes ☐ No ☐

________

Question 4

Do you have any other comments concerning the issues under discussion in this section?

________
THE ‘NOT PROVEN’ VERDICT

**Question 5**

What if any view do you have on whether the „Not Proven“ verdict should be retained?

**Question 6**

If there were to be only two verdicts, do you have any view on whether the two verdicts should be „proven“ and „not proven“ or „guilty“ and „not guilty“?

STATUTORY SUBMISSION OF ‘NO CASE TO ANSWER’

**Question 7**

Do you think that the circumstances in which the accused can apply to the judge to have the case withdrawn from the jury should be expanded to include circumstances in which the judge is of the view that no reasonable jury could convict the accused on the basis of the evidence led during the trial?