

The Not Proven Verdict and Related Reforms: Analysis of Responses to Consultation

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Acknowledgments

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Executive Summary	1
Respondent Profile	1
Summary of questions	1
Introduction	8
Background.....	8
Respondent Profile	9
Methodology	11
Analysis of responses.....	11
The Not Proven Verdict	13
The number of verdicts in criminal trials in Scotland	15
Views on what the two verdicts should be.....	19
How to define the not proven verdict	23
Scenarios where a jury might return a not proven verdict	24
Whether the not proven verdict acts as a safeguard	26
Whether there is stigma for those who are acquitted with a not proven verdict ..	29
Whether the not proven verdict causes particular trauma to victims of crime and their families.....	32
Jury Size	36
Views on jury size	36
Jury Majority	40
Preferences for jury majority if Scotland changes to a two verdict system	40
Returning an acquittal where the required majority is not met	44
The Corroboration Rule	47
Preferences for use of the corroboration rule under different scenarios	48
Views on necessary changes if the corroboration rule is reformed.....	51
The need for safeguards against wrongful conviction if the corroboration rule is reformed or abolished.....	52
How to understand the corroboration rule better	55
Equality and Human Rights, Other Impacts and Comments	57
Equality and Human Rights	57
Other Impacts and Comments.....	60
Additional comments	62
APPENDIX 1: Respondent Organisations	63
APPENDIX 2: Key Terms	64

Executive Summary

Scottish jury trials have some unique features, including a 15 person jury, simple majority for conviction and three possible verdicts of guilty, not guilty and not proven.

The Scottish Government's 2021 Programme for Government committed to carrying out a public consultation on the three verdict system and whether the not proven verdict should be abolished as well as consideration of the corroboration rule.

In December 2021, the Scottish Government launched a [public consultation to seek views on the three verdict system](#) in Scottish criminal trials and, if the not proven verdict were to be abolished, whether any accompanying reforms would be necessary to jury size, the jury majority required for conviction and the corroboration rule.

Findings from this consultation analysis will be used to help the Scottish Government consider the best approach to take and will inform what, if any, reforms will be taken forward.

Respondent Profile

In total, there were 200 responses to the consultation paper, of which 21 were from organisations and 179 from individuals. Individuals responding to this consultation were also asked to indicate if they had any personal experience of the criminal justice system and whether they had ever worked professionally or volunteered in any specific roles. A breakdown of responses is provided in the respondent profile table on page 10.

While the consultation gave all 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 a wider population outwith the respondent sample.

Summary of questions

As this is a high level summary of the findings, it does not cover all of the numerical detail. This can be found in the relevant chapters and tables in the main report.

The Not Proven Verdict (Qs 1-7)

Views on what verdicts should be available in criminal trials (Q1)

- Overall, there was a **higher level of support for change to a two verdict system than for keeping the current three verdict system** (62% supported the change compared to 37% who did not). This was the case across most sub-groups, although higher numbers of legal organisations (7 out of 8), those who have been a juror (19 of 30) in a criminal trial and those

who have been charged with a crime (5 of 6) supported keeping the three verdicts currently available.

- A key reason for supporting a change to two verdicts was confusion over what is meant by the not proven verdict and the lack of a definition of not proven. It is also seen as a compromise verdict which allows jurors to 'sit on the fence'. A two verdict system was seen to be easier to understand, more fair and more straightforward.
- For those who supported retention of the existing three verdict system, the key reason was that the not proven verdict should be retained as this is a reflection of the Crown having failed to present sufficient evidence to prove the accused's guilt beyond reasonable doubt but where there was a belief that the accused may be guilty.

Views on what the two verdicts should be (Q2)

- Overall, **50% of respondents favoured guilty and not guilty** (compared to 41% who supported proven and not proven). Over half of the legal and advocacy organisations supported use of the guilty and not guilty verdicts. However, majorities of legal professionals, those working within the justice system, those in the third sector, academics/ researchers, victims of crime and jurors favoured the use of proven and not proven.
- Guilty and not guilty were seen to be easier to understand, unambiguous and familiar to people, as well as being commonly used and having an acknowledged definition.
- Proven and not proven were supported as they were perceived to more accurately reflect what is happening in the criminal justice system in that a jury will be asked to decide whether the Crown has proved its case beyond reasonable doubt.

Defining the not proven verdict (Q3)

- **Defining the not proven verdict was clearly a challenge for respondents, with limited agreement on a specific definition.** Of those who offered a definition, there were some suggestions that the not proven verdict should be defined as, words to the effect of, 'the prosecution has not proved beyond reasonable doubt that the accused is guilty and neither have they presented sufficient evidence for a jury to award a not guilty verdict'. This view was held across all sub-groups.
- Some respondents, including legal professionals, felt this verdict cannot be defined or that attempting to define this would cause confusion and that is why it has not been defined to date.

Scenarios where a not proven verdict might be returned (Q4)

- When presented with four scenarios where a jury might return a not proven verdict, no scenario received a majority in support. However, almost half of respondents (49%) agreed a not proven verdict could be appropriately returned in the scenario where the jury believed a person is guilty but the evidence did not prove this beyond a reasonable doubt. There were some

differences of opinion across sub-groups, with legal organisations noting support for returning the not proven verdict across three of these scenarios; advocacy organisations were opposed to using the not proven verdict in these four scenarios.

- In general, there was support for the not proven verdict across more of these scenarios from legal organisations.

Whether the not proven verdict acts as a safeguard (Q5)

- Overall, there was **disagreement with the view that the not proven verdict acts as a safeguard that reduces the risk of wrongful conviction** (50% disagreed and 36% agreed), although views differed considerably across sub-groups; all 8 advocacy organisations disagreed and 7 of the 8 legal organisations and 15 of 27 legal professionals agreed.
- For respondents who perceived the not proven verdict acts as a safeguard against wrongful conviction, the key reason was that it should be used in instances where the jury find an allegation is not proven to the required standard but offers the jury a chance to record its misgivings. However, some of these respondents offered no further explanation as to how this operates or what it adds to the availability of the not guilty verdict.
- For those who felt the not proven verdict does not act as a safeguard, the key reason was that rather than reducing the risk of wrongful conviction, in their view it increases the chance of wrongful acquittal, particularly in cases of domestic or sexual abuse. It was also felt that there are other more appropriate safeguards in the Scottish system, including the standard of proof and the corroboration rule.

Whether a not proven verdict attaches more stigma than a not guilty verdict (Q6)

- More respondents agreed than disagreed that there is more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict (45% compared to 33%). Highest levels of disagreement came from legal organisations (4 of 8) and legal professionals (13 of 27). Across other sub-groups, greater numbers agreed than disagreed.
- The key reason for feeling there is more stigma attached to those who have received a not proven verdict was that this verdict suggests guilt but with insufficient evidence to prove it. Thus, in their view, it can leave a stain on their character and does not align with the presumption of innocence.
- Of those who felt there is not more stigma for those who are acquitted with a not proven verdict, the key theme was that this is a verdict of acquittal and is regarded in the same light as a not guilty verdict.

Whether a not proven verdict can cause particular trauma to victims of crime and their families (Q7)

- Overall, **65% of respondents agreed a not proven verdict can cause particular trauma to victims of crime and their families**, compared to 29% who disagreed. Those in agreement included all advocacy organisations and 10 of the 17 academics. Some respondents with personal experience of the criminal justice system as a victim or family member of a victim provided examples of the trauma caused to them by the not proven verdict. Six of eight legal organisations disagreed.
- Significant minorities of those who agreed felt trauma is caused because of a belief that the accused was guilty but there was a lack of evidence to prove this, that this offers no sense of closure to victims or that this verdict denies justice to victims and that justice is not seen to be done.
- For respondents who did not agree that the not proven verdict can cause particular trauma to victims of crime and their families, the key reason was that a not guilty verdict would be just as traumatic or more so.

Jury Size (Q8)

- **A majority of respondents (58%), across all sub-groups, supported jury size remaining at 15 jurors.** The key reasons being that the current number of jurors works well, there is no compelling case to change this, this allows for a diverse range of jurors in terms of population characteristics and offers a range of differing views and opinions. It is also a sufficient number to allow for a small number of excusals, for example due to illness.
- For those who felt the jury size should change to 12 jurors (19%), the key themes were that this would bring Scotland into line with other jurisdictions, that it would encourage higher levels of participation and deliberation from jurors or reduce pressure on the jury pool. A few respondents noted the benefits of this jury size was backed up by the mock jury research¹.

Jury Majority (Qs 9-10)

Views on the majority required for a jury to return a verdict in Scotland if Scotland changes to a two verdict system (Q9)

- **A majority of respondents (52%) supported a qualified majority of some kind.** This was consistent across almost all respondent sub-groups. It was felt that this builds safeguards into the system or ensures a greater proportion of the jury is convinced beyond reasonable doubt.
- Of those preferring a simple majority (28%), the key reason was that the current system works well and there is no need for change.

¹ Research undertaken by Ipsos MORI and Professors James Chalmers and Fiona Leverick from the University of Glasgow and Professor Vanessa Munro from the University of Warwick, available at [Scottish jury research: findings from a mock jury study - gov.scot \(www.gov.scot\)](http://www.gov.scot/scottish-jury-research-findings-from-a-mock-jury-study).

- Of the small number (13%) preferring a reduction in jury size and a qualified majority of 10 jurors for conviction as in the system in England and Wales, the key themes were of a need for a clear majority to more credibly display that the charge has been proven beyond reasonable doubt, or that a close decision in Scotland's simple majority system (e.g. 8/7) could arguably imply that the verdict is not reached beyond reasonable doubt.

Levels of agreement on whether the jury should be considered to have returned an acquittal where the required majority is not met (Q10)

- A majority of respondents (52%) agreed that where the required majority was not reached for a guilty verdict the jury should be considered to have returned an acquittal. This was the case across almost all sub-groups.
- The key reason for returning an acquittal was that a failure to reach this threshold shows the Crown has failed to prove its case beyond reasonable doubt and that acquittal is the only appropriate verdict to return.

The Corroboration Rule (Qs 11-14)

Preferences on the use of the corroboration rule in different scenarios (Q11)

This question tested the use of the corroboration rule in three scenarios with different combinations of the number of verdicts available and the majority required for conviction.

- For each scenario presented, a higher number of respondents supported keeping the corroboration rule.
- If Scotland retains a three verdict system and keeps the simple majority, 45% of respondents wanted to keep the corroboration rule, 28% supported reform of the rule and 15% supported abolition. Highest numbers of those supporting keeping the corroboration rule were in the justice sector and legal organisations, those working in the legal profession, other justice system organisations and academia / research and those who have experience of being a juror.
- If Scotland changes to a two verdict system and keeps the simple majority, 44% of respondents wanted to keep the corroboration rule, 30% supported reform of the rule and 10% supported abolition. Highest levels of support for retaining the corroboration rule came from jurors and family members or friends of someone charged with a crime; highest levels of support for reform came from legal and advocacy organisations, albeit that reform does not mean the same thing to all respondents.
- If Scotland changes to a two verdict system and increases the jury majority, 40% of respondents wanted to keep the corroboration rule, 30% supported reform of the rule and 13% supported abolition. Highest levels of support for keeping the corroboration rule came from those in the justice and legal sectors, those working in the legal profession or another justice organisation and those who are a family member or friend of someone charged with a crime, jurors and victims of a crime.

- In each scenario, when reform and abolition numbers are combined, a similar number of respondents supported these, to those who wanted to retain the corroboration rule, although a significant minority of the reform responses wanted the corroboration rule strengthened or retained. Only a small minority of respondents supported abolition of the corroboration rule.
- For those wanting to see the corroboration rule kept, a key reason was that this is an essential part of Scots Law and protects the innocent by providing a safeguard against wrongful conviction.
- For those wanting to see reform, the key suggestion was for different requirements for crimes which occur in private, with a greater use of qualitative rather than quantitative evidence. Conversely, a few respondents wanted to see reform to strengthen the corroboration rule.
- For the small number wanting to see abolition of the corroboration rule, the key reason was that this was seen to unfairly disadvantage victims of domestic abuse and sexual offences.

Required changes if the corroboration rule is reformed (Q12)

- A key view raised, often from legal organisations and legal professionals, was that **the corroboration rule does not need to be reformed or abolished**; some of these respondents felt the corroboration rule needs to be strengthened. Conversely, there were also calls for the requirements of the corroboration rule to be reduced for sexual offences (cited primarily by advocacy organisations and individuals).

Whether further safeguards are required against wrongful conviction before any changes to the corroboration rule (Q13)

- A significant minority of respondents (43%) across most sub-groups supported further safeguards against wrongful conviction being in place before any reform or abolition of the corroboration rule, compared to 34% who did not. A majority of legal organisations and legal professionals, those working in another justice system organisation, jurors, families and friends of those charged with a crime and victims and their families felt that further safeguards are required against wrongful conviction prior to any changes to the corroboration rule.
- A significant minority of respondents, primarily legal organisations and legal professionals, noted there is no need to reform or abolish the corroboration rule as it is necessary to provide a fundamental protection against wrongful conviction.

What can be done to help people understand the corroboration rule better? (Q14)

- **A wide range of suggestions were made including information provision** via schools, guidance and information to jurors, public information campaigns and information via online sources and websites; providing simple explanations using terms that can be understood by all.

Equality and Human Rights and Other Impacts (Qs 15-17)

The potential for particular impacts on people with one or more of the protected characteristics listed in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) (Q15)

- The key comment was that none of the suggested reforms considered in this consultation paper would have a particular impact on people with one or more of the protected characteristics.
- The current jury size of 15 was perceived to ensure that a diverse range of people, interests and opinions are represented and a few respondents felt this could be compromised by any change to jury size.
- Removal of the not proven verdict and / or the corroboration rule were seen to remove a barrier to justice for survivors of sexual crime and domestic abuse, who are predominantly women and girls.

Other issues relating to equality (Q16)

- **Very few respondents raised any issues about equality** in relation to the reforms suggested in the consultation paper.

Whether there would be an impact on human rights (Q17)

- The key view was that the **reforms being considered would have no impact on human rights**. There were a few comments on the right to a fair trial, although views were split as to whether reforms or changes would have a positive or negative impact.

The potential for impacts on island communities, local government or the environment (Q18)

- Most respondents answering this question felt there would be **no impacts on island communities, local government or the environment**. Some reference was made to island communities where it was felt that smaller jury sizes would be beneficial given that island populations are so low.

Comments on the content of this paper (Q19)

- Only a few respondents provided any comments about the content of this consultation paper. There was no consistency in the comments made.

Introduction

Background

1. Scottish jury trials have some unique features, including a 15 person jury, simple majority required for conviction and three available verdicts: guilty, not guilty and not proven. Scots law also requires corroboration; the evidence of one witness is not enough to prove a charge against an accused or to establish any essential part of the crime.
2. The legal consequences of a not proven verdict are the same as those for a not guilty verdict, with the accused being acquitted and innocent in the eyes of the law. Arguments against the not proven verdict are that:
 - The existence of two verdicts of acquittal, where the difference between the two cannot properly be explained, is illogical in principle.
 - The verdict is incompatible with the presumption of innocence and may lead to an acquitted accused being stigmatised.
 - The verdict allows jurors to compromise and 'sit on the fence'.
3. Conversely, arguments for keeping the not proven verdict focus on:
 - The not proven verdict being an important safeguard that reduces the risk of wrongful conviction.
 - The current system works well and there is no evidence that it requires to be changed.
4. The not proven verdict is not defined in statute or case law, and jurors receive no instruction from a judge on the meaning of the verdict. They are informed that there are two verdicts of acquittal and that the accused cannot be tried again for the same offence. The third verdict is also used by sheriffs and justices of the peace in summary cases, so a move to a two verdict system would affect all criminal cases.
5. There has been controversy over the not proven verdict for some time, with some individuals seeing this as an approach a jury can use when they are unsure of a person's innocence but do not feel there is enough evidence to prove guilt. As such, some critics see this as leaving a stigma hanging over the accused as well as depriving the victims of closure. Conversely, supporters of the not proven verdict see this as offering a safeguard against miscarriages of justice.
6. In 2015, Lord Bonomy undertook a Post-Corroborated Safeguards Review. One of the recommendations emerging from this review was for research into jury reasoning and decision making to ensure that any changes to several unique aspects of the Scottish jury system were made only on a fully informed basis. Following on from this, mock jury research in Scotland conducted in 2019 found that the size of the jury, the number of verdicts available and the

type of majority required may all have an effect on the outcome of finely balanced trials.² It also found that there were inconsistent views on the meaning of not proven and how it differs from a not guilty verdict. This study found that removing the not proven verdict might bring about more guilty verdicts in finely balanced trials. Subsequent engagement events on the findings conducted by the Scottish Government, involving stakeholders across the country from a range of sectors, highlighted the complexity of the issues and a lack of agreement about next steps.³

7. There have been a number of calls over the years to abolish the not proven verdict particularly regarding its perceived impact in relation to certain crimes. For example, the not proven verdict is used in a disproportionately high number of rape cases. There are some concerns that the option to give a not proven verdict gives juries in rape trials an opt out and contributes to guilty people walking free. In 2019/20 the proportion of not proven acquittals for people proceeded against in court for all crimes and offences was 1%; for rape and attempted rape the proportion of not proven acquittals was 25%.
8. The 2021 Programme for Government committed to carrying out a public consultation on the three verdict system and whether the not proven verdict should be abolished as well as consideration of reform of the corroboration rule.
9. In December 2021, the Scottish Government launched a [public consultation to seek views on the three verdict system](#) in Scottish criminal trials and if the not proven verdict were to be abolished, whether any accompanying reforms would also be necessary. Due to the complex and interlinked nature of the jury system, the consultation asked questions about jury size, majority required for conviction and the corroboration rule.
10. Findings from this consultation analysis will be used to help the Scottish Government consider the best approach to take and will inform what, if any, reforms will be taken forward.

Respondent Profile

11. In total, there were 200 responses to the consultation paper, of which 21 were from organisations and 179 from individuals. Individuals responding to this consultation were also asked to indicate if they had any personal experience of the criminal justice system and whether they had ever worked professionally or volunteered in any specific roles. A breakdown of responses is provided in the following table.

² Research undertaken by Ipsos MORI and Professors James Chalmers and Fiona Leverick from the University of Glasgow and Professor Vanessa Munro from the University of Warwick, available at [Scottish jury research: findings from a mock jury study - gov.scot \(www.gov.scot\)](#).

³ A summary of discussions at these engagement events is available at [Supporting documents - Jury research - engagement events: summary of discussions - gov.scot \(www.gov.scot\)](#).

Table 2: Respondent Groups

	Number
Total organisations	21
Academic / research *	2
Advocacy	8
Justice	3
Legal organisations	8
Personal Experience (Individuals)	
I have been / I am a victim / complainer / survivor of a crime that was reported to the police	34
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police	51
I have been charged with a crime	6
I am a family member or friend of someone who has been charged with a crime	13
I have been a juror in a criminal trial	30
None of these	66
Types of roles (individuals)	
I have worked as a legal professional (for example, as a lawyer or judge)	27
I have worked in another justice system organisation (for example, as a justice social worker, in a prison or for the Police)	21
I have worked for a third sector organisation that operates in the justice system (for example, working for a charity that supports people convicted of crimes, provides rehabilitative interventions, or supports victims and witnesses)	18
I have worked as an academic or professional researcher on issues related to the justice system	15
I have not worked in any of the types of roles listed above	94
Total Individuals	179
Total respondents	200

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

12. A list of all those organisations that submitted a response to the consultation and agreed to have their name published is included in Appendix 1.

Methodology

13. Responses to the consultation were submitted using the Scottish Government consultation platform Citizen Space, by email or by post; most respondents submitted their views via Citizen Space. Where responses were submitted in email or hard copy, these were entered manually onto the Citizen Space system to create a complete database of responses.
14. The number responding at each question is not always the same as the number presented in the respondent group table. This is because not all respondents addressed all questions. This report indicates the number of respondents who commented at each question.
15. The researchers examined all comments made by respondents and noted the range of issues mentioned in responses, including reasons for opinions, specific examples or explanations, alternative suggestions or other comments. Grouping these issues together into similar themes allowed the researchers to identify whether any particular theme was specific to any particular respondent group or groups.
16. When referring to respondents who made particular comments, the terms 'a small number', 'a few' and so on have been used. While the analysis was qualitative in nature, as a very general rule of thumb it can be assumed that: 'a very small number' indicates around 2-3 respondents, 'a small number' indicates around 4-6 respondents; 'a few' indicates around 7 to 9; and 'some' indicates 10 or more but fewer than half of those who commented at any question. Where larger numbers of respondents are referred to, a 'significant minority' is 10-25% of respondents, a 'large minority' is denoted by 25-50% of respondents and 50%+ is 'a majority'.
17. When considering group differences however, it must also be recognised that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups did not share this opinion, but rather that they simply did not comment on that particular point.

Analysis of responses

18. The analysis of responses is presented in the following chapters which follow the order of the questions raised in the consultation paper. While the consultation gave all 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 a wider population outwith the respondent sample.
19. The Citizen Space database was exported to an Excel working database for detailed analysis. Where respondents requested anonymity and / or confidentiality, their views have been taken into account in the analysis but

quotations have not been taken from their responses. Quotations have been included where they illustrate a point of view clearly and have been selected across the range of respondent sub-groups.

20. Throughout responses, some respondents referred to personal experience of the criminal justice system either through their experience as a complainer or from being accused or charged with a crime, in order to illustrate issues being raised. In order to retain anonymity for these respondents, we have not made specific reference to any individual cases.
21. Some responses to this consultation showed a lack of understanding of some of the issues being considered. For example, there is no difference between the two acquittal verdicts in relation to the possibility of retrial; however, some respondents believed that the return specifically of a not proven verdict will allow for a retrial if new evidence comes to light. There were also some commonly held views that the not proven verdict was the original Scottish verdict, rather than 'not guilty'. So, some responses did not accurately reflect the situation in Scotland and comments on any proposed changes or suggestions for change can reflect this lack of understanding.
22. Some respondents provided commentary on a specific question in their response to another question. Where this has occurred, responses have been moved to the relevant question to avoid duplication.

The Not Proven Verdict

Key Findings

Views on what verdicts should be available in criminal trials

- Overall, there was a higher level of support for change to a two verdict system than to keep the current three verdict system (62% supported the change compared to 37% who did not). This was the case across most sub-groups, although higher numbers of legal organisations, those who have been a juror in a criminal trial and those who have been charged with a crime supported keeping all three verdicts currently available.
- A key reason for supporting a change to a two verdict system was confusion over what is meant by the not proven verdict and the lack of a definition of not proven. Additionally, this is seen as a compromise verdict allowing jurors to 'sit on the fence' and remove the onus to make a decision. A two verdict system is also perceived to be easier to understand, more fair and more straightforward.
- For those who supported retention of the existing three verdict system, the key reason was that the not proven verdict should be retained as this is a reflection of the Crown having failed to present sufficient evidence to prove the accused's guilt beyond reasonable doubt but where there was a belief that the accused may be guilty.

Views on what two verdicts should be

- Overall, 50% of respondents favoured guilty and not guilty (compared to 41% who supported proven and not proven). Over half of the legal and advocacy organisations supported use of the guilty and not guilty verdicts. However, over half of the respondents who were legal professionals, those working in another justice system organisation, those in the third sector and academics / researchers, victims of a crime and jurors preferred verdicts of proven and not proven.
- The key reason for support of using guilty and not guilty verdicts was that these are easier to understand, unambiguous and familiar to people. Additionally, they were seen as being commonly used and established terminology elsewhere.
- The key reason given for support of the proven and not proven verdicts was that they accurately reflect what is happening in a criminal justice system. There were also some comments that guilty and not guilty are emotive terms.

Defining the not proven verdict

- Respondents did not generally agree on a specific definition of the not proven verdict; some which were suggested contradicted each other or were incorrect in law. A few respondents also noted their view that the not proven verdict is impossible to define. There were some suggestions that a definition should be based on 'the prosecution have not proved beyond reasonable doubt that the accused is guilty and neither have they presented sufficient evidence for a jury to award a not guilty verdict'.
- There was a degree of support for clearer directions to be provided to jurors by the trial judge and / or provision of a definition of this verdict in the Jury Manual.

Scenarios where a not proven verdict might be returned

- When presented with four scenarios where a jury might return a not proven verdict, no scenario received a majority in support. However, almost half of respondents (49%) agreed a not proven verdict could be appropriately returned in the scenario where the jury believed a person is guilty but the evidence did not prove this beyond a reasonable doubt.

Whether the not proven verdict acts as a safeguard

- Overall, there was disagreement with the view that the not proven verdict acts as a safeguard that reduces the risk of wrongful conviction (50% disagreed and 36% agreed). However, views differed considerably across sub-groups; the most notable being that all advocacy organisations disagreed and 7 of the 8 legal organisations and 15 of the 27 legal professionals agreed with this premise.
- For those respondents who perceived the not proven verdict acts as a safeguard to prevent wrongful conviction, the key reason was that it should be used in instances where the jury find an allegation is not proven to the required standard but offers the jury a chance to record its misgivings.
- For the respondents who felt the not proven verdict does not act as a safeguard that reduces the risk of wrongful conviction, the key reason was that rather than reducing the risk of wrongful conviction, it increases the chance of wrongful acquittal, particularly in cases of domestic or sexual abuse.

Whether a not proven verdict attaches more stigma than a not guilty verdict

- Overall, a higher number of respondents felt there is more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict (45% compared to 33%). Highest levels of disagreement with this came from legal organisations (4 of 8) and legal professionals (13 of 27). Across most other sub-groups greater numbers agreed than disagreed.
- The key reason for feeling there is more stigma attached to those who have received a not proven verdict was that this verdict suggests guilt but that there was insufficient evidence to prove it. Thus, in their view, it can leave a stain on their character and does not align with the presumption of innocence.
- Of the respondents who felt there is not more stigma for those who are acquitted with a not proven verdict, the key theme was that this is a verdict of acquittal and is regarded in the same way as a verdict of not guilty.

Whether a not proven verdict can cause particular trauma to victims of crime and their families

- Overall, 65% of respondents agreed a not proven verdict can cause particular trauma to victims of crime and their families, compared to 29% who did not agree. All advocacy organisations and 10 of the 17 academics agreed; 6 of 8 legal organisations disagreed.
- Significant minorities of those who agreed felt trauma is caused because of a belief that the accused was guilty but there was a lack of evidence to prove this, that this offers no sense of closure to victims or that this verdict denies justice to victims and justice is not seen to be done.

- For those who felt that this verdict does not cause particular trauma to victims and their families, the key reason was that a not guilty verdict would be just as traumatic or more so.

The number of verdicts in criminal trials in Scotland

Q1: Which of the following best reflects your view on how many verdicts should be available in criminal trials in Scotland? Please give reasons for your answer.

- **Scotland should keep all three verdicts currently available**
- **Scotland should change to a two verdict system**

23. A total of 194 respondents answered the first part of this question. As shown in the following table, of all those who responded to this question, overall there was a **higher level of support for change to a two verdict system (62%) than to keep the current three verdict system (37%)**. In terms of organisation type, 7 of 8 legal organisations supported keeping all three of the verdicts currently available, and all advocacy organisations and 10 of 17 of those in the academic sector supported change to a two verdict system. Across each type of professional or voluntary role undertaken by individuals, a majority supported change to a two verdict system. A majority of individuals who have been / are a victim / complainer / survivor of a crime that was reported to the police, and family members / friends of victim / complainer / survivor of a crime that was reported to the police were supportive of a move to a two verdict system, although majorities of individuals who had been charged with a crime and jurors supported retention of the three verdict system. Views were split from those who were a family member or friend of someone who had been charged with a crime.

Q1	Number		
	Scotland should change to a two verdict system	Scotland should keep all three verdicts currently available	Not answered
Organisations (21)			
Advocacy (8)	8	-	-
Academic (2) *	2	-	-
Justice (3)	1	-	2
Legal organisations (8)	1	7	-
Individual roles (professional / volunteer) (81)			
Worked as legal professional (27)	16	10	1
Worked in another justice system organisation (21)	15	6	-
Worked for third sector organisation operating within justice system (18)	14	4	-
Worked as academic or professional researcher on issues related to justice system (15)	8	6	1
Personal Experience (87)			
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	22	12	-
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	41	9	1
I have been charged with a crime (6)	1	5	-
I am a family member or friend of someone who has been charged with a crime (13)	7	6	-
I have been a juror in a criminal trial (30)	11	19	-
Total individuals (179)	111	66	2
Total respondents (200)	123	73	4

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

24. A total of 170 respondents went on to give reasons for their answer or to make further comments at this question.

Scotland should change to a two verdict system

25. Of those who supported change to a two verdict system, a key theme cited primarily by individuals, advocacy and academic organisations, was that **there**

is confusion over what is meant by the not proven verdict as well as a lack of clarity due to lack of a definition. There were also some concerns that this lack of understanding could lead to inappropriate decision making by jurors and lead to wrongful acquittals. As noted by a legal professional:

“The only question for determination in a criminal trial is whether the prosecution has proved its case beyond a reasonable doubt. This is a binary question. It is confusing and unnecessary to have more than two potential answers to the question.”

26. A few of these respondents felt that the not proven verdict can distract jurors from conducting a full examination of the available evidence and reaching a verdict after deliberating appropriately.
27. The other key theme which emerged and was cited primarily by individuals was that **the not proven verdict can be used as a ‘get-out clause’ and allows juries to compromise and ‘sit on the fence’** by removing the onus to make a decision and bring deliberations to an end. An academic / researcher commented:

“The not proven verdict risks a loss of public confidence in the criminal justice system, as it allows jurors to use it as a compromise verdict to bring deliberations to an end, rather than engaging in more rigorous discussions. There is empirical evidence from the Scottish Jury Research that the verdict operates in precisely this way, with participants using it to bring deliberations to a premature end.”

28. To an extent, some respondents – mainly individuals and advocacy organisations – echoed the consultation paper and referred to this verdict being used disproportionately in sexual offence crimes.
29. A perception that the not proven verdict causes issues for both complainers and accused was cited by some respondents. This verdict was seen by some as causing distress and trauma to complainers and a few respondents also referred to there being no option for a retrial should new evidence come to light at a future date.
30. There were also references to this verdict protecting the accused and allowing guilty parties to get away with a crime, although there were also some comments that this verdict can cast doubt on the acquittal of an accused person and cause stigma for them. In both instances there were a few comments that this verdict is at odds with the presumption of innocence and does not reflect a satisfactory resolution of the judicial process.

“An accused person is presumed innocent by operation of law. The judge will direct the jury that the accused is presumed innocent until proven guilty, that the crown must establish guilt beyond a reasonable doubt and that if that is not done a verdict of acquittal must result. One might legitimately ask how

the availability of a verdict of not proven can be reconciled with these directions.” (Senators of the College of Justice, legal organisation)

31. The nature of **a two verdict system as being easier to understand, being more fair and more straightforward** was suggested by a significant minority of respondents. A number of these respondents also pointed out that it is up to the Crown to establish guilt beyond reasonable doubt; a legal professional noted that the only question for determination in a criminal case is whether the prosecution has proved its case beyond reasonable doubt and that it is confusing and unnecessary to have more than two potential answers to this question.
32. References to the lack of a definitive definition was noted by a few respondents, with comments that there is a lack of transparency in instances where a judge is not allowed to provide any instruction on the meaning of the verdict and a lack of guidance as to when the not proven verdict is appropriate.
33. References to the current system being outdated were made by a few individuals or respondents in the advocacy and academic sectors; and a small number of respondents noted that this would bring Scotland into line with the criminal justice systems in other countries.

Scotland should keep all three verdicts currently available

34. Of those respondents who supported keeping the three verdicts currently available, the key reason, cited by a large minority, was that the **not proven verdict should be retained as this is a reflection of the Crown having failed to present sufficient evidence to prove the accused’s guilt beyond reasonable doubt but where there was a belief that the accused may be guilty.**
35. The not proven verdict was referred to by a few of these respondents as offering a safeguard against wrongful conviction.
36. With this in mind, a few respondents who were either individuals or legal organisations noted **concerns that a two verdict system would lead to miscarriages of justice.** A very small number of respondents noted that the not proven verdict supports the fundamental principle of innocent until proven guilty and protects innocent victims who are wrongly accused of committing a crime. A respondent working in the legal and academic sectors commented:

“In the experience of all of us there are many cases where a verdict of not proven has been reached and where, had that verdict not been available, the jury would have found the accused guilty, and there are many men and women today in Scotland who have been acquitted on a not proven verdict and who, had it not been available to them, would have been in prison.”
37. Some respondents noted that the **current system works effectively and efficiently** and has worked well for a long time. A small number of individuals

also noted that this is a unique system and distinctive to Scots Law. An individual working in the legal and academic sector noted:

“The three verdict system is a unique and well established feature of Scots Law. Scots law is an independent system of law quite distinct from that of England and Wales and we should be slow to follow blindly the approach taken south of the border It has operated satisfactorily for centuries and a very compelling case would require to be made in order to abolish it.”

38. Despite supporting the current three verdict system, there were some comments of **a need to provide information on the not proven verdict**. A number of suggestions were made by legal professionals, as follows:
- Produce statutory guidance on the meaning and impact of the not proven verdict.
 - For jurors to be provided with appropriate directions by a judge.
 - To provide an explanation to jurors so they understand the difference between the two acquittal verdicts of not guilty and not proven.
39. That said, a couple of respondents felt that the three verdict system is not a difficult concept to grasp, with one commenting that not proven means the alternative options of ‘guilty’ and ‘not guilty’ are not viable to a juror because the case for either of these was not sufficiently compelling. Another couple of respondents felt that their personal experience either as a juror or in a specific case gave them an understanding of the not proven verdict and confidence in the current system.
40. A small number of respondents noted that most people within the legal profession wish to keep the three verdict system. One individual commented that in a recent online survey of solicitors carried out by the Law Society of Scotland, over 70% of respondents favoured retention of the third verdict (Law Society of Scotland, Not Proven Verdict Analysis of Survey of Members of the Law Society of Scotland, August 2021).
41. A small number of respondents also believed mistakenly that the not proven verdict provided particular opportunities for a retrial if new evidence comes to light (all individuals).

Views on what the two verdicts should be

Q2: If Scotland changes to a two verdict system, which of the following should the two verdicts be? Please give reasons for your answer. If you have selected ‘other’ please state what you think the two verdicts should be called.

- **Guilty and not guilty**
- **Proven and not proven**
- **Other**

42. As the following table shows, **50% of respondents overall favoured guilty and not guilty verdicts** (compared to 41% who supported proven and not proven).

43. Over half of the legal and advocacy organisations supported the guilty and not guilty verdicts to be used. However, majorities of legal professionals, those working within the justice system, third sector or who are academics / researchers supported the proven and not proven verdicts.

Q2	Number			
	Guilty and not guilty	Proven and not proven	Other	Not answered
Advocacy (8)	6	2	-	-
Academic (2) *	1	1	-	-
Justice (3)	1	-	-	2
Legal organisations (8)	5	3	-	-
Total organisations (21)	13	6	-	2
Individual roles (professional / volunteer) (81)				
Worked as legal professional (27)	5	17	4	1
Worked in another justice system organisation (21)	7	10	2	2
Worked for third sector organisation operating within justice system (18)	7	11	-	-
Worked as academic or professional researcher on issues related to justice system (15)	5	7	2	1
Personal Experience (87)				
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	13	17	2	2
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	30	16	3	2
I have been charged with a crime (6)	3	3	-	-
I am a family member or friend of someone who has been charged with a crime (13)	4	6	2	1
I have been a juror in a criminal trial (30)	8	18	2	2
Total individuals (179)	86	75	12	6
Total respondents (200)	99	81	12	8

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

44. A total of 144 respondents provided further commentary in support of their initial response.

Support for Guilty and Not Guilty

45. The key reason for supporting these two verdicts – and cited by a significant minority – was that these are **easier to understand and unambiguous, as well as being familiar terms**. As noted by an individual in the academic sector:

"I accept that proven and not proven might be more accurate terminology but the public would find this terminology unfamiliar and confusing. For that reason, guilty and not guilty are preferable. The criminal justice system is there to serve the public and not legal pedants, hence it should adopt the more 'user friendly'".

46. A small number of respondents noted the verdicts of guilty and not guilty would have greater public support and offer clarity, both legally and in terms of public perceptions; and thus help to eliminate the uncertainties that can arise in relation to the not proven verdict.

47. A significant minority of respondents also commented that these terms are commonly used by other justice systems and have been proved to work well; and that these are established terminology with a clear and acknowledged definition.

48. Some respondents also noted that these are the only two possible verdicts: that the defendant is either guilty or not guilty of a crime.

49. A number of respondents felt that the perceived problems with the current system would be replicated in a two verdict proven and not proven system, particularly in sexual offence cases. Other reasons offered in support of guilty and not guilty verdicts included:

- It (not proven) is not understood well by people, as demonstrated in the mock jury research undertaken in 2019 by Ormston et al.
- It can carry a residual element of stigma for both the complainer and the accused.
- The not proven verdict can be problematic in that some believe that although the case for the prosecution was not proved beyond reasonable doubt, it implies there may be some truth to allegations which arguably does not sit well with the concept of innocent until proven guilty, or that it is a cop out for jurors who are undecided.
- Closure to victims is not offered, particularly in sexual offences or other crimes that are committed in private, with a small number of comments that this verdict is used disproportionately highly in sexual offence or domestic abuse cases.

Support for Proven and Not Proven

50. The key reason given for support of these two verdicts was that **they accurately reflect what is happening** in that a jury is asked if a charge is proved beyond reasonable doubt and can only consider the evidence that is presented to them; that it is not the jury's job to pass judgement on the accused but to assess the evidence put before it. A very small number of respondents also noted that the framing of these verdicts is clearer and removes the burden from the juror who may struggle with the concept of sitting in judgement on another person. Two legal organisations noted that it is rational and logical to have proven and not proven verdicts if Scotland moves to a two verdict system. An individual working in the legal and academic sectors noted:

“The function of a jury, in any criminal trial, is not to determine the ‘guilt’ or otherwise of the accused, but rather to determine whether or not the Crown has succeeded in proving the case brought against said accused.”

51. There was also a mistaken perception from a few respondents that the use of ‘not proven’ specifically would allow for a retrial if new evidence comes to light but there is no difference between the two acquittal verdicts in relation to the possibility of retrial.

52. The **emotiveness of the terms ‘guilty’ and ‘not guilty’** were commented on by some respondents who felt these terms are emotionally charged and ask jurors to make a moral judgement. Conversely, they commented that proven and not proven are more factual and objective terms to utilise.

53. There were also a few mistaken comments that the proven and not proven verdicts are the original Scottish verdicts. Some others noted that these verdicts should be used because they are uniquely Scottish.

Support for Other Verdicts

54. There was no consistency in preferences from the low number of respondents supporting other verdicts. Suggestions included:

- Proven guilty and not proven guilty.
- Guilty and not proven.
- Guilty and not proven (or not established).
- Conviction or acquittal.

55. A very small number of individuals noted their preference for the current system; and a similar number of individuals advocated the need for clear definitions that are provided to jurors.

How to define the not proven verdict

Q3: If Scotland keeps its three verdict system, how could the not proven verdict be defined, in order to help all people including jurors, complainers, accused and the public to better understand it?

56. A total of 159 respondents commented at this question. A key finding emerging at this question was **limited agreement on a specific definition**; also the definitions which were suggested sometimes contradicted each other or were incorrect in law. A number of respondents also noted their view that the not proven verdict is impossible to define.

“In our view this cannot be done. To introduce any definition of not proven would be to introduce the availability of an entirely novel and inappropriate halfway house verdict which would be inconsistent with the presumption of innocence and the purpose of the trial process.” (Senators of the College of Justice, legal organisation)

57. That said, where there was agreement, the key theme across all sub-groups of respondents, was that the **not proven verdict needs to be defined as ‘the prosecution has not proved beyond reasonable doubt that the accused is guilty and neither have they presented sufficient evidence for a jury to award a not guilty verdict’**. One individual described this as a ‘compromise’ verdict, and some others felt this means the jury was undecided and unable to reach a decision.

58. The **difficulty of defining the not proven verdict** was highlighted by some respondents, with some comments from legal professionals concluding that this cannot be defined or that it is not possible to define this without creating confusion. However, a similar number of respondents felt that a definition needs to be provided so that there is clarity and understanding of the consequences of this verdict and a clear distinction between a not guilty and a not proven verdict.

59. A few respondents also suggested it would be dangerous to define, with one academic stating:

“It is impossible to formulate an appropriate definition of the not proven verdict other than simply saying that it is one of two verdicts of acquittal and has the same consequences as the not guilty verdict (which is present practice). Any attempt to distinguish it from the not guilty verdict would result in a state sanctioned two-tier system of acquittals, which carries the risk that not guilty is seen as a ‘better’ acquittal verdict than not proven. This would be highly inappropriate and would be vulnerable to challenge under Article 6(2) of the ECHR (the presumption of innocence).”

60. A legal organisation suggested that there needs to be clearer directions given to jurors by the trial judge on when a not proven verdict should be considered and a small number of respondents felt that judges need to explain this verdict

clearly to jurors at the start of a trial. One individual suggested there should be a definition in the [Jury Manual](#). A legal organisation felt that information on the not proven verdict could be more readily available on the Scottish Courts and Tribunals Service's website. However, a small number of individuals felt that it is already explained clearly and the current system works well; a few also noted that this is not a difficult concept to understand.

61. Some respondents felt that the not proven verdict should be linked to the possibility of a retrial in the future if new evidence comes to light or if the original evidence is shown to be false or misleading. As noted by one individual:

"If the two "Not Guilty" verdicts are kept I would say that Not Proven should allow for a retrial if new evidence comes to light but not including evidence that has been known and not presented. That is what many of the public mistakenly think anyway. Maybe there is something in their common sense. This would allow for a distinction to be made in the two verdicts."

62. To an extent, many of the issues raised by respondents echoed those presented at earlier questions, with a significant minority of respondents, primarily individuals and advocacy organisations, noting a preference for a two verdict system.

Scenarios where a jury might return a not proven verdict

Q4: Below are some situations where it has been suggested a jury might return a not proven verdict. How appropriate or inappropriate do you feel it is to return a not proven verdict for each of these reasons?

- The jury returns a not proven verdict because they believe the person is guilty, but the evidence did not prove this beyond a reasonable doubt.
- The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to publicly note some doubt or misgiving about the accused person.
- The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to indicate to complainers and / or witnesses that they believe their testimony.
- The jury returns a not proven verdict as a compromise, in order to reach agreement between jurors who think the right verdict should be guilty and others who think it should be not guilty.

63. As shown in the following table, in all but one of the scenarios presented to respondents, a majority of respondents felt it was inappropriate to use the not proven verdict. **The only scenario in which almost half of respondents (49%) agreed a not proven verdict could be appropriately returned is when the jury returns a not proven verdict because they believe the person is guilty, but the evidence did not prove this beyond a reasonable doubt.**

64. There were differences of opinion across sub-groups, with a majority of legal organisations noting support for returning the not proven verdict across three of these scenarios; a majority of advocacy organisations were opposed to using the not proven verdict in all four scenarios.

Q4	Number		
	Appropriate	Inappropriate	Don't know / Not answered
The jury returns a not proven verdict because they believe the person is guilty, but the evidence did not prove this beyond a reasonable doubt	97	81	22
The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to publicly note some doubt or misgiving about the accused person	68	108	24
The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to indicate to complainers and/or witnesses that they believe their testimony	54	122	24
The jury returns a not proven verdict as a compromise, in order to reach agreement between jurors who think the right verdict should be guilty and others who think it should be not guilty	26	153	21

65. When we examine each of these scenarios in further detail, the data shows some sub-group differences, as follows:

The jury returns a not proven verdict because they believe the person is guilty, but the evidence did not prove this beyond a reasonable doubt

66. A majority of legal organisations (7 of 8), legal professionals (18 of 27), individuals working in the third sector (11 of 18) and individuals who have been charged with a crime (5 of 6) or have been a juror (21 of 30) thought it was appropriate to return a verdict of not proven in this scenario. Conversely, a majority of those who are family members or friends of a victim / complainer / survivor of a crime that was reported to the police (25 of 45) and 4 out of 8 advocacy organisations felt it was inappropriate to return a verdict of not proven.

The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to publicly note some doubt or misgiving about the accused person

67. A majority of legal organisations (6 of 8) felt it was appropriate to return a verdict of not proven in this scenario; compared to a majority of advocacy organisations (5 of 8), those working in the third sector (11 of 18), in another justice system organisation (13 of 21) and those who are academics / researchers (10 of 17), and individuals who have been charged with a crime (4 of 6) or individuals who are family members or friends of a victim / complainer / survivor of a crime that was reported to the police (30 of 45) felt it was inappropriate to return a verdict of not proven in this scenario. The views of legal professionals were split (12 supported each option) as to the appropriateness or otherwise of returning a not proven verdict in this scenario.

The jury returns a not proven verdict because they believe the case has not been proven beyond reasonable doubt, but they wish to indicate to complainers and/or witnesses that they believe their testimony

68. A majority of legal organisations (6 of 8) felt it was appropriate to return a verdict of not proven in this scenario, although the views of legal professionals were split (12 supported each option). This compared to a majority of advocacy organisations (5 of 8), those working in another organisation in the justice sector (15 of 21), those working in the third sector (14 of 18) and individuals who are family members or friends of a victim / complainer / survivor or a crime that was reported to the police (33 of 45), who felt it was inappropriate to return a verdict of not proven.

The jury returns a not proven verdict as a compromise, in order to reach agreement between jurors who think the right verdict should be guilty and others who think it should be not guilty

69. A majority of organisations and individuals across all sub-groups felt that it would be inappropriate to use the not proven verdict in this scenario (7 of 8 legal organisations, 5 of 8 advocacy organisations, 17 of 21 individuals working in another organisation in the justice sector, 15 of 18 individuals working in the third sector, 11 of 13 of those who are family members or friends of someone who had been charged with a crime and 36 of 45 who were family of friends of a victim of crime).

Whether the not proven verdict acts as a safeguard

Q5: Do you believe that the not proven verdict acts as a safeguard that reduces the risk of wrongful conviction? Please give reasons for your answer and explain how you think it does not operate to prevent wrongful convictions

70. As shown in the following table, **50% of respondents disagreed with the view that the not proven verdict acts as a safeguard that reduces the risk of wrongful conviction** (compared to 36% who agreed). Across organisations as a whole, a majority of legal organisations (7 of 8) and legal professionals agreed (15 of 27), while all advocacy organisations disagreed.

71. Views were relatively evenly split across academic organisations and individuals who have an academic or professional researcher role.

72. Views were also relatively evenly split across most individual sub-groups, with the exception of those who were family members or friends of a victim / complainer / survivor of a crime that was reported to the police; a majority of these disagreed.

Q5	Number			
	Yes	No	Unsure	Not answered
Organisations (21)				
Advocacy (8)	-	8	-	-
Academic (2) *	1	1	-	-
Justice (3)	-	1	-	2
Legal organisations (8)	7	1	-	-
Individual roles (professional / volunteer) (81)				
Worked as legal professional (27)	15	6	5	1
Worked in another justice system organisation (21)	7	10	4	-
Worked for third sector organisation operating within justice system (18)	6	10	2	-
Worked as academic or professional researcher on issues related to justice system (15)	6	4	4	1
Personal Experience (87)				
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	15	15	4	-
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	13	29	8	1
I have been charged with a crime (6)	5	-	1	-
I am a family member or friend of someone who has been charged with a crime (13)	6	5	2	-
I have been a juror in a criminal trial (30)	13	11	6	-
Total individuals (179)	63	88	24	4
Total respondents (200)	71	99	24	6

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

The not proven verdict acts as a safeguard that reduces the risk of wrongful conviction

73. One key theme that emerged in relation to the not proven verdict acting as a safeguard that reduces the risk of wrongful conviction was that **it should be used in instances where the jury find an allegation is not proven to the required standard but offers the jury a chance to record its misgivings**. In comparison, a not guilty verdict denotes innocence on the part of an accused.
74. The other key theme was that the not proven verdict **prevents wrongful conviction** but most who suggested this did not offer any further explanation as to how this operates. However, there were some comments that if there were only two verdicts, a jury might find an innocent person guilty or that it is better that a guilty person is not convicted rather than an innocent person is convicted.

“The not proven verdict may be a safety valve for jurors who have not reached the threshold for conviction but reject the impossibility of guilt... There may be cases which should not end in conviction, but where the removal of the safety valve could turn them into false and wrongful convictions, as jurors may find the polarity of ‘not guilty’ is repellent in the hard evidential landscape of rape and attempted rape cases.” (Faculty of Advocates, legal organisation)

75. Linked to these points, some respondents – all individuals – noted that **if this verdict is removed it would lead to more wrongful convictions** as individuals might be found guilty, based on some likelihood of guilt rather than a jury being convinced beyond reasonable doubt. One legal organisation commented that the availability of the third verdict acts as a balance to the fact that Scotland has simple majority verdicts.
76. Once again, there were a small number of comments on the need for more direction from judges so that the not proven verdict is clearly defined and understood.
77. A small number of respondents referred to the mock jury research which suggested that the not proven verdict may reduce the likelihood of jurors favouring a conviction in finely balanced cases.

The not proven verdict *does not* act as a safeguard that reduces the risk of wrongful conviction

78. The key point made by a significant minority of respondents – primarily in the advocacy sector and individuals – as to why the not proven verdict does not act as a safeguard is that rather than reducing the risk of wrongful conviction, **it increases the chance of wrongful acquittal**. Some of these respondents referred specifically to types of crime committed in private such as domestic or sexual abuse.

“There are many safeguards within the Scottish legal system, the most important being the presumption of innocence and the onus being on the Crown to prove its case beyond reasonable doubt. Removing the not proven verdict will have no impact on this. Rather than the not proven verdict acting as safeguard against wrongful convictions, the evidence suggests that it contributes to wrongful acquittals.” (Rape Crisis Scotland, advocacy organisation)

79. Another key theme which emerged – again cited primarily by advocacy organisations and individuals – was that **the requirement for corroboration is the main safeguard offered to the accused** and that there are other existing safeguards to wrongful conviction including the presumption of innocent until proven guilty.
80. There were some comments that the **not proven verdict allows an easy way out for a jury** that does not feel confident to make a definitive decision, with a small number of respondents referring to this as a ‘cop-out’ or enabling jurors to ‘sit on the fence’.
81. Of the relatively small number of respondents who gave an answer of ‘unsure’ to the question, the same themes emerged. For example, that there is no clear evidence that this verdict offers a safeguard against wrongful convictions or that this verdict allows jurors to compromise and ‘sit on the fence’. One academic individual suggested a need for further mock jury research and modelling.

Whether there is stigma for those who are acquitted with a not proven verdict

Q6: Do you believe that there is more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict? Please give reasons for your answer.

82. As shown in the following table, a **higher overall number of respondents agreed that there is more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict** (45% agreed compared to 33% who disagreed). Of those who answered this question, a majority of advocacy organisations agreed and a majority of legal organisations and legal professionals disagreed. A majority of those working within the third sector also disagreed. In terms of personal experience, a majority in each category agreed.

Q6	Number			
	Yes	No	Unsure	Not answered
Organisations (21)				
Advocacy (8)	3	1	1	3
Academic (2) *	2	-	-	-
Justice (3)	-	-	1	2
Legal organisations (8)	2	4	1	1
Individual roles (professional / volunteer) (81)				
Worked as legal professional (27)	9	13	4	1
Worked in another justice system organisation (21)	12	2	7	-
Worked for third sector organisation operating within justice system (18)	5	8	5	-
Worked as academic or professional researcher on issues related to justice system (15)	6	4	4	1
Personal Experience (87)				
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	17	11	5	1
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	27	18	5	1
I have been charged with a crime (6)	4	-	2	-
I am a family member or friend of someone who has been charged with a crime (13)	7	4	2	-
I have been a juror in a criminal trial (30)	13	7	9	1
Total individuals (179)	82	60	35	2
Total respondents (200)	89	65	38	8

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

Belief there is more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict

83. Of the respondents who agreed that there is more stigma for those who are acquitted with a not proven verdict, the key reason given was that **the verdict suggests guilt but that there was insufficient evidence to prove it beyond reasonable doubt**; this was cited mostly by those in the academic sector and individuals with some form of personal experience of the system, often

individuals who were a family member or friend of a victim / complainer / survivor of a crime that was reported to the police. In their view this verdict can leave a stain on a person's character and lingering doubt as to their guilt and, as such, does not align with the presumption of innocence.

“Having regard to that central question [has the Crown proved its case beyond reasonable doubt?], the recipient in Scotland of a not proven verdict would (or at least should), by definition, be found not guilty in any other, two verdict, jurisdiction. Uniquely in Scotland, therefore, doubt is cast on the acquittal of an accused person. This doubt has the effect of stigmatising every accused person acquitted by a not proven verdict.” (Miscarriages of Justice Organisation (Scotland), advocacy organisation)

84. While this is an acquittal, a few respondents believed that this is not an absolute acquittal as in their view it is less clear-cut than a not guilty verdict and there is always a degree of doubt applied to the accused after a verdict of not proven is awarded.
85. A few respondents also felt that the media can play a role in creating stigma, particularly in high profile cases or in small communities; noting that the media and therefore public opinion, see a distinction between the not proven and not guilty verdicts and thus the media has helped to create this stigma.
86. A few respondents noted that this verdict can create stigma for the complainer as well as the accused, as they are disbelieved and do not receive closure. Allied to this, there were some more calls for a two verdict system as it was felt that removal of the not proven verdict would provide a fairer application of justice for both the accused and the complainant.
87. Other comments made by very small numbers of respondents included:
- There is no reason for stigma to be applied to the accused as this is a verdict of acquittal; that any stigma that exists is unjustified.
 - The current not proven verdict cannot be appealed, so any stigma remains indefinitely.
 - This verdict leaves victims and their friends and families questioning the legal system.
 - There is a stigma attached to a not proven verdict but this should be disregarded by the accused as they have been acquitted.

Belief there is *not* more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict

88. Of the respondents who felt there is not more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict, the key theme was that this is a **verdict of acquittal and is regarded in the same way as a verdict of not guilty**, with one legal organisation noting it is made clear by a judge that it is a verdict of acquittal. A few individuals,

including some legal professionals, also noted there is no reason for stigma to be attached to those acquitted with a not proven verdict. As remarked by an individual who was a legal professional and academic:

“People who have received a Not Proven verdict can still continue on with their daily life just as someone with a not guilty verdict. There is no difference and no repercussions.”

89. Small numbers of respondents also noted:

- The accused does not have to disclose any information about the case or the verdict.
- Most accused people are grateful to be acquitted.
- There is a need to educate jurors as to what this verdict means and that many people demonstrate a lack of understanding of the not proven verdict.
- Some high profile cases which attract post trial publicity which in turn can create stigma for the accused.

90. Of the respondents who were unsure as to whether there is more stigma for those who are acquitted with a not proven verdict compared to those acquitted with a not guilty verdict, the key point raised was that **there may be a stigma but that that is better than wrongful conviction**. A small number of respondents noted that any stigma will be dependent on the nature of the crime.

Whether the not proven verdict causes particular trauma to victims of crime and their families⁴

Q7: Do you believe that the not proven verdict can cause particular trauma to victims of crime and their families⁵? Please give reasons for your answer.

91. As shown in the following table, **a majority of respondents agreed that the not proven verdict can cause particular trauma to victims of crime and their families** (65% agreed compared to 29% who disagreed). Across organisations who commented at this question, all advocacy organisations agreed, compared to a majority of legal organisations who disagreed. A majority of legal professionals also disagreed, although majorities of individuals working in another justice system organisation or in the third sector agreed. Majorities of academic organisations and individuals within academic organisations agreed.

⁴ The use of the term ‘victim’ in this paper is not intended to have any particular legal meaning or imply anything about specific cases.

⁵ A few respondents raised that there was no “unsure” option for this question. However, the open text box allowed respondents to provide additional comments and to indicate if they neither agreed or disagreed with this question or were unsure.

92. A majority of individuals with direct experience and a large majority of their families felt the not proven verdict can cause particular trauma to victims of crime and their families (cited by 59% of victims and 76% of their families).

Q7	Number			
	Yes	No	Unsure	Not answered
Organisations (21)				
Advocacy (8)	8	-	-	-
Academic (2) *	2	-	-	-
Justice (3)	1	-	-	2
Legal organisations (8)	1	6	-	1
Individual roles (professional / volunteer) (81)				
Worked as legal professional (27)	10	14	-	3
Worked in another justice system organisation (21)	14	6	-	1
Worked for third sector organisation operating within justice system (18)	14	4	-	-
Worked as academic or professional researcher on issues related to justice system (15)	8	4	-	3
Personal Experience (87)				
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	20	13	-	1
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	39	11	-	1
I have been charged with a crime (6)	2	4	-	-
I am a family member or friend of someone who has been charged with a crime (13)	8	5	-	-
I have been a juror in a criminal trial (30)	18	11	-	1
Total individuals (179)	117	52	-	10
Total respondents (200)	129	58	-	13

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

Agreement that the not proven verdict can cause particular trauma

93. Of those who agreed that the not proven verdict can cause particular trauma to victims of crime and their families, two key themes emerged, both cited by a

significant minority of respondents. First, trauma is caused because of a **belief that the accused was guilty but there was a lack of evidence to prove this**. There were some references to jurors using this verdict as a 'cop out'. The second key theme was that this verdict offers **no sense of closure to victims of crime**, as there is no proper outcome. This, in turn, can lead to lifelong trauma, with a small number of individuals commenting that this can be more traumatic than a not guilty verdict. As noted by an individual:

"The not proven verdict is the aspect which I feel responsible for and exacerbates my shame and guilt that rape victims already have in such crimes... with a not proven verdict it felt like the onus was on me and that I had let my family and friends down but also society as I hadn't protected them from the stranger who raped me."

94. A small number of respondents noted this verdict was seen by some to exacerbate trauma for victims of crime, particularly as there is no recourse to an appeal system. One individual simply remarked:

"It invalidates victims and give no sense of closure."

95. A significant minority of respondents noted that this **verdict denies justice to victims of crime or that there is a sense that justice is not seen to be done**. Linked to this, there were a few comments that this verdict can lead to a loss of confidence in the criminal justice system and / or anger or resentment towards the system and police.

"A perception has been permitted, if not encouraged, to develop that "not proven" means "we think you did it but the Crown couldn't quite prove its case." In this context, a not proven verdict equates, in the public perception, to justice not only not being seen to be done but being seen not to be done." (Miscarriages of Justice Organisation (Scotland), advocacy organisation)

96. It was also noted by a few respondents that perpetrators can continue with abuse and / or that there can be further potential danger to victims from the accused. A few respondents referred specifically to cases such as assault, rape or sexual offences as being particularly traumatic for victims due to the nature of the offence; this trauma can then be exacerbated if a not proven verdict is returned.
97. Other aspects associated with trauma for victims included frustration and confusion over the criminal justice system, that this creates emotional and mental trauma and can lead to mental health issues or that this verdict makes out the complainer to be a liar and the process of going through a trial simply increases trauma.
98. A very small number of respondents referred to specific research which has been conducted (Munro in 2020 and Forbes in 2022) among complainers whose cases had concluded with a not proven verdict and noted that their lived experience needs to be considered. A few advocacy organisations and

individuals also referred to their own research among victims or personal experience of the not proven verdict. There were also a couple of calls for further research into this area.

Disagreement that the not proven verdict can cause particular trauma

99. One of the key reasons given by a significant minority of respondents answering this question as to why they did not feel the not proven verdict can cause particular trauma to victims of crime and their families, was that a **not guilty verdict would be just as traumatic or more so given that it demonstrates no doubt on the part of the jury** as to whether the accused was guilty. Similarly, a very small number of legal organisations noted that any form of acquittal will cause trauma.

“My experience with victims and their families suggests that the trauma arises from acquittal. Nothing I have heard suggests that the trauma would be any less if acquittal was by verdict of not guilty.” (Society of Solicitor Advocates, legal organisation)

100. A few respondents commented that the judge, sheriff or court staff should provide an explanation to complainers as trauma can be caused by a lack of understanding. A similar number noted that there is a need for a higher threshold for evidence, with one individual suggesting a need for more police and legal work to collect and assimilate evidence before a case goes to court so that there is a greater chance of returning a guilty verdict rather than a not proven verdict.
101. It should also be noted that a very small number of respondents did not agree with the use of the term ‘victim’ at this question. A legal organisation felt that this consultation was based on an assumption that all who make an allegation of having suffered a criminal act were the victims of such an act and that those accused of a crime had committed this.

Jury Size

Key Findings

- A majority of respondents (58%) – across all sub-groups – supported jury size remaining at 15 jurors. The key reasons for this were that the current number of jurors works well and there is no compelling case to make changes and that this jury size allows for a diverse range of jurors in terms of population characteristics and offers a range of differing views and opinions.
- For those who supported jury size changing to 12 jurors (19%), the key themes were that this would bring Scotland into line with other jurisdictions, that it would encourage higher levels of participation and deliberation from jurors or reduce pressure on the jury pool.
- For respondents wanting to see some other size of jury (14%), there was little by way of agreement on what this size should be, although there were consistent comments on the need for an odd number of jurors to enable a majority verdict.

Views on jury size

Q8: Which of the following best reflects your view on jury size in Scotland?

If Scotland changes to a two verdict system:

- **Jury size should stay at 15 jurors**
- **Juries should change to 12 jurors**
- **Juries should change to some other size**

If you selected ‘some other size’, please state how many people you think this should be.

Please give reasons for your answer including any other changes you feel would be required, such as to the majority required for conviction or the minimum number of jurors required for a trial to continue.

102. As the following table demonstrates, **the majority of respondents (58%) supported jury size remaining at 15 jurors**. This was consistent across all respondent sub-groups, regardless of organisation type, individual roles or personal experience. Relatively small numbers of respondents supported a change to a jury of 12 (19%) or some other size (14%).

Q8	Number			
	Jury size should stay at 15 jurors	Juries should change to 12 jurors	Juries should change to some other size	Not answered
Organisations (21)				
Advocacy (8)	6	1	-	1
Academic (2) *	1	1	-	-
Justice (3)	1	1	-	1
Legal organisations (8)	7	1	-	-
Individual roles (professional / volunteer) (81)				
Worked as legal professional (27)	16	4	3	4
Worked in another justice system organisation (21)	9	4	5	3
Worked for third sector organisation operating within justice system (18)	10	5	2	1
Worked as academic or professional researcher on issues related to justice system (15)	10	2	1	2
Personal Experience (87)				
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	22	1	9	2
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	28	10	8	5
I have been charged with a crime (6)	2	1	3	-
I am a family member or friend of someone who has been charged with a crime (13)	9	3	1	-
I have been a juror in a criminal trial (30)	18	5	5	2
Total individuals (179)	101	34	28	16
Total respondents (200)	116	38	28	18

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

103. A total of 138 provided commentary in support of their initial response to this question.

Jury size should stay at 15 jurors

104. Two key reasons were given by a significant minority of respondents. The first reason, mostly made by legal organisations, legal professionals and individuals, was that the **current number of jurors works well and there is no compelling case to change this.**
105. The second key reason was that a jury size of 15 **allows for a diverse range of jurors in terms of population characteristics and offers a range of differing views and opinions**; that this offers greatest representation of the population and a balance of experiences and prejudices, which help to ensure a fair trial and ensure more rounded and robust decisions are made. An individual remarked:
- “The fifteen member jury has served well throughout recent history. Having an uneven number is preferable to an even number as a way of avoiding arithmetical ties. Reducing much below this number would risk losing the availability of such a wide range of views.”
106. Some also raised that a jury of 15 **allows for some excusals** part way through the trial, if necessary, while still allowing the trial to continue, albeit with a smaller jury size.
107. There were comments by some respondents that an **odd number of jurors ensures a verdict will be reached.** Linked to this, a small number of respondents noted this also reduces the likelihood of a hung jury. Some respondents commented on jury majority and these comments are covered in the following question.

Jury size should change to 12 jurors

108. The key themes emerging to this part of the question, albeit mentioned by less than 10 respondents, were that this would **bring Scotland into line with other jurisdictions, that it would encourage higher levels of participation and deliberation from jurors or that it would reduce pressure on the jury pool.** There were also a few comments that the benefits of this jury size is backed up by the mock jury research (Ormston et al). In reference to the perceived importance of deliberation, a member of a victim’s family said:

“A smaller number of jurors would be beneficial as this gives a smaller number of people time to discuss the facts of the case.”

Juries should change to some other size

109. Of the respondents suggesting that juries should change to some other size, there was little by way of agreement on what that size should be, with suggestions ranging from 7, 9, 11, and 13. What was consistent was a need for an uneven number of jurors in order to avoid hung juries and to achieve a majority verdict.

110. A small number of respondents suggested the abolition of juries, with a trial by a bench of 3 judges or a single specialist judge in a specialist court for sexual offences.

Jury Majority

Key Findings

Views on the majority required for a jury to return a verdict in Scotland if Scotland changes to a two verdict system

- A majority of respondents (52%) supported a qualified majority of some kind.
- A large minority of respondents (40%) wanted to see a qualified majority in which at least two thirds of jurors must agree. Majorities of respondents across professional / volunteer roles and personal experience supported a qualified majority in which at least two thirds of jurors must agree. Reasons for this included that it builds safeguards into the system or that it ensures a greater proportion of the jury is convinced beyond reasonable doubt.
- Of those who preferred a simple majority (28%), the key reason was that this system works well at present and there is no need for change.
- Of the small number (13%) showing a preference for a reduction in jury size to 12 and a qualified majority of 10 jurors for conviction as in the system in England and Wales, the key themes were of a need for a clear majority to more credibly display that the charge has been proven beyond reasonable doubt, or that a close decision in Scotland's simple majority system (e.g. 8/7) could arguably imply that the verdict is not reached beyond reasonable doubt.

Level of agreement on whether the jury should be considered to have returned an acquittal where the required majority is not met

- A majority of respondents (52%) across almost all sub-groups agreed that where the required majority was not reached for a guilty verdict the jury should be considered to have returned an acquittal.
- The key reason for returning an acquittal was that a failure to reach this threshold shows the Crown has failed to prove its case beyond reasonable doubt and that acquittal is the only appropriate verdict to return. All organisations and majorities across other sub-groups agreed with this.

Preferences for jury majority if Scotland changes to a two verdict system

Q9: Which of the following best reflects your view on the majority required for a jury to return a verdict in Scotland? If Scotland changes to a two verdict system:

- **We should continue to require juries to reach a 'simple majority' decision (8 out of 15)**
- **We should change to require a 'qualified majority' in which at least two thirds of jurors must agree (this would be 10 in a 15 person jury, or 8 in a jury of 12)**
- **We should reduce the jury size to 12 and require a 'qualified majority' of 10 jurors for conviction as in the system in England and Wales**

- **We should change to some other majority requirement**

If you selected 'some other majority requirement', please state what proportion of the jury you feel should have to agree to the decision.

Please give reasons for your answer including any other changes you consider would be required such as to the minimum number of jurors required for the trial to continue.

111. As the following table shows, **a majority of respondents (52%) supported a qualified majority of some kind.** This was consistent across almost all respondent sub-groups. A large minority of respondents (28%) supported a simple majority decision and only a small number of respondents (7%) supported some other majority requirement.

Q9	Number				
	Simple majority decision	Change to qualified majority of 2/3	Reduce jury size to 12 + require qualified majority	Some other majority requirement	Not answered
Organisations (21)					
Advocacy (8)	2	2	-	1	3
Academic (2) *	-	1	1	-	-
Justice (3)	1	-	-	-	2
Legal organisations (8)	1	4	2	-	1
Individual roles (professional / volunteer) (81)					
Worked as legal professional (27)	8	11	-	4	4
Worked in another justice system organisation (21)	6	7	-	4	4
Worked for third sector organisation operating within justice system (18)	4	8	1	4	1
Worked as academic or professional researcher on issues related to justice system (15)	3	8	2	-	2
Personal Experience (87)					
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	10	14	-	4	6
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	15	21	5	2	8
I have been charged with a crime (6)	1	4	-	1	-
I am a family member or friend of someone who has been charged with a crime (13)	2	9	1	-	1
I have been a juror in a criminal trial (30)	6	12	4	4	4
Total individuals (179)	52	72	22	12	21
Total respondents (200)	56	79	25	13	27

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

112. A total of 119 respondents provided commentary in support of their initial response to this question.

Preferences for a change to a qualified majority of 2/3 if Scotland changes to a two verdict system

113. A majority of legal organisations supported this option. There was also support for this option from significant minorities of most other respondent sub-groups. A large minority of individuals who have been charged with a crime and their families or friends supported this option.

114. The key reason given in support of this change, albeit only mentioned by a few respondents was that this **builds safeguards into the system**, for example, in compensating for the removal of the not proven verdict or acting as a counterbalance in the interests of fairness to the accused (cited primarily by legal organisations and legal professionals).

115. A similar number of respondents – mostly individuals – also noted that this would **ensure a greater proportion of the jury is convinced beyond reasonable doubt**; with one legal professional noting that a simple majority is not a mark of finding guilt beyond reasonable doubt.

116. Furthermore, a few respondents noted that this would help to safeguard against wrongful conviction or increase the reliability of the verdict. Conversely, some respondents criticised the simple majority for being too slim a margin to decide if someone is guilty of a crime, or for not encouraging enough deliberation by jurors, with one legal professional noting that the simple majority contravenes the principle of proof of guilt beyond reasonable doubt.

Preferences for a simple majority if Scotland changes to a two verdict system

117. The key reason given by respondents – mostly individuals – who noted a preference for a continuation of a simple majority was that this **system works well at present and there is no need for change**. Most of these respondents wanted to retain three verdicts and also retain the simple majority, although a small number wanted to move to two verdicts and retain a simple majority.

118. Other comments, each made by very small numbers of respondents, included:

- This system is fairest for all.
- This system is straightforward and easy to understand.
- Increasing the majority required will increase barriers to justice for survivors of sexual offences and result in fewer convictions; retaining the not proven verdict and increasing the jury majority will result in more not proven verdicts.

“Given the existing evidence about the reluctance of juries to convict in rape cases, even in the face of considerable evidence, we have grave concerns that increasing the jury majority will increase the barriers to justice for rape survivors in Scotland and result in even fewer rape convictions.” (Rape Crisis Scotland, advocacy organisation)

Preferences for reducing the jury size to 12 and requiring a ‘qualified majority’ of 10 jurors for conviction as in England and Wales

119. A significant minority of respondents (13%) supported this option. Highest levels of support came from legal organisations although this was not supported by legal professionals. In terms of personal experience, most support – although at a low level – came from jurors and families of victims.
120. The key themes emerging in response to this option, albeit each was only mentioned by a very small number of respondents, were that **there should be a clear majority or that the simple majority means that some verdicts may not be beyond reasonable doubt.**
121. There were also a small number of comments that this approach is used by a majority of systems worldwide and is a tried and tested approach that works.

Preferences for some other majority requirement

122. There was little consistency in views on the most appropriate majority requirement, although a very small number of respondents referred to the need for a two-thirds majority. Other single suggestions were made for:
- 8:12.
 - 9:14.
 - 11:15.
123. Of those who did not answer this question, there were requests for further evidence on all potential systems to see which is most effective or for research covering all aspects of the jury system.

Returning an acquittal where the required majority is not met

Q10: Do you agree that where the required majority was not reached for a guilty verdict the jury should be considered to have returned an acquittal?

124. As the following table shows, **over twice as many respondents agreed that where the required majority was not reached for a guilty verdict the jury should be considered to have returned an acquittal** (52% respondents agreed compared to 25% who did not). A large majority of organisations agreed as did a majority of individuals with professional or volunteering roles.

Q10	Number			
	Yes	No	Unsure	Not answered
Organisations (21)				
Advocacy (8)	4	1	1	2
Academic (2) *	2	-	-	-
Justice (3)	2	-	-	1
Legal organisations (8)	7	-	1	-
Individual roles (professional / volunteer) (81)				
Worked as legal professional (27)	22	1	2	2
Worked in another justice system organisation (21)	11	7	2	1
Worked for third sector organisation operating within justice system (18)	9	3	4	2
Worked as academic or professional researcher on issues related to justice system (15)	8	-	4	3
Personal Experience (87)				
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	17	9	5	3
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	24	15	6	6
I have been charged with a crime (6)	5	1	-	-
I am a family member or friend of someone who has been charged with a crime (13)	8	3	1	1
I have been a juror in a criminal trial (30)	17	6	3	4
Total individuals (179)	88	48	25	18
Total respondents (200)	103	49	27	21

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

Agreement that where the required majority is not reached for a guilty verdict, the jury should be considered to have returned an acquittal.

125. The key reason given by a significant minority of those who agreed that where the required majority was not reached for a guilty verdict the jury should be considered to have returned an acquittal, was that in their view it **shows the Crown has failed to prove its case beyond reasonable doubt, so acquittal is the only appropriate verdict to return.** A few respondents simply noted

that in these circumstances a jury logically has to acquit; and similar numbers commented that this reflects the majority decision.

“The burden of proof is on the Crown. There is no obligation on an accused person to prove their innocence. If the Crown fail to satisfy the requisite number of jurors of an accused’s guilt beyond reasonable doubt, then they have failed to prove their case and an acquittal must follow any other approach would place a burden on the accused to persuade the jury of his innocence.” (Faculty of Advocates, legal organisation)

126. In line with this, a few respondents also noted the need to maintain the presumption of innocence as this is a fundamental part of the justice system. Additionally, it was suggested that there is also a need to avoid hung juries as it can be difficult to secure a fair second trial.

Disagreement that where the required majority is not reached for a guilty verdict, the jury should be considered to have returned an acquittal.

127. The issue of **having a retrial when the required majority is not reached** for a guilty verdict was noted by some respondents, all individuals. Although a few other respondents commented that this is an instance where a not proven verdict should apply – if the majority is nearly reached - as in their view it more accurately reflects the outcome.
128. Reference to the use of a not proven verdict was also commented on by a very small number of respondents who gave an answer of ‘unsure’ to this question.
129. A small number of respondents suggested that there should be more deliberation on the part of jurors and direction from the judge of their duty to reach a decision. A very small number of respondents commented that there should be unanimity or a qualified majority for conviction or acquittal, although a similar number highlighted that this would not be relevant with a simple majority and an odd number of jurors.
130. Once again, there were a small number of references to the need for further research, for example, comparison to the system in England and Wales. While the issue of hung juries was noted by small numbers of respondents, it was noted in the answer to this question, by a legal organisation and elsewhere in the consultation by academic respondents, that these are very rare in the English system.

The Corroboration Rule

Key Findings

Preferences on use of the corroboration rule in different scenarios with different combinations of the number of verdicts available and the majority required for conviction.

- For each scenario presented, a higher number of respondents supported keeping the corroboration rule than either reforming or abolishing it.
- In each scenario, when reform and abolition numbers are combined, a similar number of respondents supported these, to those who wanted to retain the corroboration rule, although a significant minority of the reform responses wanted the corroboration rule strengthened or retained. Only a small minority of respondents supported abolition of the corroboration rule.
- Regardless of the scenario presented to respondents, broadly the same arguments for and against changes to the corroboration rule were provided.
- Of those wanting to see the corroboration rule kept, a key reason was that corroboration is an essential part of Scots Law and protects the innocent by providing a safeguard against wrongful conviction.
- Of those wanting to see reform to the corroboration rule, the key suggestion was for different requirements for crimes which occur in private, with a greater use of evidence based on qualitative rather than quantitative evidence. Conversely, a few respondents wanted to see reform to strengthen the corroboration rule.
- For the small number wanting to see abolition of the corroboration rule, the key reason was that this was seen to unfairly disadvantage victims of domestic abuse and sexual offences.

Required changes if the corroboration rule is reformed

- A key view raised, often from legal organisations and legal professionals, was that the corroboration rule does not need to be reformed or abolished; some of these felt the corroboration rule needs to be strengthened. However, there were also calls, largely from advocacy organisations and individuals, for the requirements of the corroboration rule to be reduced for sexual offences.

Whether further safeguards are required against wrongful conviction before any changes to the corroboration rule

- A significant minority of respondents (43%) across most sub-groups supported further safeguards against wrongful conviction being in place before any reform or abolition of the corroboration rule, compared to 34% who did not. A majority of legal organisations and legal professionals, those working in another justice system organisation, jurors, families and friends of those charged with a crime and victims and their families felt that further safeguards are required against wrongful conviction prior to any changes to the corroboration rule.
- The key reason for responses either to whether further safeguards are needed or not, was that there is no need to reform or abolish the corroboration rule as it is seen as necessary to provide a fundamental protection against wrongful conviction.

- Across respondents who made suggestions for additional safeguards, there was little consistency.

What can be done to help people understand the corroboration rule better

- A wide range of suggestions were made including information provision via schools, guidance and information to jurors, public information campaigns, information via websites and other online sources; provided using simple explanations in terms that can be understood by the general public.

Preferences for use of the corroboration rule under different scenarios

Q11: Which of the following best reflects your view on what should happen with the corroboration rule in the following situations?

- a) **If Scotland remains a three verdict system and keeps the simple majority**
- b) **If Scotland changes to a two verdict system and keeps the simple majority**
- c) **If Scotland changes to a two verdict system and increases the jury majority**

(options given were for Scotland to abolish the corroboration rule, to reform the corroboration rule or to keep the corroboration rule as it is currently).

Respondents were also asked to give reasons for their answer to each of these scenarios.

131. As the following table demonstrates, significant minorities of respondents **supported keeping the corroboration rule across each of these scenarios.** However, when reform and abolition numbers are combined, a similar number of respondents supported these to those who wanted to retain, although a significant minority of the reform responses wanted the corroboration rule strengthened or retained. Only a small minority of respondents supported abolition of the corroboration rule.
132. **If Scotland remains a three verdict system and keeps the simple majority**, 43% of respondents wanted to keep the corroboration rule, 28% supported reform of the rule and 15% supported abolition. In terms of sub-group differences, a majority of legal and justice organisations, legal professionals, those working in other justice systems and academia / research, and those with experience of being a juror supported keeping the corroboration rule as it is currently. A majority of advocacy organisations wanted to see reform to the corroboration rule.
133. **If Scotland changes to a two verdict system and keeps the simple majority**, 44% wanted to keep the corroboration rule, 31% supported reform of the rule and 11% supported abolition. In terms of sub-group differences, a majority of justice organisations, those who have been a juror and those who

are family or friend of someone who has been charged with a crime supported keeping the corroboration rule as it is currently. Conversely, a majority of legal and advocacy organisations supported reform to the corroboration rule, albeit that reform can mean different, and sometimes opposing, things to different respondents.

134. **If Scotland changes to a two verdict system and increases the jury majority**, 40% wanted to keep the corroboration rule, 30% supported reform of the corroboration rule and 13% supported abolition. In terms of sub-group differences, a majority of legal and justice organisations, legal professionals and those working in another justice organisation, and those who had been a juror supported keeping the corroboration rule as it is currently. A majority of advocacy organisations supported reform of the corroboration rule.

Q11	Number			
	Keep	Reform	Abolish	Not answered
If Scotland remains a three verdict system and keeps the simple majority	85	55	30	30
If Scotland changes to a two verdict system and keeps the simple majority	87	61	21	31
If Scotland changes to a two verdict system and increases the jury majority	80	60	26	34

135. A total of 115 respondents opted to provide additional commentary in support of their initial response.

136. **Regardless of the scenario presented to respondents, broadly the same arguments for and against changes to the corroboration rule were provided.**

137. The key reason provided by a large minority of respondents who wanted to see the corroboration rule kept as it is currently was that **corroboration is an essential part of Scots Law and protects the innocent by providing a safeguard against wrongful conviction.**

“Corroboration provides a necessary and reasonable protection against miscarriages of justice.” (Scottish Law Agents’ Society, legal organisation)

138. Other arguments for retaining the corroboration rule as it is currently and cited by a few or less respondents included:

- The current rule is not broken and works effectively and is well understood. It has been developed over time and can be further refined as it is under ongoing review in the Appeal Courts. There were

a small number of suggestions for regular reviews to take account of the changing ways in which evidence can be gathered.

- It is important that evidence does not come from a single source as this can be unreliable; the testimony of a single individual should not be sufficient to convict an accused person.
- The low conviction rate in crimes committed in private such as domestic abuse or sexual offences is not a consequence of a need for corroboration but more due to the way crimes are reported and prosecuted, and this needs reform. Additionally, use of the Moorov doctrine or the Howden principle provides further options for prosecution, as does growth in more sophisticated DNA and digital evidence or the use of dockets.
- A very small number of respondents noted that the corroboration rule has already been 'watered down' but is adequate as it stands.

139. For respondents wanting to see reform to the corroboration rule, the key suggestion was for **different requirements for crimes which occur in private**; some of these respondents felt that the corroboration rule as it is currently discriminates against certain types of crimes, particularly in domestic abuse and sexual offence cases, and can lead to fewer prosecutions. The respondents putting forward this point of view were largely advocacy organisations or individuals.

“Corroborated evidence for crimes that are usually committed in private provide a barrier to obtaining corroboration, such as domestic abuse, sexual crimes, and abuse that takes place in a private or domestic: abuse of older or otherwise vulnerable people. It is the particular crimes where the evidence should be based on qualitative rather than quantitative evidence.” (Manda Centre, advocacy organisation)

140. Linked to this point, there were a few suggestions for the use of evidence based on qualitative rather than quantitative evidence. One advocacy organisation commented that the current evidential bar is so high that in their view only 10% of rape cases can reach it. This organisation also had concerns that corroboration in its current form is overly complex and inconsistently implemented.

141. One advocacy organisation noted that even if corroboration is reformed or abolished, the legal system still retains a number of other safeguards against miscarriages of justice.

142. However, conversely, a few respondents noted that the requirement for corroboration has now been so diluted that it fails to provide an acceptable level of protection to the accused; developments to the Moorov doctrine was given as an example of a change which has diluted the system to too great an extent. As such, there were suggestions from these respondents that the rule should be reformed so as to strengthen it.

143. There were also a very small number of suggestions that if corroboration is maintained, there is a need to aid understanding of it as well as a suggestion that it should be given a statutory footing with a legal definition.
144. For the small number of respondents wanting to see the corroboration rule abolished, the key reason was that **the corroboration rule was seen to unfairly disadvantage victims of private crimes such as domestic abuse or sexual offences and is a barrier to accessing justice.**
- “Of principal concern however is the extent to which the requirement for corroboration acts as a barrier to accessing justice, particularly in the cases of many women and child victims of both sexual abuse and more general domestic abuse.” (Senators of the College of Justice, legal organisation)
145. A very small number of respondents commented that the corroboration rule is historical and archaic and should have no place in a modern progressive legal system. A legal organisation noted that corroboration can act as an impediment to bringing cases based on the evidence of a single witness, regardless of the quality of that evidence. They further noted that the requirement for corroboration can act as a barrier to justice and that the rules regarding what might constitute corroboration are not always consistently understood by judges or jurors.

Views on necessary changes if the corroboration rule is reformed

Q12: If the corroboration rule was to be reformed, rather than abolished, what changes do you feel would be necessary?

146. A total of 119 respondents provided a response to this question, some of which were diametrically opposed to each other, with those in the legal profession wanting to see a strengthening of the corroboration rule and those in advocacy organisations wanting to see its requirements abolished or weakened.
147. A key theme emerging in response to this question and cited by a significant minority of respondents was that **the corroboration rule does not need to be reformed or abolished.** This view came largely from legal organisations and legal professionals.
- “We consider that the requirement for corroborated evidence is not an antiquated or outmoded legal notion but is a fundamental principle on which the Scottish Criminal justice system has been founded.” (Law Society of Scotland, legal organisation)
148. In line with preferences to retain the corroboration rule as it is currently, some respondents – primarily within legal organisations and legal professionals suggested **the corroboration rule needs strengthening to a higher standard to reduce the potential for wrongful conviction.** There were also a very small number of recommendations to discard the Moorov doctrine.

149. Echoing an issue raised at an earlier question, a significant minority of respondents suggested that **corroboration should be unnecessary, or that requirements for corroboration should be reduced in domestic abuse or sexual offences**. This issue was noted largely by advocacy organisations and individuals; one of these organisations noted that the requirement for corroboration poses significant obstacles that do not feature to the same extent in other types of crime and that the current system means that there is unequal access to justice for survivors of crimes committed in private.

150. Linked to this point, a small number of advocacy organisations and individuals suggested that all evidence should be considered on a qualitative basis.

“In every other country in the world, evidence of a crime is assessed on the basis of quality. Good quality evidence is the key to securing a safe conviction. In Scotland, however, good quality evidence of a sexual offence does not count unless it ticks the right boxes.” (Speak Out Survivors, advocacy organisation)

151. The issue of education or information being provided to jurors was raised by a small number of respondents, so that, for example, jurors understand what types of evidence constitute corroboration and instances when specific types of evidence can be accepted as corroborating evidence.

152. There were also a small number of calls to abolish the corroboration rule; and some respondents were unable to make any suggestions as to what changes would be necessary. A legal organisation suggested that the rule should be simplified and codified and set out in legislation.

The need for safeguards against wrongful conviction if the corroboration rule is reformed or abolished

Q13: Do you feel further safeguards against wrongful conviction should be in place before any reform or abolition of the corroboration rule? Please give reasons for your answer, including what other safeguards you believe would be appropriate and why.

153. As the following table demonstrates, **43% of respondents, across most sub-groups supported further safeguards against wrongful conviction being in place before any reform or abolition of the corroboration rule**, compared to 34% who did not feel further safeguards were necessary. There were some differences by type of organisation in that greater numbers of legal organisations and legal professionals supported further safeguards being in place, compared to advocacy organisations. Higher levels of support for the introduction of further safeguards also came from individuals working in another justice system organisation, victims and their families and jurors.

Q13	Number		
	Yes	No	Not answered
Organisations (21)			
Advocacy (8)	1	4	3
Academic (2) *	-	-	2
Justice (3)	-	1	2
Legal organisations (8)	5	2	1
Individual roles (professional / volunteer) (81)			
Worked as legal professional (27)	16	8	3
Worked in another justice system organisation (21)	11	7	3
Worked for third sector organisation operating within justice system (18)	6	7	5
Worked as academic or professional researcher on issues related to justice system (15)	7	6	2
Personal Experience (87)			
I have been / I am a victim / complainer / survivor of a crime that was reported to the police (34)	18	10	6
I am a family member or friend of a victim / complainer / survivor of a crime that was reported to the police (51)	20	18	13
I have been charged with a crime (6)	4	-	2
I am a family member or friend of someone who has been charged with a crime (13)	8	4	1
I have been a juror in a criminal trial (30)	18	6	6
Total individuals (179)	80	60	39
Total respondents (200)	86	67	47

* A total of 17 responses were received from academics; 2 from academic organisations and 15 from individuals who work as an academic or professional researcher on issues related to the justice system.

154. The key response provided by some respondents, including legal practitioners, legal professionals and other individuals who wanted to see additional safeguards against wrongful conviction put in place before any reform or abolition of the corroboration rule takes place, was that there is **no need to reform or abolish the corroboration rule as it is necessary to provide a fundamental protection against wrongful convictions**. A significant number of respondents who made this comment were legal organisations or legal

professionals. A legal professional who had also been a victim of crime commented:

“Corroboration does an important job in protecting accused persons against wrongful conviction, which is essential in a democratic society.”

155. While some respondents noted that other safeguards would need to be put in place to avoid miscarriages of justice, they generally did not specify what these additional safeguards should be or did not know what other safeguards would be effective.
156. While a number of respondents made suggestions for additional safeguards, there was little consistency in their recommendations. These included:
- An appeals process for all cases.
 - Abolition of the not proven verdict.
 - A statutory obligation on the police for two officer teams.
 - A larger majority with 10:12 required for conviction.
 - Unanimous verdicts required for conviction.
 - A test for sufficiency of supporting evidence.
 - Any additional safeguards would need to be as onerous as corroboration.
 - Implementation of the safeguards recommended by Lord Bonyhady's Post-Corroboration Safeguards Review Group, including the retention of corroboration in a narrow range of cases.
 - A better qualitative approach at 'no case to answer' stage.
157. A number of respondents who did not feel that further safeguards against wrongful convictions should be in place before any reform or abolition of the corroboration rule, commented that the corroboration rule should not be changed and that current safeguards are satisfactory or that other safeguards are already in place.
158. There were a few comments on the need to focus on safeguarding victims rather than the accused and that the current system prioritising the needs of the accused more than the needs of the victim.
159. Other comments made by very small numbers of respondents who answered 'no' to this question, included:
- There should be a system of specialist courts and judges who can offer appropriate guidance.
 - Any reform has to consider corroborative evidence for private crimes and use qualitative evidence.
 - Queries as to how frequently wrongful convictions happen.

- Change to a qualified majority.

How to understand the corroboration rule better

Q14: If the corroboration rule was kept or reformed, what else could be done to help people, including those involved in the justice system and the general public, to understand it better?

160. A total of 108 respondents opted to provide commentary in response to this question.

161. A wide range of suggestions were made by respondents, many of which related to the provision of information.

“For victims who make the difficult decision to report an offence to the police it feels like walking blindly into a foreign land for which no map is provided. Whatever conclusions are drawn from the consultation, we hope that better guidance and information for victims at all stages of the criminal justice process will be one of the outcomes.” (Speak Out Survivors, advocacy organisation)

162. A significant minority of respondents suggested that there should be some form of **information provision via schools** or for some basic information on the legal system to be incorporated into the curriculum.

163. Specific **guidance and information to jurors** was referred to by a significant minority of respondents, with suggestions for additional guidance to be provided when commencing jury service, jury directions provided by a judge or jury classes for all jury members. Two organisations in the justice and legal sectors suggested provision of a route to verdict⁶ for jurors, although these same two organisations noted that jurors are already provided with standard and specific directions about the legal concept of corroboration both in writing and orally. Some of these respondents also noted that information provided needs to be widely available in a range of formats to suit all needs. There were also a small number of suggestions for information to be provided to complainers and those who are accused of a crime and their families.

“The jury research indicated that juries had a lack of understanding around several key concepts, including the threshold of evidence required to prove guilt “beyond reasonable doubt” so guidance and clarification on such matters would be beneficial to juries and the public in general. This could be done as part of the work taking forward the recommendations from Lady Dorrian’s review.” (Scottish Women’s Aid, advocacy organisation)

⁶ For further information on routes to verdict, see [Methods of Conveying Information to Jurors: An Evidence Review, 2018](#)

164. Provision of **simple explanations using terms that can be understood by the general public and written in plain English** was suggested by a significant minority of respondents across the legal and advocacy sectors and individuals. Allied to this, there were a small number of calls for a statutory definition to be provided.
165. Different types of **public information campaigns** were suggested by a significant minority of respondents, with references to public information campaigns about the not proven verdict and the corroboration rule, social media campaigns, mail drops and pamphlets provided in community locations such as GP surgeries or hospitals. One individual suggested a press campaign such as that used to inform people about the Domestic Abuse (Scotland) Act 2018.
166. Information via websites and the provision of online information were also cited as useful sources of information.
167. Across all of these potential sources, there were some suggestions not simply for a clear explanation but also for anonymised examples to be provided to help illustrate the explanation.
168. A very small number of respondents noted that corroboration is not a difficult concept to understand, that there is already a good explanation in the Jury Manual or that the general public do not need to understand legal concepts.

Equality and Human Rights, Other Impacts and Comments

Key Findings

Equality and human rights

- The key comment was that none of the suggested reforms considered in this consultation paper would have a particular impact on people with one or more of the protected characteristics.
- The current jury size of 15 was perceived to ensure that a diverse range of people, interests and opinions are represented and a few respondents felt this would be compromised by any change to jury size.
- Removal of the not proven verdict and / or the corroboration rule were seen to remove a barrier to justice for survivors of sexual crimes and domestic abuse, who are predominantly women and girls.
- It was felt that those who are disabled and women would benefit most from any changes.

Other issues relating to equality

- Very few issues were raised in relation to this question.

Whether there would be an impact on human rights

- The key view was that the reforms being considered would have no impact on human rights.
- There were a few general comments on the right to a fair trial, although views were split as to whether reforms or changes would have a positive or negative impact on this.

The potential for impacts on island communities, local government or the environment

- Most respondents answering this question felt there would be no impacts on island communities, local government or the environment.
- Most reference was in relation to island communities where it was felt that smaller juries would be beneficial given that island population numbers are low.

Equality and Human Rights

Q15: Considering the three needs of the public sector equality duty – to eliminate discrimination, advance equality of opportunity and to foster good relations – can you describe how any of the reforms considered in this paper could have a particular impact on people with one or more of the protected characteristics listed in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation)?

169. A total of 94 respondents opted to provide an answer to this question. The key comment emerging – primarily from legal organisations and individuals – was that **none of the reforms considered in this paper would have a particular impact** on people with one or more of the protected characteristics listed in the Equality Act 2010. Very small numbers of respondents were unsure about any impact, noting that all protected characteristics need to be considered or commented that any changes and improvements to the criminal justice system would benefit all people. There were also comments from a very small number of respondents that any reforms should reinforce assurances that justice is blind and all are equal in the eyes of the law and entitled to a fair trial.
170. Jury size was a focus for some respondents, with most comments noting that **maintaining the current jury size of 15 ensures a diverse range of people, interests and opinions are represented**, with a few comments that reducing the jury size could compromise this.
171. **Removal of the not proven verdict and for some, also the removal of the corroboration rule, was seen to remove a barrier to justice for survivors of sexual crimes and domestic abuse**, who are predominantly women and girls.
172. A small number of respondents referred to the corroboration rule, although views were mixed as to whether its removal would help to protect those with protected characteristics or not, with a couple of comments that the corroboration rule acts as a safeguard against gender discrimination.
173. A significant minority of respondents focused on specific groups of people who would be positively affected by any changes. These included:
- Those who are disabled, physically and mentally.
 - Women, with reference once again to sexual crimes disproportionately impacting on women. There were a couple of suggestions to reform the law to create different levels of sexual offence.
174. There were also a very small number of comments that the justice system is already biased in favour of non-minority individuals and that any reforms which mitigate against this would be welcomed.

Q16: Are there any other issues relating to equality which you wish to raise in relation to the reforms suggested in this paper?

175. Only 35 respondents raised any other issues relating to equality.
176. Once again, many of the themes raised at this question, each by only small numbers of respondents, echoed those seen in earlier questions. These included:
- References to a need for the legal system to provide better protection for women who are victims of sexual crime.

- A need for training for all involved in the criminal justice system, including judges, sheriffs, jurors and other legal professionals so that they can understand bias, how it can be manifested and how to challenge it.

177. Court logistics was raised as an issue by a very small number of respondents who referred to the need to reduce timescales, for complainers to be able to access counselling prior to a trial or that courtrooms are not well set up to cope with individuals with physical or mental support needs. There were a very small number of suggestions for jurors to be screened for bias prior to being assigned to a trial or for the gender of jurors to be considered in gender based violent crimes.

Q17: Do you feel that any of the reforms considered in this paper would have an impact on human rights?

178. A total of 111 respondents opted to provide an answer to this question, with a large minority of respondents – including legal and advocacy organisations, and individuals – feeling that the **reforms considered in this paper would have no impact on human rights**. Some respondents reiterated an individual's right to a fair trial and that this right is a cornerstone of the criminal justice system in Scotland. However, a very small number of legal organisations commented that the current system is fair, with one noting that any reforms or changes could remove safeguards and increase the risk of miscarriages of justice.

179. Allied to this point, some respondents referred specifically to corroboration and that **any decision to remove the corroboration rule would impact on the accused's right to a fair trial and increase the risk of a miscarriage of justice**. Conversely, a few respondents in advocacy organisations and individuals felt **the removal of the corroboration rule would have a positive impact on the human rights of women and girls** who disproportionately experience sexual or domestic abuse.

180. References to removing or abolishing the not proven verdict were made by some respondents, although views were polarised as to whether impacts would be positive or negative. For example, there were a small number of concerns that this could lead to more guilty verdicts and an increase in wrongful convictions or miscarriages of justice, although some thought that this would remove one of the barriers currently facing victims of crime and would improve the rights of victims.

181. A small number of individuals referred to ECHR (European Convention on Human Rights), with comments that reform of the system is likely to bring about concerns about Article 6 (the right to a fair trial), although one noted that most jurisdictions without a corroboration rule are in full conformity with the ECHR.

Other Impacts and Comments

Q18: Do you feel that any of the reforms considered in this paper would have impacts on island communities, local government or the environment?

182. A total of 99 respondents replied to this question; with a majority of these noting there would be **no impacts on island communities, local government or the environment** from any of the reforms considered in the consultation. A few respondents noted they were unsure about the likely impact of any reforms, and a very small number felt there would be impacts but did not provide any details as to what these impacts might be.
183. A few respondents commented on island communities specifically; the key theme, albeit only mentioned by a very small number of respondents was that **smaller juries would be easier in island communities where population numbers are relatively low**. There was one comment that it could be possible to conduct trials with remote juries, as per COVID-19.
184. An advocacy organisation noted that these reforms could potentially impact on local government through justice social work but did not provide any further detail.
185. Only one respondent commented on the environmental impact with a suggestion that jury packs could be sent in digital format to jurors.
186. A few respondents commented on this question as being irrelevant.

Q19: Do you have any other comments about the content of this paper?

187. A total of 42 respondents gave a reply to this question. Most responses echoed themes outlined in previous questions. A few other areas were outlined as needing reform, although each was mentioned by only a single respondent. These included a need to focus on:
- Other issues such as legal aid, reporting restrictions, the role of the press in courts and first appearances.
 - The use of telelinked evidence in trials.
 - More focus should be placed upon the views of those who have relevant experience, rather than giving weight to pressure groups or academics.
 - Support of Lady Dorrian's Group proposal to have complainers separately represented at section 275 hearings.
188. A small number of respondents saw any reforms potentially arising from this work as being motivated by a desire to increase the number of convictions, and disagreed with this, with a legal organisation noting that this would undermine the institution of justice.

189. A small number of respondents praised the consultation paper although an equal number were critical of the length and / or wording of some of the questions.

Additional comments

190. Ten respondents opted to provide additional information in their consultation response. Some provided background information on themselves or their organisation to set the context for their response and / or welcomed the opportunity to respond to the consultation. A few also provided historical detail and background to the evolution of the Scottish legal system. Many of the points raised echoed those seen at earlier questions and included (for example) references to a need for more transparency within the criminal justice system, for example, explanations should be provided as to verdict decisions made by juries.

191. Other issues raised by respondents included:

- Conflict resolution may be more appropriate for some non-violent allegations.
- The negative impact the media can have on perceptions of the general public, jurors and their attitudes towards particular crimes or verdicts.
- The potential impact that reforms could have upon the programming of hearings, staff and accommodation resources and costs involved in any relevant IT changes.
- As well as providing more guidance and information for jurors, there is also a need for more guidance and information for victims at all stages of the criminal justice process.
- Considering these reforms at this point in time should not be a priority, given the backlogs in summary and solemn cases brought about by the pandemic; rather the focus should be on building capacity and ensuring there are effective resources for all parts of the criminal justice system.

Appendix 1: Respondent Organisations

British Transport Police
Edinburgh Bar Association
Faculty of Advocates
Feminism Law and Gender Research Cluster, Law School, The Open University
Lanarkshire Rape Crisis Centre
Law Society of Scotland
Miscarriages of Justice Organisation (Scotland)
Rape Crisis Scotland
Scottish Courts and Tribunals Service
Scottish Criminal Cases Review Commission
Scottish Solicitors Bar Association
Scottish Women's Aid
Scottish Women's Convention
Senators of the College of Justice
Society of Solicitor Advocates
Speak Out Survivors
The Glasgow Bar Association
The Manda Centre
The Open University in Scotland
The Scottish Law Agents' Society
Victim Support Scotland

Appendix 2: Key Terms

Accused – A person charged with committing a crime or offence.

Acquittal – An outcome after a trial which means that the accused is not convicted of the offence. In Scotland, this can be through either a ‘not guilty’ or ‘not proven’ verdict.

Admission – A statement by the accused admitting an offence or a fact.

Beyond reasonable doubt – The standard of proof in a criminal case (see ‘standard of proof’ below).

Circumstantial evidence – Evidence that does not itself prove a particular fact but allows a reasonable inference to be made which supports the fact, for example, where an accused in a theft case has been found in possession of the stolen property.

Common law – A system of laws based on custom and court decisions (also known as ‘precedent’) rather than on written laws made by a parliament. Common law forms a large part of the legal system in Scotland.

Complainer – A person who, in criminal proceedings, claims to have been the victim of an offence.

Consent – In Scottish criminal law, consent in a sexual offence case means that the complainer freely agreed to have a particular type of sexual contact with the accused. Most sexual offences require proof that the accused acted without the complainer’s consent.

Corroboration – The requirement in Scottish criminal law that an accused cannot be convicted of a crime unless there are at least two separate sources of evidence that:

- (a) The crime was committed; and
- (b) The accused was the person who committed the crime.

Deliberations – The process of discussion by which juries reach a verdict.

Directions – The instructions given by a judge to a jury at the end of a criminal trial that tell the jury the legal tests that they should apply during their deliberations.

Finely balanced trials – The jury research showed mock jurors two specific trials where the evidence presented was deliberately designed to generate a degree of ambiguity, in order to encourage debate within the jury room about guilt and acquittal, and to maximise the likelihood that jurors would consider the difference between the not guilty and not proven verdicts. Had the evidence in these trials

been differently balanced, for example, with very strong evidence of the guilt of the accused, the balance between verdicts would probably have been different.

Howden Principle - In limited circumstances it may be possible to find corroboration of one charge in the evidence of another charge, even if there is no independent evidence of identity in relation to the first charge, where the second charge is supported by corroborated evidence and the similarities between the crimes are such as to justify the inference that they must have been committed by the same person. This is the rule from *Howden v HMA*^[1].

Hung juries – In some countries where a jury is required to reach a certain majority in order to return a verdict, and cannot do so, it is referred to as a ‘hung jury’. Hung juries are not a feature of the current Scottish system as they have 15 members and return verdicts by a simple majority of votes.

Jurisdiction – The territory over which a Court has legal authority.

Majority required – The number of jurors required to support a verdict before it can be returned, for example in Scotland, eight out of 15 are required for a conviction.

Miscarriage of justice – when a court proceeding has an unfair outcome, for example a person is convicted of a crime they did not commit.

Mock jury – the juries in the independent jury research study were made up of members of the public who were eligible to serve on a jury, but were asked to come to a verdict based on a fictional filmed trial simulation, rather than a real criminal case. This is a well-established type of research which is normally referred to as ‘mock jury research’.

Moorov Doctrine – The evidence of single witnesses to different incidents may provide what is known as mutual corroboration in certain circumstances. For example, in the Moorov case itself, where an employer carried out a series of sexual assaults against female staff, it was not necessary for the complainers to have witnessed the assault on each other; each complainers’ testimony about what happened to them was considered enough to corroborate the evidence of other complainers where the incidents were sufficiently similar in “time, character and circumstance” from which an overall course of criminal conduct could be inferred.

Presumption of innocence – Every accused person is presumed innocent until proved guilty and is not required to prove his or her innocence.

Simple majority – A rule requiring a majority of jurors (for example, eight out of 15) to support a verdict before it can be returned. This is the rule that currently applies in Scotland.

[1] 1994 SCCR 19

Standard of proof – The level of certainty needed to prove a legal claim. In a criminal trial this is ‘beyond reasonable doubt’.

Survivor / Victims – Some people prefer the term victim and others identify as survivors. The use of these terms in this paper is not intended to have any particular legal meaning or imply anything about specific cases.

Solemn cases – Cases which are determined at trial by a jury, either in the High Court or the Sheriff Court. These cases are usually considered to be more serious.

Summary cases – Criminal cases that are usually considered less serious and are determined at trial by a Sheriff or a Justice of the Peace. Juries are not used for summary cases.

Unanimity and near unanimity – A rule requiring that either all, or almost all, jurors support a verdict before it can be returned. Unanimity requires that every juror supports the verdict, while ‘near unanimity’ requires no more than two dissenting jurors (i.e. 10 out of 12 must agree). In England and Wales juries are asked to reach unanimity initially but if they are unable to do so, they are instructed that a ‘near unanimous’ verdict may be accepted.

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