

Victims, Witnesses and Justice Reform (Scotland) Bill

Roundtable event – 10 April 2024

In attendance

- Lady Hale – Former Judge of the UK Supreme Court.
- Sheila Webster – Law Society of Scotland (LSS) President.
- Patricia Thom – LSS Elected Vice President.
- Gail Russell – Member of the Criminal Law Committee of the LSS.
- Dr Gabrielle Watson – Chancellor’s Fellow at the University of Edinburgh.
- Melodie McIndoe – Senior Advocacy Support Worker at Edinburgh Rape Crisis Centre.
- Dr Grant Barclay – Early Career Fellow in Evidence and Criminal Law.
- Alan McCreadie – Head of Research at the Law Society of Scotland.
- Seonaid Stevenson-McCabe – Vice Chair JUSTICE Scotland and Lecturer in Law at Glasgow Caledonian University.
- Jennifer Paton – Head of Policy at the Law Society of Scotland.
- Ronnie Renucci KC, Vice Dean of the Faculty of Advocates.
- Lord Bonyon - Judge of the International Residual Mechanism for Criminal Tribunals.
- Fiona Robb – Director of Professional Practice and Engagement at the LSS.
- Laura Buchan – Procurator Fiscal at the Crown Office and Procurator Fiscal Service (COPFS).
- Alisdair Macleod – Principal Procurator Fiscal Depute at the COPFS.
- Elena Jenny – Legal Fellow at the Scottish Human Rights Commission.
- Jan Savage – Executive Director at the Scottish Human Rights Commission.
- Linda Towers – Member of the Public Policy Committee at the LSS.
- Stuart Munro – Convenor of the Criminal Law Committee at the LSS.
- Liliana Torres Jimenez – Policy Executive and Secretary of the Criminal Law Committee at the LSS.
- Sarah Higgins – National Advocacy Project Coordinator at Rape Crisis Scotland.
- Laura Sharp – Member of the Criminal Law Committee at the Law Society of Scotland.
- Lyndsay Fleming – Senior Associate Solicitor at Just Right Scotland.
- Craig Dewar – Vice President of the Glasgow Bar Association.
- Prof Cheryl Thomas – Professor of Judicial Studies at UCL.



Notes on the meeting:

Session 1: Non legislative measures for improving the criminal justice system

In the last roundtable event, some of the attendees expressed some general concerns on how the Scottish criminal justice system deals with complainers of sexual offences. Some of those concerns were related to the information that complainers obtain about the cases they are involved with, the point of contact that they have with the Crown Office and Procurator Fiscal Service (COPFS), and the lack of preparation that they have before the trial.

During the discussion, it was proposed the implementation of an app for complainers to address some of the problems discussed in the previous session. Participants appreciated the value that an app could provide. It was noted that some efforts have been done by the COPFS to implement Witness Gateway, an app that will provide some of the information required by complainers in their cases. This initiative will be in a pilot phase aiming to serve as a starting point for future developments.

While some participants recognised the value of technology in assisting complainers and witnesses, it was noted that a personal relationship is unreplaceable. Support with a human approach in the earliest stages of the criminal process is required.

It was also discussed the negative impact that floating trial dates have on complainers and accused persons. However, it was recognised that avoiding them will have a significant resource impact.

Participants also raised their views on the importance of trauma-informed training in law schools. It was discussed that this type of training is not currently available for law students and some consideration should be given on whether trauma-informed training should be included in the Diploma in Professional Legal Practice.

Session 2: Session 65 (Pilot of single judge rape trials)

Some participants noted that there is a lack of clarity in conviction rates for rape and other sexual offences in Scotland. It was noted that the Lord Advocate indicated in her oral evidence session at the Criminal Justice Committee a conviction rate between 20 to 25% for acquaintance-type cases¹, which is significantly lower compared to other offences. However, it would be welcomed by some participants having the possibility to breakdown the data between the three verdicts available. It was also noted that conviction rates are often blurred by attrition rates (from reports to police) or general rates (including guilty pleas).

¹ Acquaintance-type cases are the ones in which there is only one complainer and one accused.

It was stated that the evidence available in England and Wales indicates that jurors are capable to reach fair verdicts in rape cases. Additionally, that south of the border, juries return more guilty verdicts than acquittals in rape cases, making this tendency more visible in recent years.

Members recognised the particularities of the Scottish criminal justice system such as the three verdicts system, the number of jurors, and the basis required for reaching a guilty verdict. It was noted that in other jurisdictions such as England and Wales, the selection criteria for prosecute rape cases varies. Extreme careful should be taken when comparing results from other similar jurisdictions.

Participants discussed on research issues regarding jury decision making. While it was recognised that the current research available is valuable, some participants considered that more should be done. It was recognised that mock juries' studies have limitations as they will leave the question of what real juries would do. Additionally, it was noted that while mock jurors participated on the research on a voluntary basis, real jurors are not volunteers.

It was highlighted that Scotland needs more reliable data on jury decision making. Data collection could include isolating rape charges that were put before a jury and analyse the verdict returned. The information could include a breakdown on the age and gender of the complainer to identify in which type of cases juries are more likely to convict.

It was stated that it is crucial to have several studies with different research methodologies. For example, it would be welcome data analysis, case simulations, attitude research, etc.

Some participants expressed their concerns on the juryless trials proposed in Part 6 of the Bill. Particularly, the reservations were focused on the lack of consent of the accused for participate and the experimental basis of the provisions.

Participants also expressed concerns on how the pilot will be evaluated. As the Bill contains significant changes to the Scottish criminal justice system, for some it would be unfair to compare the pilot's results with the current situation.

It was indicated that before starting any pilot, it would be useful to ask if any of the purposes that want to be achieved cannot be reached by jury trials. In other words, if the purpose of the pilot can only be achieved by judge trials. It would be welcome having more research in the implementation of written directions to jurors or routes to verdicts.

Concluding thoughts

It was recognised that Scots law is unique. There can be good reasons for removing the not proven verdict or implementing single judge trials. Some other Anglo-American jurisdictions have implemented single judge trials such as England and Wales in some circumstances or Northern Ireland in the Diplock



courts. However, the problem with the proposal is that it will be only possible for a particular class of cases, and it will be an experiment.

It is not clear how the cases will be selected, and difficulties may arise to assure that cases are not picked for achieving the preferred outcomes. Problems are also expected in the evaluation of the pilot. Evaluation parameters are crucial for this.

Additionally, it is not proven that jurors are a problem that should be addressed to improve the criminal justice system.

It seems that many things can be done without implementing fundamental changes to the criminal justice system. For example, improving police and prosecution practices, reducing the delays, and improving the facilities for witnesses at court. Better training for judges and practitioners is also crucial for improving the system. Judges should be subject of permanent unconscious bias training, and everyone involved in the system should receive trauma-informed training. Finally, the implementation of written directions to juries and implementing routes to verdicts can help significantly.

The final message was an invitation to learn from comparative experiences such as the one in England and Wales before implementing such radical changes.