

PE 1562

Petitioner Letter of 17/06/2015

Petitions Committee

Scottish Parliament

Edinburgh EH99 1SP

17th June 2015

Dear Petitions Committee

There have been a wide range of responses to petition 1562 from the organisations contacted. We will touch on a number of the responses in due course but to start with we want to focus on the Scottish Government response.

Scottish Government

We are convinced that the Scottish Government wants to make our current justice system a crystallised full proof and fair system for our future generations and all who live in Scotland. However from the start of the petition we have always made it clear that the proposal for Perverse Acquittal would only apply to a very low percentage of cases only where the verdict delivered is clearly unsupportive and irrational. As we all know the jury service lies at the core of the justice system, the guilt or innocence is determined by our fellow citizens selected from the electoral role and they are from different cultures and occupations. Although the Scottish Government seeks to uphold this principle and tradition there are opportunities for improvements within the current system to fill small gaps which will provide a water tight system.

The Justice Secretary made a statement on the 21st April, welcoming the publication of Lord Bonomys report which proposes research into jury reasoning and decision making, we believe that jury research is linked with the proposal for Perverse Acquittal and work in conjunction with each other.

Here are a few reasons to support this assertion

1. Public expectations have always been that as stated above our fellow citizens (Jurors) have a duty and responsibility to assess all the evidence provided during the course of the trial.
2. Jury selection is from different cultures and occupations but does our justice system provide resources to support this selection process to ensure the following i.e. Language interpreter, disabilities (Deafness), Difficulty understanding legal information.
3. The jury selection is not a guaranteed selection process that is why the Perverse Acquittal proposal will act as a safe guard for our Justice system and it will only apply to a low percentage of trials where there is the possibility of the jury getting it wrong, juries mostly get it right, but they can and do get it wrong as well.
4. The Lord Bonomy report suggests a form of means testing for the jury selection process which will provide a more accurate and professional selection process.
5. I believe that our proposal for Perverse Acquittal and jury research as stated above work hand in hand to provide a fair and balanced Justice system with the correct control measures in place.

Faculty of Advocates

The Faculty of Advocates clearly stated in their response that they did not support the petition for Perverse Acquittal as the Crown bears the onus of establishing guilt beyond reasonable doubt and the jury assess whether or not the evidence that has been led has met the required standard.

Here are a few reasons to support the assertion

1. If the Crown did not have to prove any guilt due to the accused admitting to a serious crime i.e. (murder) then how can the accused walk free from a court as the above statement says that the criminal justice system deals with serious criminal charges.
2. If the jury has failed to assess all the evidence presented during the course of the trial and have not been accurate or confident with their decisions then the wrong verdict will be delivered. The jury cannot always get it right as there may be occasions where they do not fully understand the following during the course of a trial i.e. Judges address to the jury, legal jargon, language barrier.
3. The proposal (Perverse Acquittal) and I emphasis is only for extreme cases where there is overwhelming evidence from the Crown and where the jury delivers the wrong verdict based upon all the evidence from the Crown and the Judges address to the jury.
4. The burden of proof does not solely lie with the Crown but the jury also has a duty to deliver the correct verdict based upon the evidence provided during the course of the trial, the jury are also required to listen to the judges guidance and when all that fails there must be a safeguard in place to ensure that fairness is delivered to the victim.
5. There may be cases where the Police and the Prosecuting authorities have exhausted every avenue to ensure a water tight case is presented before the courts, but everything is based upon the correct decision being delivered by the jury.

Sheriffs Association

The Sheriffs Association stated in their response the following: This petition before the Scottish Parliament arose following the death of Barry McLean. A jury acquitted his alleged assailant of murder. The Sheriffs' Association would oppose any such change in the current law. Another response was that the current test in Scots law is whether there is evidence, which if accepted would be sufficient for conviction, and does not depend on whether evidence was thought by the judge to be acceptable.

1. Why would the Sheriffs Association oppose a positive change as we live in an unsafe society more now than ever, Perverse Acquittal would not only fill a gap but provide judges with greater control only and I again emphasis in a very small percentage of trials where the jury verdict is beyond belief?
2. There may be occasions where there is overwhelming evidence and there is an admission of the crime which would be supported by the judge and would be delivered to the jury as part of the judges closing speech which will provide guidance to the jury from the judges perspective of the trial, but the jury may still deliver the wrong verdict, we must bear in mind that we are asking members of the public to make crucial life changing decisions without having any form of training, experience and most importantly guidance especially during the deliberation period.
3. There is clearly a strong objection within a highly controversial area and that there are arguments against interfering with the jury system which always weighs heavily with Judges, but we must accept that this proposal is a positive gap filler and it may be difficult to see it in working practice because it

has never been tried, tested or implemented. No one likes change but we need a safeguard in place for the Judges where the verdict is beyond belief and justice can be fairly delivered to victims.

4. The issue is definitely not about substituting the verdict of one person - the judge - for the verdict of 12 - the jury. That is a distortion. The verdict is brought in by the jury, never the judge. What we are arguing is that the judge should merely have the power, in exceptional cases, to refer the case to appeal, where the verdict may have been perverse. The appeal may be turned down by the court in which case the jury's verdict still stands. If the appeal succeeds, then the case is re-tried before another jury, so that at all times it is the jury that brings in the verdict on the evidence, not the judge. Our concern is with strong prosecution cases where there is overwhelming evidence of guilt, but the jury has perversely rejected it, so i am afraid that the Sheriffs Association have the wrong end of the stick here.

The Law Society

The Law Society stated in their response that proper research should be commissioned to determine the number of persons who sit on a jury and the majority for any verdict, this research should also capture the following.

1. SPICE has never conducted any research into Perverse Acquittal
2. How can our current justice system be satisfied that a jury has delivered the wrong verdict especially where there has been overwhelming evidence, so how can we state there has been a fair trial.
3. Jury selection criteria & selection process
4. Juror means testing
5. Language / Translators
6. Medical assessment for jurors i.e. Deafness, Competency, Understanding of Legal Terminology.
7. Young jurors influenced by mature jurors during the course of the trial due to limited life experience

The Lord President

The Lord President stated in his response that he was opposed to the idea that a trial judge should have the power to refer a jury verdict to the High Court where he/she considers the verdict to be perverse. Again the Perverse Acquittal would only apply in extreme cases where there is overwhelming evidence from the Crown. The Lord President also states that there would be no new evidence to warrant a re-trial which is true, but there may be overwhelming evidence that the jury has failed to assess during the deliberation period. The jury system is and always will be the cornerstone of our Criminal Justice System, the petition proposal is not intended to diminish the jury but to provide greater control measures and provide enhancement.

Please note the additional points below for consideration:

1. If there is clear evidence from the Crown to prove guilt and the jury fail to assess correctly and deliver the wrong verdict based upon the evidence provided then surely there should be a safe guard in place to prevent this from happening (Perverse Acquittal) which may also be the fourth element of the Double Jeopardy (Scotland) Act 2011 which can be implemented only in extreme and rare cases of Perverse Acquittal.
2. What has been proposed with the petition is protection for a low percentage of trials where the jury does get it wrong, by having this small gap complete there will be a water tight system to protect everyone and deliver fairness and ensure public confidence remains in place.

The Scottish Human Rights Commission

The Scottish Human Rights Commission state in their response that there is a number of human rights principles involved in petition 1562 which includes the protection of the public, fair trial and the rule of law. SHRC also state in their response that the rights of the victim and the accused must be respected in the criminal justice process as this helps to measure the victims. How are the deceased victims measured?

SHRC also state that the presumption of innocence must be equally upheld after acquittal as before the trial, should the same not apply to where the accused has been acquitted even though there has been an admission of the crime with overwhelming evidence.

In the interest of the public the current justice system clearly does have a small gap to fill which is public confidence, fairness and balance. The current jury system also has another gap to be filled which is support, as we know Police Scotland gather all the crime information/evidence for the case then the CPS build and test the case for the trial at immense costs to the tax payer.

1. Where a life has been taken should there not be additional control measures in place as the deceased cannot answer for themselves, so the case should be dealt with a fine tooth comb so to speak to ensure every avenue has been explored and the accused should be made to take the witness stand for their accountability and to prove their innocence.
2. How can a court/jury allow for example a perpetrator to confess and be charged with murder, then the Crown provides clear overwhelming evidence which is also supported by photographic evidence, main and independent witnesses to crystallise the case then the jury fails to assess correctly the outcome. The big question is has the jury fulfilled their role and responsibility to assess and deliver the correct verdict.
3. There should be an equal appeal process for both the victim and accused dependant on the outcome of the trial.

In Conclusion

I would like to request that the Petitions Committee ask the Scottish Government to consider the proposal for Perverse Acquittal to become a new piece of legislation within the Criminal Bill Act to be known as (Barry's Law) which will provide a new platform and control measures for our Criminal Justice System and also to continue with the research (Lord Bonomy) into the current jury system as both the Perverse Acquittal and the jury process improvements work in conjunction with each other.

I would like to thank you again for your assistance with this matter.

Yours Sincerely

Alan McLean