

## PE1562/A

### RESPONSE BY THE SHERIFFS' ASSOCIATION TO THE "PERVERSE ACQUITTAL" PETITION.

1. Section 97D of the Criminal Procedure (Scotland) Act 1995 states: "A judge has no power to direct the jury to return a not guilty verdict on any charge on the ground that no reasonable jury properly directed on the evidence could convict on the charge."
2. This Petition before the Scottish Parliament arose following the death of Barry McLean. A jury acquitted his alleged assailant of murder.
3. Barry McLean's father has brought a Petition calling on the Scottish Parliament "to urge the Scottish Government to consider the need for trial judges to have the power to refer jury verdicts to the High Court of Justiciary in the event the judge believes the verdict to be perverse" (e.g. Irrational, unsupported, unbelievable)
4. The Sheriffs' Association would oppose any such change in the current law.
5. Such a change, as presently mooted, would only apply to acquittals and not convictions.
6. The current law proceeds on the basis that the jury follows the trial judge's directions.
7. 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.
8. The background information to the Petition states that the judge would only refer a case if he or she thought that the verdict was not simply wrong but perverse. It is difficult to see how this could ever work in practice. In many ways it usurps the function of the jury which decides the facts and replaces the jury decision with the opinion of a judge. That decision is a subjective one. The finality of the jury decision is also placed in doubt. In the Association's opinion the proposal is completely unworkable and goes against the principle that the judge is the master of the law and the jury the master of the facts.
9. The current system of having a "no case to answer submission" at the end of the Crown case is an adequate safeguard against cases without sufficient evidence being considered by a jury. The background information provided with the Petition posits a situation where an irrational decision is returned by a jury "which

is completely unsupported due to the amount of evidence provided by the Crown". By that we assume that the jury reject the Crown case despite the evidence provided. What weight to give to evidence is the jury's province, not the judge's, and the Sheriffs' Association would not favour any change in the current position.

10. The major problem with a proposal such as this is that it substitutes the opinion of one person for the decision of a jury of fifteen. That is not acceptable and undermines our system of trial by jury. Additionally one would have to wonder what definition of "perverse" is likely to trigger a referral. Juries occasionally return verdicts which might not reflect the verdict which the presiding judge would have returned in a summary trial of the same case. Judges are usually able to identify and respect the reasons for divergence of view. There are disagreements within juries, giving rise to some verdicts being by a majority. The current system may not be perfect but to introduce this proposal, would, in the Associations' view, damage our criminal justice process.
11. There is currently a proposal before the Scottish Parliament in relation to the abolition of the requirement for corroboration in Scots Law. One of the issues raised there is the safeguard of a residual power for the judge not to allow a case, in which there is a technical sufficiency of evidence, to go to the jury for determination where there are serious questions as to the quality of that evidence and in which it can be argued that no reasonable jury could return a conviction. It would be premature to take any decision in relation to perverse verdicts before that matter has been resolved.

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Honorary Secretary  
Sheriffs' Association