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Piecing Together Puzzles: Complainers' Experiences of The Not Proven Verdict

Vanessa E. Munro,
Professor of Law, Warwick University

Acknowledgements

First and foremost, I am immensely grateful to everyone who agreed to speak with me about their experiences of the not proven verdict as part of this research. Their stories were often not easy ones to tell, and I hope they feel that I have represented them fairly. I am also much indebted to Sandy Brindley and Brenna Jessie, of Rape Crisis Scotland, for their support of this project. While the responsibility for the fieldwork and findings presented in this report lies solely with me, I am very grateful too to my collaborators on the Scottish mock jury study (James Chalmers & Fiona Leverick of University of Glasgow; and Rachel Ormston & Lorraine Murray of Ipsos MORI Scotland), discussions with whom provided context for this further work on complainers' experiences.

Background to, and Aims of, This Report

In 2019, the Scottish Government published a detailed report of the largest mock jury study conducted to date in the UK, and the first ever to be undertaken in Scotland. That study was completed by a team of 5 researchers, including Professor Vanessa Munro (the current author). Its aim was to consider the impact on deliberations of 3 unique features of the Scottish jury system - its size (15 members), ability to return verdicts by simple majority, and the availability of 3 verdicts (guilty, not guilty and not proven, the latter two of which have the identical effect of generating an acquittal). It explored deliberations within two factual trial scenarios - involving either a rape charge or a physical assault (with a plea of self-defence).

Findings in respect of those key research questions are set out in the project report, published at <https://www.gov.scot/publications/scottish-jury-research-findings-large-mock-jury-study-2/>. In addition, against a backdrop of longstanding concern regarding jurors' use of so-called 'rape myths' and the potentially disproportionate use of not proven as a verdict in rape cases in Scotland, Professors Chalmers, Leverick & Munro have further explored the substantive content of the rape trial deliberations [see - https://www.gla.ac.uk/media/Media_704446_smxx.pdf].

This report concerns itself with a separate (though related) strand of work, conducted independently by the current author. Its aim was to offer new insights into the ways in which complainers who received a not proven verdict understood and interpreted that decision in their case, and to explore the extent to which receipt of this verdict impacted, over time, on their capacity for 'closure' or their wider sense of 'justice'.

While it relies on a relatively small sample (10 one-to-one interviews and 1 focus group discussion involving five participants), and so clearly cannot purport to offer any generalisable findings, the qualitative data yielded through this fieldwork has generated rich and detailed experiential accounts across which a number of shared substantive themes were raised by participants.

The 'End Not Proven' campaign, spearheaded by Rape Crisis Scotland in conjunction with Miss M, has mobilised national debate regarding the future of this third verdict in the context of sexual offence trials. Those policy discussions continue in the wake of recent findings regarding (mock) jurors' interpretation and use of not proven. This account of the direct and human experiences of complainers (or surviving family members of a deceased victim) who received this verdict is intended to provide a further important contribution.

Data Collection & Analysis

10 detailed one-to-one semi-structured interviews were conducted with participants (all by phone or video-call) during February-March 2020. In addition, with the permission of the Scottish Government and Rape Crisis Scotland, as well as attendees, the author also participated in - and recorded - a focus group discussion, held at the end of January 2020, to which 5 survivors provided input regarding their experiences of making a complaint through the Scottish criminal justice process. 4 of the subsequent one-to-one interviews relied upon in this report were with participants who had also taken part in that focus group discussion. The remaining 6 participants were recruited either through pre-existing contacts, snowballing or a Rape Crisis Scotland tweet.

Interviews lasted approximately one hour, and the focus group lasted approximately 2 hours. All discussion was recorded, transcribed and then analysed using qualitative data analysis software (NVIVO), on the basis of an open and grounded thematic coding framework. Ethical approval to conduct the research was secured in advance from the University of Warwick Humanities and Social Science Research Ethics Committee.

Of the 11 individuals who participated in some capacity in this research (whether via interview, focus group discussion, or both), all but 1 was female. 9 had made allegations of rape (in some cases amongst other

offences), 1 had made allegations of physical assault within a domestic relationship, and 1 was a bereaved family member of a female victim of homicide. 9 had received not proven verdicts, and 1 had received a guilty verdict. The remaining participant - who contributed to the focus group but not to a follow-up interview - saw her case collapse at trial.

In respect of the rape allegations, these arose in a variety of contexts and involved a wide spectrum of types and levels of corroborating evidence. Cases ranged from sexual violence within intimate relationships, to assaults allegedly perpetrated by acquaintances at social gatherings, to attacks in public places. Complaints were supported - variously - by DNA evidence, CCTV footage, audio recordings of the incident, physical injuries inflicted upon the complainer, and text messages. In all except one case, the incident was a relatively recent one; the remaining case involved historical child abuse allegations (and was the only case to result in conviction in the sample). In two of the cases, the accused had been charged with sexual offences not only against the complainer who took part in the research, but against other family members (specifically, their sibling or child). 9 of the 10 verdicts were delivered by a jury (8 not proven, 1 guilty); in the assault charge, the not proven verdict was given by a judge in a specialist domestic abuse court.

Summary of Key Findings

- ▶ Participants were often unaware of, or unprepared by others for, the possibility that a not proven verdict might be returned in their case.
- ▶ Participants' immediate reactions to the verdict ranged from relief that the process was over or deflation at the feeling that it had been futile, to anger, frustration and confusion.
- ▶ Participants were often dissatisfied with the treatment and explanations offered by CJS officials after the verdict, and felt that they had not been well-communicated with throughout.
- ▶ Some participants took initial comfort in a not proven (c.f. not guilty) verdict, which they felt signified a level of belief by jurors. In the longer-term, however, this often translated into a mistrust of the justice system, which they felt had nonetheless failed to protect them.
- ▶ While sympathetic to the difficulties jurors faced in reaching a verdict, participants considered not proven to be an 'easy' option that allowed the jury to avoid making a decision; they felt it was open to manipulation by counsel and ought to be abolished.
- ▶ Though there was no consensus over whether to remove the jury from rape cases, all participants called for better informed and more accountable decision-making.

Preparation for a Not Proven Verdict

All of the participants reported that they had not felt, or been, prepared for a not proven verdict during the investigation and trial process.

Participant 6 noted that 'the process and the outcome (including the existence of a not proven verdict) wasn't explained to me at all' while Participant 2 remarked:

'I wasn't really expecting it. I didn't really think it was a possibility.'

Some reported that the existence of a third verdict had never been mentioned to them and that it was not something that they had been otherwise aware of, or at least they were not aware that it was potentially open to be used in a case such as theirs. As Participant 7 put it:

'I didn't even know that it existed, to be honest, because I've never been through the court system...I've never been in any trouble, none of my family has. So we were totally unaware of the court system, so seeing it come back with a not proven verdict, we were absolutely gob-smacked, like, what do you mean? We didn't even really know. And maybe that's ignorance on our part, but we didn't even know that that was a possibility.'

For others, though they had some vague, background familiarity with the existence of a not proven verdict in the Scottish criminal justice system, they felt they had been led to believe by actors within the process that it was not something that would be likely to apply in their case.

Immediate Reactions: Relief, Resignation, and Resistance

Perhaps unsurprisingly in light of that lack of preparedness for, and awareness of, a not proven verdict, the most common reactions expressed by participants - in the moment in which they received the decision - were either of confusion and anger at the verdict, or a more muted sense of relief and numbness at the fact that the trial, which had dominated their lives for extended periods and, for many, had been a process fraught with re-traumatisation, was finally over.

Though participants tended to position themselves in one or other of these categories in terms of their immediate reaction, it is to be expected that their emotions would have been complicated at this time, and these typologies of response are by no means mutually exclusive.

Participant 9 remarked that:

'the biggest overwhelming feeling I had when I left, if you call it a process...was I would never put myself through that again....It was actually so traumatic, the whole process in general, it was a massive eye-opener for me for why people don't come forward with things like this.'

Meanwhile, Participant 6 spoke of how:

'honestly, at that particular time, and the way that I was and the way that I was feeling, I felt relieved because I felt at that point it was all my fault....like my being a nuisance to everyone had ended, like I had stopped causing a fuss.'

For many participants who felt this way, it was also often tied to a sense that the difficult process they had undergone had been futile. Participant 2 reflected on how 'at first, it was just kind of indifferent and I'd waited a really long time for it just to be over', whilst Participant 7 spoke of how, in the immediate aftermath of receiving the verdict, she felt she had 'wasted her time', that 'you're just left...it feels very un-final, like in limbo....it just felt as if my whole life had been put in hold, in limbo, just like nothing; it was as if it was all just nothing'; and Participant 9 echoed this sense that:

'I just felt like the whole thing had been pointless in a way.'

At the same time, other participants were more immediately compelled to action. The return of a not proven verdict was interpreted by them as signalling that the jury had entertained at least a level of belief in the veracity of their account at trial (indeed, a significant number of participants were specifically advised by third parties, including criminal justice officials, that this was precisely how they ought to interpret and understand the verdict).

As Participant 4 put it, 'I know that some part of them believed me and that hurts... knowing that there are men and women on that jury that believed me just a little bit makes it so hard.' Similarly, Participant 1 remarked that:

'not proven is almost like a back-handed compliment...it's like they're trying to be nice by saying we kind of believe you, but I feel like that just makes it so much worse.'

For many complainers, this provoked a need to better understand what they felt it was that they could have done during the trial to 'tip' the balance to a conviction. Participant 1 spoke of how, while she 'really just wanted it to be over because it was really consuming for a long period of time,' with a not proven verdict, 'it's just not over' because the verdict proliferated more questions about what she could have done differently. Meanwhile, Participant 2 explained how 'what eats away at me every day is that not proven verdict' and how to make sense of it.

Both participants likened the trial to a 'test' - Participant 2 said it feels 'like you've failed a massive test' while Participant 1 said:

'it's like finding out you've failed a test with a 50% pass mark at 49%...I'd rather have failed it at 10 because it's easier...to say 'wow, they really didn't believe anything I said' but the fact that there's kind of, they've been able to pass on this message that 'we believed you a little bit', it's like, well, wait a minute, what more did you need from me?'

Reaching Out for Explanation

Many participants turned to criminal justice personnel who had been involved in their case in pursuit of such answers. At least half of the participants in this sample had made inquiries about accessing court transcripts, and a number had pursued meetings with the Crown Office or other criminal justice agents involved in their case, in an effort to have their questions addressed.

All who did so reported that they found this unsatisfactory, however; and many clearly continued to be confused about the meaning and implications of the verdict, with most participants asking the author at some point for clarification as to, for example, whether it could be taken into account in any future case against the accused.

Though criminal justice officials could apparently have done more in these conversations to clarify confusion regarding the implications of the verdict, it would have been impossible for them - in the current system - to provide the sort of clarity being asked of them in respect of why the jury had returned a not proven verdict.

The Contempt of Court Act 1981 prohibits asking Scottish jurors to provide an account of their decision-making, preserving a deliberative black hole at the centre of our criminal justice process. Any responses provided by criminal justice officials would thus be based only on conjecture.

At some level, complainers seemed to appreciate this. As Participant 2 put it:

it is a process of 'piecing together puzzles that don't even exist...I am trying to, like a detective, just trying to cover every single possibility, every single outcome, every single thought, and does that add up - it's like an equation that you don't know the answer to and you've only got part of the equation.'

Nonetheless, it was clear that many participants perceived officials to be obstructive or unsympathetic in responding to their questions, or to show obvious discomfort in engaging in the conversation with them at all. They found this especially difficult to cope with.

Participant 1 - who relayed that, in the run up to her trial, the Procurator Fiscal had been so confident of securing a conviction in the case that she had 'almost laughed' when the complainer had expressed concern about how things would play out - recounted how, after receiving a not proven verdict, 'I was angry, I was just on this crazy, blind rage, phoning up solicitors, groups and charities, demanding somebody explained to me how something

like this could have happened.' She secured a meeting with the Procurator Fiscal and Advocate Depute but, on reflection, said that:

'I actually wish I didn't go because I just felt like they were very condescending...I was bombarding them with questions but they felt like very political answers.'

In regard to the prosecutor who had previously dismissed her concerns regarding securing a conviction, Participant 1 intimated a heightened sense of betrayal, remarking that 'it was almost as if there was an eject button in that room, she would have pressed it to get out.'

Other participants recounted similarly underwhelming experiences of engaging with criminal justice officials after the verdict. Participant 7 spoke of how 'even the Fiscal...just kept saying, well, not proven means that this is the consequence of not proven. I knew what the consequence was. I knew that he was walking, I knew that he was off the register, but what is not proven, what is it?'. Participant 8 recounted that she was told by a senior criminal justice official that:

'no one really knows what not proven means and it's quite misunderstood by different organisations, so it is not very helpful for me to give you a different interpretation of what not proven means.'

It is undoubtedly true that it is difficult - as things currently stand - to provide a clear and authoritative account of what the not proven verdict means, given the paucity of formal definition to distinguish it from not guilty. It is a question of emphasis, and so perhaps unsurprising that views differ - amongst various actors in the criminal justice process - regarding when it would be appropriate in any given case. But this opacity of response from officials was extremely difficult for participants to cope with.

Moreover, it underscored a wider impression that they had received throughout the justice process, that their perspectives had limited value. Participant 10 felt that the support received - both during and at the end of the process - was 'absolutely negligible', while Participant 7 observed:

'at the High Court, they just leave you: nobody explains what it means and it's as if you're invisible, or you don't matter.'

Communication and Process Participation

This was reflective of a broader experience of not feeling appropriately involved in, or communicated with about, investigation and trial proceedings.

Several participants recounted having to chase responses from different agencies and officials, and in one case the complainer did not even receive a call from the liaison officer to advise of the not proven verdict, hearing about it in the first instance via an email apology sent by the police officer in her case.

Overall, communication with complainers was described as 'exceptionally poor' (Participant 5) and 'just pitiful' (Participant 4). Respondents spoke of the justice process as involving long 'periods of emptiness when you are not being told much' (Participant 5) and as 'a very isolating process where you just...you had to fight them every step of the way for any bit of information' (Participant 4). Indeed, Participant 5 likened it:

'you really do just have to spill your beans and then slap a blindfold on and just be led the whole way. And it's really, really not good enough.'

A number of the participants clearly had not been informed prior to the trial about matters as fundamental as what charges were going to be brought against the accused. Some also spoke of having been actively dissuaded from attending the trial, other than during their testimony, particularly where they had used special measures, for fear that 'it would look bad to the jury' (Participant 8). Some heeded this advice but felt the alienating effects - for example, spending their days in cafes near the court building nonetheless. Others disregarded it and attended, especially for the closing speeches and summaries, but some recounted how they felt awkward 'and just sat at the side' (Participant 2) or feared they had 'really annoyed the judge' in doing so, since he then directed the jury not to pay heed to their existence in the courtroom (Participant 1).

Thus, participants' contributions speak to wider concerns about the sufficiency of support for this constituency through the justice process, and the paucity of resources available in the aftermath of a trial where, whatever the verdict, complainers often feel exposed, vulnerable, confused and isolated. They also reinforce the importance of maintaining regular, respectful and effective communication with complainers, and evidence the ongoing value that many complainers would place on having a more formal standing within the investigation and trial process above and beyond their status as a witness.

Longer-Term Reactions: A Tale of Two Acquittals

While participants spoke most often about a sense of frustration / anger, or relief / numbness, in the immediate aftermath of receiving a not proven verdict, it was clear that some did feel that - in this initial period - this was still an easier verdict to receive than a not guilty might have been.

Participant 9, for example, recounted how 'initially' it gave her a sense that 'I got something from it'. She spoke of how:

'momentarily, it did help in the sense that there is a bit more belief there in you, that we believed you.'

Certainly not all participants felt this way, but for those who did, it was clear that this sense of belief proved to be of comfort only for a relatively short period of time. As Participant 9 put it, 'it was only me saying not proven and him [the accused] more saying acquitted...it didn't really make any difference because his narrative was still stronger' and:

'at the end of the day, it actually meant nothing because it had no impact...on his life at all.'

Participants who retained connections to the accused, either because he remained in the local community, was a family member or co-parent, or had shared acquaintances in common, were confronted over time by evidence of the accused resuming 'normal' life. Meanwhile, those who had severed connections were left to speculate on his future, but were confident that it was unlikely that he had experienced any stigma or consequence. Participant 1 commented, 'that's another question that hangs over my head. Is he suffering any consequences by having a not proven verdict....as far as I am aware, he's not...he is free as a bird.'

Meanwhile, Participant 6 noted 'he walks free, free to do it again.... he can be whatever he wants'; Participant 4 reflected that 'there is no stigma left on these people, absolutely nothing' and Participant 7 maintained that, if the jury believe they are sending a message to the accused by returning not proven rather than not guilty, they are wrong:

'it sends him no message, no message, he walked straight back into his job, straight back into his life, and he is driving about as if he has done nothing wrong.'

This left participants increasingly of the view that a not proven verdict is 'just meaningless...it's sort of limbo' and the only reason to think that a not guilty would feel worse is if 'you're clinging on to a false hope that not proven means something' (Participant 9).

Indeed, they were uniformly keen to insist that any initial comfort that could have been taken from the connotation that they were partially believed by the jury was outstripped over time by an emerging disappointment and lack of faith in a justice process that, on the one hand tokened belief that an assault took place against them, but on the other nonetheless failed to hold an attacker accountable.

'With the not proven verdict, people are saying, well it is better to receive that because you get an acknowledgment that the jury believed you, but I would argue that no, not really, because at least if I thought that everyone was wildly not believing...I would at least be able to sort of trust life...I know what happened...Being told that it did, but that no one is going to get convicted for it just leaves me thinking what sort of society do you live in.'

(Participant 2).

This complainer felt she had witnessed the law 'being manipulated so that people didn't have to make a decision' and this made her 'feel very unsafe' in the world, with 'no faith in the justice system.'

Likewise, Participant 7 observed that the verdict 'made the system look hollow,' and Participant 8 remarked that 'the not proven verdict probably ruined my life more than the rape itself' because it had caused her to 'lose trust in services and organisations, and a court system that's supposed to uphold the law'.

Participant 3 reflected on how agonizingly difficult this had been to deal with when the perceived denial of responsibility to protect extended not only to herself but to her child, and Participant 7 observed that - following her experience - 'if my daughter came to me and said she'd been raped, there is absolutely no way in this world I'd get her to report it.'

In this sense, the lasting legacy of the not proven verdict for participants stretched beyond the specifics of their trial or underlying incident. The sense of confusion that it generated - coupled with a perception that they were not adequately supported in the aftermath by criminal justice agencies, and the difficulty over time of reconciling an inference (that they were often encouraged by actors within that process to make) that the jury at least partially

believed their account with a decision nonetheless to acquit the accused without consequence or stigma - precipitated a more fundamental disillusionment with the justice process. Indeed, for many, the outcome of that decision caused them to lose faith in human nature and society more broadly.

It is impossible, of course, to assess the counter-factual that lies behind participants' contributions here. They did not receive a not guilty verdict, and so cannot know for certain the extent to which they may have reacted differently to that outcome, nor whether it would have similarly had a lasting and damaging impact on their faith in the justice process. What can be said, however, is that participants were consistent in their views both that not proven 'leaves you in limbo and leaves you powerless' (Participant 7) and that as a verdict it is:

'outmoded, outdated and unnecessary.'
(Participant 10).

Moreover, contrary to what might often be assumed regarding the jury 'thinking they're giving something to a survivor' with a not proven verdict, participants were consistently of the view that 'they're actually making it worse...really it's like a slap in the face' (Participant 8).

Whether or not that slap would have been any more or less painful, or any easier or harder to move beyond, if it had come in the form of a not guilty verdict, there was certainly a sense across this sample of interviews that:

'a guilty and a not guilty make the system look solid and you believe in a system that's working. Even if it is a not guilty, the system is there and it has done its job. It's not the result you want, but it is there, it is solid, it has got a framework. But I think the not proven...doesn't even feel as if it is part of a system, it feels airy-fairy, it's nonsense...I have no faith in a not proven verdict at all.'

(Participant 7).

Difficult Decisions, and An Easy Way Out for Jurors

None of this should be thought to suggest that participants did not appreciate the difficulty of the task faced by jurors - particularly in sexual offence trials. Indeed, they were often alert to it, and perceived this to be key in explaining their verdict choices:

'this is why people hate going on a jury... the deciding of someone's fate, it is always a hard decision...it is horrible, but it rests on your shoulders to decide.'

(Participant 1).

Some participants even spoke of 'feeling sorry' for jurors and court officials in sexual offence cases because 'it can't be easy for them to listen to details like that....it's difficult for them, and I get that' (Participant 7).

Despite this sympathy for jurors' predicament, it was also widely felt by participants that the existence of the not proven verdict made it possible for them to be 'manipulated' (Participant 2) by defence counsel: already uncomfortable with the weight of the decision resting on their shoulders, jury members were perceived as being steered towards a not proven verdict by tactics of 'smudging the lines' in order to accentuate both the potential for doubt and need for certainty. This, interviewees suggested, allowed jurors to abdicate responsibility and 'ease their conscience' by 'standing on the side lines' or 'sitting on the fence' (Participant 7).

Contrary to the notion that it offers some sort of solace to complainers by connoting a level of belief, or sending a message of suspicion or stigma to the accused, which was roundly disputed by participants, interviewees were broadly of the view that the primary effect of the not proven verdict was thus to 'protect the people on the jury who are scared to make the decision' (Participant 7).

'It allows them permission to sleep at night because they haven't come down on the victim and they haven't come down on the defendant, they've just sat in the middle, sat on the fence, but it's damaging because it leaves the victim with this cloud.'

(Participant 7).

Another complainer described it as a 'get out of jail card' that 'gives the jury the option to simply not make a decision'. As she went on to explain, 'you put people in a really high stress situation, force them to make a decision and then tell them they don't have to, they don't have to leave worrying that they have done the wrong thing. I'm not saying that, you know, there is a chance that I could take it in their shoes if I was offered it, but that is not how the law is supposed to work' (Participant 2).

This sentiment was also expressed by other participants, leading to the common conclusion that, while it may be an understandable human impulse for jurors to return a not proven verdict in order to, in their minds, avoid a more definitive decision, it 'defeats the point of having a jury' (Participant 1) and undermines the justice process itself.

As one interviewee put it, 'you just need a decision' and having not proven as 'an easy cop-out' is 'not what justice is about, whether you are the attacker or the survivor' (Participant 6). To the contrary, it was suggested that if it was removed:

jurors may 'look at the evidence with more of an open mind and look at things more clearly, instead of having this cushion, this safety net...it is something that allows them to make their decision a bit more lightly than they might do if it was off the table, if it was guilty or not guilty, they might look at it more authentically.'

(Participant 7).

Similarly, Participant 8 commented: 'if they actually had to make this cold decision between guilty and not guilty, I would hope...that it might mean that they would think about it a bit more.'

In this respect, it is important to be clear that the majority of participants were not suggesting that removal of the not proven option would inevitably, in and of itself, have meant that the jury would have returned a conviction against the accused in their cases. Certainly, there were some participants who felt extremely confident, given the strength of the evidence that they felt had been put forward by the Crown, that - if not proven was not available - the jury would have opted for guilty over not guilty. However, there were others who continued to contemplate the possibility that jurors in their case may still have returned an acquittal, on the basis that they lacked sufficient certainty of guilt. These interviewees felt they would nonetheless have been better able to cope with an acquittal in that circumstance: 'the result might have been not guilty all the same for me, they might still have let him walk, but at least then I would have known....I would have thought, right, so the jury was not just being lazy, it has not just been a get-out' (Participant 7). Another put it - 'if it was a slim chance that it might mean they would think about it a bit more, I would risk that any day, so that another survivor might get a guilty...I would much rather take a not guilty, which is essentially what a not proven means, in the hopes that someone else on the jury might actually think about what these two verdicts mean' (Participant 8).

Beyond Not Proven: What Future for the Jury?

Though advocating in this way for removal of the not proven verdict, it was clear that for many participants this was not to be seen as the end of the process of improving justice outcomes. Additional steps were needed to improve decision-making, particularly in rape cases.

For many, this entailed getting rid of the jury and moving instead to judge only (or other professional) determinations. As Participant 5 put it:

'I don't think we should have juries. They're too biased, the defence in particular plays to them.'

These views were not universally shared, however. Some interviewees also emphasised the importance of being judged by a jury of peers, whilst others felt unsure that they could have any greater confidence necessarily in judicial decision-making.

Interestingly, this latter concern was raised particularly by Participant 9, who had received her not proven verdict from a judge, rather than a jury: she recounted that, during the hearing, she had been 'shouted at' by the judge, who then told counsel to 'control' her as a witness, even though 'I wasn't being loud or mouthy, I was just talking about something apparently I wasn't supposed to talk about, which was the lead up to the incident'. She described this as a 'horrible experience' that reinforced the controlling dynamics of abuse by her partner which had precipitated the case. It left her feeling 'intimidated' by the judge and with a 'mistrust' of his role in the process.

Whatever participants' views regarding the ultimate desirability of removing the jury, there was a clear consensus that - for as long as they are to remain as the primary arbiters of fact in criminal cases - more steps needed to be taken to assist and educate jurors, so that they would be better able to perform their deliberative role fairly, courageously and effectively. Participant 6 remarked, for example, that as things stand:

'the jurors don't stand a chance in making an educated decision because they are so full of prejudice and societal behaviours that completely override their influences. Society tells you this is what a rape victim should look like, this is how a rape should happen, and anything that's different from that definitely needs scrutiny and definitely needs doubt...it's not their fault, it's about the system that they are in.'

Strong support was also expressed for the idea that juries should be required to give brief reasons for their decisions. Further, there were suggestions raised about requiring jurors to deliberate for a minimum period, typically raised by participants who had seen juries return with verdicts in a very short timescale in their cases - often within a couple of hours - which they felt underscored suspicion that the jury had 'opted out' of making a decision by selecting a not proven verdict.

'I gave up three years of my life for them to take less time than I do to get ready to go to work in the morning to come up with 'we didn't make a decision'. And I think that if they had sat, if I had been waiting there for like a day and a half, I would have at least known that they argued it and thought about it well, but that just reiterated to me the fact that they were confused, manipulated, and then told, look, you don't have to choose.'

(Participant 2).

Conclusions and Further Implications

Participants were clear that there were a number of challenges posed to complainers - and particularly complainers of sexual offences - within the existing Scottish criminal justice system. These included the adequacy of communications throughout the process, treatment by counsel during trial, and paucity of support in the aftermath of a verdict, as well as concerns associated with the process of jury decision-making and jurors' use of the not proven verdict in particular.

While interviewees understood it was 'a massive responsibility' (Participant 7) and 'heavy moral duty' (Participant 10) placed on the shoulders of the jury, they felt certain that jurors were currently ill-equipped for this task in rape trials and that the availability of a not proven verdict enabled them - perhaps 'subconsciously, at the back of their mind' (Participant 7) - to look at the evidence differently than they would if they knew that they would be required at the end to reach a more definitive verdict without any countervailing connotations communicated to the trial parties.

In a context in which we cannot ask jurors in real cases about the reasons for their decisions, it remains difficult, of course, to have full clarity: but evidence from the recent mock jury research in Scotland does appear to validate many of the participants' concerns here. Jurors in the simulation study did often use the not proven verdict as a 'compromise' or felt it was appropriate in situations where they suspected the accused was guilty but they could not be sufficiently sure of guilt (where sufficiency was interpreted as requiring 100% certainty or something close thereto). Moreover, jurors often suggested that a not proven verdict, as distinct from not guilty, might serve a useful function in signalling suspicion towards the accused or indicating to the complainer that they believed, at least to some degree, her account of the incident; and there was evidence of mock jurors referring to it as a cushion against the need to make a more stark decision.

What the narratives provided by the participants in the present study make clear, however, is that whatever messages jurors might believe they are communicating to trial parties through the use of a not proven verdict, it is far from certain that they are being received in any meaningful way by the accused and there is little reason to think that - other than in the very immediate aftermath perhaps - they are appreciated by, or provide any solace to, complainers. To the contrary, to the extent that the verdict communicates a belief in complainers' accounts, it only serves in the longer term to corrode their faith in the justice process more broadly; indeed, their faith in a world in which people might believe they have been victimised but nonetheless refuse to provide them with formal recognition, redress or a meaningful mechanism for protection.

In a very real sense, then, participants in this study maintained that the verdict causes more harm than good. As Participant 7 put it, while in the minds of jurors, it might 'put a wee plaster on the wound, it doesn't stitch the wound shut, it doesn't repair it;' and while it may help comfort jurors to think that is ok because 'the wound is not my responsibility', actually when you're in that courtroom as a juror, 'it is your responsibility, because it is my life and it is a defendant's life.'

