

Problems with verdicts

1. On occasion, the verdict delivered by the jury will raise a problem. The verdict might be ambiguous or inconsistent in its own terms or when considered in light of the verdict on another charge. Alternatively, the verdict might be one which was not available to the jury in the particular circumstances of the case. Or it may simply be that, in the course of the verdict being delivered, confusion or error becomes apparent (as happened in [*Cameron v HM Advocate* 1999 SCCR 476](#), and in [*Blackwood v HM Advocate* \[2016\] HCJAC 23, 2016 SCL 430](#)). In such situations the trial judge has a duty to address the issue to ensure that the jury reaches a verdict which is competent, unambiguous and which accurately reflects the decision of the jury as a whole ([*Cameron*](#)). The duty is summarised in Renton and Brown at [18.89](#).

“The judge has a duty to ensure that the jury’s verdict is not inconsistent or incompetent, and that there is no confusion among the jurors as to what the verdict is. When, therefore, the foreman announces a verdict which is incompetent, inconsistent, or contrary to the judge’s directions either in respect of one charge or one accused, or when seen in the context of other verdicts on an indictment where there is more than one charge or accused, or where the result of deletions made by the jury is that the charge is irrelevant and/or lacking in specification, or where the reaction of other jurors to what the foreman says suggests that they do not agree with it, the judge should take personal charge of the matter and do what is necessary to clarify the verdict or the jury’s intention before the verdict is recorded. This may or may not involve his giving them further directions or inviting them to retire to reconsider their verdict.”

It is important, therefore, to be alert to situations in which these requirements are not met and, when they arise, to consider what, if any, action is required.

2. Inconsistent or ambiguous verdicts can result from a number of situations. Particular problems can arise where the jury returns a guilty verdict which is inconsistent with the narrative of the charge. That can happen where the jury makes deletions which leave insufficient specification of how the crime was committed (see: [*Took v HM Advocate* 1998 SLT 425](#); [*Glover v HM Advocate* \[2013\] HCJAC 143, 2014 SCCR 68](#); and [*Goldie v HM Advocate* \[2020\] HCJAC 9, 2020 JC 164](#)). In that situation, the basis for the conviction will be unclear (potentially rendering the trial

unfair in terms of Article 6 of the ECHR which requires that the accused and public be able to understand the verdict: [Taxquet v Belgium \(2012\) 54 EHRR 26](#)). and, if the deletions were accurately pronounced by the spokesperson, it may be that an acquittal ought to have followed. In [Goldie](#) (above) (see also [Kerr v HM Advocate 1992 SLT 1031](#), below). the appellant was found guilty of murder but under deletion of the act which, on the evidence, had caused death (a push). On appeal, it was held that the basis of the conviction could not reasonably be discerned from what remained of the libel, and that the judge ought to have directed the jury further and invited them to reconsider their verdict (see also: [Took v HM Advocate](#), above).

3. Problems can also arise where the jury returns a verdict which was not open to it in the circumstances of the case. That situation is sometimes encountered in a Moorov case in which the jury returns inconsistent verdicts on two mutually dependent charges. In [Whyte v HM Advocate 2000 SLT 544](#) the jury sought advice on their “dissimilar verdicts” in a question to the trial judge. Having confirmed that the jury had not reached a final verdict, the trial judge allowed deliberations to continue under further direction. That approach was approved on appeal notwithstanding the fact that convictions were ultimately returned on both charges.

The position in [Whyte](#) was distinguished from that in which a jury has reached a final verdict which results in an acquittal on one Moorov charge and a conviction on the other. In such a case, [SS v HM Advocate \[2023\] HCJAC 48, 2024 JC 113](#), the appeal court determined that, by necessary implication, the jury had rejected the evidence of one complainer and that an acquittal on both charges should have been recorded by the court when it was clear that the jury had intended to deliver their final verdict. The court noted that in [Whyte](#), the jury had indicated to the judge that they had not concluded their deliberations, so there was no final verdict determined upon. In those circumstances it was a proper course of action to give the jury further directions and ask if they wished to deliberate further, which they did.

In [SS](#), the court approved the approach taken in [Kerr v HM Advocate](#) which was not a Moorov case but concerned a jury which had voted: 7 for guilty; 4 for not proven; and 4 for not guilty. It was held in [Kerr](#) that the jury should not have been asked to continue its deliberations when, in fact, their decision had been reached and the only question arising was the effect of that decision.

As the court ultimately explained in [SS](#):

"[25] The necessary implication of the verdict initially reported by the jury was that they had considered the complainer on charges 4 and 5 to be credible and reliable, but had not been able to reach such a conclusion regarding the other complainers. A correct application of the doctrine of mutual corroboration to that factual finding must inevitably be an acquittal. The verdict was not, as the Advocate depute submitted, "ambiguous"; the legal effect of the verdict which the jury indicated was clear, as in *Kerr*, and the verdict should simply have been recorded as an acquittal. We are satisfied that there has been a miscarriage of justice and the appeal must succeed."

4. It may be that an inconsistency is disclosed by a unanimous conviction on one charge and a majority conviction on the other, suggesting that one or more of the jury did not understand, or follow, the judge's direction. In that situation, no action need be taken on the basis that at least a majority of the jurors must have accepted the evidence of both complainers as credible and reliable ([HJL v HM Advocate 2003 SCCR 120](#); and [Goldie's Legal Representative v HM Advocate \[2012\] HCJAC 142, 2012 SCCR 783](#)).

5. Such problems are not confined to *Moorov* cases. In [White v HM Advocate 1990 JC 33](#) the jury was directed to treat charges of possession of controlled drugs, and possession with intent to supply, as alternatives. The jury convicted on both charges. On appeal, the charges relating to simple possession were quashed. It was held that the jury ought to have been invited to reconsider their verdict; it was not sufficient that the Crown had agreed not to move for sentence. And in [Glover v HM Advocate](#) where two accused were charged, inter alia, with engaging in sexual contact with one another, it was held that it did not make sense for the jury to have convicted one accused and acquitted the other. In respect of that and other problems with the verdict the court observed the sheriff's failure to take action at the time by, for instance, querying the verdict with the jury and inviting submissions from parties.

6. In [Blackwood v HM Advocate](#), which involved a single charge of assault and robbery, the jury was directed that alternative verdicts of assault or theft were available to them. The jury returned a verdict of guilty of "assault and theft". The sheriff declined to accept the verdict and, after further direction, the jury convicted the appellant of assault and robbery. On appeal, it was held that the sheriff had taken the correct approach by viewing the event, as it was libelled, as a single episode and declining to accept the jury's initial verdict.

7. With these authorities in mind, it is clear that when deciding whether to accept a verdict, it is necessary to assess it in the context of the case as it has been presented, as well as the judge's directions (see [*Cameron v HM Advocate*](#) in which an acquittal on one charge necessitated an acquittal on a second charge), and the verdicts on any other charges to which there is an inextricable link. A verdict which appears to be competent in its own terms may not be when viewed in the context of the case as a whole.

7.1. Special care must be taken when alternative verdicts (implied or expressed) are available. Judges should ensure that the clerk is clear on the manner in which the verdict is to be taken from the jury. The particular approach may depend on the circumstances of the case. However, it is vital to ensure that the verdict is taken in a way which does not prevent the jury from returning a verdict on an alternative charge open to it.

8. Where a problem with a verdict is identified, the following approach might be drawn from the authorities:

- i. any problem must be addressed before the verdict is recorded ([*McGarry v HM Advocate* 1959 JC 30](#); [*McGeary v HM Advocate* 1991 JC 54](#); [*Cameron v HM Advocate*](#); [*Amiri v HM Advocate*](#) (Unreported [2009] HCJAC Appeal No: XC845/06));
- ii. before deciding how to proceed, it may assist to hear parties on the issue;
- iii. in the first instance it may be prudent to clarify the terms of the verdict with the spokesperson to ensure that the problem is not simply an error of communication;
- iv. in the event of doubt, it should be established whether the jury has concluded its deliberations and reached a final verdict;
- v. in some cases it may be sufficient for the judge to direct the jury on the terms in which the verdict is to be recorded, but only where the jury's intention is clear and unambiguous;
- vi. in a situation, as in [*SS*](#), in which the jury evidently intended inconsistent Moorov verdicts which they announced to be their final verdicts, the court should record a verdict of acquittal on the charges featuring both complainers rather than inviting the jury to resume deliberations after further direction;

- vii. where the verdict is ambiguous, inconsistent or contrary to the charge, it will usually be necessary to explain the problem to the jury and to invite them to continue their deliberations under further direction; and
- viii. in such circumstances, care should be taken to avoid influencing the jury in any way.

Save in clear cases, such as [Kerr](#) and [SS](#), there will not necessarily be a miscarriage of justice if, after further direction, the jury returns a verdict of guilty on a charge in respect of which an intention to acquit was initially expressed, at least where the further direction was required to address an incompetent or ambiguous verdict ([Whyte v HM Advocate](#); and [Blackwood v HM Advocate](#)). The position may be different where the jury is given an opportunity to reconsider after having concluded its deliberation and reached a competent verdict; see [Kerr v HM Advocate](#)).