

Verdicts: concluding remarks

Law

1. It has long been the practice in Scotland to provide jurors with the means of taking notes and the value of at least some of them doing so seems obvious, particularly in longer trials. A review of evidence available world-wide supported the validity of this assumption ("[*Methods of Conveying Information to Jurors: An Evidence Review*](#)," Chalmers and Leverick April 2018). Judges may consider it useful to encourage jurors to take and review notes of the evidence.

Judges should also encourage the jury chair to ensure that all jurors have the opportunity to have their say in jury discussions generally.

Some suggested wording has been added to the specimen direction which follows.

2. The wording of the specimen direction was not changed when written directions were introduced. All jurors will now have those directions in writing and will have heard them from the judge or sheriff at the start of the trial. Particularly in a straightforward case, a judge may wish to tailor just how much of it is repeated in closing remarks.

3. It is not possible to propose closing remarks which will fit all situations. It will not always be correct to direct that believing the accused's evidence leads to acquittal. An obvious example is self-defence where it will be for the jury to decide if the accused's version of events meets the tests for self-defence. Another is a special defence of incrimination because in some situations, notably concert and concern in supplying drugs, evidence apt to incriminate someone else may not lead to acquittal at all. Where there are multiple accused and multiple charges then further adjustment will be required.

4. Adjustment may be required if there are alternative verdicts. What a judge might say may vary according to whether the defence invite conviction of the lesser charge or whether there is an alternative which the judge considers ought to be made available.

5. Care will always be needed in framing the requisite direction on explaining the requirement for a majority.

If the alternatives are murder and culpable homicide then if the jury were voting 7 for acquittal, 4 for guilty of murder and 4 for guilty of culpable homicide then the proper verdict would be guilty of culpable homicide. Unless there is a question disclosing voting intentions, the judge cannot know how the voting may be breaking down. Carefully crafted directions can cater for such situations. A specimen is offered.

6. It will always be incumbent on the individual sheriff or judge to ensure that their directions on closing remarks and guidance on verdicts are apt to the particular case.

7. Where alternative verdicts are open to the jury, judges should ensure that the clerk is clear on the manner in which the verdict is to be taken from the jury. Clear communication with the clerk is essential. 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.

See also:

THE VERDICTS OPEN TO THE JURY

VERDICTS MAY BE UNANIMOUS OR BY MAJORITY

ALTERNATIVE VERDICTS

DELETIONS FROM A CHARGE

Possible form of direction on verdicts: concluding remarks

[Except in case of insanity]

Let me draw this together for you members of the jury.

Your task

You should consider all of the admissible evidence in the case. It is for you, the jury, to assess the quality, strength and effect of the evidence and decide [in relation to each accused] whether the Crown has proved, beyond reasonable doubt, the guilt of the/that accused on [the charge / each of the charges] the/that accused faces. It is your decision to make.

Crown

You should consider all of the evidence founded on by the Advocate Depute / Procurator Fiscal and the points made in his/her/their speech.

[For the various reasons he/she/they gave you, the Advocate Depute / Procurator Fiscal asks you to reject any part of the evidence given by the accused which exculpates him/her/them.]

The Advocate Depute / Procurator Fiscal relies on all of the admissible evidence in the case, but particularly that identified in his/her/their speech, and invites you to find the/each accused guilty [of each charge he/she/they face(s)].

Defence

You should consider:

[the evidence of the accused; and]

all the evidence founded on, and the points made by, [the defence] in his/her/their speech(es).

[I have mentioned some of the points made but you must consider all of them (unless I have directed you to the contrary).]

General

You have heard the evidence in the case and I can tell you that there is sufficient evidence in law, if you choose to accept it, and if you draw the necessary inferences from it, for it to be open to you to find [each of] the accused guilty [on each charge]. It is open to you to find [each of] the accused not guilty or not proven [on any charge].

[It is open to you to acquit any or all of the accused. It is open to you to find some of them guilty and acquit the other or others.]

It is your decision what conclusion you reach.

If [the evidence of the/an accused, or] any evidence in the case, or the case as a whole leaves you in reasonable doubt of the guilt of the/an accused [on a charge], you must acquit the/that accused [of that charge].

On the other hand, if you are satisfied of the/an accused's guilt [on a charge] beyond reasonable doubt, your duty is to return a verdict of guilty [for that accused] [on that charge].

Where there are multiple charges

You must return a separate verdict [for each accused] on each charge.

Verdicts

There are three verdicts you can return on any charge:

- guilty,
- not guilty, or
- not proven.

Not guilty and not proven are verdicts of acquittal and have exactly the same effect. An accused acquitted of a charge can not be prosecuted again on that charge, save in exceptional circumstances, and it makes no difference whether the acquittal verdict is not guilty or not proven. There is no practical difference between verdicts of not guilty and not proven.

It is not necessary that your verdict is unanimous, it can be by a majority. But for any verdict of guilty, there must be at least eight of you in favour of that guilty verdict.

Before you can find the/an accused guilty [of a charge], there must be at least 8 votes for guilty.

Where an alternative charge is to be considered by the jury

[One or more of the following directions should be given as appropriate:]

- Where the jury has a choice of guilty verdicts

[This direction will be appropriate where a verdict of guilty on the main charge necessarily implies a finding of guilt in respect of the alternative charge. In that situation, votes for guilty on the main charge can, if necessary, be counted as votes for guilty on the alternative charge. This direction will be appropriate, for example, in cases of murder/culpable homicide, or dangerous/careless driving]

On charge [x] there are different possible guilty verdicts.

The/an accused could be guilty of [offence A], or [offence B].

[Where conviction on an alternative charge is sought by the defence: The Crown asks you to find the accused guilty of [offence A]. The defence say you should return a verdict of guilty of [offence B]. So, in practical terms, your verdict on this charge will be guilty of one or the other of those offences. An acquittal would not be open to you.]

Before you could find the/an accused guilty of [offence A], there must be at least 8 votes for guilty of [offence A].

Before you could find the/an accused guilty of [offence B] the combined total of any votes for guilty of [offence B] and any votes for guilty of [offence A] would need to be at least 8.

- ***Where the alternative charge arises only on acquittal of the main charge:***

[This direction will be appropriate where votes for guilty on the main charge can not be counted as votes for guilty on the alternative charge. In that situation, the jury ought to consider the main charge first, and consider the alternative charge only in the event of acquittal of the main charge.]

On charge [x] there are different possible guilty verdicts.

The/an accused could be guilty of [offence A], or of [offence B].

You should first consider [offence A]. If your verdict is guilty of [offence A], then that is the end of the matter and you need not consider [offence B]. However, if your verdict on the [offence A] is not guilty or not proven, you should then consider [offence B] and return a verdict on that offence.

[Where conviction on an alternative charge is sought by the defence: The Crown asks you to find the accused guilty of [offence A]. The defence say you should return a verdict of guilty on [offence B]. So, in practical terms, your verdict on this charge will be guilty of one or the other of those offences. An acquittal would not be open to you.]

Where two charges arise from the same circumstances

You will have noted that charge [x] and charge [y] are said to arise from exactly the same circumstances. In law, you cannot convict a person of two different charges which are based on exactly the same set of facts. That would not be fair. So, if you are finding the accused guilty of these charges, you have to choose between them, and convict the accused of one charge and acquit of the other.

Where deletions might be made

If your verdict is guilty, you could delete any part of the charge not proved to your satisfaction, but what is left must amount to the crime, and describe how it was carried out.

Questions

If the manner in which you are voting, or considering voting, gives rise to any doubt or difficulty in identifying the correct verdict [in relation to an accused], then you can ask for further directions from the court..

Deliberations

When you start to consider your verdict(s), as I will ask you to do shortly, I suggest that you choose somebody who will speak for you when you return your verdicts. You may find it helpful if that person chairs your discussions. That person should ensure that each of you has the chance to have a say in your considerations.

Delivering the verdict

When you come back into the court, the Clerk will ask who speaks for you and will then ask that person if you have reached a verdict/verdicts. Then, [on each charge,] the Clerk will ask what your verdict is [in respect of each accused]. Your spokesperson should say guilty, not guilty or not proven as you have decided.

Alternative verdicts

- Where two different guilty verdicts are available to the jury.

In respect of charge [x], if your verdict is guilty, you should say "guilty of [e.g. *murder / dangerous driving*]" or "guilty of [e.g. *culpable homicide / careless driving*]" as you have decided.

Or:

- Where the alternative charge only arises if the jury acquit of the main charge.

In respect of charge [x], if your verdict on the charge of [main charge] is not guilty or not proven, the Clerk will then go on to ask for your verdict on the alternative charge of [alternative charge] and you should say guilty, not guilty or not proven, as you have decided.

When you have given your verdict [on a charge], you will then be asked whether the verdict is unanimous or by a majority. If you return a majority verdict you will not be asked what your majority was. You will not be asked for your voting numbers.

If your verdict [on a charge] is guilty, the Clerk will ask whether you are making any deletions from the charge and, if so, what they are.

It would be useful for your spokesperson to write down your verdict before you come back into court and to check with you all that it has been correctly recorded.

Conclusion

You can return your verdict at any time, but do not rush to judgement. Your decisions are important for the Crown and for the accused. So, please give the case full and careful consideration. You should take a short period of time to reflect on the evidence and review your notes of the evidence at the start of your considerations.

Will you now please retire and consider your verdicts?

[Depending on the time of day when the jury is retiring consideration might be given to an additional form of words such as:]

[You must take such time, however long or short, as you require to consider your verdicts. You are under no pressure of time from the court to do so. If you find that you have not completed your considerations within a reasonable time this afternoon we will adjourn and you can cease your discussions until tomorrow.]