



The Convener
Criminal Justice Committee
Scottish Parliament

Tel: 0300 020 3000
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Your ref:

Our ref:

1 March 2024

Dear Convener,

Evidence Session – 7th February 2024

During the evidence of the Cabinet Secretary for Justice and Home Affairs on 7th February 2024 there was the following exchange between Russell Findlay MSP and the Cabinet Secretary:

“Russell Findlay: *To continue that line of questioning, the Crown Office and the Lord Advocate—perhaps unsurprisingly—support the proposal for the two-thirds majority, but they want to go further than that. If, for example, seven out of 12 people believe that the accused is guilty, they would like to have the power and the mechanism to seek a retrial. They say that they are in discussion with the Scottish Government about that. Have you taken that on board? Are you likely to amend the legislation to include that provision, or do you think that that would further exacerbate the concerns of those who I referred to in my initial question?*

Angela Constance: *Just for clarity—I really hope that I have not misheard Mr Findlay—I stand to be corrected, but I do not think for a minute that the Lord Advocate in her evidence last week was in any shape or form arguing for unanimity or near unanimity.*

Russell Findlay: *No, she was not. She agrees with the bill's provision, which is a two-thirds majority.*

Angela Constance: *Yes, a qualified majority.”*



I feel it is necessary to write to the Committee to clarify the position of COPFS and the Lord Advocate in light of this exchange to avoid the position of the Lord Advocate and COPFS being misunderstood.

Within the written submissions submitted by COPFS and during the evidence sessions of both the Lord Advocate and COPFS officials it was highlighted that the evidential basis on which the change to the jury majority was stated to be required was not accepted.

It was further submitted that the proposals were unique in requiring a qualified majority verdict only for a guilty verdict to be returned and that the proposals would create the unsatisfactory position where a not guilty verdict would be returned when only 5 out of the 12 jurors have reached that verdict.

Specifically, during her evidence session on the 31st of January, the Lord Advocate described the possible changes to the jury size and to the majority as “**very concerning**.” The Lord Advocate also indicated that she considered that the proposed changes would make it far more difficult to achieve convictions.

I trust that the above information is of assistance to the Committee.

Yours Faithfully,

Laura Buchan

Procurator Fiscal Policy and Engagement



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