

## Impact case study (REF3)

<b>Institution:</b> University of Glasgow (UofG)		
<b>Unit of Assessment:</b> UoA 18 Law		
<b>Title of case study:</b> Safeguards against wrongful conviction		
<b>Period when the underpinning research was undertaken:</b> 2012–2019		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> (1) James Chalmers (2) Fiona Leverick	<b>Role(s) (e.g. job title):</b> (1) Regius Professor of Law (2) Professor of Criminal Law and Criminal Justice	<b>Period(s) employed by submitting HEI:</b> (1) 2012–present (2) 2007–present
<b>Period when the claimed impact occurred:</b> 2013–2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<p><b>1. Summary of the impact</b></p> <p>Scots law contains a requirement for corroboration, requiring two sources of evidence in support of every “crucial fact” in a criminal trial. In 2012, the Scottish Government proposed to abolish the corroboration requirement. From 2013 onwards, Chalmers and Leverick’s research:</p> <ol style="list-style-type: none"> <li>(1) Persuaded the Government to put on hold its proposal until additional safeguards against wrongful conviction—such as reform of the jury system—had been identified.</li> <li>(2) Persuaded the Government to adopt an evidence-based approach to jury reform, which led to the first major programme of jury research ever undertaken in Scotland.</li> <li>(3) Produced the evidence that will ultimately lead to the introduction of a number of jury reform measures.</li> </ol>		
<p><b>2. Underpinning research</b></p> <p>Scots law contains a requirement for corroboration, which acts as a safeguard against wrongful conviction. Its presence has been used to justify the absence of other safeguards, such as a rule requiring unanimous jury verdicts.</p> <p>In 2010, following a UK Supreme Court decision that certain aspects of the treatment of detained suspects in Scotland were incompatible with human rights, the Scottish Government launched a major review of criminal procedure. The review was led by High Court judge Lord Carloway, who published his report in late 2011, recommending several reforms including the abolition of the corroboration requirement. The Scottish Government took forward this recommendation in the Criminal Justice (Scotland) Bill, which included provisions for abolition of the corroboration requirement when it was introduced on 20 June 2013.</p> <p>Chalmers and Leverick drew on their expertise in criminal procedure to write a critical evaluation of the Carloway proposals [O1]. They welcomed many of Carloway’s recommendations relating to procedural safeguards at pre-trial stage, but warned, having systematically reviewed the available research evidence and comparative practice, that removing the corroboration requirement without replacing it with alternative measures would risk the Scottish criminal justice system lacking substantive safeguards to protect against wrongful conviction.</p> <p>This insight led the Government to remove the provisions abolishing the corroboration requirement from the Criminal Justice (Scotland) Bill before it was passed by the Scottish Parliament, and to set up the Post-Corroboration Safeguards Review (PCSR), aimed at identifying additional safeguards that would be required if the corroboration requirement were abolished. The PCSR commissioned a team led by Chalmers and Leverick to undertake research into safeguards against wrongful conviction [G1]. This culminated in the publication of an Expert Report [O2]. Chalmers and Leverick were responsible for project design and management and researching and writing key chapters of the Report. They identified key causes of wrongful conviction [O2.1] and found that a number of these would be aggravated by the abolition of the corroboration requirement. Chalmers undertook comparative research into Scotland’s use of simple majority jury verdicts and found it to be out of line with comparable practice elsewhere [O2.2]. He argued for a Code of Practice for the recording of police interviews [O2.3]. Leverick undertook an evaluation of juror comprehension of judicial directions and found that while directions could potentially safeguard against wrongful conviction, there is evidence that jurors struggle to understand directions, making their protective effect limited [O2.4][O3].</p>		

The PCSR recommended a number of possible safeguards, one of which was undertaking research into jury reasoning and decision making to inform future decisions. Chalmers and Leverick were part of the team that carried out this research (commissioned by the Government in 2017) [G2]. The project had two relevant components: (1) a review of existing research evidence on the most effective approaches for aiding jury comprehension of legal issues (completed in 2018) and (2) a major mock jury research study (completed in 2019).

The jury comprehension evidence review undertaken (solely) by Chalmers and Leverick [O4] found that jurors face considerable challenges in recalling and understanding the legal directions they are given. The deliberation process—whereby individual jurors pool knowledge—improves memory but has little effect on comprehension. Chalmers and Leverick found that the most effective methods in terms of enhancing memory and/or understanding of legal directions are juror note-taking, pre-instruction, plain language directions (especially if given in writing) and structured decision aids (routes to verdict). Routes to verdict are a series of primarily factual questions that lead jurors to a legally justified verdict.

Further evidence that jurors sitting on Scottish criminal trials would benefit from additional guidance to aid their discussion came from the mock jury component of the study [O5]. This was the largest mock jury experiment ever conducted in the UK, involving a total of 64 mock juries with either 15 or 12 members, and the first of its kind in Scotland. It took extensive steps to recreate—as far as is possible—the experience of sitting on a real trial. Jurors watched a highly realistic trial video, which involved professional actors in the roles of witnesses and advocates and a senior judge (Lord Bonomy) giving legal directions, taken from the Judicial Institute’s Jury Manual to replicate the directions juries would hear in a real trial. They then deliberated for up to 90 minutes (filmed, but without a researcher present) in an attempt to reach a verdict. Analysis of the deliberations demonstrated that jurors did not always recall legal tests accurately and were sometimes confused about their meaning.

### 3. References to the research

#### Research Outputs

[O1] J Chalmers and F Leverick, [“Substantial and radical change: a new dawn for Scottish criminal procedure”](#) (2012) 75 Modern Law Review 842-869.

[O2] J Chalmers, F Leverick and A Shaw (eds), [Post-Corroborator Safeguards Review: Report of the Academic Expert Group](#) (2014), 277pp + xxi. This Output includes the following specific chapters written by Chalmers and/or Leverick:

[O2.1] J Chalmers and F Leverick, [“Causes of wrongful conviction”](#), chapter in Post-Corroborator Safeguards Review, pp 30-43.

[O2.2] J Chalmers, [“Jury majority, size and verdicts”](#), chapter in Post-Corroborator Safeguards Review, pp. 140-163.

[O2.3] J Chalmers, [“Recording of police interviews”](#), chapter in Post-Corroborator Safeguards Review, pp. 118-123.

[O2.4] F Leverick, [“Jury directions”](#), chapter in Post-Corroborator Safeguards Review, pp. 101-117.

[O3] F Leverick, [“Jury instructions on eyewitness identification evidence: a re-evaluation”](#) (2016) [Creighton Law Review 555-588](#).

[O4] J Chalmers and F Leverick, [Methods of Conveying Information to Juries: An Evidence Review](#) (2018), 66pp + iv.

[O5] R Ormston, J Chalmers, F Leverick, V Munro and L Murray, [Scottish Jury Research: Findings from a Large Scale Mock Jury Study](#) (Scottish Government, 2019), 143pp + x.

#### Research Grants (both awarded to Chalmers and Leverick)

[G1] GBP41,646 from the Scottish Government to investigate safeguards against wrongful conviction following the abolition of the requirement for corroboration: 2014.

**[G2]** GBP496,970 from the Scottish Government for a study of jury decision making (led by Ipsos Mori, with Vanessa Munro of the University of Warwick): 2017-2019.

#### **Evidence of quality of research**

Output 1 was published in one of the world's leading double-blind peer-reviewed legal journals. Output 2 was described by Lord Bonomy, chair of the Post-Corroboration Safeguards Review, as having "achieved the status of an authoritative work of reference" amongst members of the Review's Reference Group **[E3]**. Outputs 4 and 5 were extensively reviewed by Scottish Government Justice Analytical Services and the Government's Research Advisory Group prior to publication by the Government.

### **4. Details of the impact**

#### **4.1. Persuading the Government to reconsider its proposal**

The proposal to abolish the corroboration requirement was taken forward by the Government in the Criminal Justice (Scotland) Bill. The Bill was scrutinised by the Justice Committee in 2013-14. Chalmers and Leverick's Modern Law Review article **[O1]** was referred to repeatedly during proceedings of the Committee when it took evidence from Lord Carloway (as recorded in the Official Report **[E1]**). Chalmers and Leverick submitted written evidence (with Farmer) and gave oral evidence to the Committee (8 October 2013, Chalmers and Leverick; 10 December 2013, Chalmers). Their evidence warned of the dangers of abolishing the corroboration requirement without alternative safeguards against wrongful conviction. The Committee drew on this evidence in recommending to the Government in 2014 that the provision on corroboration be removed from the Bill and that there be "an independent review of what other reforms may be needed to ensure that the criminal justice system as a whole contains appropriate checks and balances" (Stage 1 Report on the Bill **[E2]**). The Government followed this recommendation.

The impact of retaining the corroboration rule is considerable. Corroboration is required in the vast majority of criminal cases progressing through the Scottish criminal justice system (a small number of exceptions apply in respect of relatively minor statutory offences). This means it is applied in: (a) decisions on whether or not to prosecute taken in over 170,000 reports to the public prosecutor each year; (b) over 100,000 criminal cases registered in court, and (c) over 11,000 trials.

#### **4.2. Persuading the Government to adopt an evidence-based approach to jury reform**

The next phase of the reform process involved Lord Bonomy, a former High Court judge, being appointed to lead the Post-Corroboration Safeguards Review (PCSR), an independent review into safeguards against wrongful conviction. He contacted Chalmers for advice, being aware of the work that Chalmers and Leverick had carried out (as evidenced by the letter from Lord Bonomy **[E3]**), and subsequently commissioned Chalmers and Leverick to lead a programme of academic research to inform the PCSR **[G1]**. Chalmers was also appointed to the PCSR Reference Group.

The findings of the academic research led by Chalmers and Leverick were published in an Academic Expert Report. This formed the basis for the discussions of the PCSR Reference Group which led in turn to a Consultation Paper. The Expert Report was published alongside that Consultation Paper. In the Consultation Paper **[E4]**, Lord Bonomy states of the Expert Report that it "forms the foundation of the Review's work... respondents are strongly encouraged to refer to the relevant parts of this Report in considering their responses" (at page 5). In the PCSR's Final Report **[E5]**, Lord Bonomy refers to the Expert Report's "immense contribution to the work of the Review" (at para 1.2).

Based on one of the sections of the Expert Report written by Chalmers **[O2.2]**, which set out the difficulties of drawing lessons for Scotland from jury research around the world given the peculiar characteristics of the Scottish jury (see pages 155-156), the PCSR recommended that a major programme of jury research should be undertaken (confirmed by **[E5]**, para 12.29). The research was commissioned by the Scottish Government in 2017, who also drew on Chalmers' work to justify committing almost GBP0.5m to fund the project (confirmed by the Scottish Government's Invitation to Tender **[E6]**, para 2.5). It was the first major programme of jury research to be conducted in Scotland and one of the largest jury research projects ever to be

undertaken worldwide. The Invitation to Tender further evidences the extent to which the chapters of the Expert Report authored by Chalmers and Leverick shaped the Scottish Government's thinking, stating that the research should build "on the findings of the Safeguards Review and accompanying Report of the Academic Expert Group" (confirmed by [E6], table 1). Chalmers and Leverick were part of the team conducting this research (which reported in October 2019).

#### 4.3. Reforms to the Scottish jury system

The PCSR drew on the chapter of the Expert Report authored by Leverick [O2.4] to recommend that the way in which information is conveyed to juries should be improved (confirmed by [E5], particularly the references to Leverick's work at paras 13.4-13.5). The PCSR recommended that the Judicial Institute, the body in charge of judicial training in Scotland, "note the research produced in the Report of the Academic Expert Group, the views of the Reference Group relating to the use of plain language, and the other suggestions noted in this Report and made by respondents to the Consultation, and to devise appropriate training programmes and guidance" (confirmed by [E5], para 13.14).

Chalmers and Leverick were invited to brief the Judicial Institute on jury communication methods in October 2018 (confirmed by the email from the Deputy Director of the Judicial Institute [E7]). Chalmers and Leverick drew on the Evidence Review [O4] they undertook as part of the Scottish Government funded jury research [G2] to recommend changes to the way in which juries are directed, including the use of written directions instead of only directing juries orally, which applies to over 1,300 trials per year, all for the most serious offences.

The mock jury study [O5] has also provided the evidence base that may result in further impact on the Scottish criminal justice system. At the time of writing, the Scottish Government is consulting on changes that should be made to the jury system following from the research, which may include changes to the "not proven" verdict (Scotland, uniquely, has both "not proven" and "not guilty" as potential acquittal verdicts in criminal trials). At the launch event for the jury research, the Justice Secretary described the research as "ground-breaking", noting that it "will be used to inform discussion and consideration around potential changes to our system in the future" and that "[t]here is no doubt that the quality of these discussions will be substantially improved by the publication of the jury research today" (confirmed by transcript of the Justice Secretary's speech [E8]). Shortly before the end of the assessment period, the Scottish Government had commenced a series of engagement events designed to obtain views on potential reforms. This work was paused due to the coronavirus pandemic but is expected to resume when it is safe to do so.

#### 4.4. Additional impact: police interviewing

Finally, one further completed impact additional to those noted above is that, following Chalmers [O2.3], the PCSR recommended that there should be a statutory provision requiring the creation of a code of practice for police interviewing. This was implemented by section 57 of the Criminal Justice (Scotland) Act 2016. The Code, once in force, will provide improved protection against wrongful conviction to over 100,000 suspects interviewed by Police Scotland annually (confirmed by para 5.18 of [E5]; 108,000-162,000 interviews take place per year).

### 5. Sources to corroborate the impact

[E1] Scottish Parliament Justice Committee, [Official Report, 24 September 2013](#). Confirms references to "the Modern Law Review" article (at cols 3241, 3246, 3253) and "the article by James Chalmers and Fiona Leverick" (at col 3242) [PDF available].

[E2] Justice Committee, [Stage 1 Report on the Criminal justice \(Scotland\) Bill \(2014\)](#). Confirms references to Chalmers and Leverick at paras 258, 303, 304, 309, 389, 395 [PDF available].

[E3] Letter from Lord Bonomy, High Court Judge and Chair of the Post-Corroborations Safeguards Review (20 May 2016) [PDF available].

[E4] [The Post-Corroborations Safeguards Review: Consultation Document](#) [PDF available].

[E5] [The Post-Corroborations Safeguards Review Final Report](#) [PDF available].

[E6] Scottish Government, Invitation to Tender: Jury Research (Case 336513), Specification of Requirements [PDF available].

**[E7]** Emails from Deputy Director of the Judicial Institute, 28 May 2018 (inviting Chalmers and Leverick to address the Committee) **[PDF available]**.

**[E8]** Jury research launch event: [Speech by Cabinet Secretary for Justice](#), 9 October 2019 **[PDF available]**.