

Criminal Justice Committee

5th Meeting, 2021 (Session 6), Wednesday 22 September 2021

Priorities for domestic abuse, gendered- violence and sexual offences in session 6

Written submissions

1. The Criminal Justice Committee is holding a roundtable meeting about priorities for domestic abuse, gendered-violence and sexual offences in session 6.
2. Written submissions have been provided by the following individuals and organisations who will be attending the roundtable meeting—
 - The Crown Office and Procurator Fiscal Service;
 - The Faculty of Advocates;
 - Police Scotland;
 - Rape Crisis Scotland;
 - Scottish Women's Aid;
 - Professor Michele Burman, University of Glasgow
 - James Chalmers, Regius Professor of Law, University of Glasgow.
3. In addition, the Committee has received a submission from Stop It Now! Scotland and correspondence from Baroness Helena Kennedy QC, Chair of the Working Group on Misogyny and Criminal Justice in Scotland.
4. These submissions are attached.

**Clerks to the Committee
September 2021**

Written Submission from the Crown Office and Procurator Fiscal Service

INTRODUCTION

COPFS takes a rigorous approach to crimes of domestic abuse and stalking and is committed to prosecuting these crimes effectively and fairly. This includes a presumption in favour of prosecution where there is sufficient evidence to support a criminal allegation.

Prosecutors recognise the devastating impact that these crimes can have on those affected, and use all the tools at our disposal, including the Domestic Abuse (Scotland) Act 2018, which came into force in April 2019, to prosecute domestic abuse. This legislation has allowed the prosecution of a range of coercive and controlling behaviours which are harmful to victims, but which were not previously criminal. Courts can now consider the totality of behaviour when sentencing, better reflecting the lived experience of victims and children.

Definition of Domestic Abuse

The definition of domestic abuse followed by COPFS and the Police Service of Scotland is set out in the published Joint [Protocol](#) as:

“any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere including online”.

It is acknowledged that domestic abuse as a form of gender-based violence is predominately perpetrated by men against women. This definition also acknowledges and includes abuse of male victims by female perpetrators and includes abuse of lesbian, gay, bisexual, transgender and intersex (LGBTI) people within relationships.

This definition of domestic abuse encompasses the entire spectrum of behaviour by perpetrators where this amounts to criminal conduct. This includes cases which involve isolated incidents as well as cases involving a course of conduct and includes both violent and non-violent abusive behaviour. Some cases will involve elements and tactics of coercive control, which can involve a range of behaviours designed to control and harm a victim, while others will involve isolated incidents of conflict provoked by situational factors.

Domestic Abuse Charges Reported to COPFS in 2020- 21

COPFS Publish official statistics on Domestic Abuse and Stalking Charges in Scotland. The official statistics for 2020-21 were published on 7 September 2021 and are available at the following link: [Statistics \(copfs.gov.uk\)](https://www.copfs.gov.uk/statistics)

Police Scotland report a range of offences involving domestic abuse and COPFS prosecute these offences using a variety of different statutory and common law charges. A charge that fits the definition of domestic abuse in the Protocol is reported with a domestic abuse identifier.

In 2020-21, 33,425 charges were reported to COPFS with a domestic abuse identifier. This is an increase of 9% compared to the 2019-20 total of 30,718 and is the highest number reported since 2015-16.

In 2020-21, 92% of charges reported to COPFS with a domestic abuse identifier were prosecuted. The proportion resulting in court proceedings has increased over recent years and is at its highest level since consistent figures first became available in 2013-14.

The majority of charges where the decision taken was to prosecute in court were prosecuted at sheriff summary level. In 2020-21, 80% of charges prosecuted were at sheriff summary level. The proportion of charges prosecuted at solemn level has increased over recent years, from 10% in 2013-14 to 15% in 2019-20 and to 20% in 2020-21.

Other prosecutorial actions are available through the use of Direct Measures, including warnings, and diversion from prosecution. Direct Measures are used in fewer than 2% of overall charges reported.

The volume and percentage of charges where the decision was to take No Action has steadily decreased from 3,974 (11%) in 2013-14 to 1,392 (4%) in 2020-21. Where the decision was to take No Action in 2020-21, the most common reason recorded was "Insufficient Admissible Evidence" (59%).

In 2020-21, 28,975 (87%) of the charges reported with a domestic abuse identifier were in cases where the accused was male. The majority of those reported with a charge with a domestic offence identifier in 2020-21 were aged 31-40 years (36%) or 21-30 years (31%).

In 2020-21 the most common types of offences reported with a domestic abuse identifier were breach of the peace type offences (31%: includes threatening and abusive behaviour and stalking offences), common assault (25%) and crimes against public justice (22%: includes bail offences).

2 homicide charges and 573 serious assault or attempted murder charges with a domestic abuse identifier were reported to COPFS in 2020-21.

620 charges of rape or attempted rape with a domestic abuse identifier were reported in 2020-21, which was an increase of 30% on the number of such charges

reported in 2019-20 (478). Notwithstanding, the increase in reported charges the percentages of reported charges that resulted in court action remained at its highest level over the last 10 years of recorded data and consistent at 87% during the periods 2018-2019 to 2020-21.

Statutory Domestic Abuse Aggravation

The statutory aggravation of domestic abuse was introduced by the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 section 1. The aggravation only applies to conduct that took place on or after 24 April 2017. An offence is aggravated if in committing the offence the person intends to cause or is reckless about causing their partner or ex-partner to suffer physical or psychological harm. The aggravation can only be applied where there is evidence capable of proving it and evidence from a single source is sufficient to prove that an offence is aggravated. All charges which carry the aggravation should carry the domestic abuse identifier, but the identifier may apply to charges to which the aggravation does not.

In 2020-21, 27,658 charges were reported with a statutory aggravation under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, accounting for 83% of all domestic abuse charges reported. This is a similar proportion to 2019-20.

Domestic Abuse (Scotland) Act 2018

The Domestic Abuse (Scotland) Act 2018 came into force on 1 April 2019 and created a new statutory offence of engaging in a course of behaviour which is abusive of a partner or ex-partner. A course of behaviour involves behaviour on at least 2 occasions where a reasonable person would consider this course of behaviour to be likely to cause physical or psychological harm and the person intended to cause or was reckless about causing their partner or ex-partner to suffer physical or psychological harm. The new offence only applies to conduct that took place on or after 1 April 2019.

In 2020-21, 1,581 charges were reported under the Domestic Abuse (Scotland) Act 2018 (DASA), accounting for 4.7% of all domestic abuse charges reported. This represented an increase of 48% on the 2019-20 total of 1,065 (3.5% of all domestic abuse charges reported).

95% (1,505) of the DASA charges reported were in cases where the accused was male. The majority of accused in DASA charges fell into the age group 31-40 years (36%) or 21-30 years (32%).

Court proceedings were commenced in 95% of the DASA charges reported. The majority of DASA charges prosecuted in court proceeded at sheriff summary level. The proportion prosecuted at this level fell from 82% in 2019-20 to 69% in 2020-21. The corresponding proportion prosecuted at solemn level increased from 18% in 2019-20 to 31% in 2020-21.

The Domestic Abuse (Scotland) Act 2018 section 5 also created a new statutory aggravation to the new offence, where a child was involved in the offending. The

aggravation can only be applied where there is evidence capable of proving it and evidence from a single source is sufficient to prove that an offence is aggravated. A statutory child aggravation under section 5 of DASA was recorded against 346 (22%) of the DASA charges reported in 2020-21. Court proceedings were commenced in respect of 98% of charges with a child aggravation.

In 2020-21, 1,045 stalking charges under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 were reported to COPFS. Of these, 592 (57%) contained a domestic abuse identifier.

From 1 April 2019, if an offence that would previously have been reported as a stalking charge under section 39 of the 2010 Act was part of a course of conduct of domestic abuse, where appropriate it will have been reported as part of a charge under section 1 of the Domestic Abuse (Scotland) Act 2018. This will have contributed to the fall in the number of stalking charges reported in 2019-20 and 2020-21 compared to previous years.

Impact of the Pandemic

The period of lockdown due to the coronavirus pandemic had a significant impact upon the justice system, and particularly the ability to progress criminal trials. COPFS has worked closely with justice partners and victim support organisations on a system-wide response to the challenges of the pandemic to ensure the justice system fully recovers, and cases progress as efficiently as possible.

There was greater monthly variation in the number of charges reported to COPFS in 2020-21 compared to 2019-20. Charges reported with a domestic abuse identifier were relatively low in February, March and April 2020 and in February 2021, but were relatively high for several months following the first lockdown, peaking at over 3,300 charges in both June and July 2020.

Disruption to summary business resulted in significantly reduced court capacity to deal with summary trials, especially at the beginning of the pandemic. Only a limited number of urgent trials called in court, with priority given to custody, domestic abuse and child-witness trials. As of August 2021, 40,543 summary cases are awaiting trial, which is an 132% increase on the position in March 2020. The pandemic impacted even more significantly on court capacity in relation to solemn trials, in both Sheriff and Jury courts and the High Court, leading to significant delays in progressing court business.

In 2020-21, 20% of domestic abuse charges reported to COPFS were prosecuted at solemn level. It is recognised that the impact of the lockdown on solemn business, and on High Court business in particular where the majority of trials involve allegations of serious sexual offences, will have disproportionately impacted female victims and witnesses.

Written submission from the Faculty of Advocates

1. INTRODUCTION

- a. The Faculty of Advocates is grateful for the invitation to attend this roundtable event and for the opportunity to present written submissions in advance. However, whilst recognising the need to restrict such submissions for such a short session to no more than four pages, such is the wide-ranging scope and importance of the topics under consideration that it would be impossible to give these subjects the attention they are due within only four pages of submissions. The Faculty would therefore welcome the opportunity of providing the Committee with full expanded submissions following this event in order that each topic under discussion can be given the consideration it deserves.
- b. Even with that caveat it is impossible to address all of them and therefore these submissions will focus on those that are likely to have the greatest impact on our Criminal Justice System as it presently stands. Even then, given the importance of the matters raised, it is impossible to do so within four pages.
- c. The Faculty recognises the need for change and natural evolution to meet the demands and changing attitudes in any modern democratic society. Nonetheless such change as is required should be appropriate and proportionate to meet such needs. Such changes should be neither seismic nor offend against those tried and tested values we have preciously guarded for years if not centuries. Principal amongst them being the right to a fair trial where the odds are not stacked in such a way as to be more likely to bring about a particular verdict.
- d. To do so either deliberately or as an unintended consequence would offend against all that is right and proper in a democratic criminal justice system.
- e. Paramount is the presumption of innocence. Anything that offends against that right should be unacceptable in any civilised western democracy.
- f. That does not mean that the views and needs of all those impacted by their involvement in our criminal justice system should be ignored or discounted and that reform is neither required or merited. Only, that such reform should be measured and proportionate. As such there are many proposals contained within the topics of discussion that are either actively supported by the Faculty or are not opposed.
- g. Throughout the last year the Faculty has worked in a collaborative and constructive way to ensure that our criminal justice system got back to work in an effective way, and that sometimes required compromise. We will continue in our commitment to constructive involvement when we are through the pandemic. For centuries the Faculty has had a pivotal role in our justice system, both in its development and in its operation. It has not done so by being obstructive or uncooperative.

- h. That does not mean that there will not be significant areas where our opposition will be both vocal and committed and where compromise may not be possible, but it does mean that any such opposition will be both constructive and justified. We do not and will oppose for the sake of opposing.
- i. The purpose in setting this out is to place in context these brief submissions which we will use to identify some but not all of the proposals, where even if we do not directly support them, we do not oppose them and those that we do not and cannot support, or in which we see no merit.
- j. We do not see our role as being restricted to legal practitioners tied to a particular side or cause. We have a far wider duty than that and we are already engaged with the Chief Executive of Rape Crisis, Sandy Brindley with a view to establishing an ongoing relationship seeking to identify those areas of agreement where we can work together in ensuring effective and constructive change that does not disadvantage one group over another.
- k. We also have a desire for prevention, and we are best placed to see just how many young people are affected on both sides, both accused and complainer, by sexual offending. There are far too many. To that end we are exploring if there are any ways in which we can engage with young citizens to foster a better understanding in of when, why and how the courts will intervene in relationships when respect and consideration are absent or undervalued.

2. THE GENERAL REQUIREMENT FOR CORROBORATION

- a. The Faculty retains its opposition to the removal or dilution of the requirement for corroboration whether that be in sexual offences or not. Innocent citizens find their way into the docks of our courts every day of every week. Sheriffs tell us that. juries tell us that.
- b. The requirement for corroboration is our unique safeguard a safeguard required because of the uniqueness of our single vote simple majority verdict.
- c. To remove the requirement for corroboration would require a root and branch change to our system of justice and would be another step towards the anglicisation of our jury system especially if the campaign to remove the not proven verdict is successful.

3. THE NOT PROVEN VERDICT

- a. The Faculty opposes the removal of the not proven verdict and there are number of parallels that apply both to the removal of the requirement for corroboration and the removal of the not proven verdict.
- b. It is understood that in some quarters the not proven verdict is seen as a barrier to conviction. If this is so then removing it is removing a safeguard, and in a system where a simple majority can result in conviction such a safeguard is necessary.

- c. It is for that very reason that the not proven verdict cannot be scrapped in isolation. As has been recognised previously by this very committee, notwithstanding the desire from many quarters to scrap it, this is not a straightforward matter, and why a full and frank discussion involving all stakeholders, coupled with an adequate consultation period, would be required. Only once such a process had been completed could any changes necessary to ensure that fine balance of fairness be identified and implemented.
- d. If ultimately it is the desire of the Scottish Parliament to remove the not proven verdict the Faculty would welcome the opportunity of taking part in the discussion to identify the changes in our criminal justice system that would be required in order to accommodate such a significant change without jeopardising reliable justice.
- e. It is interesting to note that although there is much vilification of it and it is often presented by some of being the default verdict in rape trials under data published by the Scottish Government on 10th June 2021 under an FOI request it was the verdict returned least in all four years between 2016 and 2020 in solemn trials for all offences and in sexual offences it was also the least returned verdict in the same period. The majority of solemn cases involving sexual offences in each of those four years resulted in conviction according to the data.

4. The Management of Sexual Offences Cases report recommendations:

a. Specialist court

- i. In the High Court for many years now the need for specialism in judges has been recognised. An example would be the commercial specialty within the High Court with its bespoke procedures and dedicated judges. It follows the appreciation that technical specialism based on experience and training reduces errors or misjudgements arising from rustiness or lack of prior exposure on the part of the judges, and provides consistency of decisions.
- ii. This extra training and quality assurance should extend to practitioners in these difficult trials too, again to avoid unforced errors from rustiness or misjudgements and to provide consistency in the treatment of participants. We therefore support the broad proposition that a specialism akin to the Commercial Court with suitably trained expert litigators has advantages.
- iii. To that extent we think we are of one mind with Rape Crisis and Lady Dorrian's group.
- iv. Where we differ is in the proposal that sexual offences should be dealt with in what is primarily a cost cutting way, taking them out of the High Court where rape has for generations been respected alongside murder, and deflating it into some sort of sub-court, not worthy of full time high court judges.

- v. We do not oppose the setting up of such a specialist court out of any special interest. Indeed, the formation of such a court would open up avenues of work to counsel in relation to cases for which at present sanction for the employment of counsel by the Scottish Legal Aid Board would not be granted.
- vi. We oppose the specific proposal of the setting up of specialist courts because we believe that this in effect would lead to the down grading of such offences, and this must be so if they are to be prosecuted other than in the High Court. If such cases are not to be tried in the High Court but the new specialist court, then they will be prosecuted in an inferior court, of that there can be no doubt. It says so within the body of the report. Lady Dorrian's proposed variation of a specialist court would have inferior sentencing powers to the High Court, and so would be more like a specialist super sheriff court. Furthermore, the report confirms the High Court is to have the final say on transferring cases to the specialist court thereby confirming that the proposed specialist court is an inferior forum. This demotion of sexual offence prosecution undermines the great strides made in recent years in recognising the enormous harm such offending represents in modern society.
- vii. We already have a specialist court, the High Court. All that is required is further specialist training for those who conduct trials for the types of offences under discussion.
- viii. There is also the danger of a two-tier system where one rape trial could be tried in the specialist court, but another prosecuted in the High Court. It is difficult to see how this can be regarded as satisfactory for complainers and genuine victims of crime where the practical effect will be that similar crimes will be treated and graded differently.
- ix. The problem with creating a middle tier is that the intention clearly is that many cases will be taken out of the top tier and this would have the result of down grading some instances of rape. Particularly given that you could have practitioners who have had specialist training and therefore can appear in the specialist court but will not have rights of audience in the High Court and can therefore conduct some rape trials but not others. There is a real danger that such a course would send out the message that those rape allegations prosecuted in the specialist court are not as serious as those prosecuted in the High Court.
- x. Why should a victim of domestic rape for example have the case in which she is a complainer prosecuted in an inferior court simply because a different accused has perpetrated the same level of abuse or violence on more than one complainer? The effect of that conduct will be the same on each rape complainer. Why should their case be treated differently?

b. Trauma informed Procedure

- i. The Faculty has no difficulty in principle with trauma informed procedures as long as they do not hamper the proper administration of justice, and the Faculty supports the idea of trauma informed training for all members engaged in the criminal justice process.
- ii. We do have some concerns that slavish adherence to current trauma informed protocols may be impracticable. We can expand on that if need be.

c. Independent Legal Representation

- i. The Faculty has no interest in preventing anyone from exercising their fundamental rights. Such a proposition would be anathema to Faculty as a body.
- ii. As such the Faculty supports in principle the proposal for independent legal representation subject to the proviso that such representation did not include involvement in the trial process itself unless the question of fresh application in terms of s275 of the Criminal Procedure (Scotland) Act 1995 arose in the course of the trial.

d. Presumption in favour of pre-recording complainer's evidence

- i. To a considerable extent this has already been addressed in the Vulnerable Witnesses (Criminal Evidence) Scotland Act 2019. The part that deals with Child Witnesses has already been implemented in the High Court and although is yet to be implemented in the Sheriff Court many practices contained therein have been adopted. The other part of the Act deals with Vulnerable Witnesses and as such it is anticipated that this presumption will be achieved in due course.
- ii. The Faculty has worked side by side with all stakeholders in ensuring as smooth a transition as possible for these significant changes to our court procedure and indeed has been instrumental in working throughout the pandemic to ensure as many commissions as possible could be held. The taking of evidence by way of commission is now routine within the High Court.
- iii. The Faculty has also worked with the Judicial Training Board of Scotland to assist in the production of a training video in respect of the proper conduct at Grounds Rules Hearings which often set the parameter for questioning within a commission where there are issues with communication needs.

e. Statutory right against identification of complainers

- i. The Faculty supports this proposal and it would simply bring Scotland into line with many other countries and may encourage more complainers to come forward safe in the knowledge that such a statutory right existed.

- ii. The Faculty also believes however, that consideration should also be given to affording such a right to any individuals charged with a sexual offence up until such time as they are convicted, and if not convicted their anonymity should be retained.

f. Excluding juries from rape trials

- i. The Faculty remains entrenched in its fundamental opposition to juryless trials in relation to any type of offence. Last year the Scottish Criminal Bar Association and many within the Legal Profession were accused of being conspiracy theorists when it was suggested that there was a hidden agenda at the haste with which an attempt was made to introduce juryless trials under the cloak of the Coronavirus Act and yet here we are a year later having the self-same discussion. We are opposed to juryless trials and will remain so for the undernoted reasons

ii. Trust

1. Efforts by special interest groups to exclude the public, with their own experience of modern life and sexual matters, in favour of a middle aged and older, university educated, middle and upper middle-class elite which is predominantly male and entirely white will erode Society's trust in criminal justice.
2. Those decision makers will be identified in each case, in a way that juries/jurors are not.
3. There are many specialist groups who whilst looking after their own constituency are vociferous in their criticism of things which offend their particular subset of society, in a way unparalleled by any other group.
4. That identification of judge combined with the loudest group being pro-complainer gives rise to a prospect of criticism of any acquittals, leading either to a risk of bias in favour of conviction, or a widely held perception of such bias, with a very real cost to the public confidence in justice in sexual allegation prosecution.
5. There is a danger that in the not-too-distant future following a freedom of information request we will be presented with a league table of "acquittal judges" and the subsequent pressure on those individuals that will come with that.

iii. Open justice

1. We must have a system of justice which the lawyers and judges are proud to have the citizens explore and understand. Moving citizens further back to limit their view, or excluding them entirely, does no good in fostering public trust and confidence in this most important of social institutions.

2. We have already voiced concerns about the ever-increasing limits being placed on what an accused person can tell a jury in a sexual crime trial. Jurors are already restricted in what evidence they can consider, despite their ample qualifications in life experiences and common sense.
3. We all too often hear about the “rape myths” however what we are now in danger of having running alongside them unfettered and uncriticised are “rape trial myths”. They are regularly trotted out in the press and include the suggestion that a complainer’s sexual history is routinely used as a tactic by defence counsel or that the defence have unfettered access to complainer’s phones or medical records. This is simply untrue. The evolution of s.275 jurisprudence has ensured this. And yet these claims are routinely presented as being facts. They are not facts. The public and Parliament should be made aware of just exactly what evidence the defence are allowed to elicit and therefore what evidence a jury hears and more importantly what evidence a jury does not hear.
4. The restriction of the length of this submission restricts the listing of example but these can easily be provided.
5. This proposal in essence would create a two tier system- the first in which an accused not charged with sexual offences will still enjoy the privilege of being judged by their peers and a second where Parliament is essentially saying to the people of Scotland, *“we trust you to vote for us, you have the sense and responsibility to do that we are happy to take your vote, we also trust you to sit in judgement in the majority of criminal cases including murder, but we do not trust you to sit in judgment in sexual offence cases”*. To exclude them as somehow unsuited to or incapable of assessing the evidence of their fellow citizens in sexual matters, preferring instead the older, wealthier elite of the senior legal profession, is to insult and patronise.
6. We would do this even though the juries who sit in these cases only come to their decision having heard all the evidence in the case and having listened to legal directions and we would do so even though the majority of those who criticise their verdicts have not.
7. The suggestion that the people of Scotland cannot be trusted to do so is concerning and it is ironic that at a time when less democratic countries such as Argentina and Bulgaria are turning towards juries we in Scotland to our shame are trying to turn away from them.

8. Our courts are thriving when they are proud to display their workings to the public whom they serve. Trust in the system of criminal justice comes from welcoming the participation of citizens into the process, whether in their role as jurors, or simply inviting them to watch the process and be satisfied by what they see.
9. Excessive restriction on what jurors can be told is unwelcome and should be avoided. The contemplated complete exclusion of citizens from the process, by removing sexual cases from a jury's reach, must be seen as abhorrent in an advanced democracy. If the perceived present trajectory is allowed to continue then we will have serious sexual offences tried with ever more limited access to honest defence challenge, and by judges alone without the benefit of any citizen's advice at all.
10. The argument to remove juries from the multi-month technical fraud trials is of much greater weight. But there is no sphere of human experience and dispute more commonly known and lived than relationships and sex.
11. Juries bring the legal profession back down to earth time after time after time. Fifteen people chosen at random have an unassailable societal validity that no single judge no matter how intelligent or venerable can come close to matching in rape trials.
12. The public trust juries because juries are composed of that public.

iv. The beauty of anonymity of juries

1. We cannot ask juries how they each voted. It is a criminal offence to do so.
2. Yet the voting of the single judge would be trumpeted in the verdict.
3. The privacy of the discussion and vote of juries liberates them to do what they think is right, without worrying about how they will be judged by the press or by the participants in the trial. No one can challenge how they voted or argued because their role is robustly shrouded in privacy.
4. They don't get promoted or demoted because of what they chose to do because we don't publicise who they are, and we have no idea what their contribution was. We simply provide them with legal guidance and trust them.
5. Think how differently you might vote in a private ballot versus a public one on a sensitive issue. With the risk of the tabloid press blaring out their populist anger at your boldness. How many could afford to be bold, even if their heart tempted it? That is why we protect the privacy of

the jury's deliberations, to liberate the decision-making process. Exposing a single judge's decisions to the world as this proposal would do is the exact reverse. It may well insert an extra bias, or perception of bias, towards a decision which avoids the baying of the loudest challenge groups.

v. The effect of the individual versus the group

1. I have never appeared in a multi-sheriff sheriffdom without there being individual sheriffs who are seen to be pro conviction, or light sentencers, or soft on this crime, hard on that crime, towering intellectuals, witty, dour, impatient or tolerant.
2. At the same time, I have yet to find a sheriffdom which doesn't have inspirational sheriffs, who take the care and time to nurture the positives in wayward offenders, with the hope of genuine and lasting rehabilitation. Or gifted jurist who improve my understanding of the issues.
3. The point is that sheriffs, or judges, or magistrates are each individuals, in the same way of every one of us.
4. Individuals are subject to whims, unconscious bias, differing experiences of life and relationships, widely varying inter-personal skills, likes and dislikes. We are no different. Who knows what combination of views we have amassed from our unique life stories?
5. That is why there is no place for what is in effect summary justice in our solemn courts.
6. The beauty of the multiplicity of decision making in juries is that the outlying personality traits, views and prejudices are rounded down by the sensible core which exists in any group as large as fifteen.
7. The sometimes-curious decisions of witnesses, accused and complainers are assessed by a group which includes people of higher, lower and the same intelligence. A decision which makes no sense to a university don might be perfectly sensible to an apprentice mechanic and party-goer.
8. The glimpses of strangeness we old stuffy lawyers see in the evidence are more easily accommodated and accepted by younger or more experienced, worldly wise jurors among the fifteen. The others listen and learn from them. We old stuffy lawyers lack that sounding board. In a jury of one, that reassuring, trust inducing rounding process is absent.
9. To make it work as well, as reliably and as inspiring of public trust as the existing jury system you'd need a bench of fifteen judges, of all ages, and ethnicity, of

widely varying life experiences and opinions. Which is impossible, unless you rope in fifteen members of the public, of the electorate, chosen at random without favour or bias to work, gender, age or orientation.

- 10.** And that is what we have, and what we along with so many other developed nations have found trustworthy over centuries.

Written submission from Police Scotland

1. PURPOSE

- 1.1 The purpose of this submission is to provide written evidence around potential discussion topics for the above Scottish Parliament's Criminal Justice Committee meeting.

2. THE IMPACT OF CORONAVIRUS RESTRICTIONS ON REPORTING AND INVESTIGATING SEXUAL CRIMES, AND THE PROVISION OF SUPPORT.

- 2.1 In total, 3,720 sexual crimes were recorded in quarter one (April to June) of 2021/22, compared to 2,992 for the same period the previous year, an increase of 24.3%. Detections also increased by 27.3% for the same period (from 1,706 in 2020/21 to 2171 in 2021/22). Of these, the number of rapes reported increased by 34.8%: 631 rapes were reported in the first quarter of 2021/22, compared to 468 for the same period of 2020/21. Detections were also up by nearly one third (30.5%) from 272 in 2020/21 to 355 in 2021/22.
- 2.2 This reporting period saw the highest number of reported sexual crimes, both recent and non-recent over the last 6 years. Detection rates also increased significantly during the same period. These are significant increases. A direct correlation can be drawn between the increased reporting of rape and other sexual crime and the easing of lockdown restrictions. This is not exclusive to Scotland and increases are mirrored across the UK.
- 2.3 Over the course of the pandemic, there was an initial reduction in reporting which could have been anticipated as people were locked down at home, however reporting increased incrementally with the easing of restrictions. While it may be considered easing of restrictions may have afforded people the space to report, there are a number of other influencing factors at play, particularly the national conversation around violence against women and girls, and high profile reporting of rape and serious sexual crime. This may have encouraged people to come forward and report what had happened to them.
- 2.4 As social interaction increases, particularly with the night-time economy opening up again, a further rise in contact offending and reporting is anticipated. Rape and serious sexual crime is generally significantly under-reported. The recent increase in reporting may in part be attributed to increased victims' confidence in the police response.

2.5 Victim support is provided by 3rd sector organisations, who have adapted to the restrictions brought about by the pandemic and provide a level of support to victims. This is highlighted by Rape Crisis Scotland in their annual report 2019 – 2020.

“In response to COVID, with funding from the Scottish Government, we implemented a new Virtual Call Centre, enabling the helpline team to work remotely. This development allows us a greater flexibility both now and in the future to meet a range of eventualities which might otherwise compromise service provision. We have been trialling a new text support service and scoping developments are underway to provide webchat, using software also acquired via COVID funding.”

2.6 Current rape and sexual crime figures as of Monday 31 August 2021 are as follows:

Crime Type	Recent	Non-Recent	
Rape	Increase 24.2%	Increase 11.3%	
Group 2	Increase 17.1%	Increase 10.3%	
Rape			
	2019-20	2020-21	2021-22
Overall (up 18.9% against previous year)	999	894	1063
Non Recent	406	364	405
Recent	593	530	658
(date period 24 March - 30 August)			
Group 2			
	2019-20	2020-21	2021-22
Overall (up 15.4% against previous year)	5958	5490	6336
Non Recent	1541	1346	1484
Recent	4417	4144	4852
(date period 24 March - 30 August 2021)			

2.7 The current position across England and Wales is almost identical. Recorded rape is showing an 8% increase over the last 4 weeks (6% in Scotland) compared to the equivalent period in 2019. It remained significantly below 2019 levels throughout lockdown but increased to above 2019 levels during July and August. There was a sharp increase in reporting in the three weeks following the Sarah Everard vigil, and further increases are apparent in recent weeks.

3.0 THE IMPACT, AND ANY UNINTENDED CONSEQUENCES OF RECENT LEGISLATION INTRODUCED TO IMPROVE THE IDENTIFICATION AND PROSECUTION OF THESE CRIMES.

3.1 In terms of sexual crime, no recent legislation has been introduced which has adversely affected or impacted investigations carried out by police.

4.0 THE EXPERIENCE OF VICTIMS WHO REPORT THESE CRIMES AND WHETHER THIS HAS IMPROVED

4.1 Police Scotland receive feedback from Rape Crisis Scotland on a quarterly basis around the Sexual Offence Liaison Officer (SOLO) deployment to victims. This feedback is designed to improve victim engagement, identify learning and address any issues raised.

4.2 In general terms, the feedback is positive or neutral, with an isolated case where victim engagement was documented as being as poor, however in terms of the organisational approach, no adverse patterns or themes have been identified in terms of our interaction with victims.

4.3 Chief Constable Iain Livingstone and other senior police officers from Police Scotland recently participated in a meeting organised and facilitated by a victim support organisation. This was a particularly beneficial meeting where victims outlined their own experiences of police interaction when reporting sexual crimes. There was a broad range of positive, negative and neutral experiences of police involvement. The Chief Constable subsequently sent a letter of response, thanking the group for the opportunity to engage and hear from victims directly. During the meeting and in the written correspondence, progress was highlighted around an updated Initial Briefing Report (IBR) document for officers who respond to initial reports of rape and serious sexual crime and in trauma informed and Video Recorded Interview Training. One particular theme identified was the lack of proper explanation to victims around policies and processes, in the most basic terms, victims want to know what police are doing and why they are doing it. This concern will be escalated via Public Protection governance meetings with divisional personnel and the Senior Investigating Officer cadre throughout the organisation.

5.0 THE GENERAL REQUIREMENT FOR CORROBORATION.

5.1 Police Scotland remain constitutionally independent relating to matters around changes to the law.

6.0 THE NOT PROVEN VERDICT

6.1 As above it is not considered appropriate that Police Scotland offer comment on Court disposals.

7.0 WHETHER A CRIME INVOLVING HATRED OR PREJUDICE BECAUSE OF GENDER SHOULD BE CLASSED AS A HATE CRIME

7.1 Police Scotland submitted a response to the working group led by Baroness Kennedy considering Misogyny and Criminal Justice in Scotland on 21 July 2021. The group is charged with assessing if there is a gap in the law that would require a standalone offence to cover and make criminal misogynistic behaviour. It is also charged to determine if a sex characteristic should be added to the Hate Crime and Public Order (Scotland) Act 2021.

8. THE MANAGEMENT OF SEXUAL OFFENCE CASES REPORT RECOMMENDATIONS

8.1 The creation of a specialist court, with trauma-informed procedures, for serious cases – ***Police Scotland would fully support this recommendation.***

8.2 Complainers having access to independent legal representation in objecting to questioning about their previous sexual history - ***Police Scotland would fully support this recommendation.***

8.3 Police interviews with complainers in serious sexual offences should be video recorded to capture the evidence of the witness at the earliest opportunity. The interviews should be conducted with officers trained in taking such statements. - ***Police Scotland is working closely with Rape Crisis Scotland and COPFS in a test of change process for Video Recorded Interviews (VRI) for victims of rape and serious sexual crime. The test of change is due to end in November 2021 when it will then be subject of evaluation by Scottish Government. In the meantime, VRIs will continue within the 3 pilot divisions. The use of VRI appears to be well received by all parties concerned. Without prejudicing the outcome of the evaluation there is a high degree of probability that VRI will be rolled out nationally in the future. To this end, we are training all new nominated Sexual Offences Liaison Officers (SOLO) in VRI and are developing a training strategy for our existing SOLO cadre (around 730) to upskill in VRI and the trauma informed approach. Up to and including the 18th August 2021, 47 officers***

have been trained in the use of VRI for this pilot, 224 SOLO VRI interviews involving 197 victims have taken place, 51 cases involving the use of VRI have been reported to COPFS and 16 cases have since been indicted by COPFS. The expansion of VRI would require significant investment in terms of resources, training and technical equipment.

8.4 Complainers having a statutory right not to be identified in the media rather than relying upon current convention and agreement - ***Police Scotland would fully support this recommendation.***

8.5 A pilot of single judge rape trials, instead of juries, to ascertain their effectiveness - ***Police Scotland would fully support this recommendation.***

9.0 CONCLUSION

9.1 This submission is provided for information in advance of the Round Table session.

Written submission from Rape Crisis Scotland

1. Most rape cases never make it to court. Of those that do, only 43% result in a conviction, compared to an 88% overall conviction rate¹. Rape and attempted rape have the lowest conviction rate of any crime type, and not proven verdicts account for a significant proportion of acquittals.

Rape & attempted rape	2015/16	2016/17	2017/18	2018/19	2019/20
Reported	1809	1878	2255	2426	2343
Prosecuted	216	251	246	313	300
Convicted	105	99	106	142	130
% of cases prosecuted	48.6%	39.4%	43%	45.37%	43.33%
resulting in conviction					
% of cases prosecuted resulting in Not proven	46=21%	42=17%	48=19%	68=21%	74=24.66%

2. There is a high level of secondary trauma caused by going through the criminal justice process, with complainers described their experience in court as “absolutely horrendous”, “the most degrading and terrifying thing”, and “worse than being raped”. One woman said that despite the case resulting in a guilty verdict, she would never go through it again². Overwhelmingly, complainers tell us that the cost of trying to obtain justice in Scotland following rape is too high.

Giving evidence

3. The ordeal experienced by rape complainers in giving evidence in court, particularly during cross examination, is well documented. Currently, cross examination can focus heavily on any perceived inconsistencies between someone’s statement to the police and the evidence they give in court. Given the length of time which passes between the incident/s and the evidence giving, some inconsistencies are to be expected, however this can be used to significantly undermine a complainer’s testimony. Moving to a process which obtains evidence as close as possible to the incident would assist the justice process in focusing more on establishing the truth, rather than how good someone’s memory is in very stressful circumstances.

4. Complainers tell us that they find giving such personal and intimate evidence in the very formal and intimidating setting of a court room extremely difficult. In addition, fear of the justice process acts as a direct deterrent to people who have experienced sexual crime in reporting what has happened to them to the police.

¹ Criminal Proceedings in Scotland, 2-19-20, Scottish Government

² Thematic Review of the Investigation and Prosecution of Sexual Crimes, Inspectorate of Prosecution in Scotland, November 2017

5. Advocacy support can be life changing. Survivors tell us repeatedly that they could not have navigated what is a complex and intimidating legal process without the support of their rape crisis advocacy worker³.

Privacy Issues

6. Of great concern to complainers of sexual offences is the prospect of personal aspects of the lives being brought up in court, for example their sexual history and character, social media, mobile phones, medical and other sensitive records. A recent report for the Equality & Human Rights Commission raised concerns about how provisions intended to protect complainers from irrelevant questioning were being implemented, referencing a number of highly critical appeal judgments⁴. While complainers have a right to publicly funded legal representation to oppose attempts to access their medical or sensitive records as part of a sexual offence prosecution, there is currently no such right when attempts are made to introduce their sexual history or character⁵.

Delays

7. Even before the Covid pandemic, complainers experienced significant delays in their cases coming to court, with some cases taking two years or longer. This has been made much worse by the pandemic. Efforts by the Scottish Government, Scottish Courts & Tribunal Service and others to restart jury trials are to be commended, but complainers continue to tell us of the distress caused by delays and uncertainty as to when they will be giving evidence. Rape trials are being allocated to floating trial diets, resulting in complainers experiencing considerable uncertainty as to when their case will be calling. We are hearing of numerous cases where complainers are being given a trial date, then waiting for a telephone call to say on which day they should turn up to give evidence, only to be told it has been postponed again. This causes considerable distress and does not assist in complainers being able to give their best evidence. The more certainty we can provide to complainers about what is happening, the more likely it is that they will feel prepared for the evidence they are going to give.

8. Enabling complainers in sexual offence cases to give evidence by commission can address at least some of the issues outlined above, by allowing them to give their evidence in advance of the trial. However, there are significant delays in complainers being able to access commissions, due to lack of availability. This has significantly limited the scope for this measure being able to mitigate the worst impacts of Covid on accessing justice following sexual violence.

Jury attitudes

³ Evaluation of the Rape Crisis Scotland National Advocacy Project, Scottish Centre for Crime & Justice Research, 2018 <https://www.sccjr.ac.uk/publications/evaluation-of-the-rape-crisis-scotland-national-advocacy-project-summary-report-jan-2018/>

⁴ S. Cowan, The Use of sexual history and bad character evidence in Scottish sexual offence trials, Equality & Human Rights Commission (August 2020)

⁵ Privacy Rights for Sexual Offence Complainers: A Report for the Victims Taskforce, Rape Crisis Scotland, March 2021 <https://www.rapecrisisscotland.org.uk/resources/ILR---Report-for-Victims-Taskforce---Roundtable-Final-Report.pdf>

9. There is considerable evidence from mock jury research⁶ of problematic attitudes towards rape complainers, including beliefs that: a ‘real’ rape victim would have extensive external and internal injuries and would resist attack by inflicting injuries on her attacker and shouting for help; delay reporting a rape is suspicious, and false allegations are commonly made by women and difficult to refute. We have grave concerns that rape survivors are systematically being denied access to justice – and guilty men regularly acquitted – due to jury decision making being influenced by attitudes and belief in myths about rape.

Not proven verdict

10. The Scottish Government commissioned research using mock juries to examine a number of issues, including potential jurors’ understanding of the not proven verdict⁷. The research is the largest study of its kind ever undertaken in the UK, and the first study to be undertaken in the Scottish context. It involved 64 mock juries and 969 individual participants who were similar in demographic composition to the Scottish population eligible for jury service. The research found that when the not proven verdict was available, more individual jurors favoured acquittal. This difference was apparent both before and after deliberation - in other words, the availability of not proven was associated with individual jurors being less likely to favour a guilty verdict, independently of any impact of deliberating as a group. The research also found that potential jurors had inconsistent understandings of the not proven verdict.

11. Complainers in rape cases have spoken powerfully of the impact of the verdict on them, describing the bewilderment they felt when they were informed this was the outcome of their case: ‘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.’⁸

Recommendations from the review of the management of sexual offences led by Lady Dorrian

12. The report from the review of the management of sexual offences, led by Lady Dorrian, published earlier this year⁹, contains a number of recommendations which

⁶ See Chalmers, J., Leverick, F., Munro, V.E., ‘The provenance of what is proven: exploring (mock) jury deliberation in Scottish rape trials’, *Journal of Law and Society*, 48:2 (2021), pp. 226-249., DOI: <https://onlinelibrary.wiley.com/doi/10.1111/jols.12287>

⁷ Scottish Government, ‘Scottish jury research: findings from a mock jury study’, Social Research, 2019, DOI: <https://www.gov.scot/publications/scottish-jury-research-findings-large-mock-jury-study-2/pages/3/>

⁸ Munro, Vanessa (2020) *Piecing together puzzles : complainers’ experiences of the not proven verdict*. Coventry: University of Warwick

⁹ <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>

have the potential to transform justice responses to sexual crime in Scotland. We are calling for these recommendations to be implemented in full, with one caveat outlined in point 15 below.

13. Many of the proposals in the review – the introduction of a specialist court, improved communication, expanding the pilot of visually recorded evidence in rape and attempted rape cases¹⁰ across Scotland, introducing independent legal representation for complainers where attempts are made to introduce their sexual history or character, introducing a legal right to anonymity for complainers – are essential and welcome and will undoubtedly improve complainers' experience of the justice process.

14. However, as important as improving complainers' experience of the justice process is, it is meaningless without action to tackle the systemic barriers to justice which currently exist. It is critical to engage with the fundamental question of why so many rape trials end in an acquittal, even where there is seemingly considerable evidence in support of the complainer's account. This requires serious consideration of how to address the use of rape myths in jury decision making.

15. We have one note of caution in relation to the proposed specialist court. We are concerned that applying a 10-year sentencing limit could be seen to reduce the seriousness with which rape is treated, given that it is currently only able to be prosecuted in the High Court, which has unlimited sentencing powers. We recognise that the vast majority of rape cases where there is a conviction result in sentences below 10 years, however, we have some cases where we are supporting complainers which result in orders for lifelong restrictions, for example cases involving serial rapists, and have some concern that if cases such as these are heard in the High Court rather than the specialist court, then complainers in these cases will not have the full benefit of a specialist court where every member of staff has been through trauma training. While we appreciate that under the proposals there is scope for the High Court to remit cases to the specialist court, we have some concern that complainers whose cases are likely to attract a sentence over 10 years would have a poorer experience than those going through the specialist court.

Conclusion

16. Urgent and radical reform is required if complainers of sexual crime in Scotland are to have meaningful access to justice. With the caveat in point 15 above, we consider that implementing the recommendations from the review led by Lady Dorrian, and removing the not proven verdict, would transform justice responses to sexual crime in Scotland.

¹⁰ Currently this pilot is running in Edinburgh, Highlands and Dumfries & Galloway and involves complainers' police statements being visually recorded with the possibility of this being used as their evidence in chief.

Written submission from Scottish Women's Aid

Scottish Women's Aid (SWA) is Scotland's national domestic abuse (DA) advocacy, policy, and service organisation; we act as an umbrella for the 34 local Women's Aid services and work hand in hand with them and national and local bodies to end domestic abuse in Scotland.

We welcome this opportunity to feed into the Criminal Justice Committee's agenda setting and are grateful for consideration of the following priority areas. We are happy to discuss any of them further.

Separation of criminal and civil matters by the justice committee

SWA is concerned that the business of the Committee is now restricted to criminal matters only—civil and criminal matters are inextricably intertwined in most domestic abuse cases. We do understand the challenges of committee workloads and crowded calendars, but we hope that both this Committee and the Equalities, Human Rights and Civil Justice Committee will jointly and proactively identify issues that reflect the existing chasm between criminal and civil proceedings and the harm experienced by children and women experiencing domestic abuse because of that chasm.

Impact of the Domestic Abuse (Scotland) Act

While SWA is undertaking research with Edinburgh University, ASSIST and EDDACS to understand how the DASA has impacted on women and children's experiences of the criminal courts, we have numerous concerns and questions about other research on implementation and would find it helpful to hear about the Committee's role in accountability mechanisms, including the report back to Parliament promised in DASA.

Children and young people

We are particularly concerned about operation of the child aggravation in DASA cases and how it does (or does not) operate to protect children in contact cases in civil proceedings. Very little information seems to be available about how COVID court closures and delays have affected children's access and rights to make their views known in court proceedings.

Young expert group

In the context of both the pandemic and significant legislative changes in our criminal and civil justice systems, now more than ever we need meaningful engagement with children and young people to inform justice decisions and implementation. A young expert group, focused on justice issues, would ensure that the transformational work being undertaken in both our criminal and civil justice systems serves those who require it most - children and young people experiencing domestic abuse, and their mothers. We have discussed this proposal multiple times with officials since DASA was passed, and who have welcomed it in principle, but action has stalled every time. With the prospect of incorporation of UNCRC and CEDAW, this mechanism seems more important than ever

Backlog of court cases

The lengthy closures of courts due to COVID-19 and the limited numbers of cases able to be heard since courts reopened has significantly increased both the backlog of domestic abuse cases and victims wait for justice. Urgent action is needed to reduce the backlog of domestic abuse cases in a way that fully respects the rights of victims/survivors, who confirm to us and sister organisations that justice delayed is indeed justice denied.

We know that SCTS currently citing average time for DA cases to be called is 13 weeks, but this figure can be misleading, as the vast majority of cases being called are not going ahead for multiple reasons. (We have heard such figures as 1 out of 5 cases is actually going ahead—cases routinely are being postponed for well into 2022.)

Access to timely, competent, and affordable legal services

Children and women living with domestic abuse—whether or not they live with the abuser—consistently suffer often insurmountable obstacles to accessing legal services. We have just completed a research project (funded by Legal Education Foundation--LEF) gathering data on the extent of the problem. The final report tells a compelling story of justice denied. We are just launching a follow-up project, also funded by LEF to test a model whereby a specialist domestic abuse solicitor is hosted in a Women's Aid service and provides early, free, and competent services. We only have funding to test this model for 6 months of access and are seeking matching funds from Justice to allow us to provide services in Edinburgh Women's Aid for a year. We expect to demonstrate that this model reduces harm to children and women, reduces court burden, and reduces costs to the public purse.

Collection and disaggregation of criminal justice data on domestic abuse

Currently police and prosecution data on domestic abuse is not fully disaggregated by sex of victim and of accused together. Limited data is available disaggregated by sex of victim only. Very little data is collected/published that is disaggregated by sex and other demographic characteristics such as age. Little to no data is available disaggregated by ethnicity and disability. This means that it is difficult, and frequently impossible, to identify patterns of experiences and disadvantages that different groups of women face within the criminal justice system and the extent to which changes in laws, policies and practices benefit them.

Written submission from Professor Michele Burman, University of Glasgow and Scottish Centre for Crime and Justice

1. Rape and Sexual Offences

There has been a marked increase in the number of rapes reported to the police in Scotland (Scottish Government 2019). While the majority of rapes still do not come to the attention of the criminal justice system, these increases do suggest that victim-survivors are increasingly confident about coming forward and reporting to the police. Yet, it remains the case that reports of rape in Scotland rarely translate into convictions. Rape and attempted rape have the lowest conviction rate of any crime type, and not proven verdicts account for a significant proportion of acquittals.

2. The experience of victims who report sexual offences

Sexual offences have profound and distinct impacts upon those who experience them and they pose particular challenges for the criminal justice response. Reporting a crime and engaging with the ensuing criminal justice process can be a positive experience leading to a sense that 'justice' has been served, though it can also be an experience characterised by anxiety, uncertainty and disappointment in both the process and the outcome. While common concerns can be identified in victims' experiences of the criminal justice system irrespective of crime type, for those who have endured rape or sexual assault, concerns are particularly acute.

In our *Justice Journeys* research, which traced the end to end experiences of those reporting rape and sexual assault (Brooks-Hay et al. 2019), it became clear that **victim survivors continue to face challenges at each stage of the criminal justice process**. Evidential challenges posed by corroboration and the admissibility of personal records combine with procedural issues such as delays and uncertainties in the progression of cases to impact negatively on the ability of those reporting rape to give their 'best evidence'.

Some difficulties occur at identifiable points (reporting to police, giving evidence in court) though others are far more generalised and occur throughout the process. In particular: disparities between victim-survivor expectations and experiences; inadequate communication from officials; the lengthy duration of the process; fear of having the minutiae of their personal lives examined in court; the uncomfortable physical environments of police stations and courts; concerns about personal safety; feeling marginal to the process; perceptions of the system being weighted in favour of the accused; and belief that the current system does not adequately represent their interests. Of great concern is the removal of personal belongings. None of those in our study received their personal possessions (e.g. mobile phone, laptop, clothing) back after they had been taken as evidence and they did not know what happened to their items, where they were, for how long they would be without them. These concerns raise significant questions about privacy and how victim-survivors can be best prepared, informed, supported and represented in the criminal justice process.

3. Information about case progression

The challenges faced by victim-survivors - **insufficient information about case progression, poor communication, the uncertainties about trial dates and last**

minute changes to court locations - are well-established (e.g. HM Inspectorate of Prosecution, 2017). In the *Justice Journeys* research (Brooks-Hay et al., 2019), victim-survivors described themselves as being 'in a state of traumatisation', 'living in limbo, with 'no road map' for how to continue in the criminal justice process or in their life more generally, especially in situations marred with a lack of communication over what is happening and why.

Participants in the *Justice Journeys* study described the delays experienced while awaiting trial as 'being continuously let down' and the impact that the lengthy criminal justice process, coupled with waiting for news of court dates had on their ability to function at school, college, work, or as a parent. Others noted how their ability to move on from what happened and plan for the future was negatively impacted. With rape trials allocated to floating trial diets, this is exacerbating the uncertainties about case progression and causing additional distress for victim-survivors.

4. Delays

Delays and inefficiencies in the criminal justice system **raise significant issues around complainer's access to justice, as well as defendants' rights and the proper administration of justice.** Even before COVID-19, waiting times in rape cases have been unacceptably lengthy. Further delays caused by Covid-19 are having adverse consequences on victim-survivors and their families, impacting on their personal, domestic and professional lives which prevent them resuming working or studying, and which will likely include difficulties in maintaining close relationships (let alone establishing new ones); developing mental and physical health problems, including anxiety, night terrors, confusion, suicidal thoughts, depression, and trauma (Burman and Brooks-Hay 2020).

Because delay has a particular effect on those who suffer from physical, sensory and learning disabilities or pre-existing mental ill health (Gillen, 2019: 290-291), the implications for those with these conditions are considerable. In cases where defendants remain within the family or community, safety concerns will likely be paramount. This is a significant concern given that sexual offences frequently occur within families or intimate relationships.

Perhaps most importantly, **delays threaten survivors' wellbeing by preventing them from moving into a therapeutic recovery phase** (Herman, 2003) thereby postponing their psychological recovery indefinitely while also requiring them to retain the detail of distressing events in preparation for going to court and give evidence.

Delays have clear implications for the administration of justice. The Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland (2019) devoted much attention to the consequences of delays in particular, the damage wrought to public confidence in the criminal justice system. Under-reporting is a recognised concern by the Scottish Government. The **knowledge that a case is unlikely to come to an end for years will likely act as a real disincentive to report in the first place,** effectively undoing the work undertaken by the Government and Police Scotland to encourage victims to come forward.

Delays also impact upon the quality of their evidence. Witness testimony is likely to be more detailed and accurate closer in time to an alleged incident. Both the victim-survivor's and the accused's ability to recall the details of an alleged offence at trial can be severely affected by delay. For this reason, **pre-recorded evidence should be taken as close to the incident/reporting of the incident as possible.**

5. Giving Evidence

The ordeal experienced by victim-survivors in giving evidence in court, particularly during cross examination, is also very well documented. In our *Justice Journeys* research, questioning by both the prosecution and the defence was clearly challenging, though the content and manner of questioning by the defence was experienced as particularly difficult, not least because, through the pursuit of questioning and evidence about sexual history and/or character, it has the potential to compound the impacts of experiencing sexual violence. The **relevance of particular lines of questioning was difficult for victim-survivors to comprehend.** This contributed to concerns that they were made to 'look bad' or that **the defence were looking for ways to discredit them, with attacks on their character or credibility, while the prosecutor did little to intervene.** A persistent theme in participants' reflections on the process of going to court and giving evidence was that their interests were 'marginal' to a process that was simply routine to those working within the system. The inability to 'tell their story' in the court room was a recurring theme. This was linked to having a lack of control over proceedings; a theme that runs through victim-survivor accounts from the point of reporting onwards but is felt acutely at court since the trial often represents the forum where they could finally stand up and 'say their piece'.

Victim-survivors were particularly anxious about the prospect of seeing their abuser in court. The **effectiveness of special measures was curtailed** by accidental meetings with the accused in and around the court building, and victim-survivors' continuing awareness of the accused in the courtroom despite the use of screens. The option of a live television link, removing the need to be in court, was warmly welcomed by some, though others felt that being in the court room was an important part of their journey.

6. Advocacy services

Findings from our *Evaluation of the National Advocacy Project* (Brooks-Hay et al., 2018) indicate the **undisputed value of advocacy support** through the duration of the criminal justice process, from reporting, to trial and beyond. Not only did advocacy support improve victims' experience of the criminal justice process and assist sustained engagement in this process, in some cases it also facilitated making a report of rape to the police in the first instance. This is in keeping with research from other jurisdictions confirming that rape survivors' experiences with medical and legal systems are significantly improved if additional support is provided by victim advocates (see also Campbell, 2006; Rich, 2014; Robinson and Hudson, 2011).

7. Recommendations from the review of the management of sexual offences led by Lady Dorrian

The report contains a number of important recommendations which have the potential to transform justice responses to sexual crime in Scotland.

a) The introduction of a specialist court, as has happened in some other jurisdictions, notably South Africa where rape courts have been in existence since 1993, has great potential for transforming victim-survivors experience of the criminal justice process. The use of dedicated and specialist trained court personnel operating at a specialised court fitted with specialised equipment would greatly improve the experience of those whose case proceeds to court, particularly if this was coupled with the use of pre-recorded evidence.

b) The introduction of independent legal representation (ILR) in rape cases would potentially alleviate some of the concerns raised by victim survivors about the asymmetry of the court room, whereby they perceive that the legal system is ‘on the side of the accused’ and feel very ‘let down’ by prosecutors (Brooks-Hay et al 2019). However, as Raitt discusses, clarity is required about exactly when, how and at what point in the process independent legal representation should be used. In the *Justice Journeys* research, victim-survivors were particularly concerned about the use of sexual history and character evidence, the removal/retention of their personal belongings, the ways in which access to their personal records were allowed and how this information was used to attack their credibility and/or suggest consent. The use of an independent legal representative for advice and representation where a s275 application is being lodged and where access to medical and other sensitive records was sought would have significant benefits for victim-survivors at these points in proceedings.

8. The impact of coronavirus restrictions on experiences of domestic abuse and provision of support

Our *Scotland in Lockdown* study (Armstrong et al 2020) explored the effects of lockdown for victim-survivors of domestic abuse and those organisations who support them. It identified the ways in which perpetrators used the opportunities offered by suppression measures to perpetuate abuse, how that abuse is experienced, and; the short-medium term impacts of the challenges posed by the pandemic for survivors of domestic abuse, and those that support them. Some of the **findings complicate the imagined safety and protection offered by the home in government and public health messaging** to suppress the spread of COVID-19:

- Lockdown measures increase incident rates and/or severity of abuse (intensification)
- Lockdown was used as a way for abusers to re-exert control and capitalize on the increased isolation survivors may be experiencing due to a lack of contact with support services and personal networks
- Suppression measures created extreme isolation, providing abusers with new or unique opportunities for coercive control even when no longer living with survivors.
- Abusers were able to establish new channels to exert their control by re-starting or extending abuse, including through the use of digital technology to coercively control, threatening to expose survivors and/or their families to the virus, and exploitation of child access arrangements and the means to perpetrate economic abuse.

- Adverse impacts of Covid-19 restrictions included exacerbation of delays and uncertainties in criminal and civil justice processes.
- The conditions of the pandemic were experienced by some survivors as 'triggering' due to mirroring the experiences and impacts of abuse such as isolation, mask wearing, and heightened anxiety resulting from increased media attention to domestic abuse.
- Access to services and support has been varied. For some, their ability to obtain support was adversely affected by suppression measures.
- For women in employment, mothers and those living in rural locations with access to appropriate digital technologies and internet access, the move to online provision has improved access to support.
- Digital exclusion is a major issue for survivors experiencing poverty or other forms of marginalisation (e.g., women who are homeless, and refugee and asylum-seeking women).

COVID- 19 greatly **increased demand placed on community-based support organisations**. Staff working in these organisations, who are mainly women, had to rapidly adapt and re-align their services to respond to stressed and traumatised service users, in demanding and markedly transformed working environments, whilst also navigating the disruptive impact of the pandemic within their personal lives.

All support organisations reported increased levels of demand, and changes in the nature of services sought – with practical support having to take precedence over therapeutic support. They also raised **significant concerns about the ongoing safety of women and their children**. For the most part, services adapted rapidly via online service provision – demonstrating innovativeness, flexibility and agility. But there is a limit to how much organisations can or should change their forms of service provision, and it also raises questions about ongoing sustainability.

Several organisations were concerned about their staff resource; in some cases this was clearly diminished due to staff illness, the need for home schooling, and other caring responsibilities. Physical distancing, home-working and recourse to digital technologies are **affecting abilities to maintain crucial professional relationships with service users and colleagues**, with service providers having to manage personal and family needs, alongside increased concerns about the safety, health, wellbeing (and finances) of those they are professionally supporting. This has implications for organisations' sustainability and vitality and could jeopardise service efficacy.

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Written submission from James Chalmers (University of Glasgow), Fiona Leverick (University of Glasgow), Vanessa Munro (University of Warwick)

1. This evidence has been submitted prior to an evidence session being held by the Committee on Wednesday 22 September 2021, regarding how crimes of domestic abuse, gendered violence and sexual offences are dealt with, the impact of existing legislation, and the availability of support services. James Chalmers will attend that session. This evidence has been compiled jointly and represents our collective views.
2. Over 2017-2019, we were members of the research team which carried out the *Scottish Jury Research* project. Vanessa Munro has separately carried out a programme of interviews with complainers whose cases concluded with a not proven verdict, a report of which was published in 2020 as *Piecing together Puzzles: Complainers' Experiences of the Not Proven Verdict* (freely available at <http://wrap.warwick.ac.uk/137857/>).
3. Based on this and other work we have written several academic papers that may be of assistance to the Criminal Justice Committee. In particular:
 1. "A modern history of the not proven verdict" (2021) 25 *Edinburgh Law Review* 151-172 (text freely available at <http://eprints.gla.ac.uk/227149/>).
 2. "Beyond doubt: the case against 'not proven'", forthcoming in the *Modern Law Review* (text will become freely available at <http://eprints.gla.ac.uk/250417/> after a window period; we can supply a copy on request).
 3. "The provenance of what is proven: exploring (mock) jury deliberation in Scottish rape trials" (2021) 48(2) *Journal of Law and Society* 226-249 (freely available at <http://eprints.gla.ac.uk/226566/>).
 4. "Why the jury is, and should still be, out on rape deliberation" [2021] *Criminal Law Review* 753-771 (text will become freely available at <http://eprints.gla.ac.uk/244551/> after a window period; we can supply a copy on request).
 5. "What do we know about rape myths and juror decision making?" (2020) 24(3) *International Journal of Evidence and Proof* 255-279 (freely available at <http://eprints.gla.ac.uk/213471/>) [by Leverick].
4. In compiling this written evidence, we have noted the issues highlighted in the invitation to attend. Given our recent work, we comment here primarily on the **not proven verdict**, but also – more briefly – on **gender and hate crime legislation**, and the **recommendations of the Dorrian Report on the *Management of Sexual Offence Cases***.

The not proven verdict

5. The existence of the not proven verdict in Scots law is a historical accident and not a matter of conscious design. It is occasionally claimed that not proven is the "original" verdict of acquittal and that not guilty was a later introduction, which is incorrect. "Not proven" was introduced in the early 17th century when juries were for a period asked to discharge a different function from that was expected of them before or today, stating whether individual facts were proven or not proven.

After that system of “special verdicts” ended – with the jury’s right to return a general verdict of “not guilty” being reasserted in 1728 – the language of “not proven” persisted and jurors continued to use it as one of two possible verdicts of acquittal alongside not guilty.

6. In modern practice, juries are simply told that there are two acquittal verdicts open to them which have the same effect and are not given a definition of either verdict or guidance as to how they might distinguish them.

The debate over the not proven verdict

7. The debate over the not proven verdict has run since at least 1846, when it was robustly attacked in print by Lord Cockburn. As we demonstrate in our *Edinburgh Law Review* article (paper 1 above), the arguments for and against the retention of the verdict have remained remarkably stable over time.
8. The case against permitting not proven verdicts has consistently been a combination of three arguments: that the verdict is incompatible with the presumption of innocence, encourages jurors to avoid the proper discharge of their functions, and casts an unwarranted stigma on the accused.
9. The case for permitting not proven verdicts has taken two forms: either that while Scots law might not design a three verdict system if starting today from a blank slate, it nevertheless *has* adopted such a system and the case for changing the *status quo* has not been demonstrated; or, more positively, that the verdict works to the benefit of the accused by reducing the risk of wrongful conviction and also by allowing the jury positively to declare innocence in appropriate cases.
10. In more recent years, the debate has shifted in two key ways: (a) emphasising the interconnection of the verdict with other distinctive aspects of the Scottish criminal justice system and (b) the emergence of specific concerns about the use of the verdict in sexual offence trials. In this respect, it has been suggested (in the verdict’s favour) that it allows jurors to signal to a complainer that they were not in fact disbelieved; it has also been suggested (against the verdict) that it is particularly distressing for complainers in such cases.

Rebutting the arguments in favour of the not proven verdict

11. The new evidence generated by the *Scottish Jury Research* and Munro’s work with complainers has allowed us to undertake a fuller and more informed analysis of the arguments for and against the not proven verdict than previously possible. We do so in our *Modern Law Review* article (paper 2 above).
12. In summary, while mock jurors believe that they are sending a particular message through their choice of the not proven verdict, the meaning of that message is variable and is not always received as intended. In sexual offence cases in particular, there is a mismatch between what jurors believe they are communicating to complainers and the message which is actually heard. In terms of communication to the wider community, the lack of any clear and settled meaning for the verdict, and differing juror understandings as to what it signifies

and when it should be used, undermines any potential communicative function and makes it difficult for criminal justice professionals to explain to complainers how they should best interpret the jury's verdict.

13. There is evidence that the not proven verdict may reduce the propensity of jurors to convict. However, this in itself does not demonstrate that it operates as a safeguard against wrongful conviction: indeed, it may equally result in the acquittal of the factually guilty. The use of the verdict is particularly prevalent, but also particularly problematic, in sexual offences, where it may enable juries to give weight to myths and stereotypes in avoiding verdicts of conviction. And while there is no clear evidence that the verdict does in fact safeguard against wrongful conviction, its existence has been used to justify Scots law not introducing other measures which would, meaning that it may in fact be actively harmful in this regard.

Arguments against the retention of the not proven verdict

14. This serves, we believe, to rebut the core arguments in favour of the not proven verdict. In addition, we would note two strong arguments against its retention in the Scottish criminal justice system.
15. The first is in terms of the stigma that attaches to the verdict. It operates by a nudge and a wink, carrying a meaning which no-one is willing to articulate and which, if they were prepared to articulate, would be seen as unjust and improper. In empirical terms, we do not know to what extent stigma is in fact experienced by those acquitted by a not proven verdict, but regardless, there is a normative argument that an acquittal verdict should not be stigmatising, and that in itself is a sufficiently powerful argument against its retention.
16. The second argument is that it risks a loss of public confidence in the criminal justice system, as it allows jurors to use it as a compromise verdict to bring deliberations to an end, rather than engaging in more rigorous discussions. There is empirical evidence from the *Scottish Jury Research* that the verdict operates in precisely this way, with participants using it to bring deliberations to a premature end. There was also evidence that this use was 'read into' the verdict outcome by sexual offence complainers, undermining their belief that jurors discharged the weighty responsibility placed upon them with appropriate diligence.

Alternative approaches to a two-verdict system

17. We do not support the suggestion, which has sometimes been made, that if Scots law were to move to a two-verdict system it should instead abolish the not *guilty* verdict, moving to a system of "proven" and "not proven". It would be odd, given the demonstrable problems of the not proven verdict, if a decision were taken to retain it rather than not guilty – against which no case has been made. Moreover, a single acquittal verdict of not proven is likely to carry a residual element of stigma that is incongruent with the principles underlying the presumption of innocence. It is also unlikely to be well understood by anyone outside of the jurisdiction, who may attach a stigmatic meaning to it through lack

of understanding, especially as the verdict would be out of step with the use of not guilty by the vast majority of other legal systems.

Gender and hate crime legislation

18. Two of us (Chalmers and Leverick) previously (on 19 July 2021) submitted written evidence to the Independent Working Group on Misogyny and Criminal Justice in Scotland. In summary, we are of the view that the characteristic of sex should be added to hate crime legislation in Scotland, in line with emerging international practice in that regard.
19. We do, however, recognise that there is a potential difficulty in applying a sex-based aggravator in respect of offences which can be considered to be inherently misogynistic and that distinguishing between e.g. sexual offences which are and are not aggravated by reference to the victim's gender may be difficult and potentially counterproductive. The issue, including how such difficulties can be mitigated or avoided, is currently under consideration by the Law Commission in respect of England and Wales (see *Hate Crime Laws: A Consultation Paper* (Law Com CP 250, 2020) ch 12). As the issues which arise in this regard are broadly similar across the two jurisdictions it may be appropriate for a final decision on this question to be taken following the Commission's report.
20. We do not think these concerns are relevant to the question of whether the "stirring up" offence under s 4(2) of the Hate Crime and Public Order (Scotland) Act 2021 should extend to sex in addition to the characteristics already listed in s 4(3) of that Act. We believe that it should, while recognising that prosecutions for an offence of stirring up are likely to be relatively rare (as is true for the existing offence of stirring up racial hatred).

The Dorrian Report

21. The Dorrian Review made a number of recommendations aimed at improving the management of serious sexual offence cases. We welcome all of these proposals, and were glad of the opportunity to present some of our in progress findings from the Jury Research to the Review Committee. Here, we expand on those findings with the benefit of additional analysis, but will confine our comments to the recommendation that measures should be taken to address false beliefs and prejudices held by jurors in sexual offence cases (so-called "rape myths"). The Review recommended expanding the range of mandatory jury directions given in sexual offence cases and reviewing the format in which these are delivered. It also recommended that consideration "should be given to developing a time-limited pilot of single judge rape trials" (para 5.70).
22. We are of the view that these measures are essential if the ongoing low conviction rate in rape and other serious sexual offence cases is to be addressed. Recently published figures indicate that only around six per cent of reported rape cases result in a conviction (see F Leverick, "Improving the Management of Sexual Offence Cases in Scotland: The Dorrian Review" (2021) 25 *Edinburgh Law Review* 385 at 385). This figure is even more concerning when

unreported incidents are considered – only half of those seeking support from Rape Crisis Scotland had reported their experience to the police. The Dorrian Review noted informal discussions with members of the judiciary who regularly preside over jury trials in sexual offence cases. These judges reported acquittals being returned “even in cases with ample evidence of high quality” where it was “difficult to understand the rationale” for this (para 5.7). This echoes concerns expressed by criminal justice professionals in England and Wales in the Ministry of Justice’s recent End to End Rape Review.

23. The Dorrian Review based its recommendations relating to rape myths on early findings from the *Scottish Jury Research* project. A full account of our findings has since been published in the *Journal of Law and Society* (paper 3 above). We found that jurors regularly expressed false and prejudicial beliefs during rape case deliberations, including that an absence of extensive injuries and/or a ‘failure’ to shout for help is evidence of consent; women regularly make false rape allegations; and even a short delay in reporting an incident is evidence that it is fabricated. These findings mirror those of a number of other mock jury studies of rape case deliberations that have been undertaken by Vanessa Munro, all funded by the Economic and Social Research Council (references to these studies can be found in papers 3, 4 and 5 above).
24. In a recent paper, Cheryl Thomas has argued that “previous claims of widespread ‘juror bias’ in sexual offence cases are not valid” (C Thomas, “The 21st century jury: contempt, bias and the impact of jury service” [2020] Crim LR 987 at 1004). She bases this claim on a questionnaire survey of jurors in England and Wales who had sat on real cases (some, but not all, of which were sexual offence cases), who were asked whether or not they believed a number of different rape myths. We discuss the methodological limitations of this research in an article for the *Criminal Law Review* (paper 4 above) and would dispute Thomas’ claim. There is extensive evidence of false and prejudicial beliefs regarding sexual assault being a real problem and that evidence is not contradicted by Thomas’s study. We would highlight also that even jurors who score relatively low on surveys aimed at measuring their belief in rape myths can express prejudicial views when deliberating in a concrete case. A short version of our argument is available at <https://www.uofgschooloflaw.com/blog/2021/3/18/the-dorrian-review-and-juries-in-rape-cases-myths-about-myths>.
25. In further support of our position, we would also point to a recent study undertaken in Australia and New Zealand (see Y Tinsley, C Baylis and W Young, “‘I Think She’s Learnt Her Lesson’: Juror Use of Cultural Misconceptions in Sexual Violence Trials”, manuscript in progress, shared with the authors, 2021). The researchers conducted a series of detailed post-verdict interviews with jurors who had sat on real sexual offence cases, triangulated with pre- and post-trial judicial interviews and observation of trial proceedings. Unlike Thomas, but in line with our findings, they identified considerable evidence that misconceptions about sexual violence were present in jurors’ discussions. Jurors often drew on ‘real rape’ stereotypes, including the extent of a complainant’s physical resistance, in determining credibility and - despite judicial warnings stressing there may be good reasons for delayed reporting - continued to place undue weight on this

factor. In 10 of the 18 cases reviewed, there was evidence of jurors' endorsement of victim-blaming attitudes related to the complainant's clothing, flirtatious behaviour, lifestyle, intoxication or prior sexual history.

26. The *Scottish Jury Research* has provided important and original insight, but was not designed primarily for the purpose of investigating juror deliberations in sexual offence cases (it aimed to test the impact of jury size, majority rules and verdict options) and so only investigated mock jurors' deliberations in relation to a single rape trial scenario. Further research across a wider range of trial scenarios may be beneficial, ideally triangulated with research in Scotland involving jurors in real cases that follows the methodology of the Trans-Tasman study. The Dorrian Review raises the possibility of a judge only pilot: we believe this merits careful consideration as part of a package of evidence-based reform and modernisation in this area.

Written submission from Stop It Now! Scotland

Summary

Stop It Now! Scotland recommends that the committee considers a dedicated prevalence survey to identify levels of sexual offending against children in Scotland alongside the development of a national strategy for tackling child sexual abuse. A reduction in sexual harm to children and young people could be achieved by a greater focus on prevention including the development of a therapeutic pathway for adults worried about their sexual thoughts and feelings towards children.

By taking a public health approach to the prevention of sexual offending against children, our children will be able to grow up in a safer Scotland protected from harm both offline and online. It also makes economic sense. In 2012 the NSPCC estimated the cost of sexual abuse to the UK economy as being £3.2 billion. Every pound spent on prevention is both an investment and a saving.

Introduction: Stop It Now! Scotland – who we are.

Stop It Now! Scotland is a child protection charity focusing exclusively on the prevention child sexual abuse. Our vision is making Scotland a place where children live free from sexual abuse and exploitation. We see child sexual abuse as a preventable public health issue.

Since 2008 we've used our wealth of child sexual abuse knowledge, including our experience of working with, and understanding of abuser behaviour, alongside prevention theory and practice, to prevent sexual offending against children in Scotland.

We maximise the safety of children and young people by:

- Helping those worried about their own sexual thoughts, feelings or behaviours towards children and young people achieve positive change and desist from offending on a long-term basis;
- Providing confidential advice to protective adults who contact us, enabling them to take positive, preventative actions to protect children from sexual harm;
- Using our knowledge from working with perpetrators to develop and evaluate evidence-based resources for parents and professionals a that prevent sexual abuse **before** it happens;
- Using our expertise in partnership with other organisations to create safer environments within families, in communities, and online;
- Providing online self-directed interventions for people concerned about their online or offline sexual behaviour towards children (Get Support and Get Help) to help them change their behaviour and prevent abuse;
- Helping individuals and communities recognise that the sexual abuse and exploitation of children is a preventable issue, that signs and indicators of abuse can be identified.

99% of our clients are male. The majority of them come to us after receiving details of our service from Police Scotland upon arrest for sexual crimes against children and young people – largely the viewing of indecent images of children.

Those we work with do not have any access to support from social work or any other service in Scotland until they have been through the criminal justice system. At the moment, due to COVID related delays – some clients are waiting in excess of 18 months to be seen by the courts. We believe there is a moral case for supporting, challenging and beginning to change the behaviour of people who pose a sexual risk to children before this process is complete. We are also the only confidential and anonymous service for anyone who is concerned about their own sexual thoughts or feelings towards children – so they can get help before a child is harmed.

Why does prevention matter?

A 2021 review of the literature on prevalence in the UK published by the Home Office¹ funded Centre of Expertise on Child Sexual Abuse concluded that 15% of females and 5% of males will experience some form of sexual abuse before the age of 16. This means at least 80,000 children in Scotland will have been affected by this issue before they leave high school. However there is no specific data for Scotland on how many children have experienced child sexual abuse in Scotland². Whilst the impact of child sexual abuse varies from individual to individual, we know that it is associated with poor mental and physical health outcomes that can endure into adulthood. We also know that it is associated with sexual revictimization in adulthood.

Statistics show that recorded sexual crimes in Scotland are increasing however widespread under-reporting of sexual crime means they should be approached with caution. Only 1 in 8 cases come to the attention of services in the UK at the time³.

We also know that

- at least 40% of recorded sexual crimes in Scotland feature children as victims
- 45% of the crimes against children recorded by Police Scotland where an age was recorded, were against children under 13⁴.
- the likelihood of victimisation increases with age with around 50% of victims being between 12 and 16.
- additional vulnerabilities also increase risk of sexual abuse; children with disabilities are twice as likely to be sexually abused than children without disabilities for example
- child sexual abuse is a gendered crime
 - a study looking at sexual offending data in 12 countries found that 98% of recorded sexual crime featured male perpetrators

¹ <https://www.csacentre.org.uk/our-research/the-scale-and-nature-of-csa/>

² <https://www.childabuseinquiry.scot/resource-centre/the-abuse-of-children-in-care-in-scotland-a-research-review/>

³ <https://www.childrenscommissioner.gov.uk/report/protecting-children-from-harm/>

⁴ <https://www.gov.scot/publications/recorded-crime-scotland-2019-2020/>

- Police Scotland figures show that where sex was recorded, girls were five times as likely to be victims of sexual crime than boys.

Impact of COVID on Sexual Offending

The number of sexual crimes recorded by the police in Scotland decreased by 1% from in 2019-20 in comparison to the previous year⁵ yet we are also seeing evidence of 25% increase in recorded sexual crime between April – June 2021⁶ compare to the same period in 2020. Whilst it is too soon to draw conclusions it is possible that children and young people have been physically and socially isolated from friends and trusted adults outside the home for various periods during the pandemic has in-turn reduced reporting year-on-year but that an increase will come in the near future as lockdown restrictions continue to ease.

Lockdown restrictions during the Covid-19 pandemic may have elevated the risk of online harm to some children by increasing vulnerabilities and reducing protection at a time when many children had increased unsupervised online access.

There is also evidence of;

- more proactive behaviour targeting children from perpetrators during lockdown⁷
- an increase of recorded sexual crime by around 1/3 between the 23rd March and 15th June 2020 (inclusive)⁸.
- a reported 50% increase in reports of online child sexual abuse images during lockdown⁹.

Our UK Stop It Now! Helpline received 14,000 contacts (calls/emails/chats) from over 7,000 people in the 2020/21 financial year, and increase by around 10% on the previous year. Half of the contacts were from individuals who were worried about their sexual thoughts and feeling towards children. Analysis of our call data found that some of these individuals identified that their concerning behaviour had escalated during the Covid-19 pandemic with economic stress, feelings of isolation, depression and anxiety all cited as factors. Some described legal, adult pornography and masturbation as a coping mechanism, but a preoccupation that ultimately provided a gateway to indecent images of children as they became desensitised to the online material they typically viewed.

Myths and realities about people who commit sexual offences

Public knowledge in relation to those who sexually abuse children and the context of the abuse is shaped by media reporting of the most serious crimes, and this leads to common misconceptions.

⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2020/09/recorded-crime-scotland-2019-2020/documents/recorded-crime-scotland-2019-20/recorded-crime-scotland-2019-20/govscot%3Adocument/recorded-crime-scotland-2019-20.pdf>

⁶ <https://www.bbc.co.uk/news/uk-scotland-58346782>

⁷ <https://www.europol.europa.eu/publications-documents/exploiting-isolation-offenders-and-victims-of-online-child-sexual-abuse-during-covid-19-pandemic>

⁸ Police Scotland, Freedom of Information Request Ref: IM-FOI-2020-1054, 14th July 2020

⁹ <https://www.iwof.org.uk/news/%E2%80%98definite-jump%E2%80%99-as-hotline-sees-50-increase-public-reports-of-online-child-sexual-abuse-during>

Common **myths** include:

- stranger assaults are a common form of offence when they are relatively rare and the most serious and repeated offences are likely to be committed by people known to the child.
- that all offenders are adults. International studies suggest that around 20-25% of sexual offences are committed by children and young people under the age of 18, with mean age of coinciding with onset of adolescence (13-14).
- abuse is committed by serial offenders. 75-80% of convicted adult sex offenders have no known sexual offending history. Reoffending rates are generally low with international rates of re-offending being around 13%¹⁰. There is no Scottish specific data.

Reducing reoffending

A recent Risk Management Authority literature review¹¹ concluded that internet offenders reoffend at a lower rate than contact offenders and those who do reoffend tend to do so with further Indecent Images of Children.

We also know that treatment reduces reoffending rates even further. Most studies have found that treatment effectiveness in well-implemented evidence-based interventions in the community or custody reduce reoffending by around 1/3¹². The Scottish programme, Moving Forward and Making Changes was evaluated in 2017 which found that it reduced risk assessment scores for the majority who attended.

Offenders who report a sexual interest in children tend to re-offend at higher rates. However, it is likely that a wider range of factors contribute towards an individual's offending behaviour, including other sexual motivations not directly related to children such as:

- sexual gratification
- a sexual interest in illegal sexual activity
- problematic attitudes towards sex
- and the use of sex as a coping mechanism

Non-sexual motivations such as financial motivations, misogyny, or those relating to entitlement, power, and control also play a significant role in re-offending behaviour. An offender's circumstances and life experiences will also play a role in the onset and maintenance of their offending behaviour.

Risk factors include:

- consumption of alcohol
- peer influences
- issues in self-management

¹⁰ https://www.researchgate.net/publication/13701423_Predicting_relapse_A_meta-analysis_of_sexual_offender_recidivism_studies Journal of Consulting and Clinical Psychology 66 348-362

¹¹ <https://www.rma.scot/literature-review-a-review-of-the-risk-posed-by-internet-offenders/>

¹² <https://pubmed.ncbi.nlm.nih.gov/31476514/>

- relationship breakdown.

These factors challenge the view that most sexual offenders are dedicated, serial offenders driven by irresistible sexual urges and suggest instead that contextual factors and the role of opportunity in child sexual abuse should be given more attention.

A Public Health Approach to Child Sexual Abuse

Scotland has a chance to change the way it approaches child sexual abuse prevention. Criminal justice responses to sexual offending and child sexual abuse are critically important. We need to bring offenders to justice and must ensure the needs of victims are at the heart of our judicial system. But if our only frame of reference for tackling child sexual abuse continues to be through the criminal justice system then we miss an opportunity to prevent abuse rather than “just” responding to it. We urgently need to think about this problem beyond one of law enforcement and shift ‘upstream’, investing in preventing sexual abuse before it happens. At Stop It Now! Scotland we are committed to understanding child sexual abuse as a preventable public health issue.

This allows a shift from professional-led responses after abuse is identified to engaging with communities as active partners in finding the solutions to this issue before it happens. This involves a pivot towards prevention and early-intervention.

- Raising awareness of child sexual abuse

Offenders can be deterred when people are educated and talk about child sexual abuse openly. If no one is talking about safety and protection, then it is more comfortable for potential offenders to rationalise thoughts, feelings and behaviours that will lead to harm.

- Deterrence and disruption of those who present a risk to children.

Last year over 2000 people accessed our self-help online resources, many of them signposted by [Police Scotland’s online deterrence campaign](#). Each year we are approached by more adults who have not offended, but are worried about their sexual thoughts and feelings towards children, looking for support in managing feelings more effectively.

- Reducing opportunities to offend

Schools, residential units, youth work settings and other child facing organisations have much to do to make their environments safer for children. That means training staff, ensuring policies and procedures concerning conduct between staff and children are appropriate, challenging cultures conducive to abusive norms, increasing understanding of grooming behaviours and handling suspected or disclosed abuse including low level concerns.

There is a lot we can do within our own homes, during playdates, family gatherings etc to keep our kids safe with those we trust the most. Some of that involves educating children about abuse and speaking to safe adults when anything worries them. But

ultimately it is not the responsibility of children to stop themselves being abused; responsibility lies with adults to be more protective and make safer choices.

Why change the current system?

Within the current criminal justice led approach to child sexual abuse prevention the vast majority of those committing abuse do not come to the attention of the authorities.

The system relies upon:

- children who have been sexually abused to make a complaint to someone
- that person to believe that disclosure AND take action
- authorities being successful in identifying and prosecuting the perpetrator
- authorities providing restitution to the victim.

This sequence of events is far from the norm despite extensive efforts and investment over many years to make it so. The majority of sexual abuse experienced by children is not reported to the authorities, and does not result in prosecution, conviction or restitution.

Recommendations

There are a number of areas where Scotland can make great strides in its understanding of, and tackling of sexual offending against children.

A dedicated national prevalence survey of child sexual abuse

We have no national data in relation to scale and nature of child sexual abuse in Scotland, or indeed other forms of child maltreatment and adverse childhood experiences. A national survey would help shape our responses to this issue over the next 10 years.

A national strategy for tackling child sexual abuse, based on a comprehensive public health approach foregrounding primary, secondary and tertiary prevention

Action plans to tackle child sexual abuse have been launched in both England and Wales over the last 2 years. A national strategy to tackle child sexual abuse would provide clear direction and ensure that prevention of child sexual abuse is a priority for this country.

A therapeutic pathway for adults worried about their sexual thoughts and feelings towards children

Evidence from UK and beyond suggests that many individuals who have not offended but who worry about sexual thoughts and feelings towards children will seek out help if the right kind of service is provided that balances client confidentiality and public protection.

We would be happy to elaborate on any of these points.



Stop It Now!
SCOTLAND | ALBA

**Helping prevent
child sexual abuse**

Stop It Now! Scotland A year in review 2019/20

**THE
LUCY FAITHFULL
FOUNDATION**

Working to protect children



Stop It Now! Scotland – a year in review 2019/20

This report outlines the impact of Stop It Now! Scotland, the only organisation focused exclusively on the prevention of child sexual abuse in Scotland.

Child sexual abuse and exploitation are issues affecting tens of thousands of children in Scotland each year, leaving many with psychological trauma and repercussions for the rest of their lives. Child sexual abuse happens at home, at school, and in the community - most often at the hands of someone the child knows and trusts. It also happens online, and the widespread use of digital technologies can put some children at risk. The consequences can be devastating for children, but also catastrophic for their families, communities and society more generally.

But child sexual abuse and exploitation are preventable. There is nothing inevitable about sexual harm to children and we know from a growing body of evidence that this is an issue that can be tackled effectively as a public health matter.

In the next few pages you will read about how we work with people who are worried about their sexual thoughts, feelings or behaviours towards children, supporting them to lead positive and responsible lives, free of offending. Some will already have offended either online or offline or both, while others are on a path to offend but looking for help to change. All are individuals who do not receive statutory support. This report also details how we take lessons from working with those who present a risk to children and use it to shape supports we provide for families and carers to protect children more effectively. You will also read about how we operate as a centre for expertise on tackling sexual harm, continuing to create and evaluate new and innovative ways to prevent sexual abuse happening in the first place and contributing to research and knowledge about the protection of children from sexual harm. You'll also find out about our partnership work both in Scotland and beyond with a range of

organisations that allow us to extend our reach, impact and understanding.

Our work is vital in keeping Scotland's children safe. We are a highly skilled and specialist multi-agency team with extensive experience in child protection, with staff from backgrounds such as social work, law enforcement, psychology, education and counselling, and with clinical oversight provided by our forensic psychologist. I want to thank all of our highly skilled staff for their dedication and energy over the last year, as well as all the charitable trusts, statutory bodies and individuals who support our work as part of The Lucy Faithfull Foundation.

The year-end coincided with the Covid-19 pandemic – a global crisis that poses huge challenges to the delivery of our work but, more importantly, prompted an increase in risks of sexual harm to children. We rose to the challenge that lockdown posed and are continuing to do so whilst the pandemic is ongoing. The determination of our staff, supported by our partners and funders, is enabling us to continue to deliver services to those who need them in these challenging times.

As we respond to this unprecedented situation, we are also looking to our future. In 2020/21 will develop a new strategy for our organisation, ensuring we remain equipped to be the pioneering, cutting-edge organisation we have always been. We will continue to be at the forefront of child sexual abuse prevention developments. And we will lead debates and influence social and political attitudes. Children in Scotland deserve nothing less.

Stuart Allardyce
Director, Stop It Now! Scotland



Keeping children safe from sexual abuse in Scotland – the stats 2019/20

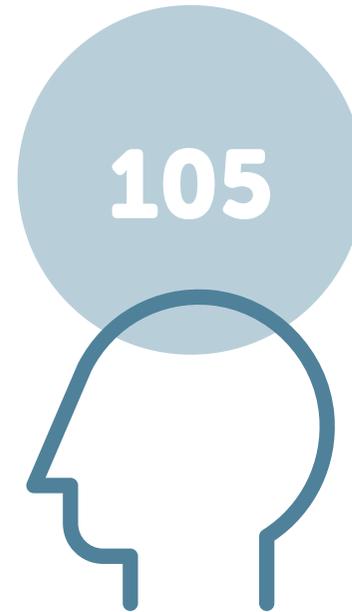


Our web pages were accessed over 34,000 times by people in Scotland.



18,270 people in Scotland used Get Help – our online resource for adults worried about their sexual behaviour online.

660 people in Scotland used Get Support – our resource for adults worried about their sexual thoughts and feelings towards children.



We provided help to 105 people worried about their own thoughts, feelings or actions towards children.



We provided support to 87 family members of people who had been arrested for offences against children.

Inform Plus – working with those who present a risk of harm to children

In 2019/20 we worked directly with 105 people in Scotland worried about their own sexual thoughts, feelings or behaviours towards children, including online behaviour. Some were individuals charged with online sexual offences who were signposted to us by Police Scotland at point of arrest. Others were directed to us from calls to our anonymous UK helpline. Others heard about us by targeted social media, traditional media or searching for help online.

Everyone who contacts us is offered a meeting with one of our project workers within five working days, and after an initial assessment we advise on how we can best support each individual who contacts us. This year in Edinburgh, Aberdeen and Inverness, 52 men completed Inform Plus, our 10-week psycho-educational groupwork programme for men charged with online sexual offences who have not yet been convicted. We also ran two Breaking the Links groups, an adaptation of Inform Plus for people who have committed online offences who have significant issues in relation to trauma, which reached 11 more people. Those who did not meet criteria for group work were offered one-to-one work with our forensic psychologist or one of our practitioners, including individuals who had not sexually offended but who were worried about presenting a sexual risk to children. For those who have been charged and who are approaching sentencing, with the client's consent, and if appropriate, we will share information about the individual's progress with social work and courts.

For the 63 people who attended our group work programmes and completed evaluations, there was an average 44% improvement on scores around mental health and wellbeing, and a 39% improvement in managing strong feelings. All agreed that the group work contributed to their being able to live an offence free life.

The *Strategic review of Police Scotland's response to online child sexual abuse* published by HM Inspectorate of Constabulary in Scotland in February 2020 noted that:

'There is a clear gap in the prevention agenda within this pre-conviction period (or those who commit online sexual offences) that cannot be addressed by statutory bodies alone. Charities such as Stop It Now! offer alternative services.'

STV interview with an Inform Plus participant



When I was arrested I was given a leaflet about Stop It Now! Scotland. It took me a day or so to pluck up the courage to phone. At that point I was already at a very, very low ebb and I was seriously contemplating suicide... Had I not contacted Stop It Now! I don't think I would be here.

Stop It Now! helped me to understand where I was going wrong... and led me to rediscovering myself. A lot of people think they are worthless and this type of behaviour arises from that. What Stop It Now! did is (they) showed me that I am worth something. But also, they showed me in a quite graphic and brutal way exactly what the consequences were for the victims in the images that I saw.

I believe that if I didn't have the support of Stop It Now!, either I would still be offending, or in jail, or dead. One of the three.



Work with family members

Family members of people who have committed a sexual offence against a child are secondary or indirect victims – they often experience significant distress, shame and social stigmatisation but have little or no support from services. At Stop It Now! Scotland, we believe they have a right to support in relation to their own needs. In many cases, the support family members may wish to provide their loved one who has offended can also have a critical role in helping them move forward and in protecting children from further harm. If we fail in supporting non-offending family members, we fail children.

In 2019/20, 87 family members self-referred themselves to Stop It Now! Scotland, mostly partners and family members of people arrested for online sexual offences. All were offered individual programmes of work and/or support of our Inform group work programme, as well as ongoing support. If families have a social worker we work closely with statutory colleagues to ensure that support is joined up and effective.

Inform is our psycho-educational programme for adult family and friends of men arrested for online offending behaviour. Typical attendees are wives and partners, but also include parents whose adult sons have committed offences online. Families are often devastated by the arrest of a loved one and are usually left reeling at the potential consequences. It provides a 'safe place' where people start to understand the offending behaviour, to talk openly about the issues and gain support in protecting any child that may be at risk. The group typically has up to six members who meet for five sessions. It can also be delivered on a one-to-one basis. The course aims to: dispel myths about online offending and provide participants with the facts; explore the reasons why the loved one offended and why he did not stop; help develop practical strategies for the future including on-going risk management and safeguarding of children; discuss implications of sentencing outcomes and the sex offenders register; provide emotional support to help alleviate stress and isolation, and empower participants to aid their family's recovery.

Stop It Now! UK has an online Family and Friends Forum for those affected by the arrest of a loved one for an online sexual offence. In 2019/20, 6,018 posts were made by 554 active users. In addition, there were 23,612 visitors who made 97,643 visits between them. We estimate around 10% of users are from Scotland.



Letter from an Inform participant

I don't know how to begin to express my immense gratitude to you all for your support after the last year. I know there are challenges ahead but as you've so wisely told us this is now the beginning of the end.

The fact that we have got through this as a family as intact as we are – that I have had the strength to protect my children from this nightmare, and watch them have a happy, secure, contented year – is due in no small part to having you there if we needed to, and having your advice and guidance to draw on.

From that absolutely transformative first conversation I had, our meeting with you, all the times each of you have been on the end of the phone – I am so grateful for your compassion, humanity, patience, and practicality.

Upstream – a one-stop shop for child sexual abuse prevention in Scotland

In December 2019, the *Upstream* website was launched by Maree Todd, Minister for Children and Families, at a conference Stop It Now! Scotland hosted for 100 professionals and policy makers. The launch of the website led to a feature and interviews on STV News that day.

Funded by the Scottish Government, *Upstream* is a one stop shop for parents and the general public who are looking for advice and information about practical things they can do to prevent child sexual abuse. Drawing on two years of consultation work with over 90 partner organisations across Scotland, the resource is broken down into five sections: Learn, Identify, Prevent, Act and Engaging Communities. There is also a Get Help section for anyone in a situation who requires immediate action.

Upstream gives practical information on:

- **Speaking to your child about safety – both online and offline.**
- **Talking about consent, boundaries and healthy relationships in an age appropriate way with your child.**
- **Taking sensible and proportionate precautions about who has access to your child and asking the right questions when considering environments such as after school clubs, football clubs, Scouts and Girl Guides etc.**
- **Having a family safety plan if something has happened or you are concerned that something may happen in the near future.**

There is also a section for professionals on informing the public about practical things that can be done to prevent child sexual abuse, with specific sections for those involved in safeguarding in sports coaching, faith and belief communities, educational settings, and prevention materials for professionals working children with disabilities, children who are looked after and LGBTQ+ youth.

In March 2020, *Upstream* was chosen by Johns Hopkins Bloomberg School of Public Health as one of five international resources they wished to promote on their website to help safeguard children and family from harm during Covid-19. The resources were reviewed by a Moore Center team and other experts for credibility of source, utility in terms of actionable advice, user-friendliness, and accessibility.

From an Upstream website visitor



The Upstream Project seems a remarkably worthwhile and laudable project. The website appears to be really well structured and easy to navigate and read. A great example of how to encourage prevention, rather than trying to cure or to threaten.



Deterrence campaigning and prevention of online child sexual abuse

In April 2019, Police Scotland ran a campaign titled *Stop It Now!* targeting individuals who were sexually exploiting children online and deterring those who may be at risk of sexually exploiting children online. The campaign came on the back of a rise in recorded crimes in Scotland where individuals communicated with a child for sexual purposes – offences rose to 1,600 in the year to April 2019, up from 1,400 the year before.

The campaign used targeted social media and traditional media.

In the six months leading up to the campaign, the average monthly page views on Stop It Now! Scotland website were 765. Page views for April 2020 (during the campaign) were 40,466. The number of visitors to the website also increased dramatically during the campaign with 33,975 new users visiting the site. During the campaign period, around 100 people each day clicked through to our online materials for adults worried about their online sexual behaviour.



Kinship care – online safety and digital resilience training

In January 2020, Stop It Now! Scotland was commissioned by the Scottish Government to develop a training programme for kinship carers – a person looking after a child of a relative or friend on a full time basis – on cyber resilience and online safety. This programme is designed to be delivered to carers by their social workers, either through groupwork or individual work.

The suite of training materials was evaluated with carers before a 'train-the-trainer' package was developed. The training contains a four-hour core training course on cyber resilience and online safety. Focused on basic awareness of relevant issues, the training is designed to build a carer's confidence in talking to their child about their online life in a way that promotes safety and skills development. The training course also signposts carers to up-to-date resources and organisations that can provide further advice and support. All materials are free to download from our website. A leaflet was also produced containing key messages for carers and parents from the training and some video material is being developed to support the training.

To supplement this core training, we produced a further 10 modules covering a range of relevant issues for kinship carers. Each can be delivered in training to carers and contain around one hour of content. Trainer notes can also be requested for each of these modules. These include:

- Addictions: gaming and pornography
- Applications, social media and safe navigation
- Brain development, mental health and social media
- Communicating safely online
- Child sexual exploitation online
- Cyberbullying
- Digital footprints
- Grooming
- Privacy and security online
- Technology assisted harmful sexual behaviour

Preventing child sexual abuse

Cyber resilience and internet safety

A Guide for parents and carers

Stop It Now!
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Helping prevent child sexual abuse

Scottish Government
Riaghaidas na h-Alba
gov.scot

upstream
PROTECTING THE NEXT CHILL

All of these training materials are open source and can be downloaded and adapted for use by organisations on the understanding that our authorship is acknowledged. Stop It Now! Scotland and our parent charity The Lucy Faithfull Foundation are also able to provide online and offline training in this area to carers, social workers and other professionals.

ROSA – working with children and young people

Our Reducing Online Sexual Abuse (ROSA) Project was established in 2018 with funding from the RS MacDonald Trust. ROSA is a service located in the HALT Project* in Glasgow city centre and also within Shawlands Academy one day a week. It is a three-year action research project evaluating approaches to working with children aged between 10 and 18 who have got into trouble with online sexual behaviour. It is also working collaboratively with children and young people to develop prevention resources and training that can prevent further children being sexually harmed.

Getting into trouble online covers a range of different things. It may include risk-taking behaviour by accessing adult pornography, sending or receiving sexual images, or viewing indecent images of children. It could also involve the use of coercion online for sexual purposes.

We offer an eight-week course of individual or family sessions to young people who have got into trouble. And we work directly with parents and carers. This work is being independently evaluated by Strathclyde University.

In 2019/20 we worked with 36 young people who had displayed harmful online sexual behaviour.

The project can be contacted at rosa@stopitnow.org.uk and our ROSA Year 2 report can be shared on request.

* The HALT Project was established in 1994 to work with children and young people who engage in a range of problem and sexually harmful behaviours.

From a parent of a young person, on the ROSA project

I felt relieved that the ROSA project was there as a support for our young person and our family. All of the work that would be undertaken was clearly outlined at the start; the worker went through all of the supports that the project offered.

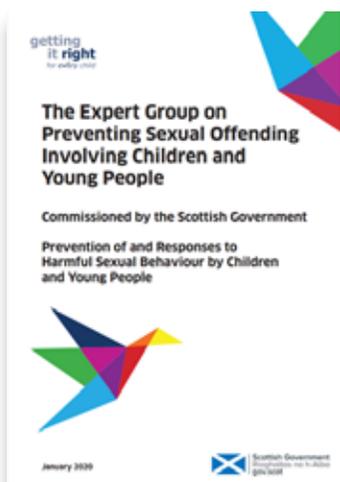
We felt relieved because at ROSA they have conversations in depth about topics we as parents could not/did not feel comfortable discussing, and we were kept informed of our child's progress whilst not breaking his confidentiality. The worker has a very professional but subtle approach which we found we were very comfortable with.

We feel this project is vital to support individuals and families in this area where personal and sexual subjects are difficult. We found the ROSA project very helpful.



Policy and training

Policy and influencing work are central to what we do. One way of protecting children more effectively in Scotland is by shifting the national conversation about child sexual abuse and sexual offending against children so that it is grounded in scientific evidence about child sexual abuse and sexual offending and highlights the many practical things we can all do to help protect children from harm.



Stop It Now! Scotland was a member of the Scottish Government's Expert Working Group on Preventing Sexual Offending by Children and Young People, the first government-led task force in the UK looking at harmful sexual behaviour and how it is prevented. Its report was published in January 2020.

The work of Stop It Now! Scotland was showcased in BBC Scotland's coverage of the report on the day of launch.

Policy and training activities

- In April 2019, our Director spoke at the Moore Centre for the Prevention of Child Sexual Abuse annual symposium at Johns Hopkins University in Baltimore. The keynote was on disruption and deterrence of online sexual offenders. We also spoke at the Forensic Mental Health Clinical Forum on Intellectual Impairments that month.
- Our Director also spoke at the Law Enforcement Public Health international conference in Edinburgh in summer 2019, the Annual Youth Justice Conference at Stirling University and the Chief Officer's Forth Valley Public Protection conference.
- In June 2019, we provided training on treatment effectiveness of sex offenders to sheriffs and judges as part of the Judicial Studies Group. We also delivered training and inputs on different aspects of child sexual abuse prevention to Children in Scotland, Edinburgh College, the Policy Hub, LGBT Youth Scotland, MAPPA in Inverclyde, Breathing Space, and at Carstairs State Hospital.
- Our work was presented at a range of conferences both nationally and internationally. This included a workshop in September 2019 at the NOTA Conference in Belfast by our project co-ordinator for the ROSA Project, Lindsay Mullen, concerning technology assisted harmful sexual behaviour and a workshop by Stop It Now! Scotland clinical lead, Sarah Graham, at the NOTA Scotland conference in April 2019 on data collection by services in relation to online offending.
- In November 2019, we ran a symposium on autism and online sexual offending.
- In December 2019, our Director was invited to join the WeProtect Global Alliance conference in Addis

Ababa, the biannual meeting of governments, NGOs, researchers and tech companies in relation to online safety and prevention of online child sexual exploitation.

- In January 2020, we piloted two training courses for 19 psychotherapists and counsellors equipping them with skills and knowledge to be able to work with individuals who are worried about sexual thoughts and feelings towards children and/or have committed a sexual offence against a child.
- In January 2020, we met with the Cabinet Secretary for Justice to discuss the prevention of child sexual abuse in Scotland.
- We contributed to research being conducted by Edinburgh University on the impact of online sexual offending on non-offending family members.
- Funding from the Christina Mary Henry Foundation allowed us to pilot a prevention initiative with Edinburgh libraries, training managers to help make changes so that libraries promote prevention and can be safe spaces for children and vulnerable adults. We also provided training to the Scottish Football Association on the principles of situational prevention within sport coaching contexts.
- We were commissioned by the Centre of Expertise on Child Sexual Abuse to produce a report on key messages for practitioners on sibling sexual abuse. This will be published in late 2020.
- We have supported Edinburgh Central Mosque on safeguarding policies.
- We have contributed to workstreams about sexual offending at the RMA and Community Justice Scotland.

How we are funded

Stop It Now! Scotland relies on the generosity of its donors to enable us to deliver our crucial child protection work that you have read about in this year in review. The demand for our services are increasing as more and more people find out about the unique help we offer.

There is no-one else in Scotland delivering the services that we do, all of which are offered free of charge. It is important therefore that these valuable interventions are accessible to those who need it and do not become the preserve of those who have the ability to pay. Raising money to work with people who have committed offences against children is hard. But we know that this work makes a difference. Our work keeps children safe and allows people who are concerned about their own thoughts, feelings and actions towards children to live safer, non-offending lives.

We work together with the Scottish Government as well as other trusts, grants and key donors to ensure that we can continue our work but also so we can grow sustainably to meet the demand we are seeing for our services. In 2019 we were awarded the Lasting Difference Symbol in recognition of our commitment to organisational sustainability.

The charity, Justice, produced a report in June 2019 on *Prosecuting Sexual Offences* which stated: *"The Lucy Faithfull Foundation also has a presence in Scotland, and we are pleased to note that it has been provided with funding from the Scottish Government to offer the Inform Plus programme face to face and free of charge."*

In 2019/20 Scottish Government support for Stop It Now! Scotland continued with core and project funding.

We also received a range of grants to support our work. We would like to thank the following funders:

- **Christina Mary Hendrie Trust**
- **The RS MacDonald Charitable Trust**
- **Hugh Fraser Foundation**
- **NOTA Scotland**
- **The AB Charitable Trust**
- **The Volant Trust**
- **The Ryvoan Trust**
- **Anonymous trust**

We would also like to thank CORRA and Inspiring Scotland for their help and support. We also would like to thank all individuals who made donations towards our work.

Full audited accounts are available.
[Click here to view](#)

Funding for Scotland Stop It Now! services 2019/20

Includes some grant funding brought forward from 2018/19:

Scottish Government grants	£230,361	63%
Charitable trust and other grants	£116,459	31%
Donations income	£6,475	2%
Professional services fees	£14,214	4%
	£367,509	100%

Percentages have been rounded



- Scottish Government grants
- Charitable trust and other grants
- Donations income
- Professional services fees

Stop It Now!

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stopitnow.org.uk/scotland

 Facebook: facebook.com/StopItNowScotland

 Twitter: [@StopItNowScot](https://twitter.com/StopItNowScot)

 YouTube: [@stopitnowukireland](https://youtube.com/stopitnowukireland)

 Linked In: [the-lucy-faithfull-foundation](https://linkedin.com/company/the-lucy-faithfull-foundation)

Scotland National Office

You can call the Scotland office on

0131 556 3535

Or call our UK helpline on

0808 1000 900

stopitnow.org.uk/scotland

scotland@stopitnow.org.uk



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**THE
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Working to protect children



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Convener of the Criminal Justice Committee
CC Convener of the Equalities, Human Rights and Civil Justice Committee

16 September 2021

Dear Ms Nicoll,

Working Group on Misogyny and Criminal Justice in Scotland

During the parliamentary scrutiny of the Hate Crime and Public Order (Scotland) Bill the then Justice Committee discussed the main aim and the timetable for the work of the Working Group on Misogyny and Criminal Justice in Scotland.

I therefore thought it appropriate, as Chair of the independent Working Group, that I write to you to provide an update on the working group's progress to date. There has been a number of events which have happened since the working group has been established which have further raised the significance of our work and the need to tackle men's violence and abuse against women and girls. Something has to be done.

Sarah Everard's case shook the nation to the core with vigils held in commemoration of her throughout the UK. There was a clear outcry from the public that women are frustrated with how they are treated on the street and more generally do not feel safe. This led to over 15,000 responses being received by the UK Government through the public consultation on its women and girls' strategy.

Even more recently there was the Plymouth Incident in which several people lost their lives in a mass shooting. The perpetrator has been linked to 'incel' forums, online platforms which appear to cultivate negativity, prejudice and hatred towards women. Whilst we must not speculate at the motivations of this man, we cannot ignore that these platforms do exist and represent extreme misogyny in their content and purpose. Misogyny is insidious, an undercurrent in society which must be tackled. I feel privileged to be in a position to bring forward recommendations to address this.

The Working Group remit has been split into three phases. We are currently working in parallel through phase one and two, with phase one almost complete. Myself and my panel of experts have committed to a schedule of monthly meetings since the inaugural meeting in February.

We have benefitted from oral evidence from a number of experts and have taken these sessions in thematic order. This included retired Chief Constable Susannah Fish and the organisation Love and Power and Citizens UK whose evidence was timely given the meeting's close proximity to Sarah Everard's tragic case. The group was able to benefit from their experience of the Nottinghamshire Police pilot which expanded its hate crime categories to include misogynistic hate incidents.

For the purpose of the pilot they defined misogynistic hate incidents as "incidents against women that are motivated by the attitude of men towards women and includes behaviour targeted at women by men simply because they are women". Incidents recorded by the police ranged from acts of violence and damage to property to street harassment (including cat calling and wolf whistling).

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After two years of the pilot, 174 women had reported misogynistic harassment to the police. Of these, 42% were recorded as crimes/offences, and 58% as hate crime incidents. One of the observed outcomes from Nottinghamshire was an increase in reporting of incidents by women and an increased confidence that women will be believed and their safety concerns taken seriously.

Professor Kate Manne followed in April and we were very fortunate to hear her views on the foundational concept of misogyny, being an important author on the subject. Dr Olga Jurasz, Dr Kim Barker and Professor Liz Kelly provided updates on online misogyny, sexualised violence and education. Dr Bianca Fileborn and Fiona Vera-Grey discussed misogyny in public spaces and most recently, Clare Barnett, UN Women UK, and Victor Madrigal-Borloz the UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, presented on street harassment and the UN's position on gender identity. We have been remarkably privileged to have heard from such an esteemed collection of experts and I would like to formally record my thanks to each of them.

Our discussions after each session have been rich and thought provoking. The membership of the working group holds differing perspectives from which to see this issue through and I have benefitted from the challenge, the wide range of questions and opinions. I do not intend to go into detail about the fullness of the views expressed. It would be wrong to offer any conclusive remarks before each of the phases of the remit is complete.

However, I would like to share an outcome from our work with you. This is an agreed working definition of misogyny. I do not believe a single definition like this exists within the UK. Too frequently people refer to the Classics and consider misogyny simply to be a hatred of women. It is in fact more complex. I was pleased that we were able to agree on this as it is important to ensure that when we talk about misogyny we know what it means and we agree on the components of it.

This definition has allowed us to analyse behaviours commonly reported and understand where these may be misogynistic or where they fall out with this definition, and why. I should emphasise that this is not a legal definition. I understand that there is often the urge to legalise language where it may be considered within a criminal context. This is not its direct purpose. The purpose of the working definition was not to identify conduct which should or should not be criminal – rather it was to understand the motivational factors which would underlie such conduct or behaviours. Our legal definition will come forward in phase three of our work.

The working definition of misogyny is:

'Misogyny is a way of thinking that upholds the primary status of men and a sense of male entitlement, while subordinating women and limiting their power and freedom. Conduct based on this thinking can include a range of abusive and controlling behaviours including harassment and bullying. Misogyny can be conscious or unconscious, and men and women both can be socialised to accept it.'

At our last meeting on 3 September, which covered misogyny in the workplace, we included a lived experience panel. This was made up exclusively of current and former female MSPs from all of the main political parties; we worked closely with the Scottish Parliament to arrange this. The safe and secure setting within our closed meetings provided participants an opportunity to share personal accounts of what it is like being in the public eye and the experiences that they have had as a result of this, relevant to our work. I am pleased that all the attending MSPs welcomed our working definition and felt it reflected their own experiences of such conduct.

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We are currently undertaking a mapping exercise to map out misogynistic behaviours against the current criminal law to assist us in making decisions about whether there are gaps in the law or where there is a failure to implement existing legislation in a way that protects women and girls. To do this, we will use a list of behaviours identified from all our research and from the 930 responses to our lived experience survey that we ran in collaboration with the First Minister's National Advisory Council on Women and Girls.

The survey asked a series of questions about recent experiences of misogynistic conduct and whether they were reported to the police and or other authorities and where it occurred (the home, education, online and public spaces e.g. the street, bars, shops, restaurants, public transport, the workplace). We also asked if they thought there was a gap in the law that would require a specific criminal offence to tackle misogynistic conduct. The survey responses provide us with 'real life' examples and with a lot of significant data that will be of benefit out with this exercise.

The majority (44.7%) of participants were in the 45 - 59 age category, with smaller percentages in the 18 - 24 (2.9%) and 25 - 34 (13.1%) age categories. We know from our other research that young women are at a higher risk of misogynistic behaviour than older women so this has implications for our survey. However, it also highlights the lived experiences of an age group not often focused on in the literature.

The analysis of respondents' lived experiences has been carried out and I've included some top-line findings below:

- The most common misogynistic behaviours experienced or witnessed ranged from whistling, name calling, comments on physical appearance to physical violence (or threat of), unwanted touching and sexual assault (or threat of).
- The majority (63.5%) of misogynistic behaviours experienced were on the streets, followed by online, and the majority (72.8%) of misogynistic behaviours witnessed were online, followed by on the streets (71.4%).
- Many experiences included more than one misogynistic behaviour, highlighting an escalating pattern of abuse, where if participants' did not respond positively or as expected to the first behaviour then more serious behaviours followed.
- Only 0.7% participants reported the experience did not impact them; 75% felt angry, 69.2% felt annoyed or irritated, and 67.1% felt uncomfortable. 42.7% became more vigilant, 33.4% became more suspicious of strangers, and 30% rethought decisions (e.g. clothing choices or posting online).
- Most (93.4%) participants did not report to the police, and 71.9% did not report to another person or agency in a position of authority. Of those who did report, 61.2% reported that the police, person or agency did not take action, 25.3% reported they did take action, and 12.6% reported not knowing if action was taken. Most (61.1%) participants reported being dissatisfied with the response of the police and/or authority, and the minority (4.7%) reported that they were satisfied.
- Of those who did not report, the main reason (52.2%) was believing the police or authority would not be bothered/ interested, followed by believing the experience was not criminal, too trivial or not worth reporting (38.2%).

We have also had the benefit of papers on international and Scottish jurisdictions produced by Scottish Government analysts which will be used to determine if there is a current gap in the law or if better awareness is needed of current law that could address misogynistic conduct.

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The working group will go through the identified behaviours and ask the following questions: is the behaviour misogynistic and what category of behaviour does it fall under (sexual abuse, physical abuse, and psychological/emotional abuse). This will be a similar exercise to that which was carried out in the development of the Domestic Abuse (Scotland) Bill and should assist us in determining if further legislation may be required to address misogynistic conduct.

In the coming months the working group will be taking further evidence, including from criminal justice organisations and victim support organisations to hopefully see us conclude the mapping exercise. At this point we will be nearing our conclusions as to whether there is a gap in the law or whether new law is required to address any deficiencies in the current law representing women's experiences.

The remaining meetings will concentrate on the development of our final report which we are on track to publish by the February 2022, the deadline recommended by the Justice Committee.

I have copied this letter to the Equalities, Human Rights and Civil Justice Committee.

I would be happy to meet with your Committee if you feel that would be beneficial.

Yours,

A handwritten signature in black ink that reads "Helena A. Kennedy".

Baroness Helena Kennedy QC

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