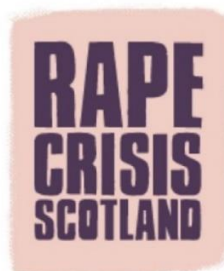




Victims, Witnesses and Justice Reform (Scotland) Bill:

Stage Three

Rape Crisis Scotland briefing



Introduction:

The Victims, Witnesses and Justice Reform Bill is a once-in-a-generation opportunity to change how our criminal justice system responds to sexual crime.

There is no doubt in anyone's mind about the need for change: the conviction rate for rape is the lowest of any crime type in Scotland, and those who have been through the justice process regularly describe it as a traumatic and violating experience.

This bill is big; some have said overwhelmingly so. But the enormity of this bill demonstrates the crushing weight that survivors of sexual violence have been forced to carry for years. It represents years of tireless campaign work and thousands of people who have been failed by the current systems.

Seven years ago, Rape Crisis Scotland launched an End Not Proven campaign with a survivor known as Miss M. Following a not proven verdict in a criminal trial in 2015, Miss M successfully sued her rapist in the civil courts, in what was the first civil damages action for rape following an unsuccessful criminal prosecution in almost 100 years.

It is the experiences of people like Miss M – and the dozens of other survivors who gave their time and emotional energy – who are at the very heart of this bill, and we hope that everyone who is about to cast a vote will keep her words in their minds:

*“Reporting rape is never going to be easy, but I shouldn’t have had to fight against the justice system in my pursuit for fairness. **It didn’t have to be this difficult.**”*

Who we are:

Rape Crisis Scotland is Scotland's leading organisation working to end sexual violence. We should all be able to live free from the fear and threat of sexual violence.

We work to raise awareness of the prevalence and impact of rape, sexual assault and abuse, advocate for better health, justice and community responses, and work to make sure that no matter what happened or when, survivors can access specialist support.

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Key points overview:

Not Proven and jury majorities (Pages 4-6):

Our position is well-documented: it's time to end Not Proven. In 2018, we launched the [End Not Proven](#) campaign alongside a survivor known as Miss M. That campaign work [informed this bill at its earliest stages](#).

The Not Proven verdict, which has the exact same impact as a Not Guilty verdict and can be just as distressing for the complainer, is used disproportionately in rape cases.

While we support the retention of the 15-person jury, we have serious concerns about the proposed increase in jury majority. We **do not** support the change to the jury majority needed for conviction and believe there is a substantial risk that a change in jury majority will result in decreasing rape convictions.

There is strong cross-party recognition that the Not Proven verdict needs to be scrapped – but the decision to increase the jury majority instead is not guided by robust evidence. It relies on the notion that the Not Proven verdict acts as a protection from miscarriage of justice, rather than simply being a historical accident. The Senators of the College of Justice have said that the change in jury majority is based on a “false premise”.

Sexual Offences Court (Pages 6-7):

Rape Crisis Scotland strongly supports the creation of specialist Sexual Offences Court (SOC) to improve the experiences of survivors of rape and sexual violence seeking justice in Scotland.

The creation of a separate Sexual Offences Court will help to streamline the management of sexual offence cases. This will ensure that cases reach trial more quickly and reduce the number and frequency of unnecessary adjournments.

A standalone court will also ensure that specialist approaches are developed and consistently across all sexual offence cases in alarming contrast to the variation that exists within the court system as it is currently structured.

Jury research (Page 6):

For years, contempt of court laws has prevented comprehensive research on what is said by jurors during their deliberations and how they vote, and we have relied on mock jury research to guide decisions about this bill.

The government amendment would allow jury research to be conducted and require the Scottish Government to publish it. This is a crucial part of ensuring that survivors of rape and sexual violence see justice, examining the impact of rape myths on the justice process, and ensuring that future criminal justice reform is rooted in evidence.

Part 2 - Trauma-informed practice

It is crucial to build accountability into the implementation of the provisions relating to trauma-informed practice, to ensure they have a meaningful impact for survivors.

The current provisions underpin the need for trauma-informed practice to be embedded in the standards of service for all justice services. It makes clear that the High Court and Court of Session powers to set out rules regulating practice and procedure in court proceedings include promoting trauma-informed practice and puts the responsibility on certain members of the judiciary to ensure this is present in individual court business.

In the early stages of this bill, the Criminal Justice Committee highlighted the evidence it had received from survivors. It recognised that the "significant and unnecessary trauma they faced during their journey through the criminal justice system is unacceptable".

There was also a recognition that, in addition to supporting the wellbeing of survivors embroiled in the court process, it would have positively impact court proceedings, noting: "We are therefore in no doubt of the importance of embedding trauma-informed practice which will enable victims to give their best evidence."

Part 3 - Special measures in civil cases

Survivors of sexual violence should not have to use the civil court system to seek justice that the criminal court system should have provided. However, that is not the current reality for some survivors, so we have always asserted that witnesses in all cases involving allegations of rape or sexual violence should be considered vulnerable.

We support government amendments which would mean that individuals would now be deemed vulnerable if they are either applying for a civil protection order or have started court proceedings for damages due to sexual abuse, harassment, or assault.

Part 4 - Criminal juries and verdicts

Scrapping the Not Proven verdict:

Our position – informed by thousands of rape survivors in Scotland -- is long-standing and well-documented: it's time to end Not Proven.

In 2018, we launched the [End Not Proven](#) campaign alongside a survivor known as Miss M. That campaign work [informed this bill at its earliest stages](#).

The Not Proven verdict has the exact same impact as a Not Guilty verdict and can be just as distressing for the complainer as a Not Guilty verdict. The Not Proven verdict is also used disproportionately in rape cases.

In 2022/23, 48% of rape and attempted rape cases resulted in convictions, the lowest rate for any type of crime, compared to an overall conviction rate of 88%. In 2022-23, Not Proven made up 61% of rape and attempted rape acquittals, compared to an overall rate of 22% for all criminal offences.

There is evidence that juries can be reluctant to convict in rape cases, and that preconceived notions of how someone should react to rape can impact on their decision-making. There are real worries that the existence of the Not Proven verdict gives juries in rape trials an easy out and contributes to guilty people walking free.

One survivor, who wished to remain anonymous, said:

“When the jury returned a ‘Not Proven’ verdict, I was crushed. My attacker completely twisted what happened and used smoke and mirror tactics to create enough doubt in the minds of the jury that I had consented. I feel sick just thinking about it. He raped another woman, and this time was found guilty and sentenced to 6 years imprisonment. But he shouldn’t even have been on the streets.”

One juror, who wrote to us after sitting on a recent rape and domestic trial, expressed concerns about why their peers reached a Not Proven verdict. They wrote:

“The bar for “sufficient evidence” was set so high as to be almost unreachable, even when multiple forms of corroboration were present. Critically, no guidance was given to the jury about what “sufficient evidence” in a rape case might realistically look like, especially given that these cases often involve a lack of witnesses, delayed reporting due to trauma, or medical evidence that is open to interpretation.

“Without that context, jurors defaulted to assumptions shaped by murder trials, courtroom dramas, or media depictions of crime — rather than the real complexities of sexual violence.”

Increased jury majority:

While we support the retention of the 15-person jury, we have serious concerns about the proposed increase in jury majority. We **do not** support the change to the jury majority needed for conviction and believe there is a real and substantial risk that a change in jury majority will result in decreasing rape convictions.

There is now almost unanimous cross-party recognition that the Not Proven verdict needs to be scrapped – but the decision to increase the jury majority instead is guided by assumption, not evidence. It relies on the notion that the Not Proven verdict acts as a protection from miscarriage of justice, rather than simply being a historical accident.

The Senators of the College of Justice have said that a change in jury majority would have based on a “false premise”.

In written evidence to the Criminal Justice Committee, they said:

“We presume that an increase in the majority required for a conviction is intended to counterbalance the abolition of the not proven verdict. If that is the rationale, then the balancing exercise may be based on a false premise.

Given the standard direction that a jury can only convict where the Crown has proved its case beyond reasonable doubt, and where there is the requisite majority for guilty, votes for not proven would not logically transfer in whole or in part to guilty.”

Jury research:

Such a major change – and any potential changes to jury majority – requires appropriate analysis and scrutiny. For years, contempt of court laws has prevented comprehensive research on what is said by jurors during their deliberations and how they vote, and we have relied on mock jury research to guide decisions about this bill.

A government amendment would allow jury research to be conducted and require the Scottish Government to publish it. This is a crucial part of ensuring that survivors of rape and sexual violence see justice, examining the impact of rape myths on the justice process, and ensuring that future criminal justice reform is rooted in evidence.

It’s important that this amendment is not lost in the enormity of the bill and everything else that it seeks to achieve, because it’s vital for survivors of sexual violence.

As Katy Clark MSP told the Criminal Justice Committee:

“... We have no information about how juries vote in Scotland, so we are working with a very limited evidence base. We do not know whether most juries provide a unanimous verdict, (...) or whether most juries are split eight to seven, nine to six or, indeed, 10 to five. We also do not know whether jury splits are very different in different kinds of cases. For example, in assault cases, there might tend to be unanimous verdicts whereas, in rape cases, there might often be very small majorities. We can speculate, but we simply do not know.”

Part 5 - Sexual Offences Court

Rape Crisis Scotland is [strongly supportive of the creation of a Sexual Offences Court](#), which remains part of this bill at the final stage, to improve the experiences of survivors of sexual violence and rape seeking justice in Scotland. Too many survivors tell us about the trauma and distress caused by the criminal justice process. There is a clear and compelling need for change.

There is a lack of awareness and sensitivity of the needs and experiences of survivors of sexual violence. Too often, the process of attending court and participating in a sexual offence trial causes significant levels of unnecessary re-traumatisation.

Survivors are also facing severe court delays in sexual offence cases, a longstanding issue that was worsened by the Covid-19 pandemic. Survivors routinely wait 2-3 years for a conclusion in their case. This keeps survivors in limbo, with some even delaying seeking counselling or medical treatment through fear these records will be used against them in court.

The creation of a separate Sexual Offences Court will help to streamline the management of sexual offence cases. This will ensure that cases reach trial more quickly and reduce the number and frequency of unnecessary adjournments. A standalone court will also ensure that specialist approaches are developed and consistently across all sexual offence cases in alarming contrast to the variation that exists within the court system as it is currently structured.

The High Court currently sits in nine locations and the sheriff courts at 39 and a Sexual Offences Court would have access to all these locations across Scotland. Better use of the court estate will enable more capacity for trials to be scheduled while also doing so in a way that supports the delivery of local justice.

In her evidence to the Criminal Justice Committee at Stage One, Lady Dorrian explained that her review group “felt quite strongly that simply creating another division of the High Court, for example, would not achieve the necessary end”.

She argued: “What was needed was a court of full national jurisdiction, with trauma-informed practices embedded; common training of individuals across the court; procedures that are uniformly applicable to the sheriff court and the Court of Session, which is not currently the case; and uniformly applicable practice notes and directions, which, again, is not currently the case.”

Rape Crisis Scotland support this position and urge MSPs to vote in favour of the introduction of the proposed Sexual Offences Court.

Part 6 - Sexual offences cases: further reform

Anonymity for survivors of sexual offences:

We believe that all survivors of sexual offences should be granted life-long anonymity automatically. Section 63 of the Bill seeks to provide automatic statutory protection for the anonymity of survivors of a wide range of sexual offences, including human trafficking. It would also prevent the publication of information likely to lead to the

identification of a person as being a survivor of a relevant offence. The protection would continue to apply during a victim's lifetime.

Current arrangements in Scotland for protecting the anonymity of victims in sexual offence cases largely rely upon convention and the responsibility of the press. Given the rise of social media and news coverage from non-traditional outlets, we support strengthened protections – including more clearly defined protections for children under the age of 18 – to ensure anonymity for survivors and allow for the prosecution of people responsible for identifying them.

Independent legal representation:

Existing legislation restricts evidence being led about the sexual history and character of complainers in sexual offence trials - sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995. Section 64 of the Bill as introduced sought to support the appropriate use of those restrictions, by giving complainers a right to independent legal representation (ILR) where there is an application to the court to lead sexual history and character evidence.

This would require the prosecution to provide the complainer with information on the application to allow sexual history and character evidence and allow the complainer to be represented by a lawyer in relation to that application. This is a positive and necessary step forward to help complainers in sexual offence cases protect their privacy.

Stage 3 amendments:

Here is a list of amendments which we would support at Stage 3. We may support the broad principles of other amendments; however, we have focused on this list on provisions which would specifically and impact survivors of sexual offences.

- **Amendment 3 (Sharon Dowey):** Circumstances in which non-harassment order must be considered by court
- **Amendment 39 (Jamie Greene):** Victim statements in solemn proceedings
- **Amendment 83 (Audrey Nichol):** Provision of transcript of record of trial to certain complainers
- **Amendment 101 (Sharon Dowey):** Victims' right to be informed of decision not to prosecute
- **Amendment 102 (Russell Findlay):** Victim's right to information about plea agreements
- **Amendment 104 (Sharon Dowey):** Reading of victim statement in court
- **Amendment 151 (Rona Mackay):** Offences relating to protective orders made outwith Scotland
- **Amendment 150 (Maggie Chapman):** Report on Non Harassment Orders

The work doesn't stop here:

While this Bill will herald significant changes to the criminal justice system in Scotland, the work does not end here.

The Criminal Justice Committee considered numerous thoughtful amendments, designed to protect the dignity and well-being of survivors of sexual crimes. For many of these, there was strong cross-party support for the principle but concerns about having the necessary time to consider proposed changes – or a consensus that change could be achieved without legislative intervention.

We will contact the Criminal Justice Committee to recommend further action on these issues as part of a future programme of work and support them to ensure that these approaches are rooted in evidence and informed by survivors who have navigated the criminal justice process themselves.