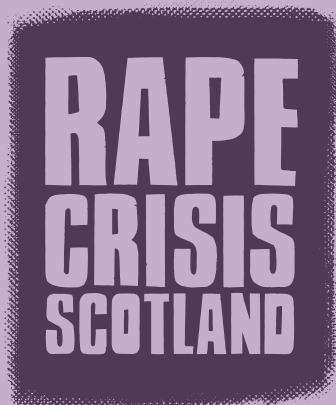




BRIEFING

Single Judge Trials (2023)



Briefing on Single Judge Trials

The Scottish Government are considering implementing a recommendation from [Lady Dorrian's review of the management of sexual offences](#) to set up a single judge rape trial pilot.

Currently, rape trials take place in the High Court of Justiciary, presided over by a High Court judge. The role of the judge is to monitor the trial, decide on legal matters such as the admissibility of evidence tell the jury what the law is, for example the legal definition of rape and the rule of corroboration and to maintain the overall fairness of the trial. The decision about whether the accused person is guilty is made by a jury of 15 members of the public.

In the proposed single judge rape trial pilot there would be no jury. A judge would sit alone and determine the facts of the case.

Why has this been proposed?

In Scotland, conviction rates for rape are the lowest of any crime type. For cases that reach trial the conviction rate is around 51% compared to 91% for all other crimes.¹ Most cases never make it as far as court: in 2021/22 there were 2,298 rape and attempted rapes reported to the police, but only 152 prosecutions and 78 convictions.

Juries can be influenced by 'rape myths'. These are deeply ingrained views about what a 'real' rape is or how a 'real' victim would look or behave. Professor Fiona Leverick analysed international research on rape myths and jury decision making and found overwhelming evidence that rape myths impact jury decision making.² There is a real perception among jury members that 'false allegations are routine' and that delay in reporting, and/or a lack of physical injury is indicative of a false allegation.³ Rape myths can also have a basis in racism⁴, or involve a bias against someone's sexual orientation or gender identity.⁵ There can also be misunderstandings about how people with disabilities are affected by sexual violence.⁶

¹ [Statistics and Key Information | Rape Crisis Scotland](#)

² 'What do we know about rape myths and juror decision making?' – [Fiona Leverick – 2020](#), Chalmers J and Leverick F (2018) Methods of Conveying Information to Jurors: An Evidence Review. Edinburgh: Scottish Government.

³ Research has concluded that the instance of false allegations sits somewhere around 3% of cases reported and is therefore considerably rare and comparable to false allegations of other crimes.

⁴ [Black Women and Sexual Violence \(now.org\)](#)

⁵ [Myths and stereotypes about abuse - Galop - Galop](#)

⁶ [Myths, Facts and Statistics – Devon Rape Crisis and Sexual Abuse Services](#)

“Stereotypes too often influence unconsciously, to instil implicit biases that inform evaluative judgements”⁷

One survivor felt:

“the jurors don’t stand a chance in making an educated decision because they are so full of prejudice and societal behaviours that completely override their influences. Society tells you this is what a rape victim should look like, this is how a rape should happen, and anything that’s different from that definitely needs scrutiny and definitely needs doubt...it’s not their fault, it’s about the system that they are in.”⁸

Research in New Zealand found that defence counsel would opt for a jury ‘nine times out of ten’ and the main reason for this was that, when it came down to credibility of the complainer it was easier to persuade a jury to entertain doubt.⁹

There is also evidence that juries do not understand complicated legal rules, such as corroboration.¹⁰

Would single judge trials be better?

The Lady Dorrian review discussed several benefits that could result from single judge trials: improved complainer experience, mitigating the impact of rape myths, more focused questioning, the provision of a written verdict and saving court time and expense.

A written verdict could be a very positive development for complainers. A judge would be required to give reasons for a decision. Some survivors describe the lack of any explanation for a jury’s decision as distressing because it means they are never able to understand what happened. The written judgments from the three civil rape cases which have taken place over the past decade are positive examples of the benefit of reasoned decisions being given in writing.

Judges are legally trained in a way that juries are not. They are trained to evaluate evidence and are less likely to be distracted by irrelevant or collateral issues. It is also much easier to educate judges, if needed, on the falsity of rape myths as they are a small body of people who can engage in interactive training sessions in a

⁷ Joanne Conaghan “The Essence of Rape” (2019) 39 Oxford Journal of Legal Studies 151 at 165.

⁸ ‘Piecing Together Puzzles: Complainers’ Experiences of The Not Proven Verdict’ V. Munro (2020) <http://wrap.warwick.ac.uk/137857/1/WRAP-91104-Law-Research-Report-Munro-2020.pdf>

⁹ ‘In the Absence of a Jury’ E. McDonald (2020) – – p16

¹⁰ [Scottish jury research: findings from a mock jury study - gov.scot \(www.gov.scot\)](http://www.gov.scot)

way that jurors can't. There is evidence that the most effective way to address rape myths is through longitudinal participatory education.¹¹

One judge quoted in the report from Lady Dorrian's review commented:

'In cases where there is evidence of a quality and quantity which for any other kind of crime would lead to a conviction, I see a number of acquittals each year in rape cases which, to my mind, are not explicable by rational application of the law to the evidence. Every year I preside over several rape trials of this kind in which I would have no difficulty on the evidence in being satisfied beyond reasonable doubt of the guilt of the accused only to see the jury return a verdict of acquittal, usually not proven'.¹²

What do survivors think?

Survivors we consulted with were, in the most part, in favour of the concept of single judge trials. Concerns were raised, but compared to the effects of a jury it was considered a better option and worthy of a pilot scheme.

'It felt like a dramatic play where my actions could affect the jury.' (Miss M, survivor)

Survivors described feeling 'watched' by the jury and feeling that everything had to be a performance for them. They were warned about how things might look to the jury and what they might think of them. This heightened anxiety immensely.

What about other countries?

Many countries do not use juries at all to decide cases (including Norway, Germany, Netherlands, Turkey and Italy).¹³ Jury free trials are not a breach of the right to a fair trial under Article 6 of the ECHR. Some positive outcomes were seen in a single judge trial pilot in New Zealand where it did appear that complainers were less negatively impacted and the admission of irrelevant evidence was reduced. The sample size was too small to draw any substantive conclusions.¹⁴

Summary

Rape cases consistently have the lowest conviction rate of any crime type in Scotland. There is overwhelming evidence that jury attitudes and pre-conceptions

¹¹ Hudspith, L. F., Wager, N., Willmott, D., & Gallagher, B. (2023). Forty Years of Rape Myth Acceptance Interventions: A Systematic Review of What Works in Naturalistic Institutional Settings and How this can be Applied to Educational Guidance for Jurors. *Trauma, Violence, & Abuse, 24*(2), 981–1000. <https://doi.org/10.1177/15248380211050575>

¹² [Lady Dorrian Review Governance Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/06/Lady-Dorrian-Review-Governance-Group-Report-2020-06-20.pdf)

¹³ [Lady Dorrian Review Governance Group: Consideration of a Time-Limited Pilot of Single Judge Rape Trials Working Group Report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/06/Lady-Dorrian-Review-Governance-Group-Report-2020-06-20.pdf)

¹⁴ 'In the Absence of a Jury' E. McDonald (2020)

impact on jury decision making in these cases. There is no doubt that rape survivors are being let down by the Scottish criminal justice system, and men who rape are walking free. Rape Crisis Scotland supports the introduction of the single judge rape trial pilot.