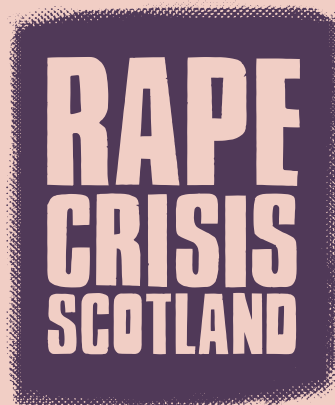




# CONSULTATION

'How to Change the  
Future for Women &  
Girls'

Consultation Response  
(2023)



# 'How to Change the Future for Women & Girls'

## Scottish Labour Consultation

### Response from Rape Crisis Scotland

#### **Young Women and Sexual Harassment**

QUESTION 1: How can we tackle these issues with young men and women? Is this key to long-term change?

We share the concerns expressed in the consultation document regarding the pressures and harassment experienced by young women today and the perceived roots in the increased usage of social media platforms. The increase in the non-consensual sending of unsolicited sexual images and the non-consensual sharing of intimate images are issues that young women are particularly concerned about. We would note that young women's experiences of sexual harassment, both in and out of a school environment, have been a longstanding issue. Social media has been around, and used by the majority of young people for around 20 years, and while we welcome the increased focus on these issues, we would stress frustration that young women have been speaking out about these types of harassment for a long time with unsatisfactory responses. These threats, to young women's safety, do not just come from young men or other peers but also, very importantly, from adults who will engage in this behaviour towards them.

Rape Crisis Scotland coordinates the National Sexual Violence Prevention Programme which works with young people across Scotland on issues such as consent and healthy relationships. The programme is delivered by specialist prevention workers at local rape crisis centres. In 2021-22 prevention workers delivered workshops to **27,952** young people across **181** schools, which is approximately half of the secondary schools in Scotland.

There is a clear need to educate young people on these issues and have open discussion about sex, relationships and consent. However, it is not enough to only educate young people without changing the culture of the schools, organisations and society they are part of. It is the responsibility of everyone in Scottish society to challenge and end rape culture.

There is alongside this a very clear need to be realistic and sensitive to the sexual autonomy, stage of development and ability to form relationships among young people, and educators need to be mindful of the realities of being a young person today. Young women should never be shamed for sending intimate images or be blamed when these are shared un-consensually. Engaging with young people and listening to their voices and experiences is key.

QUESTION 2: What have been the benefits of the Equally Safe programme in schools? How could these be built upon or developed further? Should there be a programme built into the school curriculum?

We developed ESAS because young people were telling us that sexual harassment and other forms of abuse and discrimination such as racism and homophobia were common at school, and that young survivors didn't always receive the support they needed when they reported or sought help. Young people, including those involved in the [Everyday Heroes](#) project, felt schools needed to take systemic actions to promote gender equality and tackle gender-based violence (GBV) through teacher training, education and culture change. 72 schools have now registered to implement ESAS. This represents a fifth of Scottish secondary schools which we feel is good progress and involves a substantial number of staff and young people across the country. This is long-term work, we encourage schools to take a planned and considered approach and are pleased to see increasing numbers of schools making progress. We find that many schools readily recognise the need to tackle sexual harassment and VAWG, but face challenges due to the wide range of priorities they are asked to meet, especially while they're still recovering from the impact of Covid. While they have responsibility for addressing issues like health and wellbeing, equality and safeguarding, they are not required to undertake a specific programme of work in relation to GBV. In addition, school staff are often highly committed but lack capacity to engage as meaningfully as they would like to. Nevertheless, we will continue to advocate for all schools to treat GBV as a priority and we are working with the Scottish Government and partners to develop a national approach guidance document which will support all schools to understand and implement a whole school approach.

We would recommend the process of educational reform which is currently underway ensures that gender equality and safety from GBV are high-level priorities within the renewed educational structures. The Gender Equality

Taskforce in Education and Learning is currently working to identify specific measures required to achieve this, and the educational reform process must engage effectively to integrate its findings. Over the past 10 years we have seen substantial progress in the development of resources and materials to support schools to tackle GBV and many staff are aware of the problems and committed to addressing them. However, until the issue is prioritised at a systemic level then young people will have vastly different experiences across the country and many will continue to face harassment, abuse and violence in settings where they are supposed to be safe and equal.

## **Online Crime**

QUESTION 1: Does the new Online Safety Bill do enough to protect girls and women from online abuse/sexual abuse? Should the offence of 'cyberflashing' be created for Scotland?

### Online Safety Bill

The new Online Safety Bill, proposed by the UK Government, can be viewed as an important step in the right direction for promoting better practices and responsibility for internet usage and content by internet companies. However, it is clear to us that the provisions do not do enough to protect women and girls from online sexual abuse.

The main failing is that women and girls are not addressed specifically by the bill or in any detailed guidance, and it seems clear that this is not a law which holds VAWG at its core. As expressed by the End Violence Against Women Coalition;

'By not naming violence against women and girls on the face of this Bill, government is letting down survivors and putting countless women and girls at risk of deeply gendered harms such as image-based sexual abuse (so-called 'revenge-porn'), rape threats, doxxing and tech abuse perpetrated by an abusive partner. These harms are silencing women and girls, whose freedom of speech is curtailed by threats of violence online.'

By not specifically mentioning VAWG they are failing to set the required standards to the internet companies and the new regulator. If the Bill and guidance were clear on what was, and was not acceptable, then this would give an indication for expectations. It could also do more to give depth to understanding of the types of

harassment and abuse faced by women. It does not raise this awareness nor demonstrate how it will tackle them. Terms such as 'abuse' and 'harassment' are left open to internet platforms to interpret and without clear definitions this creates scope for failings to be made.

The use of the internet and social media platforms provides abusers with new ways to exert control and carry out sexual abuse of women and girls. The advice often given to women and girls is to block users who do this or to remove themselves from online spaces, this unacceptably places the onus on women and girls to police this behaviour. It is difficult to see how the Online Safety Bill really moves away from this. There seem to be no VAWG standards for the companies, or the regulator, and there is still an implied onus on women to report and thereafter justify why the content is harmful.

In cases of intimate images, the onus is too frequently put on women and they are judged and blamed for doing so. There still seems to be a lack of accountability for the perpetrators of these offences.

It has been suggested by the Domestic Abuse Commissioner for England and Wales that specialist domestic abuse regulators are required alongside a specific VAWG code for internet companies for the new regulator to properly protect victim/ survivors from this abuse. Without the required level of understanding of these complex dynamics there is much which could be missed. We would state that there is a need to integrate better understanding of sexual violence within this model to best protect women and girls in online spaces.

### Cyberflashing

The question of the new offence of 'cyberflashing' is an important matter for consideration for the safety of women and girls online. This is a type of behaviour which is frequently experienced by women and girls, and we are aware of this, not just from our support work and work with young people, but also in personal experiences and those of friends and colleagues. For some, it is extremely routine when using certain social media platforms and dating sites to receive numerous such images un-consensually. We are aware that this has increased in its prevalence but it has been an issue for women and girls for a number of years. We welcome an increased focus on a matter which has long been a concern.

We recognise that while there can be temptation to introduce new criminal offences and legislation to tackle outstanding problems, we do already have some relevant legislation aimed at criminalising this behaviour and the answer may lie in increasing awareness and use of these provisions.

s6 of the Sexual Offences (Scotland) Act 2009 criminalises 'coercing a person into looking at a sexual image' and the explanatory notes tell us that;

"A "sexual image" is an image of a person, whether real or imaginary, engaging in a sexual activity or an image of the genitals of a person, whether real or imaginary."

S8 of the Sexual Offences Scotland Act 2009 criminalises the offence of 'sexual exposure' and there are also corresponding provisions specifically relating to older (s33 and s35) and younger (s23 and s25) children. There is no specification where these offences take place, and they can and have been used to criminalise online behaviour including cyber flashing.

We believe that if Police Scotland and the COPFS use these provisions appropriately, and that they were more fully utilised, then that would be a large step forward in curtailing this behaviour. Additionally, we would see that sufficient resources, technology and training would be required for Police Scotland to give them the ability to properly investigate these crimes and retain evidence.

If there was to be a specific offence of 'cyberflashing' it would have to do something more than the current provisions already offer and this is where we would raise an issue for which there is some concern.

There is a requirement in the current framework that any of the above named offences be committed with the 'intent' of the perpetrator for obtaining sexual gratification or humiliating, distressing or alarming the complainer. This is known as a 'motive based' offence and is something that must be demonstrated to prove the offence. This additional requirement does make it more difficult for survivors to gain justice as legal defences are put forward, sometimes successfully, that this intent did not exist. It has been argued that some men may see this inherently as something women want to see or find enjoyable or that it is a common practice to them and thus could argue falls below the threshold of 'obtaining sexual gratification'.

This is still the type of offence proposed in England, Wales and Northern Ireland, s167 of the Online Safety Bill brings in an offence of 'sending etc photograph or film of genitals' and the intention or motive requirement is for the 'purpose of obtaining sexual gratification and is reckless as to whether B will be caused alarm, distress or humiliation', there is still a requirement for the intention to obtain sexual gratification.

Professor Claire McGlynn KC of Durham University proposed that the UK Government should consider a 'consent based' offence with no motive requirement. She argues that; 'The non - consensual act breaches women's rights to sexual autonomy, to be treated with dignity and to be free from sexual violation, regardless of the motive of the perpetrator.' Motives of men who carry out this behaviour are varied and overlapping and can relate to misogyny, causing distress, sexual gratification, humour, boosting status amongst peers and transactional. A consent-based approach, it is argued, will protect women and girls better, will be easier to police and will set standards for education and prevention.

However, we are also aware that entirely removing the 'intention' element of this offence might take the offence too far towards a 'strict' liability offence and unintentionally criminalise a large number of people who were perhaps ignorant or unaware and this has important implications for the criminalisation of young people. At this stage we would suggest that there could be more research and consultation undertaken to consider this potential gap in the law and how we can better protect women and girls.

QUESTION 2: What further types of technology could be used to keep women and girls safe online? What could be done specifically in Scotland to better address and tackle online/cyber sexual crime?

Many women and girls tell us they feel there is little point in reporting online abuse to the police because they feel it is unlikely to be treated seriously or have a positive outcome. If these offences are reported to the police there is low likelihood in the perpetrator being charged and, in many instances, there is not considered to be enough evidence, even when messages are preserved and the perpetrator is known.

Better trust in the investigation processes and ability of the police to tackle this type of crime are needed. We can see that investment in police technology to focus on tracing perpetrators and collecting data as well as a solid understanding of gender-based violence, coercive control, stalking and sexual violence.

## **Domestic Abuse**

QUESTION 1: Are there ways that Clare's Law could be strengthened? Should Clare's Law be reviewed to encourage police officers to proactively visit the new partners of those convicted of domestic abuse?

On these important matters we would defer to the position of Scottish Women's Aid.

QUESTION 2: Do you think the Caledonian System should be more widespread? Should there be more programmes to work with men who have perpetrated domestic abuse in order to cut rates of re-offending?

As above.

### **Men's Responsibility**

QUESTION 1: Are there new offences that would assist in combatting violence against women? If so, what types?

At RCS we welcome the proposals made by the Independent Working Group on Misogyny and Criminal Justice in Scotland, chaired by Baroness Helena Kennedy QC, including the proposal to make an aggravation of misogyny and a new criminal offence relating to public sexual harassment. We believe that these legal tools can be part of a wider response to tackling misogyny which has no place in a modern Scottish society and look forward to the Bill which has been outlined by the Scottish Government

Public sexual harassment is experienced by many women and girls. It can be intimidating, distressing and threatening. It can place a burden on women and girls to alter their behaviour to avoid it. Women and girls should be free to live their lives free from this type of abuse.

We are also supportive of the recommendations in that report to introduce new offences of 'Stirring Up Hatred Against Women and Girls' to address the 'rapidly growing culture, with far reaching impacts, of stirring up of hatred towards women and which causes women, as a group, to feel vulnerable and excluded'. This particularly applies to incel and other 'men's rights' groups.



What we need is sufficient funding and resources allocated with this proposal to ensure full access to justice for survivors, especially given the current cost of living crisis affecting the legal sector. The response of the police will be crucial for any new legislation around misogyny to make a difference to women's lives, and Police Scotland must be resourced to train and equip officers to respond sensitivity and effectively to any new offences.

## **Women's Experiences of the Justice System**

QUESTION 1: Do you believe that court backlogs will discourage women from reporting sexual offences?

At RCS we see first-hand the effects of how the court delays are affecting survivors. This was a problem prior to the pandemic and has now been significantly compounded. Survivors are often waiting two to three years, and sometimes longer, for their case to be heard in court. This is unacceptable and must be urgently addressed. This prevents them from moving on with their lives, some feeling they must keep the memories fresh so they can give evidence properly and remember details. Others will defer receiving therapy because they are worried that their therapy notes might be used against them.

In contrast to other types of crimes recorded – sexual offences have been steadily rising since the mid 1970s and now make up the vast majority of the work of the High Court. A clear strategy to tackle the backlog and improve timescales for future cases must be a priority.

The effects of delays have been commented on in research and academic works. The 'Justice Journeys' research highlighted the sense of the loss of control inherent in sexual violence often being replicated in the lengthy judicial process leaving survivors living in limbo and often with no road map of what might happen. This profoundly affects their whole life while often leaving them unable to talk to family and friends or explain to their children. As Burman and Brooks Hay comment, 'a range of adverse consequences will likely be precipitated by inordinate delays, impacting on the personal, domestic and professional lives of victim-survivors.'

There is a massive problem with underreporting of offences of rape and sexual assault, the data we have has shown that only around 51% of survivors accessing

our services have reported to the police. Delays erode trust and confidence in the criminal justice system and as shown in the Gillen Review Report, into the law and procedures in serious sexual offences in Northern Ireland (2019), delays were seen to damage public confidence.

Women do not always trust the criminal justice system to support them and the fear of a long drawn-out process contributes to underreporting.

QUESTION 2: Do you believe court backlogs may discourage victims from pursuing justice, and withdrawing from the court system?

We are aware that women are affected by the court backlogs and delays to the extent that they withdraw from the court process and make the decision not to continue with their case. There is already a problematic high attrition rate in sexual offences cases and we know court delays contribute to this.

QUESTION 3: What measures could be taken to improve women's experience of the justice system when they report a sexual offence?

There are many measures which can be taken to improve women's experiences of the justice system. The services provided by Rape Crisis Scotland advocacy workers have been described as 'life saving' and provide invaluable support and direction to survivors. There needs to be increased funding to ensure that all survivors, who need this support, are able to access it.

Whilst the services of advocacy workers are essential to survivors going through the criminal justice system we strongly advocate for the extension of independent legal advice and representation from solicitors for survivors. Independent representation is currently only available in proceedings relating to medical and other sensitive records in criminal trials and there is a welcomed, and long overdue, proposal to extend this to s275 applications for sexual history evidence. [At Rape Crisis Scotland we propose that Independent Legal Advice be available to all survivors throughout the criminal justice process.](#)

## **Proposals for Justice Reform**

QUESTION 1: Would a pilot of single-judge trials for serious sexual offences be justified due to the long delays before cases come to trial and due to the disproportionate impact this has on women and children? What is the risk to fairness for the accused if juries were removed?

At RCS we are in favour of the creation of a single judge trial pilot being introduced in Scotland. We have long seen that there are serious concerns about the ability of a jury to properly determine a trial involving rape or sexual violence. There is sound research that juries are overly affected by the concept of rape myths.

Fiona Leverick's research demonstrates overwhelming evidence that rape myths impact jury decision making. These myths related to the effect of alcohol, length of time in reporting and assumptions about how 'real' rape victims should present, despite evidence to the contrary. Research also alluded to the fact that there is a real perception of jury members that 'false allegations are routine' (reported in more than half of the cases) and that delay in reporting is indicative of a false allegation. Meaningful and in-depth research has concluded that the instance of genuine 'false' allegations sits somewhere around 3% of all cases reported and is therefore considerably rare and comparable to false allegations of other crimes.

There have been proposals that juries be required to watch an educational video before a rape case regarding rape myths, but we must appreciate that these are often firmly established, systemic and life long held views regarding sexual behaviour and misogynist themes – not something that can be dispelled in a 10-minute video.

There is also evidence that juries do not understand the complicated legal rules that exist. This was demonstrated in the mock jury research conducted in Scotland and published in 2019 – this found inconsistent and incorrect views on the meaning of 'not proven' and there were issues around understanding of concepts like the 'burden of proof' or special defences. There is particular concern regarding a jury's ability to understand the 'Moorov' doctrine which is incredibly complex and also a concept which is often subject to appeal cases demonstrating that lawyers, advocates and judges do not always consistently apply these principles.

Survivors we consulted were, in the most part, favourable to the concept of judge led trials. Concerns were raised about the demographic of the majority of judges, but compared to the effects of a jury it was considered a better option and worthy

of the pilot scheme. We think that issues regarding the diversity of judges could be addressed by extra training and recruiting.

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

Miss M described this as a 'dramatic play where my actions could affect the jury.' This is a point touched upon in Lady Dorrian's review, the presence of a jury often gives the perception of matters being treated by counsel as a theatre production rather than a trial. Styles of advocacy are utilised for effect and irrelevant and damaging evidence brought up and hinted on to purposefully engage the prejudices of the jury. It is a performance and not a genuine presentation of the evidence.

Some survivors felt that if a judge was to preside alone then they would at least have some explanation as to the outcome. A judge would be required to give them 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. Complainers such as Miss M, and Miss AB, who have been through the civil processes, describe the judgement they received in those cases to be meaningful and have affected them positively. Miss M in particular stated 'I would rather have a judge deliberating about my future.'

There is a feeling that judges are legally trained but also accountable in a way that juries are not. They are trained to evaluate evidence and are less likely to be distracted by irrelevant issues. There is significant support for the possibility that the introduction of judge led trials could lead to reduction in delays. Timesaving benefits include not having to cite and empanel jury members, having to remove the jury for legal debate. There is also the potential to massively reduce the cost of these trials, and address the backlog in cases.

There is evidence, obtained in the Lady Dorrian Review, that suggested that judges reported cases where the evidence led justified conviction of rape and where they could not understand why the jury acquitted. This was seen to have been a difficulty when there was a single complainer even where there was ample good quality evidence. One Judge said; 'The cases in which it appears to me that, regardless of the quality and quantity of evidence juries do not convict with appropriate regularity, are cases where there is one complainer and a single charge of rape. 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. Not all judges will agree with my views on this, but I have reason to believe that they are shared by at least a number of senior and experienced judges.....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'

The pilot could ascertain the effectiveness of them, the perception by complainers, lawyers and judges.

QUESTION 2: Would it be beneficial to establish a new specialist criminal court dealing with serious sexual offences?

We believe that the establishment of a new specialist criminal court dealing with serious sexual offences is necessary for improving the justice experiences of survivors of sexual offences. We have seen that this has had beneficially results in other jurisdictions, in New Zealand (Aotearoa) in particular. We have detailed our response to this in the recently published consultation response entitled ['Improving Victims Experiences of the Justice System'](#). We have been involved with the Scottish Government and the Specialist Sexual Offences Working Group to develop the specialist sexual offences court proposal.

We see that any specialist sexual offences court established should have a number of key provisions to ensure a better justice experience for survivors. These include;

- Dedicated advocacy and court support provided by Rape Crisis advocacy workers – our staff are specially trained to deal with the needs of survivors and often have established relationships, this is a well-developed programme which could be further funded to provide the level of care and protection needed for survivors
- A totally new approach to the scheduling of trials which avoids floating trial diets – these are completely inappropriate for sexual offences and must come to an end. As previously indicated, this is an area frequently reported to cause anxiety and distress for survivors.
- Separate entrances and waiting areas for survivor and family
- A protected area where the survivor and her family can watch proceedings

We also strongly oppose there being any sentencing limit placed on the court and the full range of sentences should be available in these cases.

### **Street Harassment**

QUESTION 1: Do you agree that there should be a new offence to deal with street harassment in Scotland?

As outlined above we are supportive of the recommendations in Baroness Hale's report and await the proposed Government Bill.

QUESTION 2: What other measures do you think might help women to feel safer on our streets?

As outlined above we are supportive of the recommendations in Baroness Hale's report and await the proposed Government Bill.

### **Lack of Data on Violence Against BME and Disabled Women and Girls**

QUESTION 1: What are the ways in which policy making would benefit from more data, with the goal of bringing down the levels of violence against women and girls in BME communities as well as disabled women and girls?

We are strongly supportive of the collection of disaggregated data and believe this is essential for combatting VAWG experienced by marginalised groups. This includes the specific experiences of Black women, women of colour and women with disabilities. The correct data can help to direct resources and services where and how they are required by those with intersecting inequalities. We often see that systemic racism and ableism can push women further away from justice and often policies are generalised and tend to speak to the experiences of non-disabled, white women. This is something we need to be actively aware of in

everything we do, and the collection of proper and accurate disaggregated data is a step towards this.

The data currently published by the Scottish Government in relation to sexual offences and justice is extremely limited – it is not even broken down by gender of victim, there is no equality data. The two statistical bulletins relating to offences and prosecutions do not use the same approach to data meaning that we cannot say with any certainty how many reported rapes lead to a conviction. It is very difficult to see how we can be effective in efforts to improve justice responses to rape if we lack the most basic data.

QUESTION 2: What other ways are there to bring down the levels of violence against disabled women and girls as well as women and girls in BME communities?

Various barriers to justice exist for survivors within our justice systems, these barriers are compounded when intersectional inequalities coexist. We frequently see that survivors of colour, disabled survivors and LGBTQI+ survivors face exacerbated barriers which keep them further away from obtaining justice. There is a clear need for funding for specialist services that women can access if they require to. Rape Crisis Scotland is a service that seeks to serve all survivors of sexual violence and rape but there are specific needs of certain communities and our sister organisations, such as Shakti Women's Aid and Anyiso, require to be adequately funded to provide that. They provide invaluable and lifesaving expertise and support to women experiencing forced marriage, FGM as well as the particular sensitivities of those in the immigration and asylum process.

Research and participatory work with women facing intersectional inequalities is a continuous project which should be carried out in a safe and meaningful way. At Rape Crisis Scotland we have commissioned participatory work into the needs of survivors of colour, including their experience of the justice system. The report from this project should be published summer 2023. The Scottish Women's Rights Centre is undertaking extensive participatory work in the form of lived expertise panels and an accountability committee all aimed at access and inclusion to services and barriers to justice. These are the types of projects we need to continue to fund and pursue.