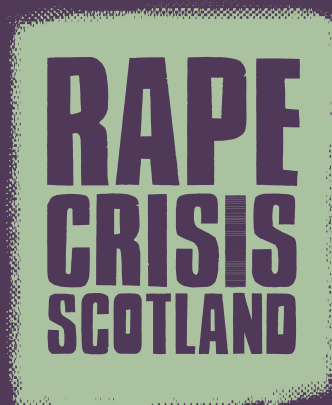




BRIEFING

'Improving Victims' Experiences of the Justice System' Summary of Consultation Response



The Scottish Government is currently consulting on a wide range of measures to improve how the justice system responds to crime - in particular sexual crime, this is named [‘Improving Victims’ Experience of the Justice System’](#). Many of these proposals are based on the recommendations from Lady Dorrian’s review of the management of sexual offences and represent a key opportunity to transform Scotland’s approach to sexual crime.

This briefing paper outlines Rape Crisis Scotland’s response to some of the key proposals in the consultation and is intended to help inform organisations and individuals who are considering responding. It is particularly important that the Scottish Government hear from survivors with direct experience of the Scottish criminal justice system. This briefing paper incorporates the views of survivors we have consulted as part of the process of preparing our response to the consultation.

The consultation closes on the 5 August 2022.

Chapter One – A Victims’ Commissioner for Scotland

We support the introduction of a Victims’ Commissioner for Scotland

In recent years there has been support from several organisations for the creation of an independent victims’ commissioner. The Victims Commissioner would be a body established in Law which can engage with victims of crime to understand their experiences and raise awareness and promote the rights of victims. They would promote best practice within the criminal justice agencies (such as the police or the Procurator Fiscal) and could research matters they consider to be affecting victims. The proposed body would therefore not become involved in individual cases but rather represent victims collectively and raise awareness for widespread matters rather than advocate on a personal level.

The work and importantly the funding of any Victims Commissioner must be complimentary to the work of specialist organisations such as Rape Crisis Scotland.

Chapter Two – Options to Underpin Trauma-Informed Practice and Person-Centred Approach

We support the introduction of trauma informed practice into legislation

For too long, sexual crime complainers have described the process of seeking justice as highly traumatic and violating. We believe that the legislation should be enacted to introduce a requirement for trauma-informed practice.

We believe that a right for sexual crime complainers to pre-record their evidence should be introduced into legislation

Rape complainers regularly tell us that the ordeal of giving evidence in court, and particularly cross examination, can feel as traumatic as being raped. This is not acceptable. Current provisions do not go far enough to give a clear right to rape complainers to record their evidence in advance of trial. We consider that further legislation to enshrine this right into law is required.

We strongly believe that the current approach to court scheduling causes unnecessary delays, uncertainty and trauma for sexual crime complainers

Despite Lord Bonyon recommending in 2002, in his review of the High Court, that rape cases should not be allocated to floating trial diets this happens routinely across Scotland. We agree that this causes distress to complainers. A completely new approach to court scheduling is required for sexual offences, and this should be developed as part of the new specialist sexual offence court which is being proposed.

Chapter Three - Special Measures in Civil Cases

Legislation should be introduced to prohibit those accused of sexual offences from representing themselves in civil proceedings, and current protections for vulnerable witnesses in the criminal system should be extended to civil proceedings.

We note that there are examples of survivors engaging in the civil court processes in relation to their experiences of sexual violence. This could be in a civil suit, such as the case of Miss M, or in family court proceedings.

As it stands the 'defendant' in those proceedings is entitled to represent themselves and can cross examine the survivor. This is unacceptable and legislation should be introduced to prohibit the defender representing themselves in civil proceedings, as is the case in the criminal system.

Other protections which are standard in criminal proceedings for vulnerable witnesses, such as the use of special measures for giving evidence in court, should be extended to civil proceedings. Sexual offence complainers should be deemed vulnerable by the nature of the crime and should not have to lead evidence to prove they require them.

Chapter Four – Review of Defence Statements

We consider that the use of defence statements should be reviewed.

During the lead up to a trial, the Advocate Depute and the defence counsel are required to prepare statements for the judge which outline the state of their preparation and issues they will bring up in court. The defence are required to lodge a defence statement which, in theory, sets out the evidence they might use in a trial. In practice, the defence rarely give any specific details regarding their defence, meaning that the parties do not know what questions can be asked of the survivor in court.

We are calling for there to be a requirement that defence statements outline detail of the accused position to allow for judicial oversight and scrutiny of the topics of cross examination and in order to allow the crown to convey the general defence to the complainer where this is permitted.

Chapter Five – Anonymity for Complainers in Sexual Offences Cases

We strongly support the introduction of a legal, lifelong right to anonymity for sexual offence complainers.

In Scots Law there is no legal protection of anonymity for survivors of sexual violence, this is achieved mainly by convention with media outlets. In some cases, a court order is sought at the trial, but this is not always the case. In an age of social media this means that a member of the public with a twitter account or a blog could do so without impunity. This is a gap in the law which urgently needs to be addressed.

We believe the list of offences to be subjected to anonymity should be those contained in; s288c of the Criminal Procedure (Scotland) Act 1995, s52 Civic Government (Scotland) Act 1982, S2 Abusive Behaviour and Sexual Harm (Scotland) Act 2016 and Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. In addition to this there should be a catch all provision for any case with a significant sexual element.

The anonymity should begin when a survivor makes a disclosure, this should not have to be to a police officer. Anonymity should be capable of being set aside by the survivor herself, if she wishes to do this via a third party or media outlet then they must have her written permission.

Anonymity should not be set aside by the court for the purposes of securing defence evidence, nor should it be set aside if the survivor withdraws from proceedings or there is a not guilty/proven verdict. The court should be hesitant about removing anonymity even in the rare cases of offences of perverting the course of justice as they may involve vulnerable women in any event.

Anonymity for cases involving younger children could benefit from judicial oversight but young people should be supported to set this aside if it is their choice to do so.

Chapter Six – Introduction of Independent Legal Representation

There should be an automatic right to non means tested, state funded independent legal representation for complainers where any attempt is made to introduce their sexual history or character

We strongly support the introduction of ILR in cases where s275 applications to raise sexual history evidence are made. This is a particularly intimate and potentially distressing area of cross examination for complainers, and they should be entitled to ILR

to challenge these. The Crown has not been able to effectively do this. This should apply at any stage in the proceedings, and they should also have rights to appeal the decision. The timeframes for the defence to lodge applications should be widened to allow time for a survivor to engage legal assistance. They should be able to obtain ILR on legal aid which is not means tested.

We consider that the current proposal does not go far enough, and that the right to legal advice and representation should be extended in sexual offence cases to enable complainers to access legal advice at any point in the process.

Chapter Seven - Specialist Court for Sexual Offences

We are strongly supportive of the creation of a specialist court but believe that it must have unlimited sentencing powers.

We are strongly in support for the creation of a specialist court for sexual offences cases in order to improve the experiences of complainers accessing the justice system in this way.

We consider that the proposed 10 year sentencing limit on cases tried in the specialist court would be seen as downgrading the offence of rape from one that can only be tried in the High Court. We are strongly opposed to this and think there should be no sentencing limit.

We support the key elements of the specialist court outlined in the report from Lady Dorrian's Review:

1. pre-recording of the evidence of all complainers
2. judicial case management, including ground rules hearings for any evidence to be taken from a complainer, either on commission or in court
3. specialist trauma-informed training for all personnel

In addition, we believe that the court should feature:

- Dedicated advocacy and court support provided by Rape Crisis advocacy workers
- A totally new approach to the scheduling of trials which avoids floating trial diets
- Separate entrances and waiting areas for survivor and family
- A protected area where the survivor and her family can watch proceedings

Chapter Eight - Single Judge Trials

There is overwhelming evidence that juries are influenced by false assumptions/rape myths and that this may be contributing to wrongful acquittals. We strongly support the development of a judge led pilot.

We are supportive of the introduction of a pilot scheme of single judge trials for rape and sexual offences cases. There have long been concerns, highlighted in research, that juries are affected by the concept of rape myths and have shown great reluctance to convict. There is also evidence that they fail to understand the legal tests that apply. The introduction of single judge trials could have the benefits of removing jury prejudice and having a trained legal professional decide the case based on the evidence alone. It could also reduce the length of trials and contribute to decreasing delays in cases.

Another, benefit that has been noted by survivors, is that judges would be able to give reasons for their decision, whereas juries do not.

As such at this stage we are strongly welcoming of a pilot scheme to assess the impact of single judge trials on survivors.

If you have any queries or require further information then please contact Kate Thompson, Justice Policy Worker – kate.thompson@rapecrisisscotland.org.uk