



Briefing

Victims, Witnesses and Justice Reform (Scotland) Bill: Stage Two

The logo for Rape Crisis Scotland, featuring the words "RAPE CRISIS SCOTLAND" in a bold, sans-serif font, stacked vertically. The text is white and set against a dark, textured background that resembles a halftone or dot pattern.

**RAPE
CRISIS
SCOTLAND**

Victims, Witnesses and Justice Reform Bill

Stage 2 Briefing

18th March 2025

Introduction

The Victims Bill represents a once in a generation opportunity to reform how our criminal justice system responds to sexual crime. There is no doubt 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. Survivors of rape and other sexual crime have given their time and emotional energy to campaign for different elements of this Bill. A number of survivors also gave evidence to the Criminal Justice Committee to make clear why they think reform is necessary, and to give their opinions on different elements of the Bill. We would urge MSPs from across all parties to approach the Bill in the spirit of recognising and honouring survivors' contributions.

The Bill is already very significant in scope, and if implemented will herald considerable changes to many elements of criminal justice procedures. The number of proposed amendments is substantial. Many have considerable merit and deserve consideration. Not all will make it into the Bill. Where there is support for the principles behind amendments but it is considered that there is insufficient time to give these amendments proper scrutiny as part of the Victims Bill, we recommend that the Criminal Justice Committee sets aside time to consider whether to recommend further action on these issues as part of a future programme of work.

In this briefing paper, we have focused on the amendments which we consider are of particular importance for survivors of sexual crime, or where there are multiple, contrasting views on the most appropriate way forward.

Trauma informed practice (amendments 60*, 87)

RCS supports Katy Clark's amendment to introduce a review of the effectiveness of the provisions requiring trauma informed practice within the justice system,

as well as Sharon Dowey's amendment requiring criminal justice agencies to prepare and publish reports on implementation of trauma informed practice. It is important to build accountability into the implementation of the provisions relating to trauma informed practice, to ensure they have a meaningful impact for survivors.

Single point of contact (amendment 64)

This was one of the recommendations from Lady Dorrian's review, and one we support. Complainers of sexual offences consistently describe feeling under-informed about the justice process and the progress of their case. This can contribute to complainers feeling marginalised, unimportant, and ill-prepared for giving evidence. There has been important work carried out through the Victims Taskforce looking at developing a single point of contact for victims, however this is primarily focused on the third sector rather than within the criminal justice system itself. Our experience of co-ordinating a single point of contact service through the National Advocacy Service has demonstrated that while this is invaluable, issues remain in trying to obtain information from justice agencies. A single point of contact based within the criminal justice system, who can be the key point of contact for either the victim's advocate, or the victim themselves, could make a considerable difference to survivors' experience. We support Katy Clark's amendment.

Not proven and jury majority (amendment 75)

Survivors have campaigned for years to remove the not proven verdict. It is crucial that the provision removing this third verdict is retained in the Bill. We have grave concerns, however, about the proposed increase in jury majority. We believe that there is a real and substantial risk that its inclusion means the overall impact of the Bill could be to decrease rape convictions even further. We are not convinced that there is sufficient evidence to suggest that the not proven verdict acts as a protection from miscarriage of justice, rather than being simply a historical accident.

We note the observation from the Senators of the College of Justice that changing the jury majority as a result of not proven being removed may be based on a false premise:

"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." (Supreme Courts of Scotland – Senators of the College of Justice, Written evidence to the Criminal Justice Committee).

For this reason, we consider that there is merit to Pauline McNeill's proposal for further research directly with juries.

Non harassment orders (amendments 85, 242)

A rape survivor recently waived her anonymity to describe feeling less protected after her abuser was convicted than in the run up to the trial. This is because prior to the court case, bail conditions were in place to prevent him contacting her, but as no non harassment order was put in place by the judge on conviction, when he is released this protection will not be there. This is completely unacceptable. We welcome the Scottish Government's commitment to considering this at stage 3. Any provisions on this should apply in all relevant sexual offence cases rather than being restricted to cases where the accused is known to the victim; although stranger rapes are less common than rapes carried out by someone known to the victim, survivors in stranger rape cases should also have access to this protection.

Right of victims to attend parole hearings (amendment 246)

The prospect of their rapist being released from prison can cause significant anxiety and fear for victims. Rape survivors have described how distressing they have found it not being allowed to attend the parole hearing of their attacker. We consider that the current restrictions on the cases where a victim has the right to attend parole hearings should be extended. We support Jamie Green's amendment introducing this right.

Access to court transcripts in sexual offence cases (amendment 179)

We support Audrey Nicoll's amendment to provide for a legal right to free transcripts for complainers in sexual offence cases. We note that this is currently being piloted. It is important that an external evaluation is commissioned into how the pilot is working, and that it engages directly with

complainers to consider any improvements which might be required to the current process.

Right to independent advocacy support (amendment 264)

We support Maggie Chapman's amendment introducing a right for complainers to access independent advocacy support to assist them in navigating the criminal justice process. Rape crisis advocacy support, provided through the National Advocacy Service (NAS) coordinated by Rape Crisis Scotland and delivered by local rape crisis services across Scotland, has been described by survivors as 'life-changing'. The independent evaluation of the NAS reported survivors feeling that they could not have navigated the criminal justice process without this support. Lady Dorrian, in her landmark review of the management of sexual offence cases, recommended that all complainers have access to specialist advocacy support. There has, however, been no action on this to extend funding to enable the NAS to meet demand, meaning many advocacy services are having to operate waiting lists for this essential service. This isn't acceptable – access to this support should be clearly set out as a right in the Victims Bill.

Specialist Sexual Offences Court (general observation)

We support the development of the Specialist Sexual Offences Court. This was a key recommendation from Lady Dorrian's review of the management of sexual offences. We consider that this provision is essential to improve the management of these cases, and transform the culture within which these cases are heard.

Revision of the contempt of court provisions to allow for approved research with juries (amendments 152, 153)

We support Angela Constance's amendments to allow for research to be carried out directly with jury members about their deliberations in sexual offence cases. Such research could also consider what, if any, impact pre-recorded evidence (as opposed to evidence at trial) may have on jury perceptions of the evidence they hear.

Independent legal advice for complainers of sexual crime (amendments 68, 265, 266, 267)

Complainers have described feeling marginal to the criminal justice process, with little knowledge of their rights. We consider that providing complainers with access to independent legal advice could make a considerable difference to their experience of the justice process. RCS and the Faculty of Advocates have developed a proposal setting out a model of independent legal advice for complainers, which includes the option of a session with an experienced court practitioner prior to giving evidence, to enable the complainer to gain a better understanding of what giving evidence and being cross-examined is likely to involve, to help them feel more prepared. Currently, complainers consistently describe the experience of giving evidence as “going in blind” as they feel so ill prepared for what is to come. We believe that giving complainers access to legal advice and information will reduce the trauma associated with the criminal justice process, and particularly with giving evidence.