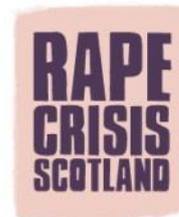


Briefing Scottish Parliament | 16 Days of Action 2021 | Justice



Rape Crisis Scotland is Scotland's leading organisation working to end sexual violence.

16 Days of Action is an opportunity to focus our minds and redouble our efforts to tackling male-violence; the issues before us are not without solutions, but these solutions require Political will, investment and for all of us who believe in equality and safety to raise our voices together.

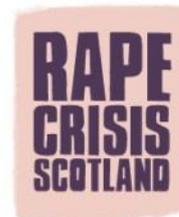
This debate on Justice in the Scottish Parliament is welcome and important. What must be considered throughout all of this debate is that access to justice is not equally afforded to all survivors. Compounding discriminations further impact particularly Black and minoritised survivor's ability to access justice. The issues we face - exacerbated by the impact of the pandemic - are not new, and they are not without solutions.

Most rape cases never make it to court. Of those that do, only 43% result in a conviction, compared to an 88% overall conviction rate¹. Rape and attempted rape have the lowest conviction rate of any crime type, and not proven verdicts account for a significant proportion of acquittals.

Rape & attempted rape	2015/16	2016/17	2017/18	2018/19	2019/20
Reported	1809	1878	2255	2426	2343
Prosecuted	216	251	246	313	300
Convicted	105	99	106	142	130
% of cases prosecuted resulting in conviction	48.6%	39.4%	43%	45.37%	43.33%
% of cases prosecuted resulting in Not proven	46=21%	42=17%	48=19%	68=21%	74=24.66%

There is a high level of secondary trauma caused by going through the criminal justice process, with the Inspectorate of Prosecution in Scotland reporting that

¹ Criminal Proceedings in Scotland, 2-19-20, Scottish Government



complainers described their experience in court as “absolutely horrendous”, “the most degrading and terrifying thing”, and “worse than being raped”. One woman said that despite the case resulting in a guilty verdict, she would never go through it again.

Overwhelmingly, complainers tell us that the cost of trying to obtain justice in Scotland following rape is too high.

Urgent action is required.

Implementation of the recommendations from the Dorrian Review

The report from the review of the management of sexual offences, led by Lady Dorrian, published earlier this year², contains a number of recommendations which have the potential to transform justice responses to sexual crime in Scotland. We are calling for these recommendations to be implemented in full, with one caveat in relation to the sentencing power of the new specialist court.

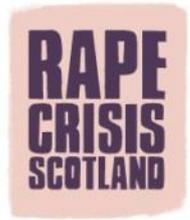
Many of the proposals in the review – the introduction of a specialist court, improved communication, expanding the pilot of visually recorded evidence in rape and attempted rape cases³ across Scotland, introducing independent legal representation for complainers where attempts are made to introduce their sexual history or character (more info on why this is needed here: [here](#)), introducing a legal right to anonymity for complainers – are essential and welcome and will undoubtedly improve complainers’ experience of the justice process.

However, as important as improving complainers’ experience of the justice process is, it is meaningless without action to tackle the systemic barriers to justice which currently exist. It is critical to engage with the fundamental question of why so many rape trials end in an acquittal, even where there is seemingly considerable evidence in support of the complainer's account. This requires serious consideration of how to address the use of rape myths in jury decision making. The Scottish Parliament must give serious consideration to the recommendations in Lady Dorrian’s review on this issue, including the piloting of judge led trials.

We have one note of caution in relation to the proposed specialist court. We are

² <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>

³ Currently this pilot is running in Edinburgh, Highlands and Dumfries & Galloway and involves complainers’ police statements being visually recorded with the possibility of this being used as their evidence in chief.



concerned that applying a 10-year sentencing limit could be seen to reduce the seriousness with which rape is treated, given that it is currently only able to be prosecuted in the High Court, which has unlimited sentencing powers. We recommend that this sentencing limit is removed, and that the sentencing power of the new specialist sexual offences courts is equivalent to that of the High Court where rapes are currently always heard.

Tackling court delays

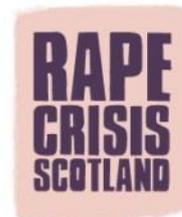
Prior to the pandemic, rape complainers already experienced lengthy waits for their case to come to court. This has been significantly exacerbated by the pandemic, with 837 cases awaiting trial in the High Court at the end of September 2021, a 57% increase on pre pandemic figures. The human cost of the backlog of cases is huge – complainers regularly tell us of the distress caused by delays and uncertainty as to when they will be giving evidence. We have supported numerous complainers who have withdrawn from the justice process as the impact of the delays on their lives was too great to bear, and many more who are considering withdrawing. Urgent action is required. At a minimum, rape cases must stop being allocated to floating trial diets, as the uncertainty this creates for complainers is causing significant distress.

End Not Proven

We have campaigned alongside Miss M for the removal of Scotland's third - controversial - verdict which is described by many survivors as feeling more akin to a comma, not a full stop. The verdict - which is simply another form of acquittal - is disproportionately used in cases of rape and attempted rape and leaves more questions than answers.

The Scottish Government commissioned research using mock juries which included potential jurors' understanding of the not proven verdict. The research found that when the not proven verdict was available, more individual jurors favoured acquittal. This difference was apparent both before and after deliberation - in other words, the availability of not proven was associated with individual jurors being less likely to favour a guilty verdict, independently of any impact of deliberating as a group. The research also found that potential jurors had inconsistent understandings of the not proven verdict.

Complainers in rape cases have spoken powerfully of the impact of the verdict on them, describing the bewilderment they felt when they were informed this was the outcome of their case: 'I didn't even know that it existed, to be honest,



because I've never been through the court system...I've never been in any trouble, none of my family has. So we were totally unaware of the court system, so seeing it come back with a not proven verdict, we were absolutely gob-smacked, like, what do you mean? We didn't even really know. And maybe that's ignorance on our part, but we didn't even know that that was a possibility.'

Survivor Reference Group – Police Report

The Survivor Reference Group was established by Rape Crisis Scotland in 2019.

Many of these survivors feel let down by the Justice System in Scotland and have come together to advocate for change. They have recently written a report detailing their experiences of engaging with Police Scotland and made a number of recommendations.

The full report can be found [here](#).

Many survivors of sexual crimes do not report what has happened to them for a variety of reasons. For those that do, Police responses are understood as being a significant factor not just in survivors experience of the justice process – regardless of whether the case reaches court and the verdict – but in their ability to come to terms with what has happened and seek further support.

Urgent and radical reform is required.

The recommendations from Lady Dorrian's review present a once in a generation opportunity for politicians across all political parties to make a meaningful difference to access to justice for rape survivors. If these recommendations are implemented, and the not proven verdict removed, Scotland has the opportunity to lead the way internationally in our response to sexual crime.

If you have any further questions, or would like to discuss this briefing in more detail, please don't hesitate to get in touch in the first instance with Brenna Jessie, Press and Campaigns Coordinator.

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