

The Scottish Women's Convention's
response to the Scottish
Government's consultation on:

Improving Victims' Experiences of the Justice System



August 2022

Premise

The Scottish Government proposed a new Vision for Justice in Scotland in February 2022, which set an agenda surrounding safety, resilience, and fairness for Scotland. The vision was people-focused, attempting to ensure improved outcomes for all who come into contact with the justice system. It is thought that the changes being proposed will be of particular importance to victims of sexual assault and abuse.

This consultation aims to assess whether the proposed vision truly does prioritise the needs and wants of victims in Scotland, focusing on the creating of the Victims Commissioner, the impact of 'trauma-informed practice', and how anonymity works within courtrooms. We shall consider whether these aims align with what women from across the country have told us in relation to crime, as well as sexual assault.

After this consultation has been closed the Government shall consider recommendations which have been made, alongside a recent public consultation on the not-proven verdict, to make any necessary revisions. It is the hope that by gathering responses, they can make a justice system that works for everyone in Scotland.



The Scottish Women's Convention (SWC)

The SWC is funded to engage with women across Scotland to ensure that their views are represented in policy and decision-making processes. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at Scottish, UK and international levels.

The SWC gathers information using different methods, including roadshows, thematic conferences, surveys, and both in-person and online roundtable events. This submission presents the views of a range of women, reflecting their opinions, ideas and lived experience. Working together with many other equalities organisations and community groups, we use our broad network to ensure that women from a range of backgrounds are heard and acknowledged. We are continually reviewing innovative ways of engaging with women and developing our trauma-informed and culturally sensitive practice to support vital contributions from as many women as possible.

Our Response: Victims' Commissioner

To what extent do you agree or disagree that the Victims' Commissioner should be independent of the Scottish Government?

Strongly Agree

The women who have engaged with the Scottish Women's Convention see the independence from the Scottish Government as crucial to having confidence in the Commission. This independence creates accountability, leading to eventual success and support of the Commission.

To what extent do you agree or disagree that the Victims' Commissioner should be a statutory role?

Strongly Agree

By ensuring that the Commission serves a statutory role, women and families would have the knowledge that it is a serious body: a body that will listen to them and make recommendations based on their needs. Ultimately making it an essential element of the judicial process.

To what extent do you agree or disagree that the Victims' Commissioner should be accountable to the Scottish Parliament?

Strongly Agree

At the Scottish Women's Convention, we believe that the Commissioner should be an independent body, creating accountability. This independence will allow for public scrutiny, yet still provide people with the opportunity to share their lived experiences.

In your view, what should be the remit of a Victims' Commissioner for Scotland?

Irrespective of whether a victim is part of criminal or the civil justice system, they will require support: particularly in cases of trauma. For this reason, we should ensure that all people living in Scotland have access to the best possible experiences in the Justice System. This is also the case when Scots holiday abroad and become victims of crime. Therefore, we recommend that the Government consider providing services for those who have experienced crimes in non-Scottish settings.

What powers do you think the Victims' Commissioner should have?

We believe that due to increased awareness surrounding the systemic issues existent within UK Police services, it would be valuable if the Commission were to have the power to intervene, investigate and make recommendations to Police Scotland. By encouraging a collaborative approach, while maintaining independence, issues surrounding racism, sexism and other discriminatory processes may be minimised: mending trust between the general public and the justice system.

How do you think that engagement with victims should take place?

The women who have attended SWC events have stated that they believe using consultative methods is the most effective way to engage with victims, as it gives a wider view of what women think. From speaking with victims ourselves, we have found that those who have experienced abuse can be very candid and open about their past. They state that they believe through open communication they can potentially prevent other women suffering in a similar way.

Are there any other relevant bodies or organisations that may have an interest in the work to be undertaken by the Victims' Commissioner?

From speaking with women, it is clear that third sector organisations such as SWC, Shakti Women's Aid, AMINA, ALLIANCE, Rape Crisis, and grassroots, are key to their healing process. It is therefore vital that the Victims' Commissioner properly engages with these groups in order to provide effective support for victims in Scotland.

To what extent do you agree or disagree that the Victims' Commissioner should not have the power to champion or intervene in individual cases?

Strongly Disagree

Advocacy is an essential element of supporting the women we engage with, and they believe that in order for the Commission to be effective they must be free to intervene in individual cases. We believe this to be the case, as some sub-groups in society require more support than others. Therefore, we must ensure that the voices of victims are being heard and properly advocated.

Are there any other matters relating to the proposal to create a Victims' Commissioner for Scotland that you would like to offer your views on?

The creation of a Victim's Commissioner for Scotland should be seen as a proud addition to the justice system in Scotland. Women in Scotland need to see this creation as a symbol of their voices being heard and listened to, particularly with regards to tackling violence against women and girls.

Our Response: 'Trauma-Informed Practice'

Bearing in mind the general principles which are already set out in the Victims and Witnesses (Scotland) Act 2014, to what extent do you agree or disagree that a specific legislative reference to 'trauma-informed practice' as an additional general principle would be helpful and meaningful?

Strongly Agree

The SWC think that any legislation which reduces the impact of trauma on victims and witnesses, would be a positive step forward enabling a more balanced approach and help victims and witnesses to feel more empowered.

To what extent do you agree or disagree that a specific reference to 'trauma-informed practice' within the current legislative framework for the Standards of Service would be useful and meaningful?

Strongly Agree

The SWC agree that specific reference to 'trauma-informed practice' within the current legislative framework for the standards of service would be useful and meaningful, especially for victims and witnesses. This would empower women to know that legal professionals and the justice system held standards which would be thoughtful, kind, and compassionate and helping them to discuss their trauma in a safer way.

To what extent do you agree or disagree that a legislative basis for the production of guidance on taking a trauma-informed approach would be useful and meaningful?

Strongly Agree

The SWC agree that having a legislative basis for the production of guidance on taking a trauma informed approach would be useful and meaningful, as it would clearly define the process in which victims and witnesses would go through. It would also hold legal professionals to a duty of standards ensuring that a trauma informed approach was being delivered. This would help both sides of the justice system to have a duty of care over one another, reducing trauma and maintaining safety.

To what extent do you agree or disagree that the Court should have a duty to take such measures as it considers appropriate to direct legal professionals to consider a trauma-informed approach in respect of clients and witnesses?

Strongly Agree

The SWC agree that the court should have a duty to take such measures as it considers appropriate, to direct legal professionals in considering a trauma-informed approach in respect of all witnesses, including their clients. This would ensure that witnesses and clients would be treated in fairer and more compassionate way whilst ensuring the re-traumatisation of a witness or victim would be kept to a minimum. It would also lessen the negative impact on being in the criminal justice system.

To what extent do you agree or disagree with the recommendation of the Virtual Trials National Project Board that there should be a presumption in favour of virtual trials for all domestic abuse cases in the Scottish summary courts?

Somewhat Agree

The SWC agree that virtual trials for domestic abuse cases in Scottish Summary courts are a good idea as this reduces the trauma for the victims and witnesses of domestic abuse. This would also help women who have been waiting for years to bring their abuser to court due to the backlog created during the pandemic. Furthermore by having virtual trials, it ensures that victims would not have to be in the same space as their abuser and the power dynamic would be more balanced for the victims and witnesses.

While removing vulnerable victims from the physical court setting is beneficial in the vast majority of cases, to what extent do you agree or disagree that virtual trials offer additional benefits to the ability to give evidence by live TV link?

Strongly Agree

The SWC agrees that virtual trials offer additional benefits to the ability to give evidence by live TV link. Women have told the SWC when discussing VAWG that the court process can be traumatising especially when having to be in the same building as the accused and their families. Giving evidence behind a screen can be helpful, but women have advised us that they still do not feel safe as they know the accused is still in the same area. This disempowers them and makes them feel unsafe. Women have advised us that this makes them feel shame and can be more traumatising than the abuse itself. Therefore, we believe there are benefits to virtual trials as it can significantly reduce the anxiety and trauma of the victim and witnesses and they may be able to talk more freely as they are able to deal with the trauma in a more positive way.

To what extent do you agree or disagree that Ground Rules Hearings should be extended to all child and vulnerable witnesses required to give evidence in the High Court, irrespective of the method in which their evidence is to be provided to the court?

Strongly Agree

The SWC agree that Ground Rules Hearings should be extended to all child and vulnerable witnesses required to give evidence in the High Court, irrespective of the method in which their evidence is to be provided to the court. The SWC also agree with Lady Dorrian's recommendations that there should be a presumption in favour of the pre-recording of evidence of sexual offence complainers. We also concur with Lady Dorrian's recommendation relating to the taking of evidence by commission, in that it should be the default approach when conducting a cross-examination of all sexual offence complainers, and used for the whole evidence where police statements have not been recorded in a manner which would allow their use as evidence-in-chief. The SWC also agree that although there may be instances in which sexual offence complainers would be required to give evidence in court and that GRH's should be used in these instances too.

To what extent do you agree or disagree that the current legislative basis for court scheduling, as managed through the existing powers of the Lord President, is sufficient to inform traumainformed practice?

Strongly Disagree

The SWC disagree that the current legislative basis for court scheduling is sufficient to inform trauma informed practice. This has been highlighted due to COVID-19 and the waiting time for victims and witnesses to be given an opportunity to get justice. Women have told the SWC that they have had to wait over 2 years for a court case which was then postponed at the last minute and have been advised that it may take months to rearrange. This is not good enough for these women, causing anxiety, fear, and the re-living of trauma as they prepare to give evidence. More has to be done to be more flexible and reduce the length of time for cases to be heard so victims and witnesses can move on with their lives.

To what extent do you agree or disagree that the courts should have the power to prohibit personal cross-examination in civil proceedings when the circumstances in a particular case require this measure to be taken?

Strongly Agree

There is no purpose to delve into a woman's personal life other than to seek to embarrass her publicly.

Are there any other matters relating to special measures in civil cases that you would like to offer your views on?

We believe that the provision of screens, online facilities, technology, pre-recorded evidence should be considered. These methods would be particularly helpful for people with disabilities, children, people who do not have English as their first language and people who are suffering with trauma. There are many groups in our society who would benefit from having these types of methods to assist them in providing their lived experiences.

Which one of the following best describes your view on the point in the criminal justice process when any automatic right to anonymity should take effect?

Other

Women and girls report to the SWC their fear of complaining and reporting these offences across all areas of society in Scotland. These include the workplace, travelling on public transport and physical attacks. Women are telling us that if they could make a complaint to a specific organisation then they would be more inclined to do so, as they do not feel confident that the police will act appropriately.

To what extent do you agree or disagree that the complainer should be able to set their anonymity aside?

Other

Complainers do sometimes prefer to stand up in court and face the accused, setting an example for women and families. Some women have explained that they feel a sense of closure by being in-person, particularly for sentencing. However we do realise that not all women will have the confidence and support network to enable this.

To what extent do you agree or disagree that children should be able to set any right to anonymity aside?

Strongly disagree

Children should be protected until they come of age when decisions of this import are taking place.

To what extent do you agree or disagree that the court should have a power to override any right of anonymity in individual cases?

Strongly Agree

If overriding the right of anonymity in individual cases serves the case of serving justice, then the SWC would support this power.

To what extent do you agree or disagree that any right of anonymity should expire upon conviction of the complainer for an offence against public justice?

Strongly Disagree

The complainer should be the decision maker as to the right of anonymity expiring.

Which one of the following best reflects your view of the level of maximum penalty that should apply to a breach of any right of anonymity

- a) up to 2 years' imprisonment and/or an unlimited fine

The implication of a custodial sentence for breaching the right to anonymity should deter those who wish to do, while also making clear how important it is.

To what extent do you agree or disagree that there should be statutory defence(s) to breaches of anonymity?

Strongly Disagree

There should be no excuses for breaching anonymity. If the Court is convinced that it is in the interest of justice, then that could be a conversation that has to be had with those involved.

Are there any other matters relating to anonymity for complainers in sexual offence cases that you would like to offer your views on?

The SWC believes that over time as women and families gain confidence in the judicial system, and in particular, the police, more people will come forward to report crimes.

To what extent do you agree or disagree that there should be an automatic right to independent legal representation for complainers when applications under section 275 to lead sexual history or character evidence are made in sexual offence cases?

Strongly Agree

Women tell the SWC that 'the entire court procedure is terrifying' and 'having your own legal representative would help in instances where the victim is having to defend her own sexual history'.

To what extent do you agree or disagree that the complainer should have the right to appeal a decision on a section 275 application?

Strongly Agree

Until the 'system' treats the complainer in a fair and just way then surely it is only right that the complainer should be able to appeal a decision

To what extent do you agree or disagree that a right to independent legal representation for complainers should apply during any aspect of criminal proceedings in respect of applications under section 275 applications (including where an appeal is made)?

Strongly Agree

Independent Legal representation would enable women to have confidence to give evidence in the proceedings. It would also give women and children the support to provide details which they might otherwise be reluctant to disclose.

In exceptional cases, section 275B(2) provides that an application may be dealt with after the start of the trial. To what extent do you agree that independent legal representation should apply during this aspect of the proceedings?

Strongly Agree

Women should be able to access independent legal representation at any stage of the proceedings. If the purpose of the proceedings is to get to the truth, then surely any support for the complainer should be afforded.

To what extent do you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid?

Strongly Agree

Most people in our country cannot afford individual legal representation. Legal Aid has always been the right of citizens to assist them in cases of defence. Legal Aid should also be provided to complainers in cases where independent legal representation applies. If it is deemed necessary to the proceedings, then it should also be provided by Legal Aid.

If you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid, how should this be provided?

Other

Under the current legislation legal aid is not allowed to be funded for civil and criminal ABWOR (assistance by way of representation). It must either be civil or criminal, not both. It seems logical therefore, that the legal aid rules should be amended to include both civil ABWOR and criminal ABWOR.

To what extent do you agree or disagree statutory time periods should be adjusted to provide additional time for the complainer to consider the application and effectively implement their right to independent legal representation prior to trial?

Strongly Agree

Women and children who have suffered sexual abuse and assault are oftentimes experiencing trauma. This affects their ability to function in a number of ways therefore, adjusting the statutory time periods allows them time to regain their strength before participating in proceedings. Women report to the SWC that they 'find it difficult in the immediate aftermath of an assault to cope and are still in shock'.

Are there any other matters relating to independent legal representation for complainers in sexual offence cases that you would like to offer your views on?

The Scottish Women's Convention has engaged with many women in Scotland who have suffered rape, domestic abuse, and other forms of sexual assault. It is the fear of facing their attacker and the actual proceedings that prevents many of them from even reporting their attack to the police. Changes to the process and procedures are to be welcomed if they are in interests of those seeking justice and the truth.

To what extent do you agree or disagree that a specialist sexual offences court should be created to deal with serious sexual offences including rape and attempted rape?

Strongly Agree

The facts speak for themselves. The statistics for sexual offences proceeding to trial in Scotland are dismally low. Conviction rates are even worse. It is obvious that the current system is not working in the interest of complainers or indeed wider society. The SWC has heard from many women over the years about their lack of faith in the system and proceedings. They have advised us that the Specialist Domestic Violence Courts systems have made it more likely for women to report cases of domestic abuse. The SWC would support the creation of Specialist Sexual Offences Courts, and it would also be welcomed by victims of sexual offences.

To what extent do you agree or disagree that, if a new specialist sexual offences court is created, it should be - as recommended by Lady Dorrian's Review - a new court for Scotland, separate from the High Court or the Sheriff Court?

Strongly Agree

Lady Dorrian's recommendation for the creation of a new specialist offences court is supported by the Scottish Women's Convention. Women have told us time and again that the current system is not working for them.

If you disagree that the specialist court should be a new separate court for Scotland, where do you consider it should sit?

Other

The SWC supports Lady Dorrian's recommendation to create a new specialist court: 'a national specialist sexual offences court should be created to deal with serious sexual offences including rape and attempted rape.' The SWC supports the recommendation, that if implemented, would introduce a new court for Scotland with specific and bespoke jurisdiction and sentencing powers which would not sit within any existing level of court in Scotland and would require primary legislation to be implemented. The SWC believes that this approach to deal with serious sexual offences would deliver a specialist support and foundation for new court to serve the needs of complainers, particularly women and children.

To what extent do you agree or disagree that, if a specialist court is to be created, it should have jurisdiction to hear cases involving charges of serious sexual offences including rape as well as non-sexual offences which appear on the same indictment (e.g. assault)?

Strongly Agree

The SWC agrees that the creation of a new specialist court should have the jurisdiction to hear cases involving charges of serious sexual offences. In particular women are supportive of the measures to be taken to ensure the comfort and safety of the witness.

If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree with Lady Dorrian's Review that it should have a maximum sentencing power of 10 years' imprisonment and the ability to remit cases to the High Court for consideration of sentences longer than 10 years?

Neutral The SWC believes that the sentencing post-conviction should be a matter entirely for the Court.

If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree that it should be presided over by sheriffs and High Court judges?

Strongly Agree

The SWC supports the recommendation that appointments to the court would be made by the Lord President, upon satisfaction that the judge or sheriff had the experience and undergone necessary specialist training as determined by the Lord President.

If you answered disagree to the previous question, who do you think should preside over the court?

Other

The Lord President should appoint only those who have been trained in the aspects recommended by Lady Dorrian.

If a specialist sexual offences court distinct from the High Court and Sheriff Court were to be created, to what extent do you agree or disagree that the requirements on legal practitioners involved in the specialist court should be match those of the High Court?

Strongly Agree

The SWC supports the recommendation by Lady Dorrian, that legal practitioners in the specialist court should possess appropriate training consistent with the gravity of cases being heard by the court and their impact on complainers. The SWC also supports that there should be a specific requirement for all those involved in cases within the specialist court, to undergo trauma-informed training with a view to improving the experience of the complainers.

To what extent do you consider that legislation should require that legal professionals working in a specialist court should be specially trained and trauma informed?

Strongly Agree

The SWC believes that if legal professionals working in a specialist court were specifically trained and trauma informed, it would reduce the negative impact for individuals within the justice system. Being specially trained and trauma informed would mean more understanding of what had happened to the individual and would help them understand what needs to be done to support the individuals through the process. This would enable the individual to feel safe and know that they mattered. This would also help the legal professionals to talk through the system and how it may impact on the individual to lessen any trauma they may incur.

Are there any other matters relating to the potential creation of a specialist court for serious sexual offences you would like to offer your views on?

The SWC supports that features of the court should include pre-recording of the evidence of all complainers and specialist trauma-informed training for all personnel. The SWC believes that if implemented, the specialist sexual offences court would bring benefits to complainers, particularly women and families in Scotland.

What additional evidence and information do you think would be useful to assess the question of the role of juries in the prosecution of serious sexual offence cases?

Comparison of other countries rates of conviction may prove helpful.

Are there any other matters relating to single judge trials that you would like to offer your views on?

The current system of trial by jury in serious sexual offences has not proved to be successful in returned guilty verdicts. The use of a single judge trials may help to increase the conviction rate.

Conclusion

Having listened to women, our three key recommendations on this topic are:

- The proposed Victims' Commissioner must ensure that the voices of victims are prioritised.
- Optional anonymity should be guaranteed for complainants of sexual crimes, allowing those women who want to face their attacker the choice.
- Improved training surrounding sexual crimes for all judicial system staff: including police, to create a safe space whereby women and girls can come forward freely.

The SWC is grateful for the opportunity to respond to the Scottish Government's consultation on **Improving Victims' Experiences of the Justice System**. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to this topic and its effects on women's equality.

For further information or to share your views,
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