



Consultation response

Scottish Sentencing Council: rape sentencing guidelines

**RAPE
CRISIS
SCOTLAND**

1. Should either of the rape guidelines explicitly address where the offender is known to the victim, as opposed to not known to the victim?

Yes

If yes, what guidance do you think would be useful?

As noted in the consultation document, many survivors of sexual violence will experience rape by an offender known to them as a betrayal of trust. As the Scottish Sentencing Council (SSC) concludes, it may not be appropriate to list whether the offender is or is not known to the victim as a standalone feature of culpability. However, there must be room for this to be appropriately addressed within the features of harm and/or aggravating factors, and support provided for survivors to provide their views on this.

While it is important that offenders who seek to sexually harm strangers are acknowledged as a distinct form of risk to public safety, it would be wrong to assume that conversely offenders who target those who are known to them in some form are less likely to be a risk to the public. For many of these offenders, it may be the case that targeting known victims is considered less likely to lead to legal and social consequences, given the well-established difficulties with the burden of proof in such cases and the culture of shame and fear of disbelief that prevents a great number of survivors from disclosing abuse. Some may consider that it is more achievable to exploit the trust of a known person to exert power through sexual violence than to seek out potential victims through other means. While an offender is unlikely to outline the motivations for their crime and choice of victim or circumstance, there is often important information which can point to this within the evidence provided by a victim at trial and/or additional information they can provide to the court about the context and impact of the crime/s on them.

The guidelines seek to address forms of impact on victims in the levels of harm section, which cannot be divorced from the question of the offender being known to the victim. For example, while a survivor of rape by a stranger may experience harms such as fear of public places and resultant isolation, a survivor of rape by a person known to them may experience difficulties trusting others and resultant isolation. A survivor of rape by a member of their family and/or a small community may experience further compounded isolation and loss of relationships. These impacts may simply never be clear from the evidence presented at trial alone.

There should be no hierarchy of impacts simply assumed without providing appropriate space for the victims of such crimes an adequate process in which to provide their views on this matter. See question 19.

2. Do you think further guidance should be provided in relation to historical rape offences in either of the guidelines?

No

If yes, what guidance do you think would be useful?

N/A

3. Do you agree or disagree that there should be two levels of culpability in the guidelines?

Agree

If you disagree, please explain your answer.

N/A

4. Do you think that the features of culpability listed in each of the guidelines are appropriate?

Yes

If you answered 'no' in relation to either guideline, please list which features of culpability are inappropriate and explain your reasons.

N/A

5. Should any features of culpability be added to either of the guidelines, or should any features be removed?

No

If you believe any features of culpability should be added, please list these, identifying which guideline(s), and explain your reasons.

If you believe any features of culpability should be removed, please list these, identifying which guideline(s), and explain your reasons.

N/A

6. Do you agree or disagree that there should be three levels of harm in the guidelines?

Agree

If you disagree that there should be three levels of harm in the guidelines please explain your answer.

N/A

7. Do you think that the features of harm listed in each of the guidelines are appropriate?

Yes

If you answered 'no' in relation to either guideline, please list what features of harm are inappropriate and explain your reasons.

N/A

8. Should any features of harm be added to either of the guidelines, or should any features be removed?

Yes

If you believe features of harm should be added, please list these, identifying which guideline(s), and explain your reasons.

Social and economic impacts on victims should be acknowledged – e.g. loss of home, loss of income, impacts on community and/or family relationships.

Harm caused to others indirectly should be acknowledged – e.g. while the offence being witnessed by a child is rightly listed as an aggravating factor, it should be acknowledged that children and others are likely to be impacted by the crime in other ways. For example, a child may be profoundly impacted by witnessing the psychological impact of a crime on their parent even if they did not directly witness the offence; they may experience fear of the offender; if the offender is their parent they may suffer self-esteem issues or fear the reactions of others; and they may be impacted in other ways through the above noted social and economic impacts on the victim. Many of these harms may not be immediately apparent at the time of sentencing but may develop in the years to follow. It is therefore important that remedies to address harm beyond custodial sentences be considered as part of sentencing, such as automatic protective measures and sex offender programmes.

Clarity on how levels of harm are assessed and sources of evidence weighted would be welcomed, particularly regarding psychological, social and financial impacts. Medical evidence should not be relied upon alone to demonstrate psychological harm or trauma. Due weight should be given to Victim Impact Statements with more support provided to survivors to complete these.

See question 19.

If you believe features of harm should be removed, please list these, identifying which guideline(s), and explain your reasons.

N/A

9. Do you agree with the sentencing ranges for each of the guidelines?

No

Please provide any reasons for your answer.

While it can be difficult for sentences to ever reflect the impact of rape, some of the sentencing ranges seem particularly low, particularly those of rape of a child.

10. Do the guidelines sufficiently address the issue of public protection and risk?

No

If answering 'no' please tell us why and explain your reasons.

As the guidelines primarily focus on custodial sentences, insufficient consideration is given to utilising sentencing powers to direct other remedies such as protective measures for victims and support for rehabilitation for offenders. See question 19.

11. Are the aggravating factors listed in each of the guidelines appropriate?

Yes

If you answered 'no' in relation to either guideline, please list what aggravating factors are inappropriate and explain your reasons.

N/A

12. Should any aggravating factors be added to either of the guidelines, or should any factors be removed?

Yes

If you believe any aggravating factors should be added, please list these, identifying which guideline(s) and explain your reasons.

While remorse is listed as a mitigating factor, lack of remorse is not explicitly cited as an aggravating factor. Lack of remorse may be demonstrated through a lack of guilty plea or a very late plea. It should be acknowledged that many survivors experience the criminal justice process as highly retraumatising and that a trial is

likely to take many years to be heard in court from the point of a police report, particularly where there have been consistent not guilty pleas. This must be viewed in context as an often purposeful prolonging of harm and intent to retraumatise a victim by the offender and should be weighted as such as an aggravating factor. It is important that this is acknowledged in the rape sentencing guidelines as a crime type-specific aggravator.

If you believe any aggravating factors should be removed, please list these, identifying which guideline(s) and explain your reasons.

N/A

13. Are the mitigating factors listed in each of the guidelines appropriate?

Yes

If you answered 'no' in relation to either guideline, please list what mitigating factors are inappropriate and explain your reasons.

N/A

14. Should any mitigating factors be added to either of the guidelines, or should any factors be removed?

If you believe mitigating factors should be added, please list these, identifying which guideline(s), and explain your reasons.

N/A

If you believe mitigating factors should be removed, please list these, identifying which guideline(s), and explain your reasons.

As above, remorse is noted as a mitigating factor. We would welcome additional consideration in the guidelines as to how the meaningfulness of any stated remorse in relation to this crime type should be assessed, particularly where there has been a not guilty plea.

15. Do you think either of the guidelines will influence sentencing practice in Scotland?

Yes

Please explain your reasons.

Consistency and transparency amongst the judiciary is vital if the sentencing guidelines are to meaningfully address issues of harm. It is vital that robust

trauma informed training is available to judges to enable psychological harm and trauma to be adequately understood in sentencing decisions.

16. Do you think either of the guidelines will lead to an increase or decrease in public understanding of how sentencing decisions are made?

Increase

Please explain your reasons.

We hope that the guidelines will improve public transparency in relation to sentencing decisions if consistently applied.

17. Do you see any benefits or negative effects arising from the introduction of each of these guidelines?

If you believe benefits may arise, please state these and your reasons why.

We welcome the guidelines and the commitment to consult and seek views on this important development.

If you believe negative effects will arise, please state these and your reasons why.

N/A

18. What costs (financial or other) do you see arising from the introduction of each of these guidelines, if any?

Please explain your reasons.

In order to meaningfully improve sentencing outcomes, additional resource is required to provide adequate support to survivors of sexual violence to engage with criminal justice processes, including continued and expanded funding for specialist sexual violence advocacy via the National Advocacy Service, and legal advice for survivors via the Emma Ritch Law Clinic.

Additional resource is urgently required to expand sex offender rehabilitation programmes, and this should be a mandatory sentencing consideration. If adequately resourced and appropriate protections for survivors are provided in the form of Non-Harassment Orders, this should offset some of the financial implications of any increased custodial sentences handed out as a result of the sentencing guidelines. See question 19.

19. Please provide details about anything else you feel is of importance or we may have omitted with regard to sentencing for rape offences.

Please provide any reasons for your response.

Some further issues require consideration.

Victim Impact Statements (VIS)

Much of the emphasis of the guidelines is on harm caused, however it is not clear to us how this is currently and is intended to be measured. Victim Impact Statements are one important area, and uptake of these should be promoted. The 2021 Sentencing Process guideline notes that “in assessing the level of harm the court must have regard to any victim statement which has been put before it, to the extent that it considers the information in the statement to be relevant to the offence”. It is not clear at present to what extent a VIS is given weight in the sentencing decisions of judges. For example, one survivor who responded to our consultation on these guidelines told us that they had outlined their reasons for requesting that a Non-Harassment Order be granted in their VIS, which was disregarded by the sentencing judge. We would welcome clarity in the guidelines to improve transparency and provide reassurance to survivors that the information they provide in a VIS is meaningfully considered.

Survivors tell us how traumatic and difficult it can be to complete a VIS, and how little support and guidance is available to assist them in doing so. For some, fears about their VIS being read out in open court for the accused and the accused’s supporters to hear can lead to a decision not to complete a VIS, or to limit the detail provided about the breadth of the impacts on them. Support for survivors to engage with the VIS process should be offered and tailored to their needs and wishes, which may include considering options for private submissions.

More support should be made available, either through increased resources for the National Advocacy Service and/or the Emma Ritch Law Clinic. We appreciate that such funding is a matter for the Scottish Government however it is important to note this as a consideration for the development of these guidelines.

We also support calls from survivors to have a right to read out their VIS or have a person of their choice read it out on their behalf. Victims have this right in England & Wales and it is time for survivors to have an equivalent right in Scotland.

Non-Harassment Orders (NHOs)

NHOs should be put in place as a matter of course in rape cases upon completion of the offender’s prison sentence. Survivors tell us how terrifying the prospect of their rapist being released can be. Greater protection is needed to protect survivors from being contacted or approached by their abusers, to reduce the trauma and fear experienced by survivors in these circumstances.

Sex offender programmes

Consideration should be given to including mandatory participation in sex offender programmes as part of sentencing. The public would be horrified to learn that rapists can leave prison without undertaking any direct rehabilitation in relation to their behaviour. This will require increased investment in sex offender programmes, as we are aware of lengthy waiting lists in prison for these programmes. This is unacceptable.

20. Are you responding as an individual or an organisation?

(Required)

Organisation

21. Name of person responding:

Name: (Required)

National Advocacy Service Coordinator

22. Name of your organisation (if responding on behalf of an organisation):

Organisation:

Rape Crisis Scotland

23. Phone number:

Number:

0141 331 4180

24. Address, including postcode:

Address:

Rape Crisis Scotland, 2nd Floor, 134-138 West Regent Street, Glasgow, G2 2RA

25. The Scottish Sentencing Council would like your permission to publish your consultation response. Please indicate your preference:

(Required)

Publish response with name

Do not publish response

[Information for organisations](#)

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

26. We may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Sentencing Council to contact you again in relation to this consultation exercise?

Yes