



Briefing

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

The logo for Rape Crisis Scotland, featuring the words "RAPE CRISIS SCOTLAND" in a bold, sans-serif font, stacked vertically. The text is contained within a white rounded square with a halftone dot pattern background.

**RAPE
CRISIS
SCOTLAND**

Stage One report briefing

Scotland's justice system is letting down too many survivors of sexual violence. Conviction rates for rape are the lowest of any crime type. For cases that reach trial the conviction rate is around 51% compared to 91% for all other crimes. Figures provided by the Lord Advocate to the Criminal Justice Committee indicate it is as low as 20-25% in single complainer rape cases. Most cases never make it as far as court. Survivors are also facing severe and distressing court delays in sexual offence cases, a longstanding issue that was made worse by the pandemic. Change is urgently needed.

The Victims, Witnesses and Justice Reform (Scotland) Bill presents the most significant opportunity to improve how survivors of sexual violence experience the Scottish justice system in over a century.

The Criminal Justice Committee's Stage One Report on the Bill has been informed by the experiences of survivors, who have shown huge courage in sharing their experiences and views with the Committee, which are reflected in the report, and our thanks go to them. We also welcome the robust consideration the Committee has given this report, and how seriously they have considered the contributions and evidence of survivors. This bill has the potential to transform the experience of seeking justice after sexual violence, and we hope the Parliament will consider the report very seriously.

Summary

We are pleased that the Committee is supportive of the Bill's proposal to scrap the Not Proven verdict.

We also welcome the Committee's commitment to introducing Independent Legal Representation where applications are made to introduce evidence about a complainer's sexual history and character, and a legal right to anonymity for rape complainers.

We are very relieved to see the Committee reject the Bill's proposals to change the proportion of jurors required for a conviction. We believe this would have had the effect of reducing the proportion of convictions resulting from rape trials and been counterproductive to what we perceive as the intention of the Bill.

It is disappointing, however, to see the split in the Committee on the judge led pilot. There is overwhelming evidence about the impact of rape myths on jury decision making. Real action is required.

The proposed introduction of specialist courts for sexual offences is welcome. If properly resourced and regulated, we believe specialist courts could make a transformative difference to the experiences of survivors seeking justice and we hope the Parliament will agree.

Independent Legal Representation

We also welcome the Committee's commitment to introducing Independent Legal Representation (ILR) where applications are made to introduce evidence about a complainer's sexual history and character, known as a section 275 application.

The prospect of having your sexual history brought up in court can be extremely distressing, and it is crucial that complainers can access free legal representation to help them to protect their privacy.

Introducing ILR in these circumstances would be a significant and positive step for survivors' experience of seeking justice in Scotland. This should be extended to include legal advice for complainers of sexual offences in the lead up to the trial, to assist them to better understand the process and feel better prepared for giving evidence. This is a proposal that is supported by both Rape Crisis Scotland and the Faculty of Advocates.

Legal right to anonymity for rape complainers

We are pleased the Committee has carried the Bill's proposal to introduce the legal right to anonymity for rape complainers. The right to lifelong anonymity will give survivors in Scotland the same crucial right to privacy as survivors in England and Wales.

Not Proven verdict

We are pleased to see the Bill's commitment to scrapping the Not Proven verdict carried in this Stage One report. There is considerable evidence that juries can be reluctant to convict in rape cases. There are real worries that the existence of the Not Proven verdict gives juries in rape trials an 'easy out' and contributes to guilty perpetrators walking free. We have spoken to many survivors whose cases received a verdict of Not Proven and were left feeling confused and let down.

Judge led trial pilot

It is disappointing to see the split in the Committee on the judge led pilot. There is overwhelming evidence about the impact of rape myths on jury decision making. These are deeply ingrained views about what a 'real' rape is or how a 'real' victim would look or behave. There is a real perception among jury members that 'false allegations are routine' and that delay in reporting, and/or a lack of physical injury is indicative of a false allegation. Rape myths can also have a basis in racism or involve a bias against someone's sexual orientation. There can also be misunderstandings about how people with disabilities are affected by sexual violence.

Survivors have raised concerns about the fact that their case would be decided upon by one person, and the amount of power this would allow a single person. Some survivors also raised concerns about the lack of diversity among the judiciary and the impact this might have on cases for survivors of colour. We share these concerns and action is clearly needed on the lack of diversity among the judiciary. However, a judge would be required to present a written verdict explaining their decision. This would introduce a level of accountability as to how a verdict was reached which is currently absent from the system. Survivors are currently left with no explanation as to why a jury reached the verdict they did.

Specialist sexual offences court

Our work with survivors has shown that there is a significant need for a specialist sexual offences court in Scotland. In the current court estate and diet, there is a lack of awareness and sensitivity of the needs and experiences of survivors of sexual violence. Too often, the process of attending court and participating in a sexual offence trial causes significant levels of unnecessary re-traumatisation.

The Committee was split on the introduction of a specialist sexual offences court but was generally supportive of the principle for significant change to how sexual offences are dealt with in court.

For a specialist sexual offences court to make a meaningful difference to the experience of survivors, it is not enough for the court to be specialist in name only. It must offer a fundamentally different experience for survivors. This should include secure online access for survivors to watch proceedings if they wish after they have given evidence, active management of witnesses to ensure complainers and accused persons do not bump into each other, dedicated advocacy and court support provided by Rape Crisis advocacy workers, greater certainty about when complainers will be giving evidence, and a high standard of practice and ticketing service for all lawyers, clerks and judges participating in the court.

The final point is particularly important. Many survivors have described feelings of re-traumatisation and humiliation following cross examination by defence counsel. If the ticketing system recommended by the Bill aims to introduce a more trauma informed trial process, it is essential that the individual legal professionals working in these courts are held to account for their behaviour. If there is no mechanism for this privilege to be removed from legal professionals following inappropriate conduct, the system will be rendered ineffective.

We welcomed the report's recommendation that the Bill allow for greater survivor agency in how they present their evidence in a specialist court, and that special measures (such as giving pre-recorded evidence) are not imposed on a survivor but are active and participatory choices.

The report raises concerns about the condition of the current court estate for conducting rape trials in a trauma informed way. For example, some court buildings could not accommodate separate entrances and exits for complainers and the accused. We share these concerns but are also clear that housing a specialist court in a small number of buildings must not result in further delays for survivors.

Some Committee members did not support the introduction of specialist courts and instead believe sufficient changes could be made to the existing court system to enable trauma informed practice. It is our position that changes should be made to enable trauma informed practice across the entire justice system, and that a specialist court should be introduced.

Changes to the jury majority

We had grave concerns about the Bill's proposal to increase the proportion of jurors required for a conviction. Conviction rates for rape are already the lowest of any crime type in Scotland. It would be devastating if a bill introduced with the aim of improving complainers' experiences of the justice process had the effect of making it more difficult to obtain justice after rape. This is what the change in jury majority would have meant, we are very relieved to see the Committee reject this and hope the Parliament will support this approach.