

**G**LASGOW  
**O**PEN  
**J**USTICE



**On the Periphery: Exploring Effective Participation for  
Complainers of Sexual Crime in Scotland**

***Sandy Brindley***

December 2023

**Table of contents:**

**Section 1: Introduction ..... 3**

**Section 2: The research.....4**

**Section 3: A complainer’s status as a witness .....5**

**Section 4: Complainers feel unprepared for giving evidence.....8**

**Section 5: Vulnerability and agency .....14**

**Section 6: There is a gap between theoretical rights and complainers’ experiences.....17**

    6.1 *Right to information.....18*

    6.2 *Right to legal representation on sensitive records.....20*

    6.3 *Right to be informed of, and express a view on, any application to introduce their sexual history or character evidence.....22*

**Section 7: Conceptions of justice are multi-layered.....27**

    7.1 *Safety.....29*

    7.2 *Validation.....31*

    7.3 *Accountability.....33*

    7.4 *Being able to rebuild their lives.....33*

    7.5 *Cases which result in acquittal or haven’t proceeded to court.....34*

    7.6 *A conviction isn’t the end of the process.....35*

**Section 8: Discussion.....37**

**Section 9: Conclusion.....39**

**References.....40**

## Section 1: Introduction

Despite decades of law reform on sexual offences, low conviction rates<sup>1</sup> and high levels of complainer<sup>2</sup> re-traumatisation<sup>3</sup> continue to cause concern in sexual crime cases. Excesses of cross examination<sup>4</sup> and the impact of delays in cases coming to court<sup>5</sup> play a significant role in the re-traumatisation experienced by complainers seeking justice. There has been little exploration of the impact of a complainer's status as a witness within the criminal justice process, and the resulting 'structural alienation'<sup>6</sup> experienced by those seeking justice in adversarial criminal justice processes. Consequently, the potential impact of giving complainers of sexual crime meaningful procedural rights - that is, rights to participate in the process - requires further scrutiny. This research engages directly with complainers of sexual crime to explore key concepts of justice and agency, to inform reform of justice responses.

---

\* This research is being carried out as part of a part-time PhD at the School of Law at the University of Glasgow, funded by the Clark Foundation for Legal Education <https://www.clarkfoundation.org.uk>. The author would like to thank her PhD supervisors Fiona Leverick, James Chalmers and Eamon Keane at the University of Glasgow for their invaluable comments on drafts of this paper. Thanks also go to Peter Reid and Suzy Houston for their helpful feedback on an early draft. This paper is the result of victim-survivors of sexual crime giving their time to speak about their experiences of the justice process. They did this in the hope that sharing their experiences could help improve the response of the justice process for others coming after them. The author would like to pay tribute to their generosity, courage and power.

<sup>1</sup> Scottish Government, *Recorded Crime in Scotland: 2020-21* (2021) 79; Scottish Government, *Criminal Proceedings in Scotland: 2020-2021* (2022) 25, 26

<sup>2</sup> Complainer is the legal term in Scotland for the alleged victim of an offence. The terms 'complainer' and 'victim-survivor' are used throughout this paper depending on context.

<sup>3</sup> Oona Brooks-Hay and Michele Burman, *Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault* (2019), HM Inspectorate of Prosecutions in Scotland, *Thematic Review of the Investigation and Prosecution of Sexual Crimes* (2017) 47-68

<sup>4</sup> Michele Burman and Sandy Brindley, 'Challenges in the Investigation and Prosecution of Rape and Serious Sexual Offences in Scotland' in R Killian, E Dowds and A-M McAlinden (eds.) *Sexual Violence on Trial: Local and Comparative Perspectives* (Routledge 2021) 201-205.

<sup>5</sup> Michele Burman and Oona Brooks-Hay, *Delays in Trials: The Implications for Victim-Survivors of Rape and Serious Sexual Assault: An Update* (2021)

<sup>6</sup> Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice* (Hart Publishing 2008) 290.

## Section 2: The research

Twenty victim-survivors of sexual crime participated in the research, all of whom had reported their experience to the police. Seventeen saw their cases reach court and nine saw their perpetrator convicted. Two victim-survivors undertook successful civil damages action against their attackers after receiving not proven verdicts in the criminal courts. Of the 17 victim-survivors whose cases reached court, one didn't require to give evidence at trial as the perpetrator pled guilty. The remaining 16 victim-survivors gave evidence in either criminal or civil courts within the last five years, with seven giving evidence in criminal prosecutions within the last 12 months. All participants were women; seventeen were white women, three were women of colour. An Urdu interpreter was used for one interview.

Most participants for the research were recruited through Rape Crisis Scotland's Survivor Reference Group<sup>7</sup> and National Advocacy Project.<sup>8</sup> Ethical approval for the research was obtained through the University of Glasgow's College of Social Sciences ethical approval process.

The research took a qualitative approach, with a mix of small discussion groups and one to one semi structured interviews. Interviews and group discussions were transcribed and analysed to identify key themes.

Five key themes have emerged from the research: a complainer's status as a witness within criminal justice proceedings has a profound impact on their experience of, and satisfaction with, the process; complainers feel unprepared for giving evidence in the criminal process; there is a need for a nuanced approach to vulnerability which recognises a complainer's agency; there is a gap between theoretical rights and complainers' experiences; and conceptions of justice are

---

<sup>7</sup> Rape Crisis Scotland, '*Survivor Reference Group Initial Report*' (2019) Rape Crisis Scotland, '*Survivor Reference Group: Police Responses in Scotland Report*' (2021)

<sup>8</sup> Oona Brooks-Hay and others, '*Evaluation of the Rape Crisis Scotland National Advocacy Project: Final Report*' (2018)

multi-layered - feeling that the system is 'fair' is as important as the outcome of the case. Each will be discussed in turn.

Section 3: A complainer's status as a witness within criminal justice proceedings has a profound impact on their experience of, and satisfaction with, the process.

Complainers in Scotland, as in most common law jurisdictions, are treated by the courts as witnesses to a crime committed against them, rather than as a party to proceedings. The state - represented by the Crown Office and Procurator Fiscal Service (COPFS) - prosecutes the alleged offence in the public interest, in what is often conceptualised as a binary contest between the state and the defence.<sup>9</sup>

Complainers are not generally afforded the right to legal representation, apart from within some very narrowly defined parameters in relation to access to their sensitive records<sup>10</sup> and mobile phone records.<sup>11</sup> These limited exceptions aside, complainers have no formal legal standing to participate in the court process. A victim's marginal position within adversarial justice processes can create a sense of what has been termed 'structural alienation'.<sup>12</sup> Feelings of marginalisation can be particularly acute for victim-survivors of sexual crime. As one victim-survivor in this research study commented, the lack of control experienced during the crime can be mirrored in the process of seeking justice.

"To be honest, the crime of rape is such a controlling crime. In that moment, the perpetrator has all the control. And that's what they are driven by. That's what their turn on is, that's their thing. They want everything to be on their terms. And as a victim, you have no control. You are control-less. You are literally a puppet in a play being controlled by this

---

<sup>9</sup> Doak (n 6); Tyrone Kirchengast, 'Victims' Rights and the Right to Review: A Corollary of the Victim's Pre-Trial Rights to Justice' (2016) 5 *International Journal for Crime, Justice and Social Democracy* 103.

<sup>10</sup> *WF, Petitioner* [2016] CSOH 27.

<sup>11</sup> *AR v HMA* [2019] HCJ 81. Existing rights to legal representation in Scotland are discussed later in this paper.

<sup>12</sup> Doak (n 6) 290.

person. You lose all that control. And in the criminal trial, they don't give you any control back." Sophie<sup>13</sup>

Victim-survivors described the justice process as "brutal, dehumanising, traumatising" (Lisa) and "not victim centred whatsoever." (Emily)

"You're not treated like a human that has feelings or has a life, you are literally treated like evidence." Lisa

Although she saw a conviction in her case, Katy said that she wouldn't do it again and described being treated as "an evidence bag at the back of the evidence cabinet, ready to just be pulled out when they need it and toss back when they don't need it."

Callie identified the hardest part of the justice process as "the lack of participation, the lack of feeling in control of the case, the lack of feeling like it's your own, having to put your trust in people that you might have only spoken to over email." Victim-survivors reported feeling marginalised within the criminal justice process and having few rights. As Eileen put it "I wasn't at the centre of this. I was sort of on the peripheral and was just a witness to my own crime."

Two victim-survivors undertook successful civil damages actions against their attacker following not proven verdicts<sup>14</sup> in the criminal courts. They both had significantly more positive perceptions of their role in civil proceedings compared to the criminal process. Key to this was being an active participant within civil proceedings.

"But it's hard because in the criminal system you are just literally a file, they don't give really a toss about you. It's literally just you are a file, on

---

<sup>13</sup> Pseudonyms are used throughout this paper to protect participants' anonymity.

<sup>14</sup> Scotland is unique in having two acquittal verdicts. For more information on the debates around the not proven verdict, see James Chalmers, Fiona Leverick and Vanessa E Munro, 'A Modern History of the Not Proven Verdict' (2021) 25 *Edinburgh Law Review* 151.

the desk, whereas in the civil case, in the build up to that, you can be as hands on as you want as a complainer, as a survivor.” Sophie

For the two victim-survivors who undertook civil cases, the experience of having agency as part of this process played a key role in them feeling able to move forward in their lives.

“When you are in that moment of the crime, you feel so lost, you don’t know what’s going to happen to you. You have no control. So when you actually feel some of that control coming back to you, you feel like, it’s taking steps forward that you never felt you’d take.” Sophie

These experiences resonate with the findings of other research. Herman’s research with 22 victims of violent crime, for example, pinpointed a need for control and voice amongst participants. She identified “a fundamental disconnect” between the needs of victims and the operation of the criminal justice process.<sup>15</sup>

For victim-survivors in this study, the points in the criminal process where they had some level of control, for example choices around special measures (steps which may be taken to help vulnerable witnesses give evidence), made a significant difference to their experience.<sup>16</sup> As one victim-survivor put it:

“Effectively when I’ve given my statement in court, it was done, there was nothing else I can do and that week, you know, those times were horrendous. They were absolutely horrendous. But you can’t control that. So the elements that they were able to give me to control, they were everything.” Charley

It is clear that sexual offence complainers’ status as a witness has a profound impact on their experience of the criminal justice process. Victim-survivors

---

<sup>15</sup> Judith Herman, ‘Justice from the Victim’s Perspective’ (2005) 11 *Violence Against Women* 571, 574.

<sup>16</sup> A number of participants in this study did not feel they were given control over special measures; this is discussed later in this paper.

recounted a lack of control and agency that contributed to significantly to their re-traumatisation. Where victim-survivors had positive perceptions of criminal or civil proceedings, these were directly linked to experiences of agency and control.

#### Section 4: Complainers feel unprepared for giving evidence in the criminal process

The prospect of giving evidence in a sexual offence trial can be daunting.<sup>17</sup> The Dorrian Review cites feedback from complainers that they do not feel prepared for giving evidence,<sup>18</sup> and there is some support for this in previous research with sexual offence complainers.<sup>19</sup>

The research reported here provides further evidence that complainers feel this way. Victim-survivors in this research consistently described feeling unprepared for the experience of giving evidence during the criminal process.

“In the criminal court, I didn’t have any preparation for what to expect in court. Nothing. You go on, you take the stand, you answer the questions, you’ll be asked questions by the defence and that’s it. They make it sound so easy and it’s not easy. It’s probably one of the most hardest and mentally tolling experiences you’ll ever do in your life.” Sophie

“And I felt that he [Advocate Depute] didn’t prepare me very well. I felt he didn’t take much interest in my case. And he was not very interested. That’s what I felt.” Naz

---

<sup>17</sup> Criminal Justice Committee, Scottish Parliament, ‘*What Now for the Prosecution of Violence against Women and Girls?*’ (2021); Rape Crisis Scotland, ‘*Survivor Reference Group Initial Report*’ (n 8).

<sup>18</sup> Scottish Government, ‘*Lady Dorrian Review Governance Group: Specialist Sexual Offences Court Working Group Report*’ (2022)

<sup>19</sup> Michele Burman, ‘Evidencing Sexual Assault: Women in the Witness Box’ (2009) 56 *Probation Journal* 379, 393.



Several victim-survivors used the phrase 'going in blind' to describe how unprepared they felt for giving evidence. This added considerably to the trauma of an already stressful experience.

"We're going in absolutely blind and it's already a petrifying moment as it is, let alone having no clue what you're doing and what the questions are gonna be." Quinn

Emily spoke of the impact not knowing what to expect in court had on her ability to give her evidence.

"I am actually glad [my evidence] was split over 2 days because the first day I just wasn't prepared for it at all. My anxiety got the better of me. I just kept, my brain kept freezing, I kept like mind blanking. I was so anxious. And just crumbling on the stand, I wasn't, I wasn't good at all. So I am glad that I did get that time. Go away. Think about it. You know what to expect. Now go in the next day."

One victim-survivor described the impact of being called to give evidence for 11 minutes at 3.45pm on a Friday, after waiting all day and being told that if she wasn't called by 3pm she wouldn't be taken until the Monday.

"I was so panicked that [prosecutor] asked me my name and I just looked at him... And it wasn't because I could see [the perpetrator]. It wasn't because of the courtroom, it wasn't anything like that. It's just because I thought I was going home. And I came home, and I phoned the case preparer and I just had an absolute mental breakdown because I was like, 'I've let you down... that was so pointless.'" And then I had to sit all weekend in that, knowing that on Monday, you've still got to get up and leave the house at 8am and you've still got to do it all again." Katy

This approach seems considerably removed from one which is likely to obtain best evidence or be trauma informed.

Uniformly, victim-survivors expressed a desire to meet the person prosecuting their case in advance of giving evidence. This did not happen consistently. There is no publicly available guidance from COPFS setting out if and when these meetings should take place. A number of victim-survivors described meeting the prosecutor for the first time either immediately prior to or at the start of their evidence. Complainers reported receiving no guidance about what might be covered in their evidence, including in some cases not being informed what the charges were against the accused. One victim-survivor in a multi-complainer case spoke of only finding out she was a complainer through a press report at the start of the trial; she had understood she was a supporting witness and had not been informed that charges had been brought in relation to her experience. She said she had previously asked COPFS to clarify her role in the case but had been informed they couldn't tell her.

Another victim-survivor spoke of the anxiety of not knowing until she was giving evidence in court that key evidence she had provided to the police had been deemed admissible. She was invited to a meeting with the Advocate Depute prosecuting the case in advance of the trial. She had anticipated that this would be an opportunity to obtain more information about her case, but the Advocate Depute informed her that he couldn't discuss any of the evidence with her.

“I had hoped that at least that meeting [with the AD] would have given me some sort of clarity as to what to expect, but I still didn't know anything. I had no idea at all.” Taylor

A further area that could assist complainers in feeling prepared for their evidence is being given access to their police statement in advance of the trial. Under section 54(2) of the Criminal Justice and Licensing (Scotland) Act 2010, the Crown may enable complainers, in advance of trial, to read the statements they gave to the police. These statements can form the basis of much of the questioning in court, in trials which are frequently taking place years after complainers have

given their statements.<sup>20</sup> Some victim-survivors were not offered access to their statement; others only saw it the morning they were due to give evidence. One spoke of being given her statement immediately prior to giving evidence, and realising it contained numerous factual inaccuracies. This was the first time she had seen the statement since she reported to the police over two years previously. She noted that the police had checked the accuracy of the statement with her immediately after she gave it, but she hadn't been in a mental state then to take in what it said:

“I was in the courtroom that day, given a statement and told you made this two years ago, you're going to be asked about it. And there were so many factual inaccuracies in that statement, but when I'd given it, I was not in a position to read through [immediately afterwards]. I think I did technically agree to it, but I don't remember any of that, and I wouldn't have, so much of it was incorrect. I was a bit like 'you want me to tell the truth, but also it's gonna look really bad because it's not what it says.'” Jane

Two victim-survivors in a multiple complainer case spoke of having their police statements read out to them over the phone. They said they were informed that there wasn't time to arrange for them to read the statements in person. It is worth noting that police interviews often take place over many hours, and statements can be of considerable length. Giving complainers access to their statements can play an important role in assisting them to prepare for court. It has, however, the potential to cause harm if the statement cannot be accessed in an appropriate and trauma informed manner.

That said, of the 20 victim-survivors who participated in this research, two had a relatively positive experience with the prosecution of their rape case. Charley described being kept informed throughout the process. Pivotal to her satisfaction with the process was feeling prepared for what was going to happen, including the meeting she had with the prosecutor in advance of the case.

---

<sup>20</sup> Scottish Government, *'Journey Times in Scotland's Criminal Justice System'* (2023); Burman and Brooks-Hay (n 6).

“Meeting him [Advocate Depute], you know, myself and my husband just sat in a room with him in the court. He introduced himself, really friendly, really open, gave me - any question that I had in my head that I thought I was going to need to ask him, he already answered, when we sat and spoke. And he just put me at ease. I think he put my husband at ease also. And just made things easier.” Charley

For Charley, this meeting meant that she had sufficient confidence in the Crown that she felt comfortable with her status as a witness to the case.

“I had a job to do, and I think that's the way I tried to treat it, you know, went in, did my job and walked away. I didn't want to be a part of the rest of the case and I think I was, after meeting the prosecutor, I was comfortable that this was his trial. It wasn't mine. He knew what he was doing and I felt completely confident in putting the case, you know, leaving it with him.” Charley

Charley also described being offered a meeting with the defence advocate, which after consideration she agreed to, and reported being glad that she had.

“And he just said to me, ‘look’, he said, ‘this is my job. I'm not gonna scream at you. I'm not gonna shout you. I'm not gonna bawl at you. I've got a few questions I'm gonna ask you’. And he said ‘look, my job is if this guy is going to jail, it's my job to just give him a fair trial and that's it’. That's all he said. And I think meeting him in that manner, also, don't get me wrong, my heart was pounding throughout that whole process. It wasn't nice, but being able to have that moment face to face with him and realise he was just another person, I think that also put me at ease.”

Sandra was studying for a law degree when she reported what had happened to her. She spoke of how having legal knowledge, and being able to ask her course

tutors any legal questions she had, made a difference to her experience of being a witness in the case.

“I know that I'm the key witness. And yes, I'm the victim. But I've managed to understand that it's not me that is, you know, it's not me against him. I've done the job for the Crown to report a violent person. And I'm now helping them to put a violent person in prison is how I look at it. I know that not everybody has that same perspective but having that perspective has helped me to just detach from it. I think being a key witness, we should still be treated with a trauma-informed approach, and we should be treated with respect, but I understand my rights in the situation. I think that's helped me and it's allowed me not to get too caught up in it all.”

Of the 17 victim-survivors whose cases reached court, all bar one felt unprepared for the prospect of giving evidence.<sup>21</sup> Difficulties accessing their statements to the police in advance of trial, alongside an inconsistent approach to meeting with the prosecutor in advance of trial, contributed considerably to this lack of preparedness. Few victim-survivors had any sense of what might happen when they were giving evidence, or what they might be asked. This added to their anxiety and made it difficult for them to feel prepared for what was to come. It contributed to victim-survivors' sense of the justice process not being a fair process. The lack of preparation they experienced contrasted sharply with their perception of the preparation the accused was likely to have received from their defence team.

---

<sup>21</sup> This includes the case where the perpetrator pled guilty. The guilty plea was made after multiple preliminary hearings and three years after he was charged. The victim-survivor in this case reported feeling very unprepared for giving evidence at time the trial date was set.

## Section 5: There is a need for a nuanced approach to vulnerability which recognises complainers' agency

There is an increasing recognition of the need to protect vulnerable witnesses who are giving evidence within criminal justice processes,<sup>22</sup> in relation to how they are supported to give their evidence through the provision of special measures.

The Victims and Witnesses Act 2014 (the 2014 Act) and the Vulnerable Witnesses (Scotland) Act 2019 conferred rights for vulnerable witnesses, including sexual offence complainers, to special measures such as screens, live video link and pre-recorded evidence.<sup>23</sup> There is evidence that vulnerable witnesses appreciate and can benefit from the ability to give their evidence in alternative ways which they might find less stressful than giving live evidence in court.<sup>24</sup>

In addition, there has been increasing recognition of the role of judges in intervening to protect vulnerable witnesses giving evidence in criminal trials. There have been several notable appeal judgments in Scotland which are highly critical of trial judges who fail to protect sexual offence complainers from hostile and insulting cross-examination,<sup>25</sup> derogatory questioning,<sup>26</sup> and questioning on sexual history and character prohibited by both the common law and s274 of the Criminal Procedure (Scotland) Act 1995.<sup>27</sup>

While these protective measures are important, the experiences of victim-survivors in this research reveal a concern about their effectiveness where complainers have no or limited agency over their implementation. Five victim-

---

<sup>22</sup> Scottish Courts and Tribunals Service, 'Evidence and Procedure Review' (2015); Lesley Thomson, 'Review of Victim Care in the Justice Sector in Scotland' (COPFS 2017); Scottish Courts and Tribunals Service, 'Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk's Review Group' (2021)

<sup>23</sup> These rights can be found in s.271 and 271A-Z of the Criminal Procedure (Scotland) Act 1995.

<sup>24</sup> Vanessa E Munro, 'Pre-Recorded Evidence and Juror Decision-Making: Evidence Review - Research Findings' (Scottish Government 2018); Louise Ellison and Vanessa E Munro, 'A "Special" Delivery? Exploring the Impact of Screens, Live-Links and Video-Recorded Evidence on Mock Juror Deliberation in Rape Trials' (2014) 23 *Social & Legal Studies* 3.

<sup>25</sup> *Dreghorn v HM Advocate* [2015] HCJAC 69.

<sup>26</sup> *Donegan v HM Advocate* [2019] HCJAC 10.

<sup>27</sup> *MacDonald v HM Advocate* [2020] HCJAC 21.

survivors described feeling under pressure from VIA<sup>28</sup> to use special measures such as a screen or video link when giving evidence when they did not wish to use them. One victim-survivor, for example, stated that:

“I remember saying to them ‘you’ve granted me a screen, I don’t want it’ and they were like ‘are you sure you don’t want the screen, are you sure, are you sure?’ and I went ‘I am sure. Because the screen isn’t going to do anything for me, it’s just going to protect him from seeing what he’s done. And I want him to see me when I give my evidence. And hear every word I’m saying and see the emotion. And that’s why I don’t want the screen.’ And they thought I was mental. ‘Oh think about it first, you don’t have to make this decision now, we can put it in and then we can take...’ and I went ‘No. Take it away. Take it away.’” Sophie

Another victim-survivor spoke of the frustration of not being listened to when she expressed that it was important for her that she faced the accused in court.

“I didn’t want the last time I saw him in person for me to leave thinking ‘he still thinks I’m scared of him’ because I’m absolutely not. It was meant to be like an empowering thing for me. And I don’t know why they were trying to take that opportunity away from me when I was telling them why I wanted it... I absolutely understand there will be some victims that do need that protection, and I appreciate that. And they have every right to do that. But what about the other survivors that aren’t wanting that. Why is it such a fight to not have this?” Emily

Emily stressed the importance of the justice process not taking a ‘one size fits all’ approach to how victim-survivors should give their evidence. Overwhelmingly, victim-survivors in this research wanted to be given options, and for their choices to be listened to and respected.

---

<sup>28</sup> VIA is the Victim Information & Advice Service within COPFS.

One victim-survivor gave an example of the Court acting - presumably at least in part - to protect her but inadvertently making things worse.

“The worst thing was I had a screen and obviously had a supporter and [the accused] kept coughing and he kept sighing and tutting and doing all of these noises that he does. And quite early on, I was in the middle of, you know, talking about some horrendous part and they suddenly stopped me like midflow, they suddenly stopped me, said ‘there’s a legal issue, the jury’s gonna go out and you’re gonna go out’. So I went out thinking, ‘oh, my God, I’ve said something I shouldn’t have said. This is awful, I’ve messed it all up and we’re 15 minutes in’. Later to find out that they’d stopped because he was making all this noise. But how is any of that any good for me? Let us stop you mid flow in one of the horrendous incidents, send you out into the corridor, just to stand about in the corridor, to then bring you back in and not explain anything to you.” Genevieve

The reason for her evidence being halted was explained to her two weeks after the guilty verdict. The fear and uncertainty caused by a lack of explanation as to why questioning was stopped was echoed by other victim-survivors.

“When you’re released for legal issues and there’s no explanation given to you, why, what’s going on? So again, you’re left in a state of panic, anxiety, overthinking, darkness. You have no clue, not a clue what that could be. Is it something I said? What happened? It’s just ‘Sit in that wee room till we call you back’.” Emily

The past decade has seen increased recognition of the potential distress caused to sexual offence complainers by giving evidence in court. Providing victim-survivors with options on the method by which they give this evidence is an important development, both in reducing re-traumatisation and enabling complainers to give their best evidence. However, not being listened to when they didn’t want to use special measures contributed to a perception amongst victim-survivors that the justice process was something they were subject to, rather than one they had



some level of agency or control within. This resonates with findings of previous research, which has highlighted the importance for victim-survivors in feeling that they are active participants within the justice process.<sup>29</sup>

Increased judicial management of complainers' evidence is an important step in ensuring the complainers are protected while giving their evidence. It is vital that judges intervene to prevent hostile, insulting or inappropriate questioning. Care requires to be given to communication with complainers when they are asked to leave the courtroom whilst giving evidence, otherwise there is a risk this may create further anxiety and distress. Without consideration of agency, there is a risk that measures designed to protect complainers inadvertently reinforce their marginalisation.

**Section 6: There is a gap between theoretical rights and complainers' experiences.**

A further issue which emerged from interviews with victim-survivors is a disconnect between their rights in theory, and their experience in practice. This relates to three key areas of existing rights for complainers in Scotland. Firstly, the right to information, as set out in the 2014 Act;<sup>30</sup> secondly the right to state-funded independent legal representation (ILR) where attempts are made to obtain their sensitive records<sup>31</sup> and thirdly the right of complainers to be informed of, and express a view on, any application to introduce their sexual history or character.<sup>32</sup> These rights are explored below.

---

<sup>29</sup> Vanessa E Munro, "It Felt like a Comma, Not a Full Stop": Complainers' Experiences of the Not Proven Verdict within Scottish Rape Trials.', in K Gleeson and Y Russell (eds.) *New Directions in Sexual Violence Scholarship Law, Power and Change* (Taylor & Francis Group 2023) 189; Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28 *Social & Legal Studies* 179; Herman (n 17).

<sup>30</sup> Victims and Witnesses (Scotland) Act 2014 s. 1(3)(a)

<sup>31</sup> *WF Petitioner* [2016] CSOH 27

<sup>32</sup> *RR v HM Advocate* [2021] HCJAC 21.

## 6.1: Right to information

The Victims and Witnesses (Scotland) Act 2014 introduced several General Principles to which specified persons or bodies were required to have regard, those being the Lord Advocate, Scottish Ministers, the Chief Constable of Police Scotland, the Scottish Courts and Tribunals Service, and the Parole Board for Scotland. The General Principles include that a victim or witness should be able to obtain information about what is happening in the investigation or proceedings.<sup>33</sup>

Inadequate information provision been identified as a key issue in previous research with complainers of sexual crime.<sup>34</sup> Poor communication with complainers was highlighted in the Inspectorate of Prosecution's Thematic Review of the Investigation and Prosecution of Sexual Offences.<sup>35</sup> Lack of information was a significant issue for victim-survivors who participated in this research. As two victim-survivors put it:

“You sit by your phone for 2 1/2 years, waiting on a phone call for an update. You don't know when the update is gonna come. You don't get the choice of when, if and when, you engage in those updates. You don't get the choice how those are delivered, how those updates are put across. And you get no choices, you are just sitting carrying this rucksack of trauma that you've reopened, and you're just stuck carrying it about waiting for someone to come and lift it off you. And you get no choice on and no control over any of it.” Katy

“There were sort of gaps, big gaps and it was really difficult to sort of live in those gaps.” Cat

---

<sup>33</sup> Victims and Witnesses (Scotland) Act 2014s. 1(3)(a)

<sup>34</sup> Munro, “‘It Felt like a Comma, Not a Full Stop’: Complainers’ Experiences of the Not Proven Verdict within Scottish Rape Trials.’ (n 28); Oona Brooks-Hay and Michele Burman (n 4); Brooks-Hay and others (n 9).

<sup>35</sup> HM Inspectorate of Prosecutions in Scotland (n 3).

Gaps in communication can become particularly acute at the point the case passes from Police Scotland to COPFS. Victim-survivors recalled the anxiety caused by not being kept updated by COPFS.

“I didn't feel like it was ever going to happen, and I also felt like we were kept out of the loop massively. There was such a lack of communication between the Crown and us. We had to fight for updates, we weren't kept in communication with what was happening. And we were sometimes left four or five days knowing that something had happened but not knowing the outcome of what had happened”. Lisa

Where communication did happen, participants in the research described an approach which was not trauma informed. One issue raised by several victim-survivors was the distress caused by having to give the accused's name every time they wished to access information on their case. Related to this, several victim-survivors spoke of distress caused by the accused's name being the first thing they see in any written correspondence from COPFS.

“Every letter has his name in block capitals on it... Every time the post came and there was a letter, you can always, you can see it in the envelope in the window bit, you can see his name. So I just, I just would sit there crying.”  
Genevieve

Almost identical feedback from a complainer was highlighted in the Inspectorate of Prosecution's review report six years prior to this research.<sup>36</sup>

Where victim-survivors are given appropriate information and know what their rights are, it can make a significant difference to their experience of the justice process.

“I know that a lot of people are put off reporting because it's so terrifying. And I do want people to know that it's not actually always that terrifying.”

---

<sup>36</sup> *ibid* 55.

And I think my situation has shown me that if you have the right legal information, if you have the appropriate legal knowledge, it's actually can be quite straightforward. I'm not saying everyone has to go do their [law degree] while reporting, but if people can have that knowledge available and I think a legal representative would be the way forward.” Sandra

Communication and information provision were issues mentioned by 19 out of the 20 victim-survivors interviewed for this research. Poor communication and lack of information contributed to victim-survivors feeling marginalised and alienated from the criminal justice process. Although some of the issues raised related to Police Scotland, the most significant concerns related to communication with COPFS.

### *6.2: Right to legal representation on sensitive records*

Since 2016, complainers and other witnesses in Scotland have had a right to state-funded independent legal representation when attempts are made to access their sensitive records as part of a criminal prosecution.<sup>37</sup> Concerns have been raised, however, about the adequacy of the processes in place to inform complainers of this right and support them to find appropriate legal advice.<sup>38</sup> In the nobile officium case of *JC*,<sup>39</sup> Lord Turnbull expressed concern about the ability of complainers to effectively participate in proceedings around their sensitive records due to inadequate information being provided to them. These concerns are substantiated by the experiences of two of the victim-survivors interviewed in this research. One victim-survivor described being informed by the Crown that she had to agree to her records being handed to the defence, with no indication that she had a right to legal advice or representation.

---

<sup>37</sup> *WF Petitioner [2016] CSOH 27*

<sup>38</sup> Rape Crisis Scotland, *'Privacy Rights for Sexual Offence Complainers: A Report for the Victim Taskforce'* (2021); Michele Burman and Sandy Brindley, 'Challenges in the Investigation and Prosecution of Rape and Serious Sexual Offences in Scotland' in Killean R, Dowds E and McAlinden A-M (Eds), *Sexual Violence on Trial: Local and Comparative Perspectives'* (Routledge 2021); Rape Crisis Scotland, 'Spirit of Rights Set out in WF Must Be Honoured' 19 October 2018

<sup>39</sup> *JC v HM Advocate [2018] HCJAC 21*.

“So 4pm on a train heading north knowing that there was another, I don't know, 18th first diet due to take place the next day so on edge anyway, then phone call from VIA ‘you need to authorise us sharing your medical records with the defence’ and I remember being like ‘I have rights. And I don't know them!’ (laughs). And she was just so adamant, like, “no, you just need to say yes.” And I was like, “no, no, I don't”, phoning [Rape Crisis Advocacy Worker] obviously and then, you know, all of that escalating and just why does it get to that position? I think that was in October, apparently it had been at the previous first diet in August, so at least two months earlier, that the defence had requested my medical records. So the night before the next date, they're requesting them from me.”

Although Rape Crisis Scotland arranged legal representation for her, the very tight timescales meant they were unable to identify an available solicitor with relevant expertise. She did not have a positive experience with her representation.

Another victim-survivor described considerable difficulties in securing suitable legal representation. She was told by VIA that she needed a lawyer but wasn't given any guidance on how to secure representation. She contacted three different law firms who said they couldn't assist as they had no experience in cases of this nature. Grace recounted finding the situation extremely distressing; she was very anxious about her records being accessed and brought up in court.

“So I was just stuck. I was flummoxed. I remember just lying in bed just about able to blink. I was literally paralyzed with fear.”

She contacted Rape Crisis Scotland who put her in touch with a suitable lawyer. The Court approved the defence being given access to her medical records, albeit over a more restricted timescale than the defence had applied for. Despite this outcome, Grace spoke positively about her experience of legal representation, describing it as having someone on her side “it was just knowing that I had someone standing up for me. And knowing that I wasn't alone, it wasn't just me fighting.”

Access to appropriate legal representation can be of benefit in assisting complainers to understand the legal process and assert their privacy rights within this, irrespective of the outcome of the application. For the right to ILR to be meaningful, complainers require to be properly informed of their rights and supported to access appropriate legal representation. Complainers, already being in a challenging and difficult situation, should not be left to try to ascertain their own rights or be required to phone multiple law firms to try to identify a solicitor with knowledge of this area of law.

### *6.3: Right to be informed of, and express a view on, any application to introduce their sexual history or character evidence*

The prospect of being asked questions on sexual history can cause significant distress for complainers of sexual crime.<sup>40</sup> Where it does happen, it can add considerably to the trauma experienced by complainers in giving evidence.<sup>41</sup> Restrictions on the introduction of a complainer's sexual history or character were introduced in their current form in Scotland through the Sexual Offences (Procedure and Evidence) Scotland Act 2002, amending the Criminal Procedure (Scotland) Act 1995.<sup>42</sup> Where the Crown or defence wish to introduce such evidence, they must make what is known as a s275 application to the court, normally in advance of trial.<sup>43</sup> There is no recent evaluation of the Scottish provisions.<sup>44</sup> Previous research raised concerns about their effectiveness,<sup>45</sup> albeit this was almost two decades ago. Case law on sexual history and character evidence has developed considerably since then. Examination of reported decisions from shortly after the 2002 Act show a markedly different approach from the

---

<sup>40</sup> Rape Crisis Scotland, 'Privacy Rights for Sexual Offence Complainers: A Report for the Victim Taskforce' (n 38).

<sup>41</sup> Beverley Brown, Michèle Burman and Lynn Jamieson, *Sex Crimes on Trial: The Use of Sexual Evidence in Scottish Courts* (Edinburgh University Press 1993).

<sup>42</sup> Criminal Procedure (Scotland) Act 1995 Sections 274 & 275.

<sup>43</sup> Sharon Cowan, 'The Use of Sexual History and Bad Character Evidence in Scottish Sexual Offences Trials' (Equality & Human Rights Commission 2020)

<sup>44</sup> Researchers at the universities of Edinburgh, Glasgow and Warwick are currently undertaking an evaluation of the operation of s274 and s275. Publication of their findings is expected early 2024.

<sup>45</sup> Michele Burman and others, 'Impact of Aspects of the Law of Evidence in Sexual Offence Trials: An Evaluation Study' (Scottish Government Social Research 2007).

Appeal Court to this area of law<sup>46</sup> compared with cases from the past five years.<sup>47</sup> There is a noticeably tighter approach to the question of relevance in more recent appeal judgments.<sup>48</sup>

There is no right in Scotland for complainers to instruct legal representation to oppose applications to introduce their sexual history or character in evidence. Compelling arguments have been made as to the need for, and merits of, ILR in these circumstances.<sup>49</sup> In April 2023, the Scottish Government introduced a Bill to Parliament which, if passed, will introduce this right.<sup>50</sup>

The current position of complainers in relation to s275 applications has developed through recent case law. In *RR v HM Advocate*<sup>51</sup> the Court clarified the Crown's duties when engaging with complainers regarding s275 applications. Citing the right to effective participation in the 2014 Act<sup>52</sup> and the article 8 right to respect for private and family life in the European Convention on Human Rights, the Court held that the Crown has a duty to ascertain a complainer's position in relation to a s275 application and to present that position to the court, irrespective of the Crown's own attitude. This requires that complainers be told of the content of the application, invited to comment on the accuracy of any allegations within it, and

---

<sup>46</sup> See *Kinnin v HM Advocate* 2003 SCCR 295; *Cumming v HM Advocate* 2003 SCCR 261.

<sup>47</sup> For example *CH v HMA* [2020] HCJAC 43; *LL v HMA* 2018 JC 182.

<sup>48</sup> One remarkable case which drew considerable criticism from the Appeal Court was *Macdonald v HM Advocate* [2020] HCJAC 21. During cross-examination the complainer was asked 12 different questions about showering with her female friend the night of the incident, and 11 questions on what she was wearing immediately prior to and during the incident, with repeated reference to the type of underwear she was wearing. The sheriff was heavily criticised by the Appeal Court for failing to intervene during cross-examination and for allowing evidence to be admitted which should have been excluded under common law and s274. The complainer in the case subsequently brought a petition for judicial review against Scottish Ministers and the Lord Advocate for failing to protect her Article 8 rights, leading to the Lord Advocate making a financial settlement and an apology.

<sup>49</sup> Rape Crisis Scotland, '*Privacy Rights for Sexual Offence Complainers: A Report for the Victim Taskforce*' (n 37); Rachel Killean, '*Legal Representation for Sexual Assault Complainants*', *Sexual violence on trial: Local and comparative perspectives* (Routledge 2021); Eamon Keane and Tony Convery, '*Proposals for Independent Legal Representation for Complainers Where an Application Is Made to Lead Evidence of Their Sexual History or Character*'; Fiona Raitt, '*Independent Legal Representation for Complainants in Rape Trials*', *Rethinking Rape Law International and Comparative Perspectives* (Routledge-Cavendish 2010).

<sup>50</sup> Victims, Witnesses, and Justice Reform (Scotland) Bill s.64.

<sup>51</sup> *RR v HM Advocate* [2021] HCJAC 21.

<sup>52</sup> Victims and Witnesses (Scotland) Act 2014 s. (3)(d).

asked to state any objections which they might have to the granting of the application.

The HM Inspectorate for Prosecutions' review of the management of applications to introduce complainers' sexual history or character<sup>53</sup> highlighted the complexity of the law around sexual history and character evidence.

“During our inspection, we regularly heard that the law around sexual history and character evidence is complex and challenging, even for experienced prosecutors. Even members of the judiciary we interviewed said sections 274 and 275 tend to be some of the most complex matters they encounter.”<sup>54</sup>

The Inspectorate's review outlined the content of the (unpublished) COPFS operating instructions on engagement with complainers in respect of s275 applications. The instructions set out that complainers should: be informed of the application; invited to a meeting to discuss the application and to be precognosed on its contents (that is, for COPFS to take a record of what they say); advised of the full content of the application; asked about their position in relation to each relevant point in the application and their attitude to the application; advised that their position on the facts and attitude to the application will be made known to the court; advised of the Crown's view on the likely outcome of the application. Following the hearing, the complainer must be advised of the outcome of the application.<sup>55</sup> The operating instructions remind COPFS personnel of the need to fulfil the duty of engagement in a way which accommodates and responds to the vulnerabilities or other requirements of the complainer.<sup>56</sup>

Three victim-survivors in this research described s275 applications being made in their cases. All three cases were post *RR v HM Advocate* and took place after the

---

<sup>53</sup> HM Inspectorate of Prosecutions in Scotland, *‘Inspection of the Management to Sections 274 and 275 of the Criminal of Criminal Allegations against Procedure (Scotland) Act 1995’* (2022).

<sup>54</sup> *ibid.*

<sup>55</sup> *ibid* 40.

<sup>56</sup> *ibid.*



above noted operating instructions were issued by COPFS. Two victim-survivors spoke of not understanding what their conversations with COPFS on s275 applications meant.

“She [PF] emailed me and said ‘new evidence has come to light. I need you to come in and speak to me about it’. I had a panic attack on my way home, as you would. And so I phoned her as soon as I got the chance and was like ‘What’s the evidence? What’s going on?’ And she just said ‘I can’t tell you anything. You have to come in’. By which point I was really distressed. I actually, I used to struggle with self-harm,<sup>57</sup> so I think I actually ended up injuring myself because I was so upset. I didn’t have any other ways of controlling those emotions.” Jane

The new evidence COPFS wished to discuss related to text messages between Jane and the accused which formed part of a s275 application by the defence. Jane had previously deleted all communication with the accused from her devices. Her position was that the text messages had been edited by the accused to present the conversation in a certain way, and she communicated this to COPFS. However, she didn’t express opposition to the text messages being introduced as she believed the evidence in the case would show she was telling the truth.

“So when they asked if they could use the text messages, because I didn’t understand what the implications of that meant for me and I didn’t realise, I think I’ve actually only realised in the last week that they were, sorry [crying] that they were making an application to use those against me.”  
Jane

She was not informed of the outcome of the application and the text messages formed a key part of her cross examination at court. The accused was acquitted on all charges.

---

<sup>57</sup> Jane had been placed on the Vulnerable Persons Database by Police Scotland due to mental health issues arising from the assault.

Taylor recounted getting a telephone call from COPFS as she was walking home from the hairdresser. She was given no indication that the call was about a sensitive matter, nor was the process in relation to s275 explained to her.

“I got a call - I believe that this will have been in relation to a 275 application. I wasn't told, I didn't know what 275 application was. The word 275 application wasn't even used to me, I'm just assuming now, based on the knowledge I have now. Basically I was walking home from the hairdresser when I got this call recapping what his version of events was, going through the rapes. But obviously he said that he didn't rape me. There's all these questions that I was being asked to clarify by the Crown. I know people have a job to do, but it felt like some of them felt quite judgmental. You know 'Why did you stay with him after he did this? What was your explanation for that?' And again, this being done over a phone call sort of out of the blue.”

Taylor

Being given such limited information created anxiety for Taylor about what might be brought up in court. She described going into court thinking she might be asked about “every guy I've had sex with,” adding “I feel like it adds to your sense of fear just not knowing what to expect.”

It is difficult to reconcile both victim-survivors' experiences of communication with COPFS around s275 applications with the approach outlined in COPFS's operating instructions.

Sandra had a more positive experience with the Crown's approach to engagement on the s275 applications in her case.

“The case preparer phoned me and they asked me to attend a meeting and they wanted to discuss the s275 with me. I was very impatient and I was like, 'can you just tell me what this concerns and then we can talk about it, just so I know' and she told me over the phone and she just read it out. But she was like, 'are you OK? I know that's a hard listen', she was very nice

about it, very sort of supportive. So that was good. Then she was like ‘can you come through to Edinburgh or we can do a zoom?’. And I said I would prefer to do it in person, so I went through to Edinburgh on the Friday... And so they went through everything and it was nice to meet the Advocate Depute.”

At the meeting, Sandra felt able to ask questions and give her views on the evidence which the defence were seeking to admit.

It is notable the only victim-survivor who felt able to effectively express a view on s275 applications had a legal background. It is difficult to see how complainers can give informed views on a s275 application without a proper understanding of the legal process or the potential implications of the evidence contained in the application/s.

Section 7: Conceptions of justice are multi-layered- feeling like the system is ‘fair’ is as important as the outcome of the case.

The justice needs of victim-survivors of sexual crime are, as McGlynn and Westmarland<sup>58</sup> identified, pluralistic and multi-layered. A desire for a sense of agency, of having a voice within the system, crosses across almost all of the existing research or engagement with victim-survivors of sexual crime.<sup>59</sup> Research to date has identified a number of key themes on the meaning of justice for victim-survivors of sexual crime. McGlynn and Westmarland pinpointed the need for consequences, recognition, dignity, voice, prevention and connectedness;<sup>60</sup> Iliadis & Flynn highlighted victim-survivors’ desire for information, voice, control

---

<sup>58</sup> McGlynn and Westmarland (n 29).

<sup>59</sup> Vanessa E Munro, *‘Piecing Together Puzzles: Complainers’ Experiences of The Not Proven Verdict’* (Warwick University 2020); Mary Iliadis and Asher Flynn, ‘Providing a Check on Prosecutorial Decision-Making’ (2018) 58 *The British Journal of Criminology* 550; Criminal Justice Committee, Scottish Parliament (n 19).

<sup>60</sup> McGlynn and Westmarland (n 29).

and validation.<sup>61</sup> Doak stressed the importance for victims more generally of recognition, acknowledgement and some form of participation.<sup>62</sup>

Particular concerns have been identified for victim-survivors from marginalised communities who can face considerable barriers to seeking justice.<sup>63</sup> Gangoli, Bates & Hester's research with BME survivors of gender-based violence found that most had experienced racism while engaging with the justice system. This was particularly acute for women with insecure immigration status.<sup>64</sup> A recent report by the Scottish Commission for People with Learning Disabilities identified specific barriers for victim-survivors with learning disabilities in reporting what had happened to them to the police, including fear of Adult Support and Protection and Child Protection processes.<sup>65</sup>

Is it possible for victim-survivors' justice needs to be met within an adversarial criminal justice process? For the victim-survivors who participated in this research, feeling that the justice process is a 'fair' system was as important as the outcome of the case. Victim-survivors consistently spoke of the need for a fair process, irrespective of the outcome.

"I don't think that every case would get a guilty verdict either, but you need to stand a fair chance. You need to feel like you've been represented well, that your side of events have been represented well, that you can trust that the people have evaluated the evidence are in a position to do so well

---

<sup>61</sup> Iliadis and Flynn (n 59).

<sup>62</sup> Doak (n 6).

<sup>63</sup> Talat Yaqoob and In partnership with survivors of colour, '*Developing Sexual Violence Support Services That Work for Survivors of Colour*' (Rape Crisis Scotland 2023); Aviah Sarah Day and Aisha K Gill, 'Applying Intersectionality to Partnerships between Women's Organizations and the Criminal Justice System in Relation to Domestic Violence' (2020) 60 *The British Journal of Criminology* 830; Ravi Thiara and Sumanta Roy, '*Reclaiming Voice: Minoritised Women and Sexual Violence Key Findings*' (2020); End Violence Against Women Coalition, '*Listen to Us! Communication Barriers: How Statutory Bodies Are Failing Black, Minoritised, Migrant, Deaf and Disabled Women and Girls Victims/Survivors of VAWG*' (2023)

<sup>64</sup> Geetanjali Gangoli, Lis Bates and Marianne Hester, 'What Does Justice Mean to Black and Minority Ethnic (BME) Victims/Survivors of Gender-Based Violence?' (2020) 46 *Journal of Ethnic and Migration Studies* 3119.

<sup>65</sup> Scottish Commission for People with Learning Disabilities, '*Unequal, Unheard, Unjust but Not Hidden Anymore: Women with Learning Disabilities' Experience of Gender-Based Violence in Scotland*' (2023)

without bringing their own biases to the table. That if it is to be a jury that they have the, you have an understanding that they're a good group of people who can make sound judgments. Yeah, just to be involved in the process in a way that if it doesn't go your way, you don't feel a great sense of dread about existing in the world.” Francis

For Eilidh, a process which was fair and where the victim-survivor felt involved could feel like justice.

“For me, it can't always be a guilty verdict, although that would be the dream but it's for fairness. It is justice and fairness. It's the best opportunity, no disadvantage. Properly involved. And yeah, moved from bystander role to the centre part of it so that you can start taking control, rebuilding.”

Victim-survivors in this study were asked what justice meant to them. Responses can be categorised into four overlapping themes: safety (for themselves and others), validation, accountability and being able to rebuild their lives. These are explored below.

### 7.1: Safety

Previous research with victim-survivors has identified that a key motivation in reporting sexual crime to the police is a desire to prevent the perpetrator committing further sexual offences.<sup>66</sup> Similarly, in this study, the most common reason given for reporting to the police was safety, either their own or that of other women.

“I just remember feeling really unsafe and it had got to the point where I just didn't have a choice, I actually had to go to the police. I probably wouldn't be here if I hadn't, it got that abusive.” Callie

---

<sup>66</sup> Oona Brooks-Hay, 'Doing the "Right Thing"? Understanding Why Rape Victim-Survivors Report to the Police' (2020) 15 *Feminist Criminology* 174; Debra Patterson and Rebecca Campbell, 'Why Rape Survivors Participate in the Criminal Justice System' (2010) 38 *Journal of Community Psychology* 191; Herman (n 15).

“For me, seeking justice was about not only about what he did to me, but it was very much to make sure that he can't do it to anybody else.” Charley

Victim-survivors were asked how important the criminal justice system was for them. Except for the two victim-survivors who undertook civil action,<sup>67</sup> all viewed the criminal justice system as an intrinsic site of justice seeking following rape or sexual abuse. One of the key reasons for this was safety. Close to half of participants in this research (eight of 20) had been raped by a partner/ex-partner in the context of coercive control. Several stated that if their attacker wasn't in jail, they believed that he would have killed them.

“It [the criminal justice system] was absolutely very, very important, he was really dangerous. And I think although we have this hardship of going through it, I think we all sleep a little bit better knowing that he's not out there harming than somebody else, because I truly believe that he would have killed somebody, whether it be his next victim or the one after that. I think he would have killed somebody so, not saying that we deserved to go through what we did with the justice system, but it definitely kind of, it helps me knowing that he can't do it to somebody else and that's kind of the whole purpose of why I reported him all these years later... had I known what it was going to be like, I'm not sure I would have in hindsight. I mean, I'm glad I did. But I don't know if I would have in hindsight.” Lisa

Feeling safe was considered a prerequisite to attempting to recover from what they had been through.

“I feel like [justice] is less actually about punishing him, although I think he should be punished, I think he should face consequences. But it's less to me about punishing him, it's about helping me to rebuild my life, actually giving me time in which I'm safe, which I feel safe to try and mentally recover.”  
Taylor

---

<sup>67</sup> Both victim-survivors indicated that on reflection, they wished they had gone straight to civil proceedings and bypassed the criminal system.

If a key meaning of justice is safety, what does this mean when sexual offence prosecutions fail? For Naz, it meant she was left with significant concerns for her safety.

“Nobody understood what type of person he is, and if he doesn't get any punishment for what he did to me, he will do more wrong to other ladies. Nobody understood that. I keep telling everyone that what sort of person he is, he will definitely do something wrong to me in future. I kept telling everyone, but nobody listened or understood my fear.” Naz

## *7.2: Validation*

Many victim-survivors spoke of the impact of justice processes in validating the harm caused to them.

“And as [the criminal case] went on further, every single time it's kind of passed one of those hurdles, it's completely validated my trauma.” Sandra

“See the word guilty, that's all that matters to me. That piece of paper that I got through the post that said he's been found guilty. He is now a registered sex offender and he has been remanded in custody. That's everything.” Charley

For the two victim-survivors who undertook successful civil cases against their attackers following a not proven verdict in the criminal courts, both considered that the civil case gave them justice. In response to being asked if the judgment in the civil case felt like justice, Sophie commented “Yeah. Oh God, yeah. When I got that, I'm sitting in the car when I got it. I just started crying.”

For Eileen, the validation she received from how she was treated during her civil case was at least as important as the outcome.

“I think regardless of the outcome of that civil case, I think knowing that someone has treated you as someone that's been a victim of crime, realise that it's wrong and wanted to try and help you and get closure on that was worth anything, you know? Probably more than the actual judgement itself.” Eileen

One victim-survivor, Grace, spoke of the external validation that came from a conviction. “I just felt like people would look at me and go ohh she's not lying.” Similarly for Quinn, justice meant being believed.

For Sophie, the recognition of her experience by someone within the legal system who had heard all the evidence, meant everything.

“For actually, apart from the verdict, it's just one word. I've never seen a penny of money.<sup>68</sup> He never went to jail. He's still got his job. The only repercussion was that he is legally known as a rapist. He didn't go on the sex offenders register. He didn't. Nothing happened to him. He's never had to pay me a penny of the [money] that was awarded to me, he said he doesn't have it. So you're going through all of that for one word. But actually that one word is the one thing that carries you through. Because all you want to hear is that somebody in the legal system says they are guilty based on the evidence. And that's what drives you forward.” Sophie

Victim-survivors who saw a conviction in their criminal case spoke of feeling fortunate that they were believed. Katy spoke of feeling “really, really lucky and really so validated.” Several victim-survivors whose case resulted in a conviction expressed feelings of guilt that they had managed to achieve some form of justice when they knew that others hadn't.

---

<sup>68</sup> Neither of the victim-survivors who undertook successful damages cases against their rapist have received any money from the damages awarded.



### *7.3: Accountability*

For many victim-survivors, justice also meant accountability. They engaged with the criminal justice process because they wanted the perpetrator to take responsibility for what they had done. This has resonance with the findings of other research into victim-survivors' justice needs. Gangoli, Bates & Hester's study found a strong desire from BME survivors for perpetrators to be held accountable within communities.<sup>69</sup> This echoes Herman's finding of a need amongst victim-survivors for what she termed vindication with their communities.<sup>70</sup>

For Sandra, justice meant her perpetrator taking accountability for the harm he had caused, reflecting "I want someone to take accountability for their actions and take steps to become a better person." Similarly, for Eilidh, an admission of responsibility from her perpetrator "would have been worth more than anything."

Cat's case didn't progress beyond the police stage. For her, justice was inextricably linked with accountability and recognition for what she had been through.

"I think, justice for me would be a lot about feeling heard and feeling validated and I think feeling that abusers had been held to account and have had to pay for what they have done. Feeling that my experiences matter and that the impact on me matters not just to me and the people close to me, but actually in a societal way, that there's some recognition there." Cat

### *7.4: Being able to rebuild their lives*

A common theme running through all the interviews was the importance of justice, or its potential, in enabling people to start rebuilding their lives.

---

<sup>69</sup> Gangoli, Bates and Hester (n 64).

<sup>70</sup> Herman (n 15) 597.

“I think justice means coming out the other side of it and being able to move on with your life. That's the most important thing for me as at one point, I never, ever, ever thought I would be where I am now.” Callie

For Grace, justice meant no longer being defined by what had happened to her.

“When I got the guilty verdict, I thought, what does it mean to me now? It's moving forward. It's finding life after the assault, not being defined by the assault because for a very long time, I felt like it was just who I was as a person.”

Genevieve described the conviction in her case representing a chapter ending, but acknowledged a difficulty in feeling that this was justice. For her, this was linked to the perpetrator still not acknowledging responsibility. Similarly, Taylor identified the safety she felt due to her rapist being in prison as crucial to enabling her to try to move forward and rebuild her life. The meanings of the key elements of justice identified by victim-survivors in this study - safety, validation, accountability, and re-building - are interwoven and interconnected.

#### *7.5: Cases which result in acquittal or haven't proceeded to court*

In cases which resulted in an acquittal, victim-survivors still identified the criminal justice system as an important potential source of justice.

“It [reporting] was just something that I couldn't not to do and it's not that I'm a firm believer in exactly how prisons work. It's not that I trust that that person would be reformed, but it's just the way that you're brought up in the world, you understand that this shouldn't happen legally, shouldn't happen. And if it does, there will be repercussions. So to see that those repercussions seem to take up a lot of everyone's time, a lot of money and don't actually exist. It's kind of, you know, that's quite frightening. And I don't think there is really another form of justice.” Francis

“I mean, I would loved the conviction. I suppose I don't really care about what the sentence was, I just wanted him on sex offenders register because he's a sex offender...” Jane

For two victim-survivors, their case didn't progress beyond the police stage. They described the criminal justice process as one they felt it important to have engaged with.

“Even though I haven't had justice, I think that engaging with the criminal justice system has been crucial for me. I think for me it was part of a gradual and growing capacity to break silence really. And I think that it helped sort of being able to tell my story and yeah, it's sad that I had to fight so hard... I think that that kind of process did help in some way that I started to heal, I started to find my voice and then had my voice in other places. I feel like I was the victim of a crime and so it's right that the criminal justice system should engage with that.” Cat

#### *7.6: A conviction isn't the end of the process*

Several victim-survivors spoke of the impact of legal processes post-conviction in eroding their sense that they had secured some form of justice. For Sara, hearing her rapist had been convicted was “absolutely immense.” However, three years into his sentence, he is now being considered for parole on an annual basis. The terror she feels about what might happen to her when he is released left her with doubts about having spoken out in the first place “sometimes I say to people if you were like I've been in my situation, it's not worth opening your mouth.” Sara

Emily, who saw her rapist convicted, spoke of the difficulty of having to deal with the appeals process.

“The word justice for me used to mean, I would think of justice as like peace, like reaching a form of peace and the right thing has been done, like justice has been served. That's what I would have thought of that. And in a

way, I think we do feel a sense of that, however, it's also not because it's never ending, it's not stopped because we're in the appeals process now and that just seems like this is a never-ending thing now. So it's like we've overcome the big hurdle of trial and then sentencing and now we're into this next part of the journey of his appeals process.” Emily

Similarly, for Taylor, lengthy appeals in her case have left her re-evaluating the extent to which the conviction in her case was justice.

“I think if you asked me immediately after the court case had finished, I would have said that I felt that I had gotten some sort of justice. I think that the thing that has maybe changed my perception of the level of justice that I've got is the appeals process. I feel like that has robbed me of that precious time because the five years, five years doesn't mean five years. It means two and a half because he's not going to be fighting in prison, he's quite likely to be released after two and a half years. The fact that's actually probably only really a year of recovery time for me, that doesn't feel like justice.” Taylor

It clear from the voices of victim-survivors interviewed in this research that justice in the context of sexual crime has a myriad of overlapping meanings.

Notwithstanding the trauma caused by their engagement with it, the criminal justice system is viewed as a key means of achieving some sense of justice following rape or other forms of sexual violence. Efforts to improve access to justice in the context of sexual crime should include exploring alternative routes to justice, including civil justice. This is important given the continued under-reporting of sexual crime to the police,<sup>71</sup> and high attrition rates in cases which are reported.<sup>72</sup> This research builds on previous work<sup>73</sup> to make the case for a

---

<sup>71</sup> The Scottish Crime and Justice Survey found only 22% of people who experienced serious sexual assault reported this to the police Scottish Government, ‘Scottish Crime and Justice Survey 2019/20’ (2021) 189

<sup>72</sup> Sharon Cowan (n 43); Liz Kelly, Jo Lovett and Linda Regan, *A Gap or a Chasm? Attrition in Reported Rape Cases* (1. publ, Home Office Research, Development and Statistics Directorate 2005).

<sup>73</sup> Clare McGlynn, ‘Challenging Anti-Carceral Feminism: Criminalisation, Justice and Continuum Thinking’ (2022) 93 *Women’s Studies International Forum* 102614.

continued focus on reform of criminal justice processes to better meet victim-survivors' justice needs.

## Section 8: Discussion

Section 1(3)(d) of the Victims and Witnesses (Scotland) Act 2014 provides that as a general principle complainers should be able, where appropriate, to effectively participate in the investigation and proceedings. It is notable, however, that only two of the 20 victim-survivors in this study considered that they had been able to participate in any meaningful way in the justice process. The failure to enable complainers to effectively participate is a factor that cuts across all the key issues identified in this research. Victim-survivors spoke almost uniformly of being under-informed and ill-prepared for giving evidence. At times, measures intended to protect complainers resulted in further marginalisation. Without recognition of complainers' agency, protection may unintentionally veer into a paternalism that removes control.

A key aspect of participation for complainers relates to preparation for court. As the findings of this research demonstrate, the majority of complainers felt very under-prepared for the experience. This added to the trauma they experienced from their engagement with the criminal justice system. Complainers could feel considerably more prepared if they were able to meet the person prosecuting their case more than once in advance of giving evidence, ideally two or three times. This would require prosecutors to be allocated cases at an earlier stage<sup>74</sup> but would contribute to complainers feeling less marginal to the process. Consideration should be given to what information it would be appropriate for complainers to have to enable them to feel more prepared for court. While it is crucial that complainers are not coached in how to give their evidence, it is difficult to understand the legal rationale for providing them with little to no information about what their case entails. Related to this, it is clear that

---

<sup>74</sup> One participant had been informed by the prosecutor that he had been allocated the case a week before it commenced.

complainers would welcome and benefit from being given information in general terms about what giving evidence is likely to involve.

A theme running throughout this research is the failure to meaningfully implement existing rights for complainers. In the conferring of new rights, it is crucial to consider how complainers are to be informed of these rights and supported to access them in an appropriate and trauma informed manner. For rights to be meaningful, there requires to be a clear process in place for recourse where these rights are not met. Further work requires to be carried out by justice agencies to address ongoing concerns about communication, to ensure their statutory obligations under the 2014 Act are met. It is not possible to participate meaningfully without information.

Across multiple legal jurisdictions, complainers of sexual offences are being given limited rights to legal advice and representation at key points within adversarial processes.<sup>75</sup> These rights are generally restricted to pre-trial processes. Providing access to legal advice in areas of the criminal justice process where complainers have an existing right to participation, for example applications to review a decision by COPFS not to prosecute, could assist in making these rights more accessible.<sup>76</sup> The Gillen Review<sup>77</sup> recommended general legal advice on a time limited basis for complainers in Northern Ireland throughout the process up to the commencement of the trial. The Department of Justice in Northern Ireland have introduced a 2-year pilot scheme to provide legal advice to complainers.<sup>78</sup> This research demonstrates that there is a case for consideration of similar provision to

---

<sup>75</sup> Raitt (n 49); Tyrone Kirchengast, 'Victim Legal Representation and the Adversarial Criminal Trial: A Critical Analysis of Proposals for Third-Party Counsel for Complainants of Serious Sexual Violence' (2021) 25 *The International Journal of Evidence & Proof* 53; Killean (n 49).

<sup>76</sup> COPFS, 'Victims' Right to Review Annual Report 1 April 2022 - 31 March 2023'; HM Inspectorate of Prosecutions in Scotland, 'Thematic Report on the Victims' Right to Review and Complaints Handling and Feedback Follow-up Report' (2018); Kirchengast (n 10).

<sup>77</sup> Raitt (n 50); Tyrone Kirchengast, 'Victim Legal Representation and the Adversarial Criminal Trial: A Critical Analysis of Proposals for Third-Party Counsel for Complainants of Serious Sexual Violence' (2021) 25 *The International Journal of Evidence & Proof* 53; Killean (n 50).

<sup>78</sup> Department of Justice, 'Justice Minister Launches Scheme to Provide Free Legal Advice to Victims of Sexual Offences' (31 March 2021)

be made available to complainers of sexual crime in Scotland.<sup>79</sup> Victim-survivors across this study voiced a desire for access to legal advice and representation to assist them to participate in the justice process more effectively.

## Section 9: Conclusion

For many victim-survivors in this study, their experience of the criminal justice process mirrored the lack of control they were subjected to during the rape or sexual abuse. The findings of this research demonstrate that the level of re-traumatisation caused by complainers' engagement with the criminal justice system is intrinsically linked to their ability to meaningfully participate in the process. Without negating the case for more radical reform, this research suggests that it is possible for complainers to feel less on the periphery of their case within the parameters of the existing justice process in Scotland. The experience of complainers of sexual crime could be greatly improved by ensuring they are properly informed, know their rights, feel prepared for giving evidence and are given choices and control wherever this is possible. Enabling meaningful participation for complainers of sexual crime has the potential to transform their experience of the justice process.

---

<sup>79</sup> One innovative development of note in Scotland is the new Emma Ritch Law Clinic which is being established at the School of Law at the University of Glasgow. Due to start providing a service in early 2024, the clinic will provide free legal advice and representation to complainers of sexual offences, legal education to students and research into the impact legal representation has on complainers' experience of the justice process.

## References

- BBC, 'Free Law Clinic to Help Sexual Assault Victims' (8 March 2023) <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-64888244> accessed 26 November 2023
- Brooks-Hay O, 'Doing the "Right Thing"? Understanding Why Rape Victim-Survivors Report to the Police' (2020) 15 *Feminist Criminology* 174
- Brooks-Hay O, Burman M and Bradley, L, 'Evaluation of the Rape Crisis Scotland National Advocacy Project: Final Report' (2018) <http://eprints.gla.ac.uk/187695/>
- Brown B, Burman M and Jamieson L, *Sex Crimes on Trial: The Use of Sexual Evidence in Scottish Courts*, Edinburgh University Press, (1993)
- Burman M, 'Evidencing Sexual Assault: Women in the Witness Box' (2009) 56 *Probation Journal* 379
- Burman M, Jamieson, L, Nicolson, J and Brooks-Hay, O, 'Impact of Aspects of the Law of Evidence in Sexual Offence Trials: An Evaluation Study', Scottish Government Social Research (2007)
- Burman M and Brindley S, 'Challenges in the Investigation and Prosecution of Rape and Serious Sexual Offences in Scotland' in Killean R, Dowds E and McAlinden A-M (Eds), *Sexual Violence on Trial: Local and Comparative Perspectives* (Routledge 2021)
- Burman M and Brooks-Hay O, 'Delays in Trials: The Implications for Victim-Survivors of Rape and Serious Sexual Assault: An Update' <https://www.sccjr.ac.uk/wp-content/uploads/2022/03/Delays-in-Serious-Sexual-Offence-Cases.-Dec-2021.pdf>
- Chalmers J, Leverick F and Munro VE, 'A Modern History of the Not Proven Verdict' (2021) 25 *Edinburgh Law Review* 151
- COPFS, 'Victims' Right to Review Annual Report 1 April 2022 - 31 March 2023' <https://www.copfs.gov.uk/media/4exhlf1r/vrr-annual-report-2022-23.pdf>
- Criminal Justice Committee, Scottish Parliament, 'What Now for the Prosecution of Violence against Women and Girls?' (2021) <https://www.parliament.scot/~media/committ/1768> accessed 26 November 2023
- Day AS and Gill AK, 'Applying Intersectionality to Partnerships between Women's Organizations and the Criminal Justice System in Relation to Domestic Violence' (2020) 60 *The British Journal of Criminology* 830
- Department of Justice, 'Justice Minister Launches Scheme to Provide Free Legal Advice to Victims of Sexual Offences' (31 March 2021) <https://www.justice-ni.gov.uk/news/justice-minister-launches-scheme-provide-free-legal-advice-victims-sexual->



[offences#: - :text=From%201%20April%2C%20adult%20complainants,difficult%20for%20victims%20to%20endure](#). Accessed 26 November 2023

Doak J, *Victims' Rights, Human Rights and Criminal Justice* (Hart Publishing 2008)

Ellison L and Munro VE, 'A "Special" Delivery? Exploring the Impact of Screens, Live-Links and Video-Recorded Evidence on Mock Juror Deliberation in Rape Trials' (2014) 23 *Social & Legal Studies* 3

End Violence Against Women Coalition, 'Listen to Us! Communication Barriers: How Statutory Bodies Are Failing Black, Minoritised, Migrant, Deaf and Disabled Women and Girls Victims/Survivors of VAWG' (2023)

<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2023/04/Listen-to-us.pdf>

Gangoli G, Bates L and Hester M, 'What Does Justice Mean to Black and Minority Ethnic (BME) Victims/Survivors of Gender-Based Violence?' (2020) 46 *Journal of Ethnic and Migration Studies* 3119

Gillen J, 'Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland' (Department of Justice 2019) Part One <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

Herman J, 'Justice from the Victim's Perspective' (2005) 11 *Violence Against Women* 571

HM Inspectorate of Prosecution in Scotland, 'Inspection of the Management to Sections 274 and 275 of the Criminal of Criminal Allegations against Procedure (Scotland) Act 1995' (HM Inspectorate of Prosecution in Scotland 2022)

<https://www.gov.scot/publications/inspection-copfs-practice-relation-sections-274-275-criminal-procedure-scotland-act-1995/>

HM Inspectorate of Prosecutions in Scotland, 'Thematic Review of the Investigation and Prosecution of Sexual Crimes' (2017)

<https://www.gov.scot/publications/thematic-review-investigation-prosecution-sexual-crimes/>

HM Inspectorate of Prosecutions in Scotland, 'Thematic Report on the Victims' Right to Review and Complaints Handling and Feedback Follow-up Report' (2018)

<https://www.gov.scot/publications/thematic-report-victims-right-review-complaints-handling-feedback-follow-up/>

Iliadis M and Flynn A, 'Providing a Check on Prosecutorial Decision-Making' (2018) 58 *The British Journal of Criminology* 550

Keane E and Convery T, 'Proposals for Independent Legal Representation for Complainers Where an Application Is Made to Lead Evidence of Their Sexual History or Character' <https://www.research.ed.ac.uk/en/publications/proposal-for-independent-legal-representation-in-scotland-for-com>

Kelly L, Lovett J and Regan L, 'A gap or a chasm? attrition in reported rape cases' (2005) Home Office Research Study

Killean R, 'Legal Representation for Sexual Assault Complainants', in Killean R, Dowds E and McAlinden A-M (eds), *Sexual violence on trial: Local and comparative perspectives* (Routledge 2021)

Kirchengast T, 'Victims' Rights and the Right to Review: A Corollary of the Victim's Pre-Trial Rights to Justice' (2016) 5 *International Journal for Crime, Justice and Social Democracy* 103

Kirchengast T, 'Victim Legal Representation and the Adversarial Criminal Trial: A Critical Analysis of Proposals for Third-Party Counsel for Complainants of Serious Sexual Violence' (2021) 25 *The International Journal of Evidence & Proof* 53

McGlynn C, 'Challenging Anti-Carceral Feminism: Criminalisation, Justice and Continuum Thinking' (2022) 93 *Women's Studies International Forum* 102614

McGlynn C and Westmarland N, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28 *Social & Legal Studies* 179

Munro VE, 'Pre-Recorded Evidence and Juror Decision-Making: Evidence Review - Research Findings' (Scottish Government 2018)

<https://www.gov.scot/publications/impact-use-pre-recorded-evidence-juror-decision-making-evidence-review-9781788516679/>

Munro VE, 'Piecing Together Puzzles: Complainers' Experiences of The Not Proven Verdict' (Warwick University 2020) <http://wrap.warwick.ac.uk/137857/>

Munro VE, "'It Felt like a Comma, Not a Full Stop": Complainers' Experiences of the Not Proven Verdict within Scottish Rape Trials' in Gleeson, K and Taylor, Y (eds) *New Directions in Sexual Violence Scholarship Law, Power and Change* (Taylor & Francis Group 2023)

Brooks-Hay O and Burman M, 'Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault'

[https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report\\_Aug-2019\\_FINAL.pdf](https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report_Aug-2019_FINAL.pdf)

Patterson D and Campbell R, 'Why Rape Survivors Participate in the Criminal Justice System' (2010) 38 *Journal of Community Psychology* 191

Raitt F, 'Independent Legal Representation for Complainants in Rape Trials', *Rethinking Rape Law International and Comparative Perspectives* (Routledge-Cavendish 2010)

Rape Crisis Scotland, 'Spirit of Rights Set out in WF Must Be Honoured' 19 October 2018 <https://www.rapecrisisscotland.org.uk/news/news/rape-crisis-scotland-spirit-of-rights-set-out-in-wf-must-be-honoured/> accessed 26 November 2023

Rape Crisis Scotland, 'Survivor Reference Group Initial Report' (2019) <https://www.rapecrisisscotland.org.uk/resources/SRG---First-Meeting-FINAL-info-breakdown-web-version.pdf>

Rape Crisis Scotland, 'Privacy Rights for Sexual Offence Complainers: A Report for the Victim Taskforce' (2021) <https://www.rapecrisisscotland.org.uk/resources/ILR---Report-for-Victims-Taskforce---Roundtable-Final-Report.pdf>

Rape Crisis Scotland, 'Survivor Reference Group: Police Responses in Scotland Report' (2021) <https://www.rapecrisisscotland.org.uk/resources/SRG-Police-Responses-in-Scotland-Report---RGB-spreads.pdf>

*Recorded Crime in Scotland: 2020-21* (The Scottish Government 2021) <https://www.gov.scot/publications/recorded-crime-scotland-2020-2021/>

Scottish Commission for People with Learning Disabilities, 'Unequal, Unheard, Unjust but Not Hidden Anymore: Women with Learning Disabilities' Experience of Gender-Based Violence in Scotland' (2023) <https://www.sclid.org.uk/wp-content/uploads/2021/12/Unheard-Unequal-Unjust--But-not-Hidden-web-version.pdf>

Scottish Courts and Tribunal Service, 'Evidence and Procedure Review' (2015) <https://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report---publication-version-pdf.pdf?sfvrsn=2>

Scottish Courts and Tribunal Service, 'Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk's Review Group' (2021) <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>

Scottish Government, 'Scottish Crime and Justice Survey 2019/20' (2021) <https://www.gov.scot/publications/scottish-crime-justice-survey-2019-20-main-findings/pages/21/>

Scottish Government, 'Criminal Proceedings in Scotland: 2020-2021' (2022) <https://www.gov.scot/publications/criminal-proceedings-scotland-2020-21/>

Scottish Courts and Tribunal Service, 'Lady Dorrian Review Governance Group: Specialist Sexual Offences Court Working Group Report' (2022) <https://www.gov.scot/publications/lady-dorrian-review-governance-group-specialist-sexual-offences-court-working-group-report/>

Scottish Government, 'Journey Times in Scotland's Criminal Justice System' (2023) <https://www.gov.scot/news/journey-times-in-scotlands-criminal-justice-system/#:~:text=Analysis%20shows%20that%20in%20the,Justice%20of%20the%20Peace%20court.>

Sharon Cowan, 'The Use of Sexual History and Bad Character Evidence in Scottish Sexual Offences Trials' (Equality & Human Rights Commission 2020)

<https://www.equalityhumanrights.com/sites/default/files/the-use-of-sexual-history-and-bad-character-evidence-in-scottish-sexual-offences-trials-summary.pdf>

Thiara R and Roy S, 'Reclaiming Voice: Minoritised Women and Sexual Violence Key Findings' (2020) [https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/f98049\\_1a6181417c89482cb8749dbcd562e909.pdf](https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/f98049_1a6181417c89482cb8749dbcd562e909.pdf)

Thomson L, 'Review of Victim Care in the Justice Sector in Scotland' (COPFS 2017)

Yaqoob T in partnership with survivors of colour, 'Developing Sexual Violence Support Services That Work for Survivors of Colour' (Rape Crisis Scotland 2023) <https://www.rapecrisisscotland.org.uk/resources/Delivering-sexual-violence-suppot-services-that-work-for-survivors-of-colour-1.pdf>

## Cases

*AR v HMA* [2019] HCJ 81

*CH V HMA* [2020] HCJAC 43

*Cumming v HM Advocate* 2003 SCCR 261

*Donegan v HM Advocate* [2019] HCJAC 10

*Dreghorn v HM Advocate* [2015] HCJAC 69

*JC v HM Advocate* [2021] HCJAC 21

*Kinnin v HM Advocate* 2003 SCCR 295

*LL v HM Advocate* [2018] HCJAC 35

*MacDonald v HM Advocate* [2020] HCJAC 21

*RR v HM Advocate* [2021] HCJAC 21

*WF Petitioner* 2016 CSOH 27

## Legislation

Criminal Procedure (Scotland) Act 1995

Human Rights Act (1998)

Criminal Justice and Licensing (Scotland) Act 2010

Sexual Offences (Procedure and Evidence) (Scotland) Act 2002

Victims and Witnesses (Scotland) Act 2014

Vulnerable Witnesses (Scotland) Act 2019

Victims, Witnesses and Justice Reform (Scotland) Bill