

Improving protections in the justice system for women and girls

Scottish Government Consultation 2026

Victim Support Scotland is a national organisation dedicated to supporting victims and witnesses of crime. As Scotland's largest victims' organisation, people impacted by crime have access to our services right across the country. We are a listening ear when people need to talk to someone about the impact of crime, we provide practical support such as when people need a safety plan to feel secure in their home and we give access to critical crime-related emergency funds in their time of need.

We play a crucial role in delivering victim-centred support, and this in turn drives our forceful and successful lobbying and campaigning for change within the criminal justice system. As an organisation rooted in the experiences of victims and witnesses, we aim to ensure that their voices are central to the development of policy and practice.

Background to the consultation:

[Improving protections in the justice system for women and girls: consultation - gov.scot](https://www.gov.scot/publications/consultations/2026/consultation-improving-protections-in-the-justice-system-for-women-and-girls/)

This consultation focuses on the potential role that changes to criminal law can play in preventing and addressing violence against women and girls.

In the consultation, the Scottish Government has provided information about how existing laws help to protect women and girls. They are seeking views on what steps could be taken to improve how such protection is delivered. In some areas, they are looking for views on specific proposals for criminal law reform that would create new necessary protections for women and girls. The consultation covers:

- non-fatal strangulation
- spiking
- statutory aggravation – offences committed against pregnant women
- prosecutorial powers to impose non-harassment orders
- online and technology-facilitated harm:
 - intimate images offences (relating to deepfakes and nudify apps)
 - general criminal law online and technology related harm
 - further steps that could be considered

Section 1: Non-Fatal Strangulation

Question 1: Do you agree with the Scottish Government view on the benefits arising from the operation of current law in relation to non-fatal strangulation?

Answer:

Victim Support Scotland's position is that, following careful consideration, on balance we are supportive of a standalone offence for non-fatal strangulation. This is mostly based on the views of families of victims and other organisations that have greater focus on this issue. We have reservations on some issues, primarily corroboration. We have expanded on these concerns below and advocate that priority should be given to addressing current issues in investigations and practice.

Evidential Burden

From our experience of supporting victims of crime, we know that some crimes may be harder to evidence than others.

Although supportive of the standalone offence, we are concerned that the creation of a standalone non-fatal strangulation offence may result in a higher evidential burden for victims. Currently, when prosecuting under the Domestic Abuse (Scotland) Act 2018 (DASA), it is the overall course of abusive behaviour that is required to be proven rather than a single incident. This is particularly important in cases where non-fatal strangulation has occurred, as we know that non-fatal strangulation does not always leave visible injuries and most commonly occurs within the home, where there are no external witnesses.

It is important that victims are not subjected to any additional burden as a result of a crime, nor have their experiences doubted simply because one aspect of a pattern of behaviour is more difficult to evidence. The impact that coercive control, whether it is for a prolonged or short time period, can have on a person must not be underestimated and we have seen these effects firsthand. We contend that a higher evidential burden is likely to result in re-traumatisation through having to repeatedly explain the physical and psychological consequences of strangulation, obtain medical testing, and participate in testing.

We note from colleagues that non-fatal strangulation may be the first act of abuse which occurs within a relationship. As such, prosecution under DASA may not yet be applicable because this is one isolated incident (as of that point in time). We contend that for this reason, a standalone offence is needed as no pattern of behaviour will be required in order to prosecute non-fatal strangulation as a standalone crime.

Consent Defence

Currently, the primary way in which non-fatal strangulation is prosecuted is under the common law offence of assault. Under this offence, consent cannot be used as a defence by the perpetrator. Even using minimal force, non-fatal strangulation can have serious, life-threatening consequences, such as stroke, brain injury and nerve damage. VSS is clear that there can be no situation in which a victim truly consents to actions which can result in severe injury or death.

We support the creation of a standalone offence of non-fatal strangulation. However, consistent with our view that victims should not face additional burdens through the justice process, we are concerned that including a consent defence within such an offence may lead victims to feel as though they are on trial. This is not conducive to a victim-centred approach to justice, and we ask that the implications of this are considered in any legislation that is drafted.

Moreover, VSS knows firsthand of the severe and complex psychological impacts that can arise following a crime. Staff at VSS note that victims they have supported state that where non-fatal strangulation had occurred, they felt a significant level of mental torture from the fear and control they were experiencing.

- Our colleagues at ASSIST and EmilyTest provide testimony from those they have worked with that, out of all the abusive behaviour they have experienced, non-fatal strangulation was the worst aspect. These victims have even stated that they could endure sexual assault because they knew it would end, but being strangled made them feel as though they were going to die.

In addition to the above, we know that non-fatal strangulation is often noted as being a strong indicator of escalating future abusive behaviour or murder. It reflects the severity of the violence that is already present and the willingness to engage in behaviour which could result in death. The level of control exerted by the perpetrator in an instance of non-fatal strangulation is incredibly high.

By ruling out consent as a defence, an additional layer of power is removed from the offender in the court room, where they cannot attempt to place the blame back on the victim. We are steadfast in our support for legislation which protects victims from perpetrators attempting to use consent as a defence as we believe no one can truly consent to any activity that may result in serious injury or death. Therefore, we would not want to see a situation in which victims of non-fatal strangulation lose the protection of consent not being a defence.

VSS sought clarity from the Scottish Government on whether it could be that a standalone offence could contain protections to ensure that consent cannot be used as a defence. Whilst the Scottish Government confirmed that this may be the case, we contend that, despite the complexities of introducing such measures, every legislative step must be taken to ensure that a consent defence cannot be pursued by a perpetrator.

Potential arguments for a Standalone Offence

England and Wales

Although the legislation previously surrounding NFS required strengthening, findings from England and Wales must not be ignored. We recognise that the presence of a standalone non-fatal strangulation offence in England and Wales has seen prosecutions rise.

- Data released by the Crown Prosecution Service for England and Wales in June 2026 shows that, in the 4 years since non-fatal strangulation was made a standalone offence, 24,000 offences have been prosecuted. CPS data shows that in June to December 2022 just 503 cases of non-fatal strangulation were prosecuted, but this rose to 10,807 cases in June to December 2025.¹ This shows a correlation in an increase in prosecution and the imposition of the standalone offence.

Sentencing

VSS raises concerns that the way in which domestic abuse is sentenced may not fully reflect the severity of abuse, particularly where there may non-fatal strangulation involved. Scottish Sentencing Council data shows that perpetrators of domestic abuse do not receive a custodial sentence in eight out of ten cases. Additionally, the Scottish Sentencing Council acknowledges that the most common penalty given to perpetrators convicted under the Domestic Abuse (Scotland) Act 2021 is a Community Payback Order (CPO).

We note there have been a couple of case examples recently that have received longer term sentences, that included non-fatal strangulation as part of the offence.

- In one case, a life sentence was imposed, and it was noted that the offender had a propensity to choke or asphyxiate.

¹ [Strangulation and suffocation became standalone criminal offences four years ago. They are serious forms of abuse used to control and harm victims. Since then, the CPS has prosecuted more than... | Crown Prosecution Service](#)

- In another case, a 14 year extended sentence was imposed, alongside placement on the sex offenders register and lifelong non-harassment orders given.

VSS contends that, in cases of abuse involving non-fatal strangulation, more severe sentences are imposed to reflect the willingness of the perpetrator to engage in potentially lethal behaviour.

As stated at the beginning of the answer to this question, we make the following suggestions for improvements that may be made to the operation of current law in relation to non-fatal strangulation.

VSS contends that naming the act of non-fatal strangulation in the indictment and sentencing statement would prove powerful in the recognition of the danger and potential lethality of non-fatal strangulation. Not only does it draw public awareness to the behaviour, but it specifically labels that perpetrator as dangerous and willing to take someone's life into their hands.

- Our colleagues at EmilyTest have noted to us that naming someone specifically as a 'strangler' would hold significant weight for victims and the wider public as it highlights brutality of what they are willing to do.

We provide the following recent examples of sentencing statements which note the act of non-fatal strangulation:

1. *'Some of that abuse involved physical violence including seizing her by the neck, restricting her breathing, repeatedly punching her on the head and body, striking her so that she fell and lost consciousness, and repeatedly choking her.'*
2. *'including the highly dangerous act of seizing them by the throat until their breathing was restricted'*

Whilst ultimately, it would be more desirable for the act to be specifically named 'non-fatal strangulation' we are supportive of the wording included in the above sentencing. VSS contends that this helps to recognise the terror inflicted by non-fatal strangulation.

We therefore ask that in all cases where there has been non-fatal strangulation that it is specifically outlined by sentencers in both the indictment and sentencing statement.

Overall, the arguments that have been presented to VSS on both sides of the argument for a potential standalone non-fatal strangulation offence are all worthy of serious

consideration. Agreeing on a stance to answer this section of the consultation has been a decision we have not taken lightly. Ultimately, we are inclined to support the introduction of a standalone offence for non-fatal strangulation. However, we believe it is important that existing challenges in the investigation and policing of non-fatal strangulation are addressed alongside any legislative change to ensure an effective and victim-centred response.

We hope this consultation has contributed to further discussion and reflection on the issue of non-fatal strangulation, and we would welcome a clear commitment from the Scottish Government to addressing the wider challenges associated with non-fatal strangulation and improving outcomes for victims affected.

Question 2: Do you agree with the Scottish Government view for better recording of criminal cases where non-fatal strangulation arises?

Answer:

Victim Support Scotland agrees with the Scottish Government view for better recording of criminal cases where non-fatal strangulation arises.

We are concerned that, currently, there is no way of identifying whether a DASA case includes non-fatal strangulation.

National Data

Better recording of criminal cases where non-fatal strangulation arises would help to reveal the demographics of perpetrators of this crime. This could be supported by explicitly naming non-fatal strangulation in an indictment and sentencing statement. In doing so, it would reveal any trends or emerging trends amongst those who engage in this behaviour and can therefore contribute to effective and targeted public awareness strategies.

Better recording of cases is also essential for assessing and analysing the prevalence of the behaviour. It can help to inform national and local statistics which builds clearer pictures of the behaviour, perpetrators and victims. Further, accurate data allows policymakers to understand emerging trends, which can help to identify and target strategies for raising public awareness. This is critical when assessing whether laws are effective, where gaps exist, and what reforms may be needed.

In addition, VSS contends that better recording of cases of non-fatal strangulation will help to inform evidence led prevention and policy responses from the Scottish Government, Police Scotland and victim support charities. From VSS's perspective,

having accurate information about the crime and its prevalence helps to better inform our service delivery to ensure it is trauma informed, placing victims at the heart of what we do.

Additionally, we offer the following views:

Recording of non-fatal strangulation at the point of reporting

VSS recognises that this question is in relation to recording of non-fatal strangulation in court, but it is also important that non-fatal strangulation is accurately recorded at the point at which a victim reports it. We stress the need to ensure that when a victim tells first responders that they have been strangled that this is noted and they are given immediate medical attention, given the potential for death to occur in the hours or days following an instance of strangulation.

Additionally, ensuring that first responders accurately respond to a report of strangulation could help to identify other abusive behaviours and the escalation of domestic abuse. This point links directly to points made in our answer to question three where VSS highlights the importance of ensuring that first responders are aware of non-fatal strangulation and its dangers and that there is streamlined practices for recording strangulation.

New Sexual Offences Courts

VSS welcomes the introduction of new sexual offences courts under provisions in the Victims, Witnesses, and Justice Reform (Scotland) Act 2025. However, we raise concerns at the lack of pace in which these courts are being implemented. We worry that this may be inhibiting more cases of non-fatal strangulation being identified.

We ask that these new sexual offences courts are implemented at pace so that opportunities are not missed to identify and prosecute non-fatal strangulation. VSS asks that, when these courts are established, those prosecuting within them are fully aware of the lethality of non-fatal strangulation and prosecute as such.

Question 3: Do you have views on how best public awareness can be improved as to the dangers of non-fatal strangulation?

Answer:

Victim Support Scotland believes that there should be steps taken to better address understanding of non-fatal strangulation. This must be achieved by reaching the correct audiences and the embedding the topic into people's everyday interactions.

Focus should be given to improving public and professional understanding of not only the instant harms of non-fatal strangulation but also its hidden, delayed and potentially fatal consequences. We are also supportive of any measure that could support people to report a crime that has been committed against them. In this context of this consultation, we know that women and girls often find it difficult to recognise when domestic abuse is happening to them, so we must take every step to support them to do so.

Campaigning

Victim Support Scotland notes that the recently released COPFS graphic and information on non-fatal strangulation, using the title ‘Never Safe. Never OK’² is a strong resource for conveying what non-fatal strangulation is, the dangers of it and how to seek help. It is integral that more people understand that non-fatal strangulation is a crime and feel supported to report it as such. We therefore advocate for this campaign to be expanded and for further similar materials being produced and shared by the Scottish Government to convey this message.

Traditional means of advertising such as posters in public places should be utilised – this could include GP surgeries, health clinics, universities, nightlife venues, gyms, leisure centres and workplaces amongst others. We also know that the way in which people consume content has evolved. As such, we see the benefit in public awareness campaigns on social media platforms like Instagram and TikTok. This method also allows for these campaign materials to be reshared by other organisations like VSS to reach an even wider audience.

To build on these points, informed by staff experience in supporting victims, VSS believes that public awareness campaigns should highlight how dangerous non-fatal strangulation can be, drawing particular attention to making the hidden risks visible. This could be framed to highlight that the absence of strangulation marks does not equal no harm. This would be most effective if simple language was used, for example, stating that death can occur days after being strangled. VSS believes this would be effective as it challenges the assumption that strangulation only leaves short term markings or a hoarse voice

In addition, any campaign material must provide guidance on what to do if you have been strangled and, crucially, that help should be sought as soon as possible.

These campaigns should be made and platformed with the support of victim support organisations as we are experts in trauma informed language. Contact details for support organisations should also be included in campaigns.

² [Non-fatal strangulation. Never safe. Never OK | COPFS](#)

From our experience of working with victims of crime and their families, we know how impactful survivor-informed or family informed storytelling can be. Statistics alone often do not demonstrate the impacts of crime alone and should be supported by real life narratives. Online adverts and even public poster campaigns could contain survivor or family stories about their experiences with non-fatal strangulation. VSS strongly believes that lived experience helps people to recognise patterns which could be applied in their own lives and helps to reduce stigma, making it easier for people to seek help.

Ban on pornography depicting strangulation

Victim Support Scotland is supportive of the ban on pornography depicting strangulation included in the UK Government's Crime and Policing Bill and welcomes the application in Scotland. We know that research shows that pornography depicting acts like strangulation has established it as normalised and that this, coupled with the belief that it is not necessarily dangerous because it is 'non-fatal', could be seen to be driving a rise in the behaviour. This is despite evidence showing that there is no safe way to strangle someone as a person cannot consent to the long-term harm that can be caused, which could include effects on cognitive function and memory. This is particularly welcome as there has been a noted increase in young people engaging in this type of behaviour, with 71% of 16 to 34 year olds reportedly engaging in this activity³. Banning and removing this content not only stops young people from watching it, but it also sends a clear message about its dangers. This legislation must be implemented and enforced with pace.

Non-fatal strangulation has increasingly become a common behaviour during sexual activities, as demonstrated above. VSS acknowledges that it is important that the focus of non-fatal strangulation among younger people is not simply framed in a sexual way. We know that non-fatal strangulation occurs among young people outside of sexual activity – such as in situations of domestic abuse - and so, it is important that policy decisions do not solely focus on addressing it as a sexual behaviour.

Education

Victim Support Scotland contends that age-appropriate education about the dangers of strangulation should be delivered to children and young people, whether it is delivered via sex education or personal and social education classes. Strangulation in any form should be taught as a dangerous and inappropriate behaviour.

³ [Mum of Emily Drouet calls for change in strangulation law](#)

We know that young people are impressionable to what they see and hear both in person and online. We have seen a recent rise in misogynistic male influencers and the ‘manosphere’ which the police say could be contributing to a rise in domestic violence amongst young people. We therefore advocate for comprehensive education for young people on unacceptable behaviours against women and girls. Louisa Rolfe, Assistant Commissioner of the Met Police stated that:

“We see the connection between the sort of sense of toxic influencers online and their sort of views that are promoted about women and women’s status in society.”⁴

Tackling such beliefs from a young age can contribute to reinforcing that holding violent and misogynistic views against women and girls is never acceptable and in the longer term, support a reduction in violence against women and girls.

VSS suggests that this education should begin with the delivery of the Equally Safe programme in all schools.

Universities and the EmilyTest GBV Charter

Victim Support Scotland is steadfast in our support for EmilyTest, recognising the significant impacts of Emily Drouet’s death from suicide following a campaign of GBV, including non-fatal strangulation, from a fellow student. We support EmilyTest in the promotion of the GBV Charter for colleges and universities.

Since launching the Charter in 2021, EmilyTest has worked with 12 institutions in Scotland and five in England. Given that the Charter builds upon the Scottish Government’s Equally Safe in Higher Education Toolkit, VSS would like to see the Scottish Government promote the implementation of the EmilyTest GBV Charter in more institutions across Scotland.

As mentioned in the section on campaigning, VSS supports the inclusion of lived experience in educational materials. Statistics alone often do not demonstrate the full impacts of crime, and should be supported by real life stories, informed by victims, survivors and their families. VSS advocates for the value of lived experience helping people to recognise patterns which could be applied in their own lives. This can also help to reduce stigma, making it easier for people to seek help.

Use of terminology

Victim Support Scotland advocates that there should be better public awareness and education on differences in terminology that is used when discussing and describing non-fatal strangulation. We acknowledge that ‘choking’ is often used when referring to

⁴ [‘Manosphere’ may be contributing to teenage domestic abuse, say police](#)

sexual activity and have increasingly seen ‘choking’ be used interchangeably for non-fatal strangulation in the media and publications, despite the definitions of the two being different.

- Choking occurs internally when something gets lodged in the throat, blocking the airway and impeding breathing. It is usually accidental and is often caused by the person choking on food or an object.
- Non-fatal strangulation occurs externally when pressure to the throat impedes breathing and/or the circulation of blood. It is usually intentional and carried out by someone else.

Victim Support Scotland highlights that using the word choking in place of strangulation or non-fatal strangulation is not only factually incorrect, but it could downplay the seriousness of non-fatal strangulation as a form of abuse and harmful behaviour committed against someone. We therefore feel that better education could be provided in schools, universities, workplaces, healthcare settings etc., to better educate people on the differences. This will help to reinforce the risks and harms associated with non-fatal strangulation.

Frontline Training

From previous experience in working with Police Scotland to deliver training, Victim Support Scotland believes that embedding education on non-fatal strangulation will prove essential in raising awareness of the severity of non-fatal strangulation.

Victim Support Scotland advocates for more comprehensive training to be given to police officers on non-fatal strangulation. This would equip them with the skills to recognise the signs or potential patterns of behaviour which could signal that non-fatal strangulation has occurred. As mentioned in previous sections, this could be supported by the inclusion of lived experience to reinforce the impact and trauma of non-fatal strangulation and how important it is that frontline responders react where there is suspected or confirmed strangulation.

It is important that the police understand the dangers and the short, medium and long term harms non-fatal strangulation can cause so that they can make the informed decision to escalate a case that comes forward. Moreover, when police arrive at a scene where non-fatal strangulation could have occurred, whether or not there are visible marks, police officers should be trained to ask potential victims if strangulation has occurred.

Additionally, when police officers know the dangers and signs of non-fatal strangulation this can support them in knowing to ask whether a victim has experienced non-fatal strangulation. Without knowing the signs and symptoms, police may not know to ask,

which could result in these victims falling through the cracks and non-fatal strangulation not being recorded. Where police *do* ask and non-fatal strangulation *is* recorded, this will help support victims and measure the prevalence of this behaviour, supporting more effective response measures.

We strongly believe that as soon as someone mentions or indicates that they have been strangled to first responders, they should be taken straight to hospital for assessment. We know that even though there may not be physical marks on the person on first response, assessment must be made of the potential internal damage or longer-term effects that may occur.

Question 4: Do you have any other views on steps to address the dangers of non-fatal strangulation?

Answer:

No.

Section 2: Spiking

Question 1: Do you have views on how the offence of spiking is addressed under existing laws?

Answer:

Victim Support Scotland believes that the way in which spiking is currently prosecuted is confusing for both victims and police and is not perceived as a serious act by perpetrators.

The combined factors of prevalence, lack of prosecution, risks associated and public appetite for change lead us to conclude that spiking requires a standalone offence.

Public Awareness

VSS considers that where conduct is prosecuted under existing, more general offences rather than as a distinct, named crime - such as spiking being pursued under common law offences - there is a risk that its criminal nature is insufficiently understood and respected. A lack of explicit recognition arguably contributes to lower public awareness of spiking as a punishable offence and undermines perceptions of the seriousness of the harm it causes.

Furthermore, we note Spike Aware UK have reported that during Freshers Week, students frequently describe spiking as ‘the norm’. This normalisation suggests that, under the current legal framework, spiking is not widely regarded as serious or harmful behaviour and that there is limited fear of criminal consequences for perpetrators.

This fragmented approach risks obscuring the nature of the behaviour and fails to clearly articulate spiking as a serious criminal act. In addition, VSS considers that recognition of the serious of harm because spiking is included within common law offences or the Sexual Offences (Scotland) Act 2009, there may be limited public understanding of the potential legal consequences of spiking, including the penalties which may be imposed. This lack of clarity could foster a perception that it is a low-risk behaviour – with some individuals engaging in ‘prank’ spiking without the appreciation of the harm caused or the risk of prosecution.

Prosecution

Moreover, it could be argued that the current legal framework can lead to variability and confusion in how spiking incidents are investigated, charged and prosecuted.

Outcomes may depend heavily on how police and prosecutors interpret the intent behind the action, evidence or associated harm, rather than on the act of spiking itself. As a result, there may be inconsistent justice outcomes and reduced confidence in the criminal justice system from victims.

Reporting

VSS is concerned that under current laws, victims may not feel empowered to report a spiking incident because they feel it will not be taken seriously or may be unaware that spiking can be pursued and prosecuted. Research by the Drinkaware charity has found only 1 in 10 spiking incidents are actually reported in Scotland.⁵ Police Scotland data shows that 760 spiking incidents have been reported since 2020, which means that if it is only 1 in 10 incidents reported, the true figure of people, who have some awareness that they have been spiked, in Scotland could be closer to 7600.⁶

Demographic of victims

Given the overarching theme of this consultation is violence against women and girls, it is necessary to note that young women remain the most likely demographic to be spiked. 86% of spiking occurrences were reported by females, 41% of these being reported by women aged between 16 and 20, and 75% between 16 and 30 years of

⁵ [Thousands claim their drinks have been spiked - The Edinburgh Reporter](#)

⁶ [Thousands claim their drinks have been spiked - The Edinburgh Reporter](#)

age.⁷ Additionally, in July 2026, a renewed call from Police Scotland urged women to stay alert of spiking.⁸

In line with the Scottish Government's pledge to tackle violence against women and girls, we could surmise that the current way in which spiking is prosecuted is not offering such protections given the statistics and renewed calls. It is disappointing that Police Scotland have had to renew their calls to women to stay alert of spiking.

Public Appetite for Change

There have been a number of public calls for Scotland to follow England and Wales in introducing a standalone spiking offence from victims, organisations and political parties, all based on experience. We offer the following examples:

- **The Daily Record** - *Drink-spiking victim demands action after no convictions for the offence last year*⁹
- **The Scottish Sun** - *FAMILY'S PLEA Our son died after someone spiked his drink with ecstasy – sick act must become a crime*¹⁰
- **STV News** - *Drinks spiking: 'I really felt the blame was being put on the victim'*¹¹
- **The Sunday Post** – *New law call to tackle rise in drink spikings*¹²
- **The Standard** – *Creation of separate spiking offence 'should be examined further', MSPs told*¹³

Consequently, these factors demonstrate that the current laws to prosecute spiking do not discourage the behaviour or adequately instil the seriousness of spiking for victims and perpetrators.

Question 2: Do you have views on the benefits of developing a standalone spiking offence?

Answer:

Yes. Victim Support Scotland is supportive of developing a standalone spiking offence.

⁷ [Recorded Crime in Scotland, 2023-24](#)

⁸ [Women urged to stay alert as reported spiking incidents in Scotland surge](#)

⁹ [Drink-spiking victim demands action after no convictions for the offence last year - Daily Record](#)

¹⁰ [Our son died after someone spiked his drink with ecstasy - sick act must become a crime](#)

¹¹ [Tough new measures proposed by Scottish Conservatives to tackle surge in drinks spiking incidents | STV News](#)

¹² [PressReader.com | New law call to tackle rise in drink spikings](#)

¹³ [Creation of separate spiking offence 'should be examined further', MSPs told | The Standard](#)

A clear definition

VSS believes that developing a standalone spiking offence would make the act of spiking and the way it is prosecuted more streamlined and recognisable. At the most basic level, creating a standalone offence will provide a clear definition of spiking that is set in law. As alluded to in a previous answer, because spiking currently falls under other laws, there is no set, recognisable definition of what it is.

Creating a standalone offence that provides a clear definition will help to remove uncertainty of what counts as an incident of spiking. In turn, this will help to ensure that victims have a clear label of what happened to them rather than leaving them uncertain.

Recognition of the seriousness and harm caused

VSS believes that making spiking a standalone offence would signal clear recognition of the harm it can cause and send a stronger public message that such actions will be prosecuted. In parallel to our answer to the previous question, it could be argued that the criminal nature of spiking is insufficiently understood and respected. A standalone offence will help to platform and reinforce the serious health risks that can arise from spiking, such as vomiting, unconsciousness and even death.

Moreover, VSS staff report that where an incident of spiking has not resulted in anything further, such as injury or sexual assault, the incident of spiking in itself is less likely to be taken seriously largely because it is often the case that the immediate harms of spiking wear off during the next day.

As VSS has continually expressed, every crime type and its effects are serious. Sexual offences can leave victims particularly vulnerable with profound and long-lasting consequences for victims, affecting them physically, emotionally, and psychologically. Many victims experience trauma, anxiety, depression, post-traumatic stress disorder (PTSD), and a loss of confidence that can persist for years after the offence.

The impact often extends beyond the immediate harm, affecting relationships, education, employment, and overall quality of life. Victims may also struggle with feelings of fear, shame, or mistrust. The severity of these offences lies not only in the physical violation but also in the lasting damage to a person's sense of safety, dignity, and wellbeing. For this reason, making spiking a standalone offence will recognise the severity of this behaviour and its consequences.

Victim confidence and reporting

VSS contends that a standalone spiking offence will give victims more confidence to report instances of spiking. Having a clear, named crime of spiking to report could arguably support victims to feel as though they and the spiking incident will be taken seriously. As mentioned previously, it is estimated that only around 1 in 10 spiking incidents are actually reported in Scotland, with this believed to represent gross underreporting.

It would be our hope that an increased awareness of spiking as a clear, defined crime will lead to an increase in reports of spiking and consequently drawing attention to the potential true prevalence of this behaviour.

In our response to consultation question 1 in relation to non-fatal strangulation, we have highlighted data from the Crown Prosecution Service showing the increase in prosecutions of cases of non-fatal strangulation since it became a standalone offence. Whilst this section is focused on spiking, we would apply the same argument here to demonstrate that creating a standalone offence can support an increase in prosecution and in turn, victim confidence.

Moreover, a standalone spiking offence will help to support more standardised sentencing, further supporting victim confidence. The current method in which spiking is sentenced may result in a variety of penalties, where victims may feel anger and upset if the perpetrator in their case receives a lesser penalty than a perpetrator in a different spiking case. Streamlining and standardising sentences via a standalone offence will help to reduce such feelings of inequality amongst victims. We believe that this will help to support more victims to report spiking if they know the perpetrator may receive a specific penalty.

Deterrence

Moving further, a standalone offence will arguably, when coupled with public awareness campaigning, increase public understanding of the potential legal consequences of spiking – including the penalties that may be imposed.

- As a comparison, after the Hate Crime and Public Order (Scotland) Act 2021 was introduced, recorded hate crimes in Scotland increased by 63%¹⁴

A standalone offence would reinforce that spiking is a high-risk behaviour which will result in a criminal record.

Where people are made aware that a criminal record can affect many things such as gaining employment, it may encourage them to give further thought before engaging in

¹⁴ [Hate crimes recorded in Scotland soar by 63% - BBC News](#)

this behaviour. VSS is supportive of this as it would help to facilitate a reduction in victims.

Streamlined emergency services response

Medical

From our experience in working with victims of spiking, it is our understanding that there are often feelings of not being treated seriously by medical professionals either at the scene or in hospital.

Lived Experience

VSS is aware of an occasion in which a person (who does not drink or take substances due to an underlying medical condition) had been left unable to stand or open their eyes after being ejected from a bar with no emergency services called. They were taken to A&E by a parent where they sat for the rest of the night with no tests, despite the parent indicating the underlying medical condition and prescription medication they take. The victim and parent in this case were left feeling angry and ignored that no tests had been carried out and that they were left to sit all night.

Whilst on the occasion above, the parent was able to tell A&E staff about the medical condition and medication, this is not always the case. We support our colleagues at Spike Aware UK in their calls for medical professionals to take every case of suspected spiking seriously. We know that disregarding or downplaying the seriousness of a crime can cause additional trauma (both physical and psychological) for a victim. A standalone spiking offence would help to establish a streamlined medical response, providing an efficient and effective approach to dealing with suspected or confirmed spiking.

Police

We have heard that, under the current ways in which spiking is charged and prosecuted, there are discrepancies between police divisions across Scotland. Spiking can be pursued under a range of different offences, and it is an officer's decision as to which offence they arrest a perpetrator under. Indeed, Colin Mackie of Spike Aware UK stated in July 2026 that:

"We've been working with the police, because it was a bit of a postcode lottery, where you could be treated totally differently depending on where you lived.

"In one area, the police turned up and they'd never dealt with this.

"They got the CID involved, who were straight into the venue looking for CCTV.

“Another victim, under similar circumstances, went to a local police station, and they said, ‘oh, we’ve only got one officer that deals with spiking. They’re not here at the moment.’

“It was three weeks before they went to look for CCTV, which of course had gone by then”.¹⁵

Currently, the way in which spiking is pursued, under a patchwork of offences, can lead to variation across Police Scotland divisions in:

- Charging decisions
- Evidential thresholds applied by officers
- Whether incidents are recorded at all.

A standalone spiking offence would provide each division and officer with clear options when investigating and pursuing a spiking charge. As a result, when a report of spiking is received, a clear charge of spiking can be applied, rather than having to identify the ‘correct’ offence from the current patchwork of offences and rely on supervisor discretion. This could also help to reduce confusion amongst victims about which offence may be applied in their case. A streamlined approach arising from a standalone offence will therefore ensure efficiency, reduce confusion and ensure parity across Scotland.

VSS believes that under a standalone offence, spiking can be more easily taught in national training for police officers. A clear standalone offence will arguable be easier to explain and understand. Scenario-based training will be simpler to deliver for one offence and officers will not have to contend with the variety of situations which can currently occur. VSS contends that this will equip officers to explain clearly to victims about their situation and what will happen next, as next steps will now be streamlined.

Additionally, a standalone offence will allow for standardised first responses to reports of spiking across Police Scotland divisions. This could include across:

- Immediate safeguarding
- Protection of evidence for toxicology or forensics
- Use of body worn camera footage at the scene of a reported spiking

Standardised first responses are essential in ensuring accurate reporting and recording of potential spiking incidents. For example, Colin and Mandy Mackie of Spike Aware UK

¹⁵ [Our son died after someone spiked his drink with ecstasy - sick act must become a crime](#)

state that they felt as though the police did not take their concerns that their son Greg had been spiked seriously until the toxicology results came back.

We recognise the efforts by NHS24, Police Scotland and the Scottish Government in the ‘Public urged to be vigilant against spiking ahead of summer events’ spiking campaign. Alongside such guidance, it is imperative the NHS and Police Scotland provide the response, support and recording required when someone does report a spiking.

Improved data recording

In line with the arguments made in the previous paragraphs, a standalone spiking offence will result in streamlined and consistent recording of incidents of spiking. Consistent recording across Scotland will allow for the collation, monitoring and analysis of meaningful national statistics. This is important for monitoring trends and assessing the prevalence and prosecution of spiking in Scotland.

- For example, the 7600 estimated incidents of spiking in Scotland mentioned earlier in this response, could be proven to be true. In doing so, the true extent of spiking in Scotland becomes clear.

In addition, VSS contends that accurate and full national data on spiking will help to inform evidence-led prevention and policy responses from the Scottish Government, Police Scotland, spiking awareness charities and victim support charities. From VSS’s perspective, having accurate information about the crime and its prevalence helps to better inform our service delivery to ensure it is trauma informed, placing victims at the heart of what we do.

Nighttime Economy

VSS believes that a standalone spiking offence may also help to place more responsibility on the nighttime economy to take the behaviour more seriously.

VSS has heard from spiking victims that often bar staff, particularly security, are quick to assume that a victim has had too much to drink or has chosen to take a substance and eject them from a premises, rather than assess the possibility that they have been spiked.¹⁶ As highlighted previously in this section, we know that disregarding or downplaying the seriousness of a crime can cause additional trauma for a victim. Additionally, not responding appropriately to a suspected or confirmed case of spiking could result in serious health effects or death.

¹⁶ [Drink spiking: More victims tell their harrowing stories | UK News | Sky News](#)

We also advocate for Scottish Government endorsement of the provision of anti-spiking equipment such as cup lids and straw stoppers in bars and pubs. A standalone spiking offence could include a provision that all premises must offer anti-spiking equipment.

Question 3: Do you have any views on (a) how public awareness can be improved as to the dangers of spiking and (b) how to encourage individuals to report a spiking offence?

Answer:

Yes, Victim Support Scotland has views on how public awareness can be improved and how to encourage individuals to report a spiking offence.

Campaign

Victim Support Scotland believes that the right campaigns, placed strategically can be very powerful in reaching people. For example, traditional means of advertising should be utilised, such as posters in public places, but we also know that the way in which people consume content has evolved. As such, we see the benefit in public awareness campaigns on social media platforms where target audiences are most active, like Instagram and Tik Tok. This method also allows for these campaign materials to be reshared by other organisations like VSS to reach an even wider audience.

These campaigns should be made and platformed with the support of victim support organisations as they are experts in trauma informed language. Contact details for support organisations should also be included in campaigns, in case someone sees the campaigns and wishes to seek support as a victim of spiking.

Education

Children and Young People

Victim Support Scotland considers that education on spiking can be delivered at a relatively young age. For children, this education does not need to be framed around alcohol, drug and vape spiking, instead it could be framed in ways they understand.

We are supportive of Spike Aware UK's suggestion that the dangers of spiking can be explained to younger children through the context of allergies, illustrating the serious harm that can be caused from adding something into someone's food or drink that they are allergic to. This approach allows key messages about harm and responsibility to be communicated clearly and safely, whilst remaining easy to understand for the audience.

When children reach an age in which it is appropriate to introduce drug and alcohol education, the focus of education on spiking can then be moved to encompass drug, alcohol and vape spiking.

Universities

We know from our colleagues at Spike Aware UK that spiking is common amongst university students. Education should be delivered to both staff and students to ensure that as many people as possible within a university environment. As mentioned previously, where emphasis is placed on the seriousness of spiking to students, including the resulting criminal record for the perpetrator (if spiking becomes a standalone offence), this can contribute to reducing spiking.

As mentioned in the section on non-fatal strangulation, education should be delivered with a lived experience lens. That could be from a victim of spiking or from family members – for example, having Spike Aware UK deliver the education. VSS is strong in our belief that lived experience helps people to recognise patterns which could be applied in their own lives and helps to reduce stigma, making it easier for people to seek help.

From a victim support perspective, any education should emphasise to students that support is available through organisations like Victim Support Scotland and how to access this support.

Section 3: Statutory Aggravation – offences committed against pregnant women

Question 1: Do you agree for a new aggravation in relation to offences committed against pregnant women by a partner or ex-partner?

Answer:

Yes. Victim Support Scotland agrees for a new aggravation in relation to offences committed against pregnant women by a partner or ex-partner. From our work with victims of crime, we know that vulnerability can be heightened after a crime. Pregnancy creates its own unique physical, emotional and financial vulnerabilities which can put women at an even higher risk.

Firstly, we know that many women, especially young women, often do not recognise that they are victims of domestic abuse. VSS contends that there must be wider conversations and campaigns that demonstrate signs of what domestic abuse is. These conversations and campaigns must demonstrate the added risks that come if the victim is pregnant and subject to domestic abuse. 30% of all domestic abuse starts in pregnancy,¹⁷ so it is imperative that we recognise that necessary steps must be taken to stop this happening. Creating a statutory aggravation to protect pregnant women is a clear natural step to do so.

VSS observes that psychological abuse during pregnancy is frequently employed by perpetrators as a means of control, affecting women regardless of their circumstances. Drawing on experience of supporting pregnant women who have experienced domestic abuse, VSS highlights that pregnancy itself is often used by abusive partners to exert physical, emotional and financial control. Women report being told that they would be incapable of being a good mother or unable to care for a child independently.

Such experiences can be deeply distressing, contributing to feelings of isolation and entrapment—particularly in communities where being a single mother may carry stigma.

In light of this, VSS contends that the introduction of a statutory aggravation to specifically recognise abuse during pregnancy would represent a clear and proportionate step in protecting pregnant women, whether the pregnancy is known or not. It would both acknowledge the distinct vulnerabilities faced by pregnant women and provide an important measure of support through formal recognition of their experiences.

Data Recording

Victim Support Scotland believes that creating a new aggravation in relation to offences committed against pregnant women by a partner or ex-partner may also help to improve data recording of such behaviour, making it easier to track prevalence, identify patterns and inform more efficient responses to this behaviour. Any step that can be taken to better support victims should be taken.

Section 2: Prosecutorial powers to impose non-harassment orders

¹⁷ [IDVAs in maternity units - SafeLives](#)

Question 1: Do you agree to COPFS being given a power to make a Non-Harassment Order (NHO) against a person when offering an alternative to prosecution?

Answer:

No. Victim Support Scotland does not agree to COPFS being given powers to make NHOs against a person when offering an alternative to prosecution.

VSS contends that we may have been more inclined to support this proposal if we were confident about penalties being imposed for breaches of NHOs. We are not aware of data on this, but an FOI response showed the increases from 10 prosecutions for breaches in 2010/11 to 269 in 2019/20.¹⁸ This shows a significant, worrying increase and would suggest lack of adherence to these orders, which is terrifying for victims.

VSS raises concern that giving this power to COPFS would result in a move away from a presumption in favour of prosecution in domestic abuse cases. VSS understands that only around 70% of people who ask for NHOs to be put in place receive them. and so, we understand and support the desire to expand the ability to allocate them. Through our work with victims and collaboration with other victim support organisations, we know that it is often the case that victims simply want offenders to stop the harmful behaviour.

- For example, Scottish Sentencing Council data shows that eight out of ten perpetrators of domestic abuse avoid being sent to jail¹⁹

Given recent policy measures aimed at achieving a sustainable prison population, some approaches that VSS has consistently expressed concerns about (and have articulated in our response to Prison population and penal reform - working towards a sustainable prison population: consultation), we express further concern that if COPFS were granted this new power, it could lead to NHOs being used more frequently as a means of alleviating pressure on the prison system. We caution that an overuse of NHOs could erode public and victim confidence in the criminal justice system, potentially fostering feelings of fear, upset, disillusion, and ‘what is the point.’

Domestic abuse in any form can cause lasting physical, emotional and psychological harm and should be treated as such through robust court processes which allow for the full examination of the behaviour and its effects. VSS, in tandem with other Victim Support organisations believe that if domestic abuse is serious enough to require an NHO, then it should be prosecuted. We know that some victims will feel safe enough

¹⁸ [Number of breaches of non-harassment orders: FOI release - gov.scot](#)

¹⁹ [No jail term for eight in ten domestic abuse cases in Scotland | Daily Mail Online](#)

with an alternative to prosecution and an NHO being in place for their perpetrator, but we also know that many would not feel safe enough with this and as such, it would be pertinent for this to be evaluated within court.

We understand that in many cases, victims simply want the perpetrator to leave them alone and do not want to face the additional trauma of a court case. Where a victim is considering withdrawing from the process, victim support organisations should work closely with them to understand their concerns and identify any practical or emotional barriers to participation in the justice process. Risks to the victim should also be assessed and clearly explained to support informed decisions about any protective measures or additional support that may be required. It is important to avoid creating a situation where perpetrators believe they can evade prosecution if a victim is considering withdrawing from the process, as this could lead to increased pressure, coercion, or intimidation of victims to disengage. This demonstrates the vital role of victim support organisations and reinforces the need to ensure these organisations are sufficiently funded and resourced to provide this support.

Prosecution through court allows for the opportunity for representations to be made and witnesses to be heard, including from the police, who are often the ones to see the true extent of domestic abuse when responding to a call for help. Additionally, it may be the case that not all information is recorded in a police report, a witness statement in court can allow for more information to be presented and considered in the overall prosecution decision.

Removing the opportunity for representations or witness statements to be made diminishes the opportunity to fully explore the true extent of what could have occurred in that relationship. We therefore question on what basis and detail COPFS will make their decision to prosecute. We would caution that if the decision is based solely on the police report from one occurrence of harmful behaviour with no opportunity for further evidence to be considered, this could result in detail about wider behaviours being missed and the potential for an NHO to not be imposed.

We raise concerns that the current system for imposing Non-Harassment Orders (NHOs) is not functioning as effectively as it could. Victim Support Scotland has encountered cases where victims are not informed of the conditions attached to an NHO when one is granted, leaving them uncertain about the protections in place for their safety. There is also clear evidence that NHOs are not consistently granted, even where they are requested.

For example, between July and October 2025 in Glasgow, 79 NHOs were sought at summary level, yet only 60 were granted. At solemn level, 11 requests resulted in just 7

orders being imposed. Victim support organisations have raised concerns that there is no apparent reason for these figures not being higher, and that outcomes should be closer to 100% where an NHO has been requested. Notably, during the same period, 100% of NHOs requested at Glasgow High Court level were granted, likely reflecting the clearer recognition of perpetrator risk in more serious cases.

Colleagues in the wider victim support sector have seen an increasing number of prosecution decisions being made based on individual incidents rather than the broader pattern of behaviour, particularly in summary cases. This incident-based approach risks overlooking the cumulative nature of harm and, as a result, underestimating the level of risk posed to victims. VSS raises concern that this may be replicated if this power is given to COPFS. In light of this, VSS seeks clarity on how COPFS will ensure that all relevant information is fully considered in each case. This is particularly important given that the consultation indicates many cases directed to COPFS are likely to be at summary level. Without robust safeguards, there is a real risk that women who request and would benefit from an NHO may continue to be denied one. Additionally, although the rollout of Summary Case Management has had a positive impact on court backlogs, it would have benefit for clearer guidance around how to refer to victim support organisations to assist victims to understand this procedure and implications for court.

We understand from victims and our colleagues at ASSIST that where there is a decision not to impose an NHO, it can foster feelings of ‘it can’t be that bad if they think I don’t need protection.’ This can be upsetting for victims and serves to invalidate their experience of domestic abuse. As explained in the paragraph above, we would be concerned that where there is not a court case, granting of NHOs may decline further without the opportunity to examine wider evidence.

VSS raises concerns that the consultation document states that only ‘certain cases’ will be subject to this. This raises questions as to what the rationale for deciding whether to offer an alternative to prosecution is, and also who will be responsible for making these decisions. Firstly, as a victim support organisation, we fear that if it is only ‘certain cases’ that will be subject to this, this could impact victim confidence – generating questions of ‘why is one case receiving this, but mine isn’t.’ Whilst we acknowledge that there would likely be an underlying rationale for this, this can be difficult for victims and families to understand and process. Moreover, ‘certain cases’ could be interpreted to infer that decision making would be based on severity, however, it is our stance that every case of domestic abuse is severe and can have wide ranging impacts on victims. Moreover, in relation to points made above, we question what evidence would be taken into account when making the decision.

Alongside our colleagues at ASSIST, we are further concerned that victim access to emotional and practical support from VSS, and advocacy from, for example, ASSIST whilst the case is being considered via the court system, would not be replicated if COPFS becomes the main body for deciding whether to impose an NHO. Domestic Abuse Court Advocacy (DACA) is essential in ensuring that victims of domestic abuse can have their voices heard throughout the criminal justice process. VSS would be concerned that moving to a presumption against court prosecution for some domestic abuse cases, would result in a loss of this vital support for victims of domestic abuse.

Question 2: Do you agree on how applications to vary or revoke an NHO made by COPFS should be handled with court involvement suggested for any appeals?

Answer:

No. Victim Support Scotland does not agree on how applications to vary or revoke an NHO made by COPFS should be handled with court involvement suggested for any appeals. We reiterate that we do not agree that COPFS should be given the ability to impose NHOs.

Victim Support Scotland would welcome further clarity on the rationale for enabling COPFS to make an NHO while requiring court involvement to vary or revoke it. It would be helpful to understand why confidence would be placed in COPFS at the initial stage of making an NHO, but subsequent court involvement is required for varying or revoking it. This raises questions about whether COPFS is best placed to make this decision in the first instance.

Additionally, VSS contends that if a victim has had an NHO made in their case without the involvement of the court, it could be retraumatising for them to be told that the case will now go to court for the NHO to be varied or revoked.

Question 3: Do you agree an NHO made by COPFS as part of an alternative to prosecution should have a maximum time period of 12 months?

Answer:

No. Victim Support Scotland does not agree an NHO made by COPFS as part of an alternative to prosecution should have a minimum time period of 12 months. We reiterate that we do not agree that COPFS should be given the ability to impose NHOs.

VSS raises concerns about efficiency. For example, where a case is initially considered suitable for a COPFS decision involving an NHO of up to 12 months, but is later deemed to require a court hearing for a longer NHO or the imposition of a custodial sentence, the process has become inefficient. This situation may also be distressing for the victim, particularly if expectations change and they are subsequently informed that they may need to attend court and face the perpetrator.

In relation to the questions in this section on NHOs, VSS would welcome further clarity on who within COPFS would be responsible for decisions regarding the granting of NHOs outside of the court process. We consider it important that people making decisions in domestic abuse cases have appropriate experience and understanding of the complexities such cases can present. We also stress that, in line with the victim-centred approach to justice, decision makers must be trained in trauma informed practice with demonstrable experience in delivering trauma informed service and support. We caution that without this, victims face a process that may feel exclusionary, causing more trauma in addition to the primary trauma caused by the crime.

Section 5: Online and technology-facilitated harm

Background:

This section seeks views on new laws relating to intimate images in terms of the creating of artificial intimate images of someone using software - often referred to as “deepfake” intimate images - and the tools used to create such images.

The Scottish Government proposes introducing a new creation offence and a new requesting the creation offence.

Question 1: Do you agree with the Scottish Government proposal for a creation offence?

Answer:

Yes. Victim Support Scotland agrees with the Scottish Government proposal for a creation offence.

Our increasingly digitised world is driving an increase in reported digital crime types. Through our work, VSS knows that more needs to be done to mitigate the harmful impacts of these crime types and the ever-evolving facilitative technology used to carry out such crimes and harmful behaviour. Legislation in Scotland must therefore evolve to ensure that it keeps up with new technologies so that victims of this harmful

behaviour are not unintentionally excluded and that victims who receive unsolicited intimate images receive protections also.

The point at which intimate images or purported intimate images are created could be seen as the point at which this harmful behaviour begins for a victim. By legislating to make creation illegal, we can tackle this behaviour and distressing content from the root, rather than the anticipation of further harm when it is shared. There are a variety of images that can be created which cause harm and this is not limited to intimate images.

Prosecuting the creation of intimate images or purported intimate images could act as an important pathway to uncovering wider patterns of harmful behaviour. VSS is aware that in many cases intimate images can be used as part of coercive control against a partner in cases of domestic abuse and fraud/sextortion. Prosecuting at the point of creation could therefore offer the opportunity for other crimes and harms to be uncovered. Moreover, as these images are being created online, there could be opportunity to reveal patterns and the evolution of this behaviour, helping to create a fuller picture of patterns of behaviour. Enabling this at the creation stage, offers the opportunity to potentially stop additional harms before they worsen further.

In creating this offence, Scotland will come into line with England and Wales where creating deepfake non-consensual intimate images was made an offence under the Data (Use and Access) Act 2025. This is important so that Scotland keeps up with other parts of the UK and so that victims in Scotland are not left without protections where their English and Welsh counterparts are covered. #

Question 2: Do you agree with the proposal for a requesting creation offence?

Answer:

Victim Support Scotland agrees with the proposal for a requesting creation offence alongside the creation offence.

By criminalising the request itself, VSS suggests that individuals could be deterred from initiating this harm which has the potential to result in long lasting harm to victims. Additionally, we suggest that provision of a requesting creation offence would help to close to any legal gaps in which those who request the creation of such images are not held accountable. To add to this, the act of requesting the creation results in a secondary perpetrator, that is, there is the perpetrator who requests the creation and the perpetrator who is carrying out the request. Making this an offence will help to charge two perpetrators, bringing a more well-rounded sense of justice for victims.

Creating a specific offence for requesting the creation of intimate images or purported intimate images would be a necessary step because it would help to target harm at the earliest point rather than only after images are created and potentially distributed. VSS would argue that requesting the creation of such content signals a harmful intent which can and will only serve to cause harm and distress to victims.

In making requesting the creation of these images an offence, it would also signal to society that using new technology such as AI to create such images is no less serious than taking photos or videos of a person.

As with a creation offence, a requesting the creation offence may also help to expose patterns of harmful behaviour such as domestic abuse, harassment or stalking, or malicious intent. VSS would also argue that criminalising the request to create could reveal intent and persistence, which could be relevant factors in identifying harmful behaviour. Any opportunity to stop the creation of such content at the earliest stage, in this case the point at which a request is made, is welcomed and should be legislated for. This would offer one of the best opportunities to stop such content progressing to the point of creation.

Additionally, we believe that creating an offence of requesting the creation of an intimate image may help limit, and ultimately prevent, the commercialisation of intimate image abuse. Criminalising the requesting of such images would not only target those already engaging in this behaviour but could also deter the growth and expansion of this market. This is important across all ages and genders, but is particularly significant in the context of the increasing severity and prevalence of child sexual exploitation.

In creating this offence, Scotland will come into line with England and Wales where requesting the creation of a deepfake non-consensual intimate images was made an offence under the Data (Use and Access) Act 2025. This is important as online harm does not have country boundaries so victims in Scotland would benefit from wider protection.

Question 3: Do you agree with the proposal for a new production, supply and offering to supply offence?

Answer:

Yes. Victim Support Scotland agrees with the proposal for a new production, supply and offering to supply offence.

Similar to answers given previously in this consultation, VSS would argue that the intent behind producing, supplying and offering to supply suggests the same intended harms as the other proposed offences.

As mentioned in a previous answer, our increasingly digitised world is driving the creation of new technologies and expanding their capabilities, and we know that the current law was created prior to these technologies existing or becoming prevalent and more advanced. As a result, legislation must continue to evolve alongside these technologies. A new offence covering production, supply and offering to supply would support the take down of these technologies that are being used to 'nudify' or generate content without consent.

VSS suggests that criminalising production, supply of and offering to supply intimate images would help to reduce and stop the creation of such harmful material by criminalising the tools that exist to generate images and content. Such an offence would help in the enforcement of the Online Safety Act so that online sites are obligated to remove such harmful content.

Criminalising intimate image generators will support all arguments VSS has made earlier in this section on online and technology facilitated harm.

We would also support education initiatives around this crime as many of the tools that are available may present like a game. Young people need to be supported to understand the harms caused and the associated criminality. We need to create the societal conditions where these acts are not 'the norm' and are actively seen as not acceptable.

Question 4: Do you consider that there are any specific changes to the current criminal law that would improve how the justice system is able to respond to technology-facilitated and online harms?

Answer:

Yes. Victim Support Scotland considers that there are changes to the current criminal law that would improve how the justice system is able to respond to technology-facilitated and online harms.

Expanding the definition of a deepfake:

As a country, we are increasingly desensitised to graphic detail shared online. VSS has previously campaigned to moderate the detail and volume of graphic and detailed content that is available online about murders involving child victims in Scotland. This

campaign focused on the impact, availability and prevalence of this information, and the effect it has on surviving siblings.

To build on this, Victim Supporting Scotland is advocating for the expansion of the definition of a deepfake to recognise the harms caused beyond the intimate nature only of deepfakes. Currently, the Abusive Behaviour and Sexual harm (Scotland) Act 2016 outlines deepfakes as ‘purported intimate images,’ but we believe that this definition should be expanded to encompass further harms, for example AI-generated images of deceased people.

We feel it is important to reference wording from the Victims, Witnesses and Justice Reform (Scotland) Act 2025 in regard to impact and suggest that this wording in Section 109, Subsection 4(g) could be used to expand the definition of a deepfake to one which causes:

‘physical or psychological harm (including fear, alarm and distress)’.

We further reference wording used in Section 57, Subsection 2 (4C) which it states;

‘may have an adverse impact on the safety and security or on the wellbeing of

(a) a victim

(b) a member of a victim’s family, or

(c) any other identified person or group of persons.’

Given this wording is in legislation for other aspects of the criminal justice system, it is appropriate that this could be extended to online digital harms.

We have increasingly seen the necessity for this given the growing appetite for true crime, user-generated content and the development of AI. Through our support services, we see firsthand how distressing this kind of content can be for victims and their families. Change in law must be accompanied by a cultural shift in which people give much more consideration to the victim or subject of the content.

Lived Experience

Victim Support Scotland has increasingly encountered technology facilitated harms caused to victims and their families. VSS’s Support for Families Bereaved by Crime service have been supporting a family who encountered a TikTok video

which contained AI generated content of a deceased family member recounting the circumstances of their death.²⁰

The family in this situation described this as a deeply distressing and unsettling situation which brought a renewed sense of grief. They also described it as feeling like an intrusion on their memory of their family member. The family expressed concern that this content could be made and shared so freely, this created a sense of lack of control which only added to their distress and negatively impacted their wellbeing.

As a result of this, the family alongside VSS, are clear in their belief that there should be stronger protections in place to prevent this type of content being created and shared. VSS is steadfast in our support of this. Parallel to the family's beliefs, this type of content should be viewed as a violation of dignity and something that should not be permissible by law.

Additional considerations that should be made in such situations relate to protecting children. VSS wishes to highlight complexities and the distress that could be caused if a child was to view AI generated content of a deceased family member. It may be the case that the family has chosen not to disclose to the child how the family member died. Exposing a child to this could be highly traumatic.

Question 5: Do you have any views to offer on further steps to reduce online and technology-facilitated harm?

Answer:

Victim Support Scotland emphasises that whilst the previous questions in this section focus on legislating against intimate image offences, other types of technology facilitated harms such as romance fraud, financial scams, social media abuse and online stalking, all also perpetrated through technology, must not be forgotten. As cyber crime has increased by 83% in five years,²¹ it is imperative that the seriousness of these crimes is acknowledged in policy and that robust policing responses are in place to deal with these crimes. We support the need for education on the criminal nature of these crimes, alongside more traditional forms of crime, placing emphasis on the real-world consequences they have.

Lobby the UK Government

²⁰ [Scots mum 'disgusted' at AI TikTok video of daughter telling story of her own death | STV News](#)

²¹ [Recorded Crime in Scotland 2024-25](#)

VSS encourages the Scottish Government to continue lobbying the UK government to ensure that all, but especially the provisions which extend to cover Scotland of the Online Safety Act 2023, are fully enforced and monitored. This is particularly relevant in relation to ensuring that online platforms remove harmful content at pace to reduce the harms caused to victims and families.

Education and digital literacy

VSS believes that age-appropriate education on online and technology facilitated violence against women and girls should be delivered to children and young people. Education on online safety, respect, consent and gender equality should be embedded in schools and adult learning environments. We know that young brains are the most impressionable, and so instilling from a young age that misogynistic and violent views against women and girls will not be tolerated is imperative.

Children and young people should also be equipped to recognise online abuse, harassment and manipulation and also if they are victim of this, how and where to seek help. We also need to ensure that positive male behaviours are included in a strengths-based approach as part of a strategy to reduce the attractiveness of being caught up in online misogynistic behaviour, much of which is tantamount to abuse and criminality.

Additionally, we support ongoing efforts to educate children and their carers on the dangers they and children may face online, how to recognise harmful online behaviour and on smart and respectful use of social media. Where adults learn to be responsible and respectful online, children may be more likely to follow. The online dangers are an evolving picture and, as such, we support efforts to ensure the education content keeps pace with the changes.

VSS would like to see delivery of such education in schools, places of higher education and in workplaces to ensure widespread coverage. Delivery of Equally Safe across Scotland would prove a sound starting point for this.

Undertaking a public awareness campaign

VSS understands that the Scottish Government intends to consider a 'Pause before you post' campaign for parents. We ask that this campaign is extended beyond parents to include everyone who posts online.

Increased ability to remove content

VSS would value the ability to contact social media platforms, on which the offensive material is available, in order to fast track removal of harmful content. Partner status

exists for one platform, but it is very challenging to make contact with other platforms directly, enabling the swift removal of harmful content.

VSS has an effective community partnership in place with TikTok which provides a direct link to have offensive or harmful content removed. Families are able to report distressing content to VSS, and we in turn complete a form to alert TikTok to the content, which is then reviewed and deleted if it is found to violate their guidelines. This means that harmful and offensive content can be dealt with as swiftly as possible.

VSS is asking for improved reporting procedures and this functionality and prescribed status to be extended across all social media sites. We seek further clarity and increased transparency for people who report online harm as to the process social media companies undertake when content is reported to them and a decision is made that it is criminal behaviour.

Referral pathways for victims of online harm

VSS would like to see an increased and more explicit offer of support to victims of online fraud. Victims of fraud may not necessarily consider themselves to be victims and therefore are perhaps less likely to seek support from a victim support organisation. Direct links from banking sites, apps, and platforms would help encourage victims of fraud to seek support beyond financial recompense.