



Victim Support Scotland (VSS) is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime within each local authority and every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers.

Improving victims' experiences of the justice system Consultation

Victim Support Scotland Response

Chapter 1 – Victims' Commissioner

Question 1: To what extent do you agree or disagree that the Victims' Commissioner should be independent of the Scottish Government?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Victim Support Scotland (VSS) believes that the Victims' Commissioner should be an independent and critical component in advancing the voices of victims and witnesses in influencing positive changes across the criminal justice system. We produced a document in September 2021 titled 'Making the case for a Victims' Commissioner for Scotland'.¹ This document outlines our position on the role and scope of the powers associated with the role.

We believe that to generate public trust and confidence in the role the Commissioner requires to be independent of the Scottish Government, with the necessary powers to hold the Scottish Government and other criminal justice bodies to account for any issue related to victims' rights in

¹ [Making the case for a Victims' Commissioner for Scotland - Victim Support Scotland](#)

Scotland. Public confidence in the independence of the role is extremely important and we would cite the success of the Commissioner for Children and Young People in achieving and maintaining that independent status in the eyes of the public.²

We have received the following feedback from our service users on the independence of the Victims' Commissioner to evidence our position:

'If there is a Victims Commissioner it has to be independent of the criminal justice system. If they go in with good intentions, it will smother them. Has to be independent of archaic system.'
(Individual A who had experienced stalking)

'A Victims Commissioner should 100% be independent, it can't be part of the government. It should be one of you guys (i.e., an organisation like Victim Support Scotland). They should be invited to all the meetings.' ***(Individual who had been a victim of attempted murder)***

'I think it is very important that we do have a Victims' Commissioner as victims and survivors are a large part of society that aren't dealt with properly at the moment... The Victims' Commissioner should be independent of the system, they should be allowed to rock the boat and should do so.' ***(Individual B who had experienced stalking)***

'Instinct tells me they should be independent of Government entirely. If connected they are aware of budgets and money and biased due to that. While if completely independent not constrained by that. However, if working for government they might have more power? It is important that they have power too.' ***(Individual who had experienced sexual assault)***

Question 2: To what extent do you agree or disagree that the Victims' Commissioner should be a statutory role?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer

VSS believes that the role and powers of the Victim's Commissioner should be set out in statute. Having a clearly defined role in legislation along with suitable powers to hold others to account will be a crucial factor in upholding the rights of victims and witnesses in Scotland. We do not believe that a non-statutory model such as those cited in the consultation document are appropriate for this role.

² [Home - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](http://www.cypcs.org.uk)

Question 3: To what extent do you agree or disagree that the Victims' Commissioner should be accountable to the Scottish Parliament?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

VSS believes that the Victims' Commissioner should be appointed by and be accountable to the Scottish Parliament. Having the Commissioner accountable to the Scottish Parliament would avoid any perception of political influence or interference on the role. It would allow the Commissioner to discharge their role within the boundaries set by legislation and then be accountable to Parliament rather than directly to the Scottish Government. We would again cite the example of the appointment section of the legislation creating the Children and Young Persons Commissioner legislation.³

We have received the following feedback from our service users on the accountability of the Victims Commissioner to evidence our position:

***'The whole current system is broken, but the Victims' Commissioner must be accountable to someone, so there is a trust issue there about what the power of the Victims Commissioner will be [depending on who they are accountable to]. They need the power to effect and enforce change because it's so out of balance.'* (Individual A who had experienced stalking)**

Question 4: How do you think the Victims' Commissioner should be held accountable? Please select all that apply.

a) annual report to be published and laid in the Scottish Parliament

b) multi-year strategic plan to be published and laid in the Scottish Parliament

c) other – please provide details

Please give reasons for your answer

Victim Support Scotland believes that the Commissioner should be accountable to the Scottish Parliament and only in cases where the parliament believe they have breached the terms and conditions of their appointment should they be removed by parliament, which is contained within the case for the Children and Young Peoples Commissioner legislation.⁴ This approach would ensure that the role is free of political interference and there remains the ability to remove the Commissioner in instances of them not fulfilling their role.

Also, to ensure accountability we support the requirements that the Victims' Commissioner should produce an Annual Report and set out a multi-year Strategic Plan. We believe that these

³ [Commissioner for Children and Young People \(Scotland\) Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2003/10/section/1)

⁴ [Commissioner for Children and Young People \(Scotland\) Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2003/10/section/1)

should be laid before the Scottish Parliament and be made accessible to the public in a variety of mediums to allow as much public scrutiny of their work as possible. We also believe that the Commissioner should provide evidence to parliamentary committees as and when required in both written format and in person.

Question 5: In your view, what should the main functions of the Victims' Commissioner be? Please select all that apply.

a) raising awareness/promotion of victims' interests and rights

b) monitoring compliance with the Victims' Code for Scotland, the Standards of Service for Victims and Witnesses and any relevant legislation

c) promoting best practice by the criminal justice agencies and those providing services to victims, including championing a trauma-informed approach

d) undertaking and/or commissioning research, in order to produce reports and make recommendations to the Scottish Government, criminal justice agencies and those providing services to victims

e) other – please provide details

Please give reasons for your answer.

Victim Support Scotland would support the above functions for the Victims' Commissioner.

We believe that an additional function should be to consider complaints about criminal justice organisations and other relevant bodies in relation to their compliance with the Victims' Code. We would add that these complaints should only be considered by the Commissioner once the relevant complaints process of the relevant criminal justice or other public authority has reached its conclusion. We would cite the role of the Victoria Victims' Crime Commissioner in Australia who has powers to investigate complaints regarding non-compliance with their victims' code.⁵

As well as outlining what functions the Commissioner can do, we would also advocate for setting out in the legislation what functions the Commissioner cannot do.

The functions of the Commissioner should then be available to the public for them to have the knowledge and confidence of what role the Commissioner can have in assisting them. This would also allow the Commissioner to have a clear set of parameters to their functions. We would cite the example of the Victorian Victim's Crime Commissioner in Australia where the role and remit are accessible to the public along with a list of functions that the Commissioner does not do.⁶

We have received the following feedback from our service users on the functions of the Victims' Commissioner to evidence our position:

⁵ [What we do | Victims of Crime Commissioner](#)

⁶ [What we do | Victims of Crime Commissioner](#)

'I would hope the Victims Commissioner would be a strong advocate and voice for what is really wrong in the system. It is not enough to say what victims are feeling and that there are delays etc. (Individual A who had experienced stalking)

For 'other' functions of the Victims' Commissioner victims mental health is so important. It is unbelievable that people are not offered more support from psychologists. So the Victims' Commissioner would speak out about rights including mental health, working with health services. (Individual who had experienced sexual assault)

I've campaigned and sat around the table with officials highlighting families' concerns, ideas to improve matters but very little change has come about over many years. They nod their heads, agree changes are required to improve it but then they move on to a new post and families are left to start all over again. It's shambolic a disgrace there is no 'justice for families'. Scotland desperately needs a Victims' Commissioner in order to 'carry the banner' it's not rocket science. (Individual bereaved by crime)

Question 6: What do you think should be within the remit of a Victims' Commissioner for Scotland? Please select all that apply.

- a) the experience of victims in the criminal justice system
- b) the experience of victims in the civil justice system
- c) the experience of victims in relation to the Children's Hearings system
- d) the experience of victims resident in Scotland, but where the crime has taken place outwith Scotland
- e) other – please provide details

Please give reasons for your answer.

We believe that a Victim's Commissioner should have the remit to deal with victims' issues regardless of the setting.

In relation to the criminal justice system, victims of crime often tell us that they feel unheard within the system. We would argue that there are many civil processes where the victims of crime, particularly related to domestic abuse, require support and for their needs to be accounted for within the civil justice system.

In relation to the Children's Hearing system the new Children's Care and Justice Bill will bring more older children into the hearing system and away from the traditional court setting. Our experience, and that of other organisation's is that victims of crime where the person who has caused them harm is dealt with in the Children's Hearing system receive less information and therefore less support that they would otherwise. There is also currently no requirement for the Scottish Children's Reporters Agency to comply with the standards of service required under the Victims' Code. We would strongly argue that there is a need for changes to be made in the Hearing system regarding victims' rights.

Question 7: What powers do you think the Victims' Commissioner should have? Please select all that apply.

a) the power to carry out investigations into systemic issues affecting victims of crime

b) the power to require persons to give evidence in the course of an investigation

c) the power to make recommendations to the Scottish Government, criminal justice agencies and those providing services to victims

d) the power to require persons to respond to any recommendations made to them (by the Victims' Commissioner)

e) other – please provide details

Please give reasons for your answer.

VSS agrees that the above recommendations are appropriate powers for the Victims' Commissioner.

In addition, we believe that the Commissioner should have the powers to review complaints from victims where there is some question as to whether their rights under the Victims' Code has been complied with or not. We believe that the Commissioner should have the power to investigate and remit complaints back to the public body to which the Victims' Code applies, with a direction on how the complaint should be dealt with, or a specific recommendation regarding a process or processes. As we have previously mentioned in question 5 of this consultation, we see the model in Victoria in Australia as being the ideal model where the Commissioner has the powers to investigate complaints where the Victims' Charter, in their case, has not been complied with.⁷

We have received the following feedback from our service users on the powers of the Victims' Commissioner to evidence our position:

The Victims' Commissioner should be able to do independent investigations into the scandalous failings of the criminal justice system... It can't be the case that "now we have a Victims' Commissioner, everything is fine." (Individual A who had experienced stalking)

***'It should be easier for people to take up complaints, it is about holding the police and the justice system to account. This might be a role of the Victims' Commissioner.'* (Individual B who had experienced stalking)**

***'The Victims' Commissioner could examine the time bar restrictions of civil cases against the police – police are protected where others are not. It is important that victims and survivors have the ability to take the police to task if they have not behaved in an appropriate manner.'* (Individual B who had experienced stalking)**

Question 8: To what extent do you agree or disagree that the Victims' Commissioner should be required to consult with victims on the work to be undertaken by the Commissioner?

Strongly agree

⁷ [What we do | Victims of Crime Commissioner](#)

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

VSS strongly believes that the Victims' Commissioner should be required to consult victims of crime on the work that they undertake. We believe that only through speaking with victims of crime and hearing their experiences of the justice system will the Commissioner truly be able to formulate a plan of work that will strive to make the criminal justice system work better for victims of crime.

We would also want to ensure the Victims' Commissioner engages with unheard/hidden victims voices from minority groups and traditionally seldom heard areas of society.

Question 9: How do you think that engagement with victims should take place? Please select all that apply.

a) advisory board, including victim representatives

b) victims' reference group

c) focussed consultations with victims

d) ad hoc engagement with victims

e) other – please provide details

Please give reasons for your answer.

VSS believes that a multi-faceted approach is necessary to engage with victims of crime, this would mean that victims have choice in how they engage allowing for a more trauma-informed method. Each victim of crime is different, and, in many cases, their preferred engagement method will be different. We would therefore advise looking at different approaches depending on the area being considered by the Commissioner.

We have received the following feedback from our service users on how the Victims Commissioner should carry out engagement to evidence our position:

***'I would want the Victims' Commissioner to listen to me face-to-face, would want to hear what they are going to do about issues. I would want someone from the team to come to my house. To be a hands-on organisation, to arrange a meeting between me and the organisation that failed me... The Victims' Commissioner needs to be the opposite [in style] to the existing system to have trust - it needs to be hands-on, personable, visible, in contrast to the existing system. To have a human aspect. What made a positive difference in my court case was someone taking the time to explain things one-to-one on the phone.'* (Individual A who had experienced stalking)**

'The Reference Group model would work well with Victims Commissioner if there was to be somebody who contacted people and explained one-to-one.' (Individual A who had experienced stalking)

'For Victims' Commissioner victim engagement, it would be really useful if there was a portal for members of the public to directly ask questions of the Victims' Commissioner directly, or for a team working for them to filter.' (Individual B who had experienced stalking)

Question 10: Are there any specific groups of victims who you think the Victims' Commissioner should have a specific duty to engage with? If so, who are they and how should that engagement take place?

Yes – please provide details

No

Unsure

Please give reasons for your answer.

We would advocate that the Commissioner should have a specific duty to engage with groups of victims if they are carrying out investigations related to the crimes that a specific group have encountered. For example, domestic abuse, violence against women and girls are two of the obvious examples of this.

Question 11: To what extent do you agree or disagree that the Victims' Commissioner should be required to consult with organisations that work with victims, on the work to be undertaken by the Commissioner?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Victim Support Scotland believes that there is a considerable amount of knowledge of victims' rights and practical experience working with people affected by crime among organisations and public agencies across Scotland. For the success of the new office, it is essential that the Commissioner takes advantage of this and works together with current organisations and agencies. The Commissioner would, in our view, be most successful as a complement to current services to victims and witnesses, not a replacement.

We believe the Commissioner should complement Victim Support Services by promoting and safeguarding the interest of victims and witnesses

Question 12: Are there any other relevant bodies or organisations that may have an interest in the work to be undertaken by the Victims' Commissioner?

As well as the main victims' organisations the Victim's Organisation Collaboration Forum (VOCFS) is a collective of key victims' groups who advocate for change within Scotland's justice system by engaging with criminal justice agencies.

These are main criminal justice agencies such as the Crown Office and Procurator Fiscal Service (COPFS), Police Scotland, Scottish Courts and Tribunal Service (SCTS). Other agencies such as COSLA, Community Justice Scotland and Criminal Justice Social Work have interests in ensuring victims' rights are considered in their work.

There are many third sector and community groups who will also have an interest, some of the umbrella bodies like SCVO and TSIs can perhaps advise.

Question 13: To what extent do you agree or disagree that the Victims' Commissioner should not have the power to champion or intervene in individual cases?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Victim Support Scotland acknowledge that there are already mechanisms in place to handle individual complaints and agree the Commissioner should not duplicate those processes. However, we question the extent to which these are used, in particular the Public Service Ombudsman which is listed as the escalation point for complaints about any organisation listed in the Standards of Service for the Victims Code.

If the Commissioner finds that the Victims' code has not been complied with in a particular case, or where a victims is not satisfied with the way their complaint has been dealt with, we believe the Commissioner should be able to investigate. As we have previously mentioned in question 5 of this consultation, we see the model in Victoria in Australia as being the ideal model where the

Commissioner has the powers to investigate complaints where the Victims' Charter, in their case, has not been complied with.⁸

We believe however that the Victim's Commissioner should be the ultimate arbiter of the Victims' Code and whether it has been complied with or not as this would ensure a body with specific knowledge of the criminal justice system is investigating the complaint.

This power would be limited to compliance matters related to the Victim's Code. Victim Support Scotland believes that the Commissioner should be an agency protecting victims, to whom they can turn when their rights are not fulfilled, have been violated, or when no other relevant remedy exists. If the complaint did not relate specifically to the Victims' Code, then a victim of crime would be directed towards the Scottish Public Services Ombudsman.

We have received the following feedback from our service users on the power of the Victims' Commissioner to intervene in individual cases to evidence our position:

'Who is going to intervene in the case of situations where somebody has been treated disrespectfully? Could be Victims' Commissioner or their team they manage, but there has to be someone who intervenes. There has to be somebody to hold them to account.' (Individual A who had experienced stalking)

'The Victims' Commissioner should have the power to intervene in individual cases where it is agreed justice is not done or the police or justice system have not been behaving appropriately.' (Individual B who had experienced stalking)

'I think the VC should be able to intervene in individual cases. If a particular case has been found to be unjust they should be commenting on that and intervening in that. Cases do relate to each other so this is important.' (Individual who had experienced sexual assault)

Question 14: Are there any other matters relating to the proposal to create a Victims' Commissioner for Scotland you would like to offer your views on?

We have supplied an additional general comment about the Victims' Commissioner from one of our service users to evidence our position:

'A Victims' Commissioner would be a good idea. As victims you are often hearing in the media about prisoner rights and prisoner conditions, but I've never in my life heard about victims and the impact of crime after it has happened. There is a myth in society that you once you get a conviction you as a victim get closure and move on. I feel what is absolutely lacking is awareness of victims and witnesses. In some ways, I can't believe there isn't a Victims' Commissioner already considering there is in other parts of the UK.' (Individual who had experienced sexual assault)

Chapter 2 - Options to underpin trauma-informed practice and person-centred approaches

⁸ [What we do | Victims of Crime Commissioner](#)

Question 15: Bearing in mind the general principles which are already set out in the 2014 Act, to what extent do you agree or disagree that a specific legislative reference to ‘trauma-informed practice’ as an additional general principle would be helpful and meaningful?

- Strongly agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Strongly disagree
- Please give reasons for your answer.

Victim Support Scotland agrees that there should be a general principal of trauma informed practise applied to all criminal justice agencies. We also agree that this duty should be set out in legislation (2014 Act⁹). And that the standards of service in the Victims’ Code should reflect that duty. We also believe that each criminal justice agency should report on how that duty is being applied in their service.

As highlighted in the Study into Transforming Services for Victims and Witnesses in July 2020¹⁰ recommendation 7, which was to have trauma informed practices as standard practice, was considered as having the potential to have the most impact on victims and witnesses.

Question 16: To what extent do you agree or disagree that a specific reference to trauma-informed practice within the current legislative framework for the Standards of Service would be useful and meaningful?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We would agree with having a specific reference to trauma-informed practice within the current legislative framework for the standards of service. We believe that this is necessary for criminal agencies to be accountable to. We also believe that the introduction of the Victims’ Commissioner would insist on ensuring that this would be meaningful change. Trauma-informed practices and policy are essential to ensure that victims and witnesses are treated with dignity and respect and not subject to further traumatisation in a system that is meant to get justice for them.

We have received the following feedback from our service users on trauma informed practice to evidence our position:

⁹ [Victims and Witnesses \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹⁰ [Transforming Services Victims Witnesses.pdf \(victimsupport.scot\)](https://victimsupport.scot.nhs.uk/transforming-services-victims-witnesses.pdf)

'Embedding [trauma informed principles] into legislation wouldn't mean it is done but would be a start. Anything that makes it stronger that they have to operate in this way.' (Individual A who had experienced stalking)

'There definitely should be a trauma informed approach. I haven't come across anyone who had trauma-informed approach in the justice system. The only trauma-informed people have been my lawyer and the two victim support organisations. Trauma informed principles should be in legislation, or they won't be upheld.' (Individual B who had experienced stalking)

'Delays are one part of the picture of (a lack of) trauma informed practice, repeatedly adjourned trials and long delays in receiving complaint/case related reports.' (Individual B who had experienced stalking)

'Trauma informed practice is important. There's no way you can feel better about what has happened [i.e. the crime], but you can feel more supported and comfortable... There should be acknowledgement, for example, that this court case is going to stay with someone for the rest of their life.' (Individual who had experienced sexual assault)

Question 17: To what extent do you agree or disagree that a legislative basis for the production of guidance on taking a trauma-informed approach would be useful and meaningful?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We believe that there should be a legislative basis to produce guidance on taking a trauma-informed approach. This would ensure that the guidance was both meaningful and subject to scrutiny from outside that organisation. We would envisage the introduction of a Victims Commissioner as a body that could work with agencies to create such guidance as well as hold them to account for the adherence to it.

Question 18: To what extent do you agree or disagree that the Court should have a duty to take such measures as it considers appropriate to direct legal professionals to consider a trauma-informed approach in respect of clients and witnesses?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We strongly support the court to have a duty to hold those acting in court to account when acts, or behaviour of individuals causes unnecessary re-traumatisation of victims or witnesses of crime. This includes the actions of an accused person whose behaviour intentionally or otherwise seeks to cause trauma to a victim or witness. Trauma informed practice and behaviour should be expected at all stages of the criminal justice process and a court should not be exempt from adhering to those principles.

Question 19: Should virtual summary trials be a permanent feature of the criminal justice system?

Yes

No

Unsure

Please give reasons for your answer.

We already know from experience during the pandemic how beneficial virtual trials are for people who have been traumatised by crime. Removing the intimidation of coming face to face with the accused in court is a game-changer for victims and witnesses and is something we want to see as common place across the whole justice system.

Prior to the pandemic section 271J of the Criminal Procedure (Scotland) Act 1995¹¹ provided for the use of live video links where available for vulnerable witnesses. This is done either within another area of a court or another building, which for the purposes of the hearing was deemed to be part of the court. VSS believes that this should be standard practice now and not just for vulnerable witnesses, indeed for any witness who feels intimidated by the process of giving evidence in a court building where they have concerns regarding seeing or coming into proximity of the perpetrator of the offence. VSS, and we presume other victim support organisations, would offer the use of our buildings to support the victims of crime we are supporting to give evidence to the court.

We also have concerns regarding the expense that victims and witnesses are subjected to, particularly for High Court Trials, where they may have to travel hundreds of miles to attend court over several days. A virtual trial would negate the need to travel long distances for victims and witnesses.

We have received the following feedback from our service users on virtual summary trials to evidence our position:

'Yes this (virtual trials) should be a permanent part of the system. I found even the virtual tour of the court I would be attending (in person) quite traumatic. It would be so much less traumatic if people don't have to appear in court. Also, people have to travel. It will also speed things up in courts because the backlog is shocking... Covid has shown that some many things can be done virtually. Also sometimes mitigating circumstances, for example if somebody is abroad, people

¹¹ [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1995/27/section/271j)

have disabilities, or can't travel and so on. Virtual trials provide fewer obstacles to a trial taking place.' (Individual B who had experienced stalking)

'Being part of a video link or in the court should be a choice of the complainer'. (Individual who had experienced sexual assault)

Question 20: If you answered yes to the previous question, in what types of criminal cases do you think virtual summary trials should be used?

Please give reasons for your answer.

VSS believes that virtual trials should be available for all crimes and all courts from the Justice of the Peace Courts to the High Court. The severity of the crime does not necessarily detract from the concerns that a victim of crime has with appearing in court building. It also does not detract from the concern that they have with meeting with the perpetrator of that crime again and the re- traumatisation that this can cause.

We have received the following feedback from our service users on virtual summary trials to evidence our position:

'I believe virtual trials should be the default for domestic abuse cases and stalking. Stalking as a crime gets sidelined all the time. Of all women who are murdered 95% get stalked beforehand. It is deeply disturbing for victims of stalking to have to encounter the perpetrator and their family in court.' (Individual B who had experienced stalking)

Question 21: To what extent do you agree or disagree with the recommendation of the Virtual Trials National Project Board that there should be a presumption in favour of virtual trials for all domestic abuse cases in the Scottish summary courts?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We would agree with virtual trials being the presumption in domestic abuse cases.

Question 22: While removing vulnerable victims from the physical court setting is beneficial in the vast majority of cases, to what extent do you agree or disagree that virtual trials offer additional benefits to the ability to give evidence remotely by live TV link?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

By removing the anxiety caused by attending court, victims and witnesses will feel more relaxed and comfortable in giving their evidence. That will in turn allow them to give their best evidence to the court. There should be no loss or detriment to the accused person as their defence lawyer would still be able to ask any questions that they would have asked if the person had been physically in the same room with them.

Question 23: The existing powers in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 can be used to expand the categories of witnesses who are eligible under the Act to benefit from the presumption that their evidence be pre-recorded in advance of the trial. This includes evidence by commission and the use of a prior statement as evidence-in-chief, such as a Visually Recorded Interview.

To what extent do you agree or disagree that these existing powers are sufficient to expand the use the pre-recording of evidence of complainers of serious sexual offences?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including, if you disagree, what legislative change you consider is necessary.

VSS believe that the court process for victims of crime is a particularly traumatising experience. This is shown on a regular basis in Scottish courts in the way that some cross examinations are conducted by the defence and the impact those experiences have on victims of sexual violence.

We believe that legislation should be used to protect victims and witnesses and reduce the trauma on people who have already been subject to traumatic incidents. The use of technology to prerecord or to give evidence from remote locations should be the default position. Whilst we believe that these options should be the default position, we also believe that the choice whether

to use them should be in the hands of the victim of crime and they should be empowered to choose whichever option best suits them.

Question 24: To what extent do you agree or disagree that Ground Rules Hearings should be extended to all child and vulnerable witnesses required to give evidence in the High Court, irrespective of the method in which their evidence is to be provided to the court?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We would agree that Ground Rules Hearings should be extended to all child and vulnerable witnesses required to give evidence in the High Court. It is our opinion that children and vulnerable witnesses should be dealt with in a trauma informed manner. As identified in the consultation paper this has, in other jurisdictions, been shown to improve the experiences of victims and witnesses when providing evidence. We would go further and state that the default position should be that the location of the Ground Rules Hearing should be in a non-court trauma-informed environment.

Question 25: To what extent do you agree or disagree that the current legislative basis for court scheduling, as managed through the existing powers of the Lord President, is sufficient to inform trauma-informed practice?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you disagree, what legislative provision would you like to see?

The Covid 19 pandemic has exacerbated the backlog in cases that were in existence prior to the pandemic. With the backlog in solemn expected to take until 2026 to resolve victims and witnesses will be expected to keep engaged in the justice process for years. VSS have already seen the impact of the delays on victims and witnesses' mental health with safeguarding calls increasing by 400% on average.

We also share concerns expressed by other organisations regarding floating trials. The trauma and stress that floating trials cause is not acceptable in cases where the victim is living day to day not knowing when their case will eventually be called.

The amount of trial adjournments that are taking place are also have a significant impact on vulnerable victims' and witness. Adjournments have always been problematic and have been exacerbated by the pandemic. Everyone in the justice system must do everything within their power to ensure that victims and witnesses do not face further traumatisation as a result of trials being continually adjourned.

We would highlight as a model good practice the Summary criminal case management pilots¹² that took place in Dundee, Paisley and Hamilton Sheriff courts prior to the pandemic closing the courts across the country. The aims of those pilots were to

- resolve cases at the earliest opportunity, without the need for a trial being fixed;
- reduce the need for full disclosure where cases can be resolved;
- reduce the number of cases called for trial;
- reduce the number of witnesses unnecessarily called, and
- preserve trials for cases that cannot be resolved by other means.

This type of process does not require new legislation but would seek to reduce the trauma of witnesses going to court and cases being adjourned for avoidable reasons.

Question 26: Are you aware of any specific legislative changes which would assist in addressing the issues discussed around information sharing? If so, please detail these.

VSS believe that it should be the right of all victims of crime to have information regarding the case that they are involved in intimated to them in a timely manner and in a medium that suits them best to receive it. That could be via digital/electronic means or in writing and when considering the information given to the victim or witness it should be done in a trauma informed manner.

Also in relation to information sharing, we are encouraged by section 11 of the Bail and Release from Custody (Scotland) Bill¹³. This would allow information to be shared with a Victim Service Organisation (VSO) when an individual is due for release from prison. It is vitally important from a victims' organisation point of view that victims of crime are supported prior to, at the time of and after an individual is released from prison. This Bill, in part, will provide the opportunity for victims of crime to nominate a VSO to support them through that challenging time.

¹² [Summary criminal case management pilots begin \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/news/summary-criminal-case-management-pilots-begin)

¹³ [Bail and Release from Custody \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](https://www.scottish.parliament.uk/en/bills/bills-proposed-laws/bills-proposed-laws-2020-21/bail-and-release-from-custody-scotland-bill)

Victim Support Scotland also welcomes the Scottish Government's announcement of an independent review of the Victim Notification Scheme announced on the 31 March, which we believe is well overdue.

The Victim Notification Scheme has long been seen as an outdated and archaic system that needs overhauled. We have heard of too many instances where victims have received letters about release of offenders with no warning and no offer of support. This can be traumatising.

The review and any subsequent legislation brought by this proposed Bill, or the Scottish Government, must consider the impact that communication has with people affected by crime and give choice and control back to them in terms of how they receive information.

We would also offer the following suggestions for the scheme going forward:

- Extend the Victim Notification Scheme to include all types of crime.
- Include more options of how and when information is received through the Victim Notification Scheme, therefore giving more choice and control back to victims. Often people are asked about joining the scheme only once, at an unsuitable time when they are most traumatised.
- Ensure the Victim Notification Scheme makes better use of digital communication methods, at the same time considering the digital literacy levels and digital poverty for those who are signed up to the scheme to ensure they receive accurate and timely information.
- Text/literature in relation to the Victim Notification Scheme - which includes letters to victims - should be trauma-informed and include formal referral routes to support services. In addition, alternative methods of communication that are more trauma-informed should be utilised e.g., face to face meetings and phone calls.
- Currently victims are only entitled to limited information if a person is convicted to less than 18-months and we believe that any changes must extend the information given.
- The current system is complicated to understand, and more communication is needed with victims, which in turn will hopefully increase the uptake of the scheme. Uptake is currently about one in four of victims who are eligible to participate.

Question 27: Are there any other matters relating to the options to underpin trauma informed practice and person-centred approaches in the justice system you would like to offer your views on?

We share the concerns expressed by Children 1st that the consultation fails to consider or even mention the significant changes that the Bairns Hoose model will mean to child victims and witnesses. As mentioned in the Vision for Justice access to the Bairns Hoose will provide “... a child friendly environment providing them with trauma informed recovery. Improving their experience of the criminal justice system, and aiming to prevent them being retraumatised.”

This approach encapsulates most of the improving victims' experiences of the criminal justice system consultation and any legislation being considered as a result of this consultation needs to include the Bairns Hoose model which is the very model designed to do that for children.

Chapter 3- Special measures in civil cases Background

Question 28: To what extent do you agree or disagree that the courts should have the power to prohibit personal cross-examination in civil proceedings when the circumstances in a particular case require this measure to be taken?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We would strongly support this measure. Irrespective of the court, Children and vulnerable witnesses should have the support of special measures. The trauma and harm that could be caused in a criminal court could just as likely occur in a civil court and we believe that the same protective measures should be available regardless of the court hearing the case.

The practice of self-representation and the cross examination of witnesses, which in a civil process would be a family member, would be particularly traumatic for a child or indeed vulnerable person. From a domestic abuse point of view, we would also have concerns that, regardless of the vulnerability of the person giving evidence, this would be a particularly traumatic experience.

We would welcome any changes in the law that would assist in protecting people in the court system.

We have received the following feedback from our service users on the power to prohibit personal cross-examination in civil proceedings to evidence our position:

***'The power to prohibit personal cross-examination in civil proceedings is good, as defense lawyers will go for the jugular. In my own case I approached lawyers about taking my case to civil court and one lawyer said they would advise against it as the perpetrator and lawyer would make my life hell for some years.'* Individual B who had experienced stalking**

Question 29: To what extent do you agree or disagree that special measures should be available when required for all civil court hearings in Scotland, whether the hearings are evidential or not?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

VSS would make the point that the type of court where a case is held would be irrelevant when it comes to deciding upon whether special measures were required or not. The deciding factors should be the people involved in giving evidence and whether their experience could be improved by the introduction of a particular special measure. We would particularly support pre-recorded evidence or providing evidence via a live television link not within the confines of the court. This would avoid situations where there is a potential for people involved in the case seeing each other before, during or after the trial.

We do not believe that any other special measures currently available in the criminal courts would disadvantage or provide an advantage to any party to a case. We believe that the evidence can be examined properly, and the solemnity of the proceeding secured without the need for the attendance of a witness/victim in court. We also believe that this would be the case in the civil courts.

Question 30: Are there any other matters relating to special measures in civil cases that you would like to offer your views on?

Chapter 4 - Review of defence statements

Question 31: Do you support undertaking a review of the use of defence statements?

Yes

No

Unsure

Please give reasons for your answer.

VSS believe that current system leads to delays in cases being ready for trial due to hold-ups in the defence providing defence statements. The burden of disclosure rests equally with the defence as it does the prosecution and both sides should submit all available evidence at the earliest opportunity, including defence statements.

Question 32: If you answered yes to the previous question, how do you think this should be progressed to address the issues identified by Lady Dorrian's Review?

We believe that there should be a requirement for the accused person to provide a meaningful defence statement with details of any specific defence that they may wish to use at trial. This would allow these defences to be thoroughly investigated and conclusions reached regarding their validity. This would obviously be advantageous to the accused, as the case may well not proceed to trial if it were found that their defence was valid. Equally important, is for the purposes of disclosure both the defence and prosecution would know the matters to be examined during the trial.

The inculpatory and exculpatory evidence against an accused person should be known in sufficient time prior to a trial taking place.

VSS would highlight that matters of case management such as this would seek to improve the efficiency of the criminal justice system. We would highlight the summary case pilots in Hamilton, Dundee and Paisley Sheriff courts that sought to improve case management for cases to be heard timeously, whilst not detracting from either side's ability to build a case, or a defence.

Question 33: Are there any other matters relating to a review of defence statements that you would like to offer your views on?

Chapter 5 - Anonymity for complainers in sexual offence cases

Question 34: Which one of the following best describes your view on the point in the criminal justice process when any automatic right to anonymity should take effect?

- a) when an allegation of a sexual offence is made
- b) when a person reports an alleged sexual offence to a police constable
- c) when an accused person is formally charged by the police with a sexual offence
- d) when criminal proceedings for a sexual offence first call in court
- e) other – please provide details

Please give reasons for your answer.

We support the right that a victim of a sexual crime should be given an automatic right to anonymity. As the document suggests, the person should also have the option to waive this right if they wish. It is important that the victim of crime has a choice in these matters.

The rationale for the right to take effect from the point of the when the allegation is made is that, through third party reporting, an allegation could be made initially to an organisation outwith the police. We would also argue that a victim of a sexual crime may never report a case to the police

or other authorities, and we believe that their anonymity should be protected regardless as to whether they proceed with a case through the criminal justice system.

We have received the following feedback from one of our service users on anonymity to evidence our position:

'Default anonymity should be the case as it is not appropriate or relevant to know complainer's name. There is already the horror of it all, so this is one less additional thing...As a victim of a sexual offence, I felt really unsafe from when I reported it. Knowing that my name was safe was a part of it. If it had been leaked it would have made the process harder.' (Individual who had experienced sexual assault)

Question 35: Which of the following options describes the offences that you consider any automatic right of anonymity should apply to? Please select all that apply.

a) offences contained at section 288C of the Criminal Procedure (Scotland) Act 1995

b) intimate images offence contained at section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016

c) offences contained in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

d) other – please provide details

Please give reasons for your answer.

The position of VSS is that the offences listed in options a) through to c) should attract the automatic right of anonymity.

We have received the following feedback from our service users on an automatic right of anonymity to evidence our position:

'An automatic right of anonymity should apply in sexual offence cases and in domestic abuse and stalking too. By their very nature, perpetrators (of these crimes) will go after victims again and again. Should go on for in perpetuity.' (Individual B who experienced stalking)

Question 36: Which one of the following best reflects your view on when any automatic right of complainer anonymity should end?

a) upon the death of the complainer

b) no automatic end point

c) other - please provide details

Please give reasons for your answer.

It is important that the victim of crime is protected throughout their lifetime and beyond if that was their choice.

We have received the following feedback from one of our service users on when anonymity should end to evidence our position:

'There should be no end point for anonymity for the complainer. Should be anonymous from the start and no end point, for the person's dignity. Even if I was to die, or another complainer to die, the family would have to deal with it [if anonymity ended upon death].'
(Individual who had experienced sexual assault)

Question 37: To what extent do you agree or disagree that the complainer should be able to set their anonymity aside?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

VSS believe that a victim of crime should have the right to set aside their anonymity.

We have received the following feedback from one of our service users on when someone can set aside anonymity to evidence our position:

'The ability to waive anonymity should be an adult complainer's choice.' ***(Individual who had experienced sexual assault)***

Question 38: If complainers are to be given the power to set their anonymity aside, which one of the following best reflects your view on how they should be able to do this?

a) unilaterally by consent of the complainer

b) following an application to the court by the complainer

c) other – please provide details

Please give reasons for your answer.

Taking account of the question regarding multiple victims of crime. We believe that a complainer should have the ability to set aside their anonymity except in situations where they know, or the prosecuting authorities know, that there are multiple victims of crime that could be identified from the first victim of crime setting aside their anonymity.

We believe that prior to setting aside their anonymity communication should be made with either the police and/or the procurator fiscal to inform them of this decision and to discuss whether this

would have the potential to identify other victims of crime and what measures would be required to preserve the anonymity of others. We do not believe that this would require the authority of a court.

Question 39: To what extent do you agree or disagree that children should be able to set any right to anonymity aside?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Victim Support Scotland do not agree that a child should be able to waive their right to anonymity in these types of situations. As in other criminal legislation, the age of 18 becomes the age when decisions relating to criminal matters are settled. For example, section 33 of the Criminal Justice (Scotland) Act 2016¹⁴ refers to the right to waive the services of a solicitor when being interviewed by the police. At the ages of 16 and 17 this can only be done with the express permission of a parent or guardian. Anyone below that age is automatically prevented from waiving that right.

Question 40: If children are to be given a power to set any right of anonymity aside, to what extent do you agree or disagree that additional protections should be required prior to doing so, for example an application to the court to ensure there is judicial oversight?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

¹⁴ [Criminal Justice \(Scotland\) Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

Whilst we do not agree with the right of a child to waive the right to anonymity, if this right is provided then we believe it should only be removed under judicial oversight by application to a court.

Question 41: If children are to be given a power to set any right of anonymity aside, to what extent do you agree or disagree that there should be minimum age below which a child cannot set their anonymity aside?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including (if you agree) what you think this age should be.

As we have highlighted in our earlier answers, the maturity of children varies, and we therefore believe that for anyone to have a right to waive anonymity or any other right then that should be 18 or at the very least 16/17 with the express permission of a parent or guardian.

Question 42: To what extent do you agree or disagree that the court should have a power to override any right of anonymity in individual cases?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including (if you agree) your view on the circumstances in which this power should be available.

We share the concerns expressed in the consultation document. We felt that any power to override the wishes of victims with regards to anonymity would only disempower victims and cause them to lose trust and confidence in the system. It should be entirely for the victim of crime to decide whether they wish to relinquish their right to anonymity and not for the courts to override their wishes.

Question 43: To what extent do you agree or disagree that any right of anonymity should expire upon conviction of the complainer for an offence against public justice?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We believe that courts should be very hesitant about removing anonymity even in the rare cases of offences of perverting the course of justice, as they may involve vulnerable women. We would therefore not support anonymity expiring in these circumstances.

Question 44: Which one of the following best reflects your view of the level of maximum penalty that should apply to a breach of any right of anonymity?

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

b) an unlimited fine

c) up to 12 months' imprisonment and/or a fine of up to £10,000

d) other - please provide details

Please give reasons for your answer.

Victim Support Scotland believe that any breach of anonymity is a serious matter, and any penalty for a breach should reflect that. It would thereafter be for the court to decide when to apply the maximum penalty depending on the circumstances of the case.

Question 45: To what extent do you agree or disagree that there should be statutory defence(s) to breaches of anonymity?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We would agree that there needs to be statutory defences applicable to breaches of anonymity. We would also argue that there should be a zero-tolerance policy adopted where the law regarding breaches of anonymity has been broken. The only way to curb such practices, especially on social media platforms is to pursue breaches rigorously.

Question 46: If you agree that there should be statutory defence(s) to breaches of anonymity, which of the following best reflects your view of the defence(s) that should operate? Please select all that apply.

a) adopt the model of the 1992 Act in England, Wales and Northern Ireland

b) a 'reasonable belief' defence

c) other – please provide details

Please give reasons for your answer.

We do not agree with a general defence of reasonable belief in a defence to a charge that the person believed the victim of crime had consented to publication. Whilst it would be more onerous for social media/online applications to identify whether the victim of crime had consented to waive their right to anonymity, we believe that the importance of factual accuracy of these matters is extremely important and the relevant legislation in the 1992 Act is more robust.

Question 47: Are there any other matters relating to anonymity for complainers in sexual offence cases that you would like to offer your views on?

Chapter 6 - Introduction of independent legal representation for complainers in sexual offence cases

Question 48: To what extent do you agree or disagree that there should be an automatic right to independent legal representation for complainers when applications under section 275 to lead sexual history or character evidence are made in sexual offence cases?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Victims of sexual crime are at a distinct disadvantage in any application to introduce evidence relating to their sexual history or character. Whilst we appreciate the Crown can oppose such applications, their role in the criminal justice system does not allow them to objectively act for the victim of crime. We believe that the lack of access to independent legal advice effectively means their voice is not heard or represented during an application process.

The court process can be a traumatic process for victims of crime. The thought of having their sexual history or character examined by a court without their voice and interest being heard by the court would, without doubt, be an even more traumatic experience. We believe that victims of sexual crime must have access to independent legal representation, funded by Legal Aid, for matters relating to sexual history and character evidence, and access to medical records.

Question 49: To what extent do you agree or disagree that the complainer should have the right to appeal a decision on a section 275 application?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

We would agree with the recommendations of Lady Dorrian’s review that a victim of sexual crime should have a right to appeal the decision of a court about an application relating to their sexual history or other character. We would also want to ensure that any such appeal is subject to similar public funding of independent legal advice.

Question 50: To what extent do you agree or disagree that a right to independent legal representation for complainers should apply during any aspect of criminal proceedings in respect of applications under section 275 (including where an appeal is made)?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

We would strongly agree that a victim of sexual crime should be represented at each stage of the criminal justice process. This would not only assist with matters relating to section 275 applications, but also assist victims of sexual crime understand the various other aspects of the criminal justice process. As highlighted in Lady Dorrian’s review: ¹⁵:

- Victims of sexual crime had little awareness of legal issues and court procedures and would benefit from more information in this regard particularly in relation to the law regarding sexual history evidence
- the procedures around removal of personal devices, legal rules which limit the leading of certain evidence (including hearsay) and recovery and use of medical and other sensitive records
- Witnesses were generally not aware that a special defence of consent had been lodged meaning they felt ambushed when in the witness box

Each of these concerns by victims of sexual crime could be addressed by them having access to a legal trained professional as is the right of the person accused of sexual assaulting them. This would provide parity within the justice system.

Question 51: In exceptional cases, section 275B(2) provides that an application may be dealt with after the start of the trial. To what extent do you agree that independent legal representation should apply during this aspect of the proceedings?

Strongly agree

Slightly agree

¹⁵ [Improving-the-management-of-Sexual-Offence-Cases.pdf \(scotcourts.gov.uk\)](#) para 1.17

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

As we have indicated, we believe that a victim of sexual crime should be legally represented at each stage of the court process and their voice should be heard through that legal representation at all junctures of the court process, including any appeal.

Question 52: To what extent do you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer

We would agree with the Lady Dorrian Review that Independent legal advice should be publicly funded. We would not offer a view as to what scheme should be made applicable to that funding.

Question 53: If you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid, how should this be provided?

a) under civil ABWOR

b) under criminal ABWOR

c) other – please provide details

Please give reasons for your answer.

VSS has no view as to what funding model should be used to provide independent legal representation. We would hope that whichever model is ultimately chosen the appointment of a suitable trained and qualified solicitor would be swift. With regards to training the solicitor appointed should have as with others appointed to a specialist court the necessary training in dealing with complex sexual crimes and have trauma informed practices at the heart of their skill set.

Question 54: To what extent do you agree or disagree that these time periods should be adjusted to provide additional time for the complainer to consider the application and effectively implement their right to independent legal representation prior to trial?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

We are of the opinion that a victim of sexual crime would require additional time to consider a 275 application and thereafter seek legal advice and/or representation. The current timescales may be adequate from an accused person's point of view, as they would have legally representation at that point, but the victim of sexual crime would not and would therefore require an additional period of time.

Question 55: Are there any other matters relating to independent legal representation for complainers in sexual offence cases that you would like to offer your views on?

Chapter 7 - Specialist court for sexual offences Background

Question 56: To what extent do you agree or disagree that a specialist sexual offences court should be created to deal with serious sexual offences including rape and attempted rape?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

It is the opinion of VSS that there requires to be a meaningful change in the way sexual offence related cases are dealt with in the criminal justice system. We have championed a more trauma informed with all victims and witnesses in all courts, but a trauma informed approach is required in sexual offence type cases.

These cases are both sensitive and, at times, complex regarding a specialist approach to be taken. The investigation of the types of cases by both the police and COPFS have become specialist areas of business. We agree with Lady Dorrian's Review (recommendation 2)¹⁶ that there should be specialist courts in place with an equally specialist group of lawyers on the defence and prosecution as well as a judge who has the knowledge and experience to oversee such courts.

A trauma informed approach should be adopted at all stages of the court process and everyone connected with the new court should receive training in trauma-informed practices particularly relating to victims of sexual abuse.

We also agree that more use should be made of pre-recorded evidence and ground rules hearings to ensure the experiences of the court process for victims of sexual crime can be improved.

We have received the following feedback from one of our service users on a sexual offences court to evidence our position:

***'My case was a sexual offence so going to the specialist sexual offences court would reassure me. I would hope that the lawyers defence and prosecution would be more trauma informed and this would make the experience less daunting.'* (Individual who had experienced sexual assault)**

Question 57: To what extent do you agree or disagree that, if a new specialist sexual offences court is created, it should be - as recommended by Lady Dorrian's Review - a new court for Scotland, separate from the High Court or the Sheriff Court?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

¹⁶ [Improving-the-management-of-Sexual-Offence-Cases.pdf \(scotcourts.gov.uk\)](#) – Recommendation 2

Victim Support Scotland strongly supports the creation of a new specialist sexual offences court. We would also support that being separate from the High Court, if that were to improve efficiency in the system, bring about effective case management processes and reduce court delays.

Question 58: If you disagree that the specialist court should be a new separate court for Scotland, where do you consider it should sit?

- a) within the High Court
- b) within both the High Court and the Sheriff and Jury Court
- c) other – please provide details

Please give reasons for your answer.

Question 59: To what extent do you agree or disagree that, if a specialist court is to be created, it should have jurisdiction to hear cases involving charges of serious sexual offences including rape as well as non-sexual offences which appear on the same indictment (for example, assault)?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Victim Support Scotland support the specialist sexual offences court hearing all matters related to the victim of sexual crime regardless of whether it directly related to a sexual offence or other courses of conduct and offences that were connected.

Question 60: If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree with Lady Dorrian’s Review that it should have a maximum sentencing power of 10 years’ imprisonment and the ability to remit cases to the High Court for consideration of sentences longer than 10 years?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We support the position of other third sector organisations such as Rape Crisis Scotland that specialist sexual offences courts should have unlimited sentencing powers. The crime of Rape should be treated in a zero-tolerance manner by society and the courts and those convicted of such crimes should face the maximum sentence that the law allows.

Question 61: If you disagree that a specialist court should have a sentencing limit of 10 years' imprisonment, what do you consider the limit should be?

a) unlimited

b) other – please provide details

Please give reasons for your answer.

Please see our previous answer for our rationale.

Question 62: If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree that it should be presided over by sheriffs and High Court judges?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer

We would agree with the proposals that the specialist sexual offences court should be presided over by both sheriffs and High Court judges. This would allow the full range of sexual offence related cases to be dealt with by the court.

Question 63: If you answered disagree to the previous question, who do you think should preside over the court?

- a) sheriffs only
- b) High Court judges only
- c) other – please provide details

Please give reasons for your answer.

Question 64: If a specialist sexual offences court distinct from the High Court and Sheriff Court were to be created, to what extent do you agree or disagree that the requirements on legal practitioners involved in the specialist court should be match those of the High Court?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We would agree that, in line with Lady Dorrian’s review, the legal practitioners involved in the specialist court should have the same requirements placed upon them that they would if they were practising within the High Court, such as rights of audience etc.

Question 65: To what extent do you consider that legislation should require that legal professionals working in a specialist court should be specially trained and trauma informed?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including any specific training requirements that you think should be introduced.

Part of the reason that victims of crime find the court process traumatic is the way in which they are treated when giving evidence in court. We strongly believe that legislation is required to ensure that all individuals operating in the courts should have trauma informed training and be held to account for their conduct in court.

Question 66: Are there any other matters relating to the potential creation of a specialist court for serious sexual offences you would like to offer your views on?

Chapter 8 - Single judge trials

Question 67: To what extent do you agree or disagree that the existing procedure of trial by jury continues to be suitable for the prosecution of serious sexual offences including rape and attempted rape?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Victim Support Scotland does not believe that the current system of trial by jury is suitable for the prosecution of serious sexual offence. Our opinion is supported by the significant issues identified in the large-scale Mock Jury Research completed published in 2019.¹⁷ This study identified numerous issues with jury understanding of legal issues including:

- understanding of legal issues, including their understanding of the meaning and effects of the not proven verdict.
- Several potential misunderstandings on the part of individual jurors arose relatively frequently across the mock juries (e.g. a belief that the accused should prove his innocence),
- a belief that the accused can be retried following a not proven verdict but not a not guilty verdict, and
- misunderstanding of the fact that self-defence is a legitimate defence to an assault charge, even when the fact the accused inflicted the injury is not in dispute)

The study also identified that “juror verdicts were affected by how the jury system was constructed. The research found that the number of jurors, the number of verdicts available, and the size of majority required do have an effect on verdict choice. In other words, jurors’ verdict preferences, in finely balanced trials, are not simply a reflection of their assessment of the evidence presented. but can also be affected by features of the jury system within which this evidence is considered.”¹⁸

VSS also does not believe that the current system of trial by jury is a sustainable position when there is such a backlog in cases due to the coronavirus pandemic. The pandemic is already causing extensive delays to the criminal justice system and is having a devastating and repeated impact to the lives of victims, witnesses, and their families for years to come. VSS along with other victims’ organisations called for jury less trials to be reconsidered by the Scottish Government.¹⁹

Regardless of the significant backlog in cases we also believe that a trial by a single judge is more efficient in nature to that of a jury trial. As we have highlighted from the Mock Jury research it is difficult for a jury to understand complex legal arguments and matters of law. We do have confidence that the knowledge and experience of the judiciary will lead to more just outcomes being reached.

This is a chance to put victims, witnesses, and their families at the centre of Scotland’s justice system.

Question 68: If you have answered ‘neutral’ to the previous question, what further evidence, research or information would assist you?

¹⁷ Scottish Jury Research: Findings from a Large Scale Mock Jury Study (www.gov.scot)

¹⁸ Key Findings - Scottish Jury Research: Findings from a Large Scale Mock Jury Study (www.gov.scot)

¹⁹ VSS along with other victims’ organisations called for jury less trials to be reconsidered by the Scottish Government.¹⁸

Question 69: To what extent do you agree or disagree that trial before a single judge, without a jury, would be suitable for the prosecution of serious sexual offences including rape and attempted rape?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

There are examples of Jury-less trials already taking place in Scottish courts for serious offences. Domestic abuse cases are mostly dealt with through summary proceedings that do not require juries. This has allowed thousands of serious cases to be heard in Scotland without a jury present.

There was also the Megrahi case where a serious crime was heard without a jury in Scotland.

There is also a precedent for the use of judge-only trials in serious cases in emergency situations with the establishment of 'Diplock courts' in Northern Ireland for political and terrorism-related cases during the height of the Troubles. The Criminal Justice Act 2003, applicable throughout the UK, also allows jury-less trials in complex fraud cases and where there is a risk of jury tampering.

Question 70: If you have answered 'neutral' to the previous question, what further evidence, research or information would assist you?

Question 71: What do you consider to be the key potential benefits of single judge trials for serious sexual offences? Please select all that apply.

a) removal of potential bias of the jury

b) removal of concerns around rape myths

c) greater efficiency of court process including reduced trial length

d) improved court experience of the complainant

e) greater public confidence in the decision making, including the application of legal principles

f) other – please provide details

g) I do not believe that judge-only trials convey any benefits for serious sexual offences

Please give reasons for your answer

Please see our response to question 67.

Question 72: What do you consider to be the key concerns and challenges of single judge trials for serious sexual offences? Please select all that apply.

a) less public confidence in the justice system

b) lack of diversity reflected in the pool of decision makers

c) removal of civic participation in the criminal justice system

d) undermining the use of juries for non-sexual offences

e) other – please provide detail

f) I do not have any concerns

Please give reasons for your answer.

An experienced member of the judiciary, trained in dealing with trauma and the complexities of sexual crime, can be relied upon to make well-reasoned legal determinations about the guilt or innocence of an accused. Should there be cause to believe that an incorrect decision has been made, then there are relevant appeals processes in place.

Question 73: If you highlighted concerns and challenges in the previous question, which of the following safeguards do you think could be put in place to mitigate these. Please select all that apply.

a) evaluation of requirement for written judgments to be prepared

b) specific training for judges

c) other – please provide details

d) none, I don't think there are any safeguards that could be put in place

Please give reasons for your answer.

We would agree that judges should receive as much training as possible prior to being appointed to the bench. We would highlight that prior to being appointed to the bench each judge will have had years of experience of the law. Should there be concerns regarding the outcome of a trial then there is a well-established route of appeal.

Question 74: What additional evidence and information do you think would be useful to assess the question of the role of juries in the prosecution of serious sexual offence cases?

Question 75: Lady Dorrian's Review recommended consideration of a time limited pilot of single judge trials for offences of rape, do you have any views on how such a pilot could operate?

We would support the recommendation of a pilot for single judge led trials. An alternative method would be for a team of judges to shadow a set number of jury led trials over a period of time and a proper analysis and comparison carried out about the jury results versus the judge's decisions.

Question 76: Are there any other matters relating to single judge trials that you would like to offer your views on?

Chapter Nine: Impact Assessments

Question 77: Do you have any views on potential impacts of the proposals in the chapters of this consultation on human rights?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Victim Support Scotland believes that this legislation will have a positive influence on human rights. Placing more focus on adopting a trauma-informed approach will have a positive impact and improve the experiences of victims of crime. The introduction of a Victims' Commissioner can only positively influence the justice system and improve the experience of victims who participate in the system, either as victims or indeed witnesses. We do not envisage that any of the measures contained in this consultation will have a negative impact on the rights of an accused person within the system.

Question 78: Do you have any views on potential impacts of the proposals in the chapters of this consultation on equalities and the protected characteristics set out above?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

VSS do not see any adverse impact on equalities or protected characteristics as a result of the proposals within this consultation.

Question 79: Do you have any views on potential impacts of the proposals in the chapters of this consultation on children and young people as set out in the UN Convention on the Rights of the Child (UNCRC)?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Question 80: Do you have any views on potential impacts of the proposals in the chapters of this consultation on socio-economic equality?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Question 81: Do you have any views on potential impacts of the proposals in the chapters of this consultation on communities on the Scottish islands?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Question 82: Do you have any views on potential impacts of the proposals in the chapters of this consultation on privacy and data protection?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Question 83: Do you have any views on potential impacts of the proposals in the chapters of this consultation on businesses and the third sector?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Question 84: Do you have any views on potential impacts of the proposals in the chapters of this consultation on the environment?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

