

Improving Victims' experiences of the Justice System *CJVSF Consultation Response*

A Victims' Commissioner for Scotland

Independence or role and accountability

Q1. To what extent do you agree or disagree that the Victims' Commissioner should be independent of the Scottish Government?

Strongly Agree

Please give reasons for your answer.

The role should be focused on the interests, needs and welfare of those who have been harmed by crime. As such, CJVSF strongly agrees that the Victims' Commissioner should be independent of the Scottish Government. This will enable the Commissioner to remain politically neutral and ensure they are able to challenge any policies, processes, and practices as needed.

Q2. To what extent do you agree or disagree that the Victims' Commissioner should be a statutory role?

Strongly Agree

Please give reasons for your answer.

CJVSF members are keen to see the role put on a statutory footing. The Commissioner should be awarded appropriate responsibilities and powers to enable them to be effective in their role and we would like to see these responsibilities and powers backed up by law.

Q3. To what extent do you agree or disagree that the Victims' Commissioner should be accountable to the Scottish Parliament?

Somewhat agree

Please give reasons for your answer.

Given that we are keen for the role to be independent from Government and a statutory one, the Scottish Parliament seems an appropriate route for giving the Commissioner accountability and we are supportive of this proposal.

At the same time, CJVSF members are also keen to ensure that the Commissioner is accountable to victims themselves. Potential models to support this are discussed in our response to question 9.

Q4. 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.

As set out in our response to Q3, we believe that the Victims' Commissioner should be accountable to the Scottish Parliament and, in line with the approach taken to some of the other Scottish Commissioner roles, it would be helpful to publish and lay annual reports and strategic plans in the Scottish Parliament. This would help to support transparency and raise awareness of their work, as well as giving public accountability.

In addition, as set out in our response to Q3, we believe it would be helpful if there were mechanisms established to ensure that the Victims' Commissioner is also directly accountable to Victims.

It would also be helpful for the Victims' Commissioner to have a publicly accessible website, where they publish information about that they do and what they are working on, to assist with transparency.

Functions and remit

Q5. 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.

One of the Commissioner's key functions should listening to and engaging with people who have been affected by crime, to ensure that their experiences and voices help to drive positive changes. As part of this, members are keen to ensure that people that have often been unheard within the justice system have a voice.

CJVSF members are also keen to ensure the justice system itself is challenged where necessary and feel that the Commissioner could be well-placed to ensure that there is greater accountability within the system to people who are harmed by crime. In addition to monitoring compliance with the Victims' Codes, Standards and any relevant legislation, CJVSF would therefore also like the Commissioner to be given the powers to hold other agencies to account, if they are found to not be complying with the Victims' Codes etc and to ensure that appropriate mechanisms are in place to address any lack of compliance. Without such powers, there is concern amongst members that the Commissioner will "have no teeth" to bring about meaningful change.

Q6. 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 Hearing 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.

CJVSF members are keen that an inclusive approach is adopted, with everyone who has been harmed by crime included within the remit for the Victims' Commissioner. As such, they would like to see the remit being broadened to also include, for example, people who have been witnesses of crime or family members. They also observed that some of the people that they work with, who have been harmed by crime, do not like the term 'victim' and suggested that, in line with the [VSS Language Guide](#), "People affected by crime" may be a more appropriate term to use.

Powers and recourse

Q7. 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
- 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.

CJVSF members noted that the above powers may enable the Commissioner to be able to identify good practice and what works, as well as barriers and poor practice, but they are unlikely to be sufficient powers to actually impact where and how investment is then made within the system. Unless the Commissioner has additional powers (such as being able to identify or develop appropriate funding models to support systemic changes to be made), there is a risk that the role will not be able to bring about meaningful changes on the ground.

There were also mixed views amongst the membership as to whether or not the Victims' Commissioner should have the power to require persons to give evidence in the course of an investigation.

Engagement

Q8. 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

Please give reasons for your answer.

CJVSF members are keen to see the lived experience of people who have been harmed by crime at the heart of the Commissioner's role. This should go beyond 'consultation' to ensure meaningful engagement, as set out in the [Inclusive Justice: Co-producing Change Guide](#) written by Dr. Weaver and colleagues.

The Victims' Commissioner's role should be to listen to people who have been harmed by crime and to then use what they have learned to work with partners and stakeholders to make positive changes in the criminal justice system for people who have been affected by crime.

Q9. How do you think that engagement with victims should take place? Please select all that apply.

- a) **Advisory board, including victim representation**
- b) **Victims' reference group**
- c) **Focused consultations with victims**
- d) **Ad-hoc engagement with victims**
- e) **Other – please provide details.**

Please give reasons for your answer.

CJVSF members are keen to see a variety of methods used, to enable engagement with a broad range of people who have been harmed by crime. They suggested the purpose for engagement should be clear and that the purpose on each occasion should drive the choice of engagement methods used.

Members were also clear that support needs to be in place for victims and that engagement with victims should be done in a trauma-informed way, to enable them to feed in their experiences and engage with the Commissioner without re-traumatising them.

Q10. 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 engagement take place?

Yes – please provide details

Please give reasons for your answer.

CJVSF is keen for the Victims Commissioner to engage with a broad range of people who have been harmed by crime and, as noted above, we would welcome the remit being expanded to include people who have been witnesses of crime as well as family members.

Members noted particular concerns about a lack of information and support for victims within the children's hearing system. As such, they felt it would be helpful to include specific duties to engage with victims within each part of the youth and adult justice system in Scotland.

They would also welcome a specific duty to ensure the Victims' Commissioner engages with groups with characteristics that are protected under the Equality Act.

Q11. 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

Please give reasons for your answer.

Along with their statutory partners, Third Sector organisations that work with people affected by crime are well-placed to identify what works well and where improvements could be made within the system to deliver better outcomes for people. Smaller organisations within our membership noted that, currently, it can be difficult for them to have their voice heard when they want to raise awareness of and work to improve challenges within the justice system.

Learning from the implementation of the Community Justice (Scotland) Act 2016 and other pieces of legislation has demonstrated that a legislative requirement to consult with the third sector is not sufficient to ensure strong engagement in practice. We would therefore be keen

for structures and processes to be put in place alongside legislative requirements, to support the Victims' Commissioner to engage with as broad a range of third sector organisations working with people affected by crime as possible.

Q12. Are there any other relevant bodies or organisations that may have an interest in the work to be undertaken by the Victims' Commissioner?

Yes, there are likely to be number of other relevant bodies or organisations that may have an interest in the work to be undertaken by the Victims' Commissioner, including:

- **Other third sector organisations, beyond those providing specific services for victims:** Third sector organisations may be working with people who have been harmed by crime (whether they are working with people who are victims of crime, witnesses and/or family members), even if they are not victim-specific services, and, as such, will likely have an interest in the work undertaken by the Victims' Commissioner. CJVSF would be keen to support linkages with the Victims' Commissioner and voluntary organisations in our network and we would also suggest that the Victims' Commissioner may find it helpful to make connections with the Victims Organisations Collaboration Forum Scotland (VOCFS) and SCVO's National Intermediaries Network to raise awareness of the Commissioner's role and build engagement with third sector organisations.
- **Local thematic Partnerships:** We anticipate that there may be interest in the work to be undertaken by the Victims' Commissioner from local partnerships, such as local Community Justice Partnerships, Violence against Women Partnerships, Community Planning Partnerships and Alcohol and Drug Partnerships. To support linkages to be made with these groups, it may be helpful for the Victims' Commissioner to connect with Networks such as the Community Justice Network and the [National Violence Against Women Network](#)
- **Other Commissions and Commissioners** – CJVSF agrees with the comments in the consultation paper that other Commissions and Commissioners working within Scotland, such as the Children and Young People's Commissioner and the Scottish Human Rights Commission (SHRC) are also likely to have an interest in the work undertaken by the Victims' Commissioner. We would be keen to see arrangements put in place to support collaborative working (beyond consultation) on issues that cross over the remits of different Commissions e.g. where children and young people have been victims of crime.

What the Commissioner can't do

Q13. To what extent do you agree or disagree that the Victims' Commissioner should not have the power to champion or intervene in individual cases?

Please give reasons for your answer.

There were mixed views within the Forum as to whether or not the Victims' Commissioner should not have the power to champion or intervene in individual cases. Some suggested that the Commissioner should be involved in systemic change, rather than championing or intervening in individual cases. Others suggested that individual cases can exemplify wider systemic issues and there may be a role for the Commissioner in championing or intervening in these cases, where there is a wider public interest in the case beyond those directly involved.

Q14. Are there any other matters relating to the proposal to create a Victims' Commissioner for Scotland you would like to offer your views on?

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

Q15. 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?

Somewhat agree

Please give reasons for your answer.

CJVSF is supportive of a specific legislative reference to ‘trauma-informed practice’ being added as an additional principle. This would be helpful for providing a clear statement that this is the expected approach that should be taken in Scotland.

Members cautioned, however, that to be meaningful organisations also need to be supported to understand and implement trauma-informed practice.

Q16. 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?

Somewhat agree

Please give reasons for your answer.

Similar to our response to question 15, a specific reference to trauma-informed practice within the legislative framework would be useful but is unlikely to be sufficient to achieve the change desired. To be meaningful, organisations also need to be supported to understand and implement trauma-informed practice.

Q17. 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?

Somewhat agree

Please give reasons for your answer.

Having a legislative basis for the production of guidance on taking a trauma-informed approach would be useful for emphasising the importance of a trauma-informed approach.

Any guidance about making services and systems more trauma-informed needs to be informed by people’s lived experience and evidence of what works. To be meaningful, any legal basis for the production of guidance should therefore be accompanied by a requirement to engage with people who have been harmed by crime and organisations working with them to develop the guidance.

CJVSF would welcome the opportunity to support the development of any future guidance, to ensure that third sector organisations in our network have opportunities to be able to feed in to the process.

Q18. 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

Please give reasons for your answer.

We would like to see all professionals involved in the justice system using a trauma-informed approach in respect of the individuals and families they are working with. A clear instruction from the Court to ensure professionals are considering this approach would therefore be helpful.

In terms of implementation, it would also be helpful to ensure there are links in place with existing trauma training programmes, including:

- The Trauma-Informed Lawyer Certification course, run by the Law Society of Scotland (www.lawscot.org.uk/news-and-events/events/trauma-informed-lawyer-certification-course/) – This course is designed for all solicitors working with people, no matter their practice area, whether working in criminal law, family and child law, personal injury, succession and estate planning or conveyancing and beyond, and is suitable for all levels of expertise.
- The [National Trauma Training Programme](#), run by NHS Education for Scotland. The Programme Team have prepared a range of online resources that are openly available to support all members of the Scottish workforce to meet the vision of: “A trauma informed and responsive nation and workforce, that is capable of recognising where people are affected by trauma and adversity, that is able to respond in ways that prevent further harm and support recovery, and can address inequalities and improve life chances.”

Trauma-informed practice: physical presence in court

Q19. Should virtual summary trials be a permanent feature of the criminal justice system?

Yes

Please give reasons for your answer.

Whilst supportive of people having the option for a virtual summary court, members suggested that it needs to be a choice.

For some people, going to court can be very traumatic and a virtual trial may offer options for reducing trauma for people affected by crime. A virtual option can also reduce travel time, which may mean taking less time off work (less loss of income) and/or improving accessibility, particularly for those with health conditions or childcare commitments. Virtual courts were also seen to be advantageous in terms of reducing the risks associated with Covid-19 transmission and creating a more inclusive ‘new normal’.

For other survivors, having a day in a physical court is viewed as an important part of the justice process. In order to ensure a trauma-informed approach, offering people who have been harmed by crime the choice of a virtual or in-person summary trial should be done in an empowering way, where they retain control of the decision.

Members noted that the system, as it is currently set up, may not be well-placed to offer choice and control to people who have been harmed by crime. They are keen that the system is adapted to meet people’s needs, rather than the other way around, and for greater flexibility to therefore be introduced into the system.

Q20. 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.

As noted above, members are keen for greater flexibility to be introduced into the system so that those who have been harmed by crime have a greater degree of choice and control over whether or not a virtual summary trial is used for their case.

Q21. 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?

Somewhat agree

Please give reasons for your answer.

As stated in our response to previous questions, there is a need for people who have been harmed by crime to have a degree of choice, as part of a trauma-informed approach, with the option of a virtual trial available for those who wish to make use of that model. Members noted that, for some survivors, attending the trial in the Court is part of their healing process. They are keen that there should therefore be a way to consult with the Victim (potentially via voluntary sector organisations that are supporting them) to let them decide if this is what they want.

Regardless of whether a virtual or in-person model is used, we are also keen to ensure that people have access independent advocacy and appropriate support throughout process.

Q22. 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?

Somewhat agree

Please give reasons for your answer.

Members noted that virtual trials may offer some additional benefits to the ability to give evidence remotely by live TV link and therefore be preferable for some cases.

Virtual trials may not be appropriate in all cases, however, and members highlighted a range of factors that need to be considered, including people's familiarity with, the functionality of and support for the IT being used. They also raised concerns about emerging research evidence from the Commonwealth Human Rights Initiative, which suggests that, in some circumstances, the use of virtual courts can be associated with rights violations.

Q23. 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 Visually Recorded Interview.

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

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

Not answered.

Trauma-informed practice: Ground Rules Hearings for evidence given in court

Q24. To what extent do you agree or disagree that Ground Rules Hearing 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?

Please give reasons for your answer.

Not answered.

Trauma-informed practice: court scheduling

Q25. 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?

Somewhat disagree

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

Floating high court trials can be particularly re-traumatising for people who have been harmed by crime, including during the period that they are awaiting trial to begin. Setting standards around what needs to be in place to reduce re-traumatisation would be helpful. E.g. ensuring survivors are given a date, with at least one week's notice and ensuring that support is put in place both before and after the trial.

Trauma-informed practice: information sharing

Q26. Are you aware of any specific legislative changes which would assist in addressing the issues discussed around information sharing? If so, please detail these.

Not answered.

Trauma-informed practice: civil justice

Q27. 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?

Members are keen for all parts of the justice system to use trauma-informed practice when working with individuals and families. This will require training and support to ensure that the workforce understands trauma-informed practices and are able to strengthen and improve their own practice where necessary.

Members would also like to see improvements made to the written communications from the court to victims, to ensure that information is clearly presented in a way that enables people to fully understand what is happening with their case.

Special measures in civil cases

Q28. 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?

Please give reasons for your answer.

Not answered.

Q29. 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

Please give reasons for your answer.

A person-centred, trauma approach should be taken to all civil court hearings in Scotland. As such, special measures should be available when required, to reduce the risk of re-traumatisation.

Q30. Are there any other matters relating to special measures in civil cases that you would like to offer your views on?

Not answered.

Review of defence statements

Q31. Do you support undertaking a review of the use of defence statements?

Yes

Please give reasons for your answer.

Q32. 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?

Lady Dorrian's Review recommended that *"there should be a review of the utility of section 70A of the 1995 Act with a view to strengthening the requirement therein to lodge a meaningful defence statement."*

Defence statements need to be factual and meaningful so that it is clear what the defendant's case is and the crown and the victim can prepare for them. At present, members reported that this is not always the case for those they are working with and a review of the use of defence statements would therefore be welcomed.

In order to progress the review, we would encourage strong engagement with people with lived experience of the justice system (both complainers and defendants) as well as those working with them (including legal professionals and third sector organisations), to help inform any future improvements.

Q33. Are there any other matters relating to a review of defence statements that you would like to offer your views on?

Anonymity for complainers in sexual offence cases

Q34. 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**

Please give reasons for your answer.

To ensure the right to anonymity is fully upheld and to reduce the risk of a loss of anonymity, we believe any automatic right should take effect at the earliest possible stage. This would provide the victim with the safety and reassurance necessary to continue with the journey through the criminal justice system and reporting and provide a stronger basis for the person's recovery.

Anonymity for complainers in sexual offence cases

Q35. 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 of 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.

Not answered.

End point of a right to complainer anonymity

Q36. Which one of the following best reflects your view on when any automatic right of complainer anonymity should end?

- a) **No automatic end point**

Please give reasons for your answer.

We would be keen to see a person-centred, trauma-informed approach being taken to this issue. As such, complainers should be offered a choice about when any automatic right of complainer anonymity should end. The decision about any automatic end point should be made by the complainer themselves.

Circumstances in which anonymity may be set aside

Q37. To what extent do you agree or disagree that the complainer should be able to set their anonymity aside?

- a) **Strongly agree**

Please give reasons for your answer.

As per our answers elsewhere, introducing more choice and control for complainers in to the system could help to make it more trauma-informed. As such, we are in favour of the complainer having the option to be able to set their anonymity aside if they wish to do so.

Q38. 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**

Please give reasons for your answer.

The process should be as straightforward for the complainer as possible and we have therefore selected option a).

Waiving anonymity in respect of children

Q39. To what extent do you agree or disagree that children should be able to set any right to anonymity aside?

Please give reasons for your answer.

There were mixed views amongst Forum members as to whether or not children should be able to set any right to anonymity aside. In both cases, members were keen to see children supported to be aware of and understand any rights they may have and of the longer-term consequences that setting aside any right to anonymity may have.

Q40. 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?

Please give reasons for your answer.

There were mixed views amongst Forum members as to whether or not additional protections should be required.

Q41. 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?

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

There were mixed views amongst Forum members as to whether there should be a minimum age below which a child can set their anonymity aside. Members noted that children's capacity to understand the potential long-term consequences will vary, not only based on their age, but also on other factors, such as developmental stage, how clearly information is presented to them and how well they are supported to understand the issues (including taking account of any additional support needs they may have).

Powers of the court to set aside anonymity

Q42. To what extent do you agree or disagree that the court should have a power to override any right of anonymity in individual cases

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

Not answered

Q43. 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?

Please give reasons for your answer.

Not answered

Penalties

Q44. 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?

Please give reasons for your answer.

Not answered

Defence(s) to breaching anonymity

Q45. To what extent do you agree or disagree that there should be statutory defence(s) to breaches of anonymity?

Please give reasons for your answer.

Not answered

Q46. If you agree 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:

Please give reasons for your answer.

Not answered

Q47. Are there any other matters relating to anonymity for complainers in sexual offence cases that you would like to offer your views on?

Not answered

Introduction of independent legal representation for complainers in sexual offence cases

The principle of the right to independent legal representation

Q48. 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?

Please give reasons for your answer.

Not answered

The right to appeal

Q49. To what extent do you agree or disagree that the complainer should have the right to appeal a decision on a section 275 application?

Please give reasons for your answer.

Not answered

Scope – when the right to independent legal representation should apply

Q50. 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)?

Please give reasons for your answer.

Not answered

Q51. 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?

Please give reasons for your answer.

Not answered

Legal aid

Q52. 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?

Please give reasons for your answer.

Not answered

Q53. 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?

Please give reasons for your answer.

Not answered

Timescales for hearings on applications

Q54. 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?

Please give reasons for your answer.

Not answered

Q55. 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?

Not answered

Specialist court for sexual offences

Q56. 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?

Please give reasons for your answer.

Not answered

Q57. 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?

Please give reasons for your answer.

Not answered

Q58. If you disagree that the specialist court should be a new separate court for Scotland, where do you consider it should sit?

Not answered

Practical features of a specialist sexual offences court

Q59. 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)?

Please give reasons for your answer.

Not answered

Sentencing powers of a specialist sexual offences court

Q60. If a specialist sexual offences court distinct from the High Court or the Sherriff 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.

Please give reasons for your answer.

Not answered

Q61. If you disagree that a specialist court should have a sentencing limit of 10 years' imprisonment, what do you consider the limit should be?

Please give reasons for your answer.

Not answered

Judicial appointments to a specialist sexual offences court.

Q62. If a specialist sexual offences court distinct from the High Court or Sherriff 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?

Please give reasons for your answer.

Not answered

Q63. If you answered disagree to the previous question, who do you think should preside over the court?

Please give reasons for your answer.

Not answered

Legal professionals involved in specialist court cases

Q64. 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 match those of the High Court?

Please give reasons for your answer.

Not answered

Q65. To what extent do you consider that legislation should require the legal professionals working in a specialist court should be trained and trauma informed?

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

Not answered

Q66. Are there any other matters relating to the potential creation of a specialist court for sexual offences you would like to offer your views on?

Members highlighted the importance of ensuring that anybody accessing a specialist court receives appropriate support. As such, they would welcome information about what processes such a court would use to link people in with specialist service providers.

Single judge trials

Q67. 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 offence including rape and attempted rape?

Please give reasons for your answer.

Not answered

Q68. If you have answered 'neutral' to the previous question, what further evidence, research or information would assist you?

Not answered

Q69. 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?

Not answered

Q70. If you answered 'neutral' to the previous question, what further evidence, research or information would assist you?

Not answered

Q71. What do you consider to be the key potential benefits of single judge trials for serious sexual offences? Please select all that apply.

Please give reasons for your answer.

Not answered

Q72. What do you consider to be the key concerns and challenges of single judge trials for serious sexual offences? Please select all that apply.

Please give reasons for your answer.

Not answered

Q73. 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.

Please give reasons for your answer.

Not answered

Q74. 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.

Not answered

Q75. Lady Dorrian's Review recommended consideration of a time limit pilot of single judge trials for offences of rape, do you have any views on how such a pilot could operate?

Not answered

Q76. Are there any other matters relating to single judge trials that you would like to offer your views on?

Not answered

Impact Assessments

Human Rights

Q77. Do you have any views on potential impacts of the proposals in the chapters of this consultation on human rights?

Yes

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

Throughout our response, we have highlighted the need for consent of the victim/survivor to be in place and for those that have been harmed by crime to be offered choice wherever possible, to support a trauma-informed, rights-based approach. As part of this, there will be a clear need for independent advocacy and support to ensure that people are aware of and understand their rights at each stage.

Equalities

Q78. 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?

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

Not answered

Children's Rights

Q79. 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.

CJVSF members suggested that there may be opportunities to link with some of the wider work going on around UNCRC and The Promise, with any relevant legislative changes potentially

linking to the new Scottish Barnahus (Bairns' Hoose) Standards for supporting child victims and witnesses.

In relation to UNCRC specifically, members suggested that the above proposals may impact on the following articles:

- Article 2: Right to protection from discrimination
- Article 3: The best interests of the child must be a top priority in all decisions and actions that affect children
- Article 9: Right to contact with their parents
- Article 12: Respect for the views of the child
- Article 16: Right to privacy
- Article 17: Right to reliable information
- Article 20: Right to support for children unable to live with their parents

Fairer Scotland Duty

Q80. Do you have any views on potential impacts of the proposals in the chapters of this consultation on socio-economic equality?

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

Not answered

Island communities

Q81. Do you have any views on potential impacts of the proposals in the chapters of this consultation on communities on the Scottish islands?

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

Not answered

Data protection and privacy

Q82. Do you have any views on potential impacts of the proposals in the chapters of this consultation on privacy and data protection?

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

Not answered

Business

Q83. Do you have any views on potential impacts of the proposals in the chapters of this consultation on businesses and the third sector?

Yes

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

Many of the proposals will have implications for third sector service providers, given the need for appropriate support to be in place for individuals and families at all stages of the justice system, as part of a trauma-informed approach.

We would urge early engagement with third sector service providers about any proposed changes that may arise from the results of this consultation to ensure that appropriate levels of support are available within the community and that clear processes are in place to support information sharing and joined-up working between relevant services.

Similarly, if a Victims' Commissioner is established in Scotland, we would be keen to see clear structures and processes put in place to ensure that the Commissioner engages with third sector organisations working within the justice system.

Environment

Q84. Do you have any views on potential impacts of the proposals in the chapters of this consultation on the environment?

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

Not answered