

Scottish Government Call for Evidence: Women in the Justice System – a strategic approach

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1. Introduction

This response is from three academics with substantive research experience in areas of: domestic abuse; the criminal and civil justice system; and women and children's rights.

Our response draws on our collective research expertise. It also provides an overview of new and emerging findings from ongoing research with [ASSIST](#) and [EDDACS](#) on court advocacy services for women and children affected by domestic abuse in Scotland.

This new research is part of [CAFADA](#) (Children and Families Affected by Domestic Abuse) a wider programme of research. CAFADA examines social care responses to children and parents affected by domestic abuse in Scotland and England. It explores innovations in social care relating to domestic abuse - how innovative services have developed, been implemented and their effectiveness.

Our research is ongoing, but we base our submission below on emerging findings from an initial stage that includes interviews with practitioners who provide advocacy for women and child victims and witnesses of domestic abuse. Qualitative interviews were carried out with practitioners (n=9) during 2021. These interviews focused on the challenges posed by the pandemic for women and child victims of domestic abuse involved with the criminal justice system. We also refer to wider research, exploratory discussions, attendance at relevant webinars and engagement with relevant professionals.

Our response relates to three of the Call's priorities:

1. Can you provide any evidence that demonstrates how women's experience of the Scottish Justice System is different to men's? *This can include where women are victims, accused/convicted offenders or both.*
2. What evidence is there that the needs of women are not being met by the Scottish Justice System? Why do you think this is the case? *Please support your answer with evidence.*
3. Can you provide any evidence that the rights of women are not being upheld by the Scottish Justice System? *This can include where women are victims, accused/convicted offenders or both.*

2. Domestic abuse, the pandemic, and the justice system

Preventing and responding effectively to domestic abuse should be a core concern for effective criminal and civil justice systems. Police Scotland have previously described domestic abuse as the single biggest demand on their time, with an equivalent of one domestic abuse incident being reported every nine minutes (Police Scotland, 2017). In the year 2020-21 65, 251 incidents of domestic abuse were recorded by the police, an increase of 4% compared to the previous year (Scottish Government, 2021). 2020-21 marks the fifth consecutive year of increased levels of domestic abuse recorded by the police in Scotland (ibid).

Domestic abuse is a gendered crime that is primarily perpetrated by men against women; the Crown Office report that in 2020-21 87% of the charges reported with a domestic abuse identifier were in cases where the accused was male (COPFS, 2021). Police recorded data reports that, where information about gender is available, 80% of domestic abuse incidents recorded by the police involve a male accused and a female victim (Scottish Government, 2021).

Domestic abuse is also a crime that affects children. It is of note that the statistics discussed above are adult focussed. They do not show the extent to which children are affected. The absence of children in routine statistical data collection is a longstanding issue (see Tisdall and Morrison, 2020 for discussion on the implications for monitoring children's rights when children are excluded from large scale data collection in this way). In the context of domestic abuse, child victims and witnesses should be 'counted' fully to understand the scale of victimisation, as well as what the ensuing consequences are for the justice system.

Restrictions imposed in response to the COVID-19 pandemic had, and continue to present, serious risks to women and children affected by domestic abuse. Restrictions made it harder for women and children to report abuse and to seek help and for service providers to respond effectively and continue to do so. Research shows that times of crisis and unrest are linked to increased levels of violence against women and children (Fraser, 2020). Since the outbreak of COVID-19, there have been reports from across the globe about increased rates of domestic homicide and surges in calls to helplines for survivors and perpetrators of domestic abuse (UN Women, 2020). The escalation and intensification of domestic abuse was borne out in Scottish research led by Armstrong and Pickering (2020). COVID-19 has had a significant impact on the functioning of the criminal legal system. Research highlights that delays to court proceedings, in both criminal and civil courts, have had serious consequences for women and children affected by domestic abuse. These impacts cut across women and children's rights to protection, provision, and participation (see Houghton et al, 2020 for analysis primarily on children's rights).

3. Emerging findings

We now present emerging findings. These address three substantive areas: the extent to which the justice system is victim focussed and domestic abuse sensitive; the impact of COVID-19 on the justice system; and on a fractured and disjointed justice system.

3.1 The extent to which the justice system is victim focussed and domestic abuse sensitive

Participants reported a gap between policy aspirations of a 'victim focussed' justice system and the everyday interactions that women and child victims of domestic abuse have with the criminal justice system. They questioned the extent to which the current criminal justice system was able to prioritise the rights of women and child victims of domestic abuse

There was concern about the extent to which criminal justice processes were based on an accurate understanding of domestic abuse, or the extent to which professionals working within the system were aware of the wider issues. For example, the likelihood of ongoing domestic abuse, the risks of separation and the impact of domestic abuse on children.

There is a need for increased and more sensitive attention to be given to the information given to victims or accessed from victims when there is domestic abuse. While there is a need to a balance the rights of a victim and complainer, participants identified the criminal justice system as at times generating risks for women and child victims of domestic abuse. One example related to providing up-to-date and accurate information to courts about the accused / perpetrator and the risk they posed to the victim(s). There was concern that

this information was not always handled in ways that prioritised women and children's safety. For example, information might be mishandled and inadvertently disclosed to the accused / perpetrator, placing victims at increased risk.

Policies state that victims should be informed of the court process, however victims do not routinely receive information directly from the court about why particular decisions have been made, for example why a Non-Harassment Order has or has not been granted. This leaves victims without understanding as to why such a decision had been made. It raises questions for victims as to if, and how, information about the abuse they experienced, and the risk posed by the perpetrator, has been considered or weighed by the court. Similar concerns were raised in research in relation to the implementation of children's rights in civil justice (Morrison et al, 2020a).

Participants questioned the extent to which victims' needs and rights were understood at various points of the justice system. One participant discussed the complexity of domestic abuse cases and their implications for bail reviews. While in some cases it would be entirely right for a bail review to be treated as solely about the accused / perpetrator, in many domestic abuse cases the outcome of a bail review might increase the risk of further victimisation of women and children.

Participants described instances of good engagement with the Procurators Fiscal, who would seek out information that an advocacy service had which was relevant to a bail review. However, such practice was at times inconsistent, and the advocacy services that act as the conduit for this information are limited, and not available to women and children throughout Scotland.

Overall, participants described a need to ensure that the needs and rights of women and child victims were both understood and respected within the criminal justice system echoing other research (e.g., Burman and Brooks-Hay, 2018). Doing so, would not only improve victims experience of, and confidence in the criminal justice system, but also improve victims' rights to access justice.

3.2 The impact of COVID-19 on the justice system

The pressures of the COVID-19 pandemic have exacerbated existing weaknesses in the criminal justice system to effectively provide for the rights of women and children affected by domestic abuse. Participants were acutely aware of the pressures brought about by the pandemic on the system. Court advocacy services have been under acute pressure owing to the volume and complexity of cases and delays that have meant cases have not concluded. Such advocacy services would benefit from greater resourcing.

Measures taken to tackle the pandemic were described as having adverse impacts on women attending courts. For example, safety provisions that were in place pre-pandemic such as separate entrances have not been available. Instead, women have been forced to queue for long periods, providing increased likelihood of encountering the accused / perpetrators in court buildings.

There were challenges for advocacy workers around providing information to victims. At points, during COVID-19 restrictions there have been limits on the number of people attending court. This has meant some advocacy workers (for example, those working in EDDACS) who previously were present at court, were no

longer able to attend or to find out court outcomes which in ordinary circumstances they would then share with victims.

Court systems have updated information on decisions and outcomes more slowly and irregularly than pre-pandemic restrictions, making it difficult for advocacy services to access and pass on up-to-date information to victims.

Changes in the delivery of the justice system brought about by the pandemic have generated potentially new risks for victims of domestic abuse. For example, professionals were concerned that more accused / perpetrators of domestic abuse had been released on undertakings with police bail conditions. These undertakings end on a specified date, but court hearings were often delayed meaning court bail conditions were not imposed. This led to a lack of clarity for victims and professionals about what, if any, conditions the accused / perpetrators were under and to what extent these would or would not protect the victims.

Participants also reported concerns about a reduction in the reporting of bail breaches during the pandemic, with adult victims expressing to advocacy services that 'it's not worth it', as they were not confident any action would be taken if they did report such breaches.

Increases in the time taken to progress court cases were identified by participants as having a range of negative impacts on women and children affected by domestic abuse. Extended delays and subsequent periods of uncertainty adversely affect women and children's recovery. Participants reported a perception that court outcomes were affected by the length of time taken, outcomes did not reflect the severity of the offence partly because the offence appeared so far in the past, and the pressure on the courts to clear backlogs of cases. Participants reported that women and children with such experiences were disillusioned with the system and expressed a reluctance to report subsequent criminal behaviour.

These findings highlight serious concerns about the effectiveness of the criminal legal system during the pandemic and raise questions about women and children's rights to access to justice. They point to the need to prioritise women and child victims of domestic abuse in the on-going delivery of the justice system as the pandemic continues, as well as prioritising their rights as the justice system begins to recover from the pandemic.

3.3 A fractured and disjointed system

While the primary focus of our interviews with advocacy workers was the criminal legal system, participants also highlighted civil court processes as being particularly problematic for women and child victims of domestic abuse. Similar concerns to those noted above were raised about the impact of delays in civil proceedings and the potential effect this may have on children and women's ability to recover from abuse. There was a view from professionals in our study that domestic abuse is treated differently across civil and criminal justice systems. While treated as a crime in the criminal justice system, participants reported that in civil court proceedings domestic abuse and risks associated with child contact were often marginalised or did not fully engage with the risks posed by domestic abuse (see Hester, 2011, Morrison, 2015, Morrison et al 2020b). This inconsistent approach to domestic abuse was difficult for victims with experience of both

criminal and civil legal systems to reconcile and acted to undermine their confidence in the overall justice system.

4. Conclusion

This response has summarised emerging findings from ongoing research on court advocacy services for women and children affected by domestic abuse.

The research, and related studies has highlighted that:

- Domestic abuse overwhelmingly affects women and children, and evidence suggests that their rights are not always upheld in the criminal and civil legal system. Addressing this, would improve victims experience of, and confidence in the justice system. It would also improve victims' ability to access justice.
- The safety of women and child victims of domestic abuse must be prioritised in the on-going delivery of the criminal legal system during the pandemic, as well as their rights as the criminal legal system recovers from the pandemic.
- There needs to be a consistent and improved understanding of domestic abuse, and the risks it presents for women and child victims, across both criminal and civil justice systems.

5. Acknowledgements

We would like to thank the research participants for taking part in this research. They shared their views and experience of the justice system during a period where they were working under intense pressure.

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For further information about this research contact f.morrison@stir.ac.uk

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