

ANNEX A - Lady Dorrian Working Group - Enhancing the quality of jury involvement Terms of Reference

This is one of a discrete number of working groups which will report to the Lady Dorrian Governance Group. These working groups are set up with the remit to:

- Provide, information and support Governance Group discussions on specific areas or aspects of the recommendations placed within the remit of identified workstreams by providing briefing, papers and advice as required;
- Share accountability and ownership of actions identified as being within its remit and ensure they are delivered on time;
- Where appropriate, encourage stakeholders and organisations to work together to avoid duplication of effort.

The shared terms of reference of these working groups are:

- To develop, discuss and take forward proposals and actions in support of the recommendations of Lady Dorrian's report;
- To report on progress against those actions to the Governance Group, and to ensure updates on workstreams are provided in a timely manner;
- Where the working group membership feels it is necessary, to obtain views, advice, and challenge and/or support from the Governance Group;
- To delegate actions to stakeholders for implementation (where organisationally and/or legally possible), and to obtain reports on the progress of implementation;
- To commission, if and where necessary, any additional work required to support consultation or implementation of the actions and recommendations from Lady Dorrian's report;
- To appropriately prioritise work;
- To ensure a common understanding of what success looks like.

Recommendation 4: Steps to enhancing the quality of jury involvement

Background: The recommendations made in 4(a) to (e) of the Review proceed on the assumption that juries will continue to be utilised for the resolution of serious sexual offences. It is acknowledged that implementation of the majority of the aspects of recommendation 4 fall principally within the responsibility of the Lord President/Lord Justice General and those to which he delegates such responsibility in the first instance. For example updates to the jury manual are made by the jury manual committee, on an ongoing basis and the jury manual is made publically available on line.

This working group, as a group representative of the views of a cross section of the justice sector, will specifically focus its attentions to and look at discrete aspects of Recommendation 4(a) with a view to providing a focused contribution to the discussion of, and make suggestions/proposals on the practical implementation of key elements of any pilot. The recommendation is in the following terms:

“(a) Myths and preconceptions. A pilot programme should be developed to communicate information to juries regarding certain common rape myths and stereotypes, possibly in the form of a video, drawing upon the research findings referred to in the report, and the equivalent pilot programme commenced in England and Wales. In the meantime the current statutory directions to address rape stereotypes and myths should continue to be utilised whenever appropriate.”

The key points identified in the Review Report (at 5.56 and 5.57- reproduced at annex 1) for further consideration and discussion relate principally to the type and form of communication to be adopted, and when it should be conveyed.

Over a 6 month period the working group will focus on these three discrete issues, to develop its proposals and will:

- Consider an appropriate form of communication the pilot could use, including e.g. the use of video, written directions, or oral directions or a combination as suggested by the Review.
 - Consider when a communication(s), as applicable, could be conveyed within the trial process while taking cognisance of the potential risk of entrenching rape myths. E.g. at the start of the trial, via introductory remarks by the judge, or otherwise as soon as any need to address rape myths may arise. In doing this it may require to consider the circumstances in which a communication(s) may require to be made. E.g. all or only some cases or when specific issues arise
- Consider the possible source for which the text/terms explaining the rape myths could be drawn. E.g. the statutory definitions contained within Sections 288DA and 288DB of the Criminal Procedure (Scotland) Act 1995, as supplemented by text contained within the jury manual produced by the Judicial Institute for Scotland.

In doing this the group will proceed on the basis that the rape myths identified by the Review Group at para 5.56 of the Report will form the likely initial content of the pilot.

When giving consideration to these issues the Group acknowledges the importance of evaluation, and in so far as practicable will identify, and consider the practical risks, and challenges associated with its proposals on the above issues while taking cognisance of the statutory and other responsibilities of the relevant bodies responsible for the future implementation and evaluation of the pilot, as applicable.

To assist in its consideration, and to inform its views and the preparation of its proposals the working group will:

- Consider the issues and terms of discussion made in the Review Report- the key sections (paragraphs 5.54-5.57) are reproduced at annex 1.

- Consider and seek updates and views, where possible, from the authors of the research referred to within the Review Report and recommendation 4(a). In particular this will include the UCL research pilot in England and Wales, any similar developments in Northern Ireland following the recommendation of Sir John Gillen’s Review, and, as applicable, the Scottish Jury Research Project led by Professors Chalmers, Munro, Leverick and others.
- Consider the terms of the current statutory directions and the form and manner in which they are currently communicated to jurors.
- Draw upon the experience of its own members and that of the group collectively.
- Identify, if applicable other areas or sources of information or concepts that may assist in the ultimate implementation of the pilot which it may not, given the limited lifespan, be able to explore, but which may be of assistance to those carrying out the future implement of the pilot.

Membership

The membership of the working groups will be kept to a reasonable minimum to support their need to make quick and effective progress. The suggested membership and chairing arrangements for this working group are as follows:

- Co-Chair: SCTS/SG
- Members:
 - Scottish Government (Co-Chair)
 - Scottish Courts and Tribunal Service (Co-Chair)
 - Faculty of Advocates
 - Law Society of Scotland
 - Crown Office and Procurator Fiscal Service
 - Rape Crisis Scotland
 - Judicial Institute of Scotland

The Scottish Government will provide secretariat support to this working group.

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