

## **ANNEX A**

### **Lady Dorrian Working Group - Creation of a national specialist sexual offences court**

#### **Terms of Reference**

This is one of a 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 and inform 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 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, 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 2: creation of a national specialist sexual offences court**

- A national, specialist sexual offences court should be created, in which the core features should be:
  1. Pre-recording of the evidence of all complainers;
  2. Judicial case management, including GRHs [Ground Rules Hearings] for any evidence to be taken from a complainer, either on commission or in court; and
  3. Specialist trauma-informed training for all personnel.
- The court should have the following features:
  - (a) A national jurisdiction in respect of serious sexual offences prosecuted on indictment;
  - (b) Procedures based on current High Court practice, revised to meet appropriate standards of trauma-informed practice;

(c) Those procedures to include judicial case management including GRHs and practises similar to those developed in High Court of Justiciary Practice Note No 1 of 2017 and No 1 of 2019;

(d) Presided over by a combination of High Court judges and Sheriffs, who have received trauma-informed training in best practice in the presentation of evidence of vulnerable witnesses and appointed to the court by the Lord Justice General;

(e) Sentencing powers of up to 10 years imprisonment;

(f) Rights of audience available to members of the Faculty of Advocates, solicitor advocates, and prosecutors all of whom have received specialist trauma-informed training in dealing with vulnerable witnesses, including examination techniques, in accredited courses approved by the Lord Justice General;

(g) SCTS administrative and support staff trained in trauma-informed practices expanding on services already provided in the Evidence suites in Glasgow and Inverness;

(h) Pre-recording of the whole of a complainer's evidence as the default method of presenting the complainer's evidence;

(i) The right to independent legal representation (ILR) to allow complainers to oppose section 275 applications with appropriate public funding;

(j) In the event of complainers requiring to attend court measures adopted will be those which address the comfort and safety of the witness;

(k) Measures in respect of pre-instruction and charging of juries as recommended in chapter 5 of this report; and

(l) Legal aid provision for the court including a dedicated table of legal aid fees.

- In support of the case management powers available to the specialist court, and the High Court currently, and for the reasons given in paragraphs 1.19 and 1.20, there should be a review of the utility of section 70A of the Criminal Procedure (Scotland) Act 1995 with a view to strengthening the requirement therein to lodge a meaningful defence statement. This review should proceed irrespective of the implementation of any of the other recommendations made in this report.

Over a six month period, the Working Group is asked to:

- Critically examine the areas detailed within the recommendation as being the key component parts of any national specialist sexual offences court;
- Consider what additional considerations might be required to progress the recommendation;
- Consider the key components, form, manner and substance that a review of the utility of section 70A of the Criminal Procedure (Scotland) Act 1995 might take, the benefits, legal and practical challenges associated with implementing such a review, and solutions to those and make recommendations for any progression accordingly, including the potential need for a separate workstream for this part of the recommendation.
- Liaise with existing workstreams that are looking at some of the areas identified and where possible future proof development (as applicable) alongside the progressing of the recommendation;
- Consider the operational and legal requirements necessary to enable the Courts to be introduced;

- Consider any challenges to delivery and make suggestions on how they might be addressed;
- Consider the anticipated benefits of a new national specialist sexual offences court and methods of evaluation;
- Consider the implications of progressing recommendation 2 in light of the work on the other recommendations within the review Report, but bearing in mind the independence of certain recommendations identified in the review Report;
- Consider what might usefully be included within a consultation document to help inform the Governance Group's consideration;
- Look at any other issues relevant to the Governance Group's considerations;
- Make recommendations to the Governance Group on next steps.

### **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:

- Chair: SCTS
  - Faculty of Advocates
  - Law Society of Scotland
  - COPFS
  - Scottish Government
  - Rape Crisis Scotland
  - Victim Support Scotland
  - Scottish Legal Aid Board

Criminal Justice Reform Unit  
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