

Women's Justice Leadership Panel

The Case for Gendered and Intersectional Approaches to Justice

August 2023

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1. Foreword

Today, we publish a report setting out the evidence for gendered and intersectional approaches within the justice system – a message which comes loud and clear from senior, independent, and highly respected women currently working within the system.

I would like to thank our esteemed Panel for their time and knowledge, our reference group, our dedicated secretariat, and the specialists who have made both written and verbal contributions. This report would not have been possible without the collective enthusiasm and passion of the Panel, and all of those who have supported this work.

Furthermore, I would also like to extend my gratitude to my predecessors, Ash Regan MSP, and the Minister for Drugs and Alcohol Policy, Elena Whitham, MSP.

This work is representative of the Scottish Government's ongoing commitment to improve the justice system for women, and our continued efforts to tackle violence against women and girls, in-line with our Equally Safe strategy, which will be refreshed later this year. Our Policy Prospectus commits to strengthen how the justice system responds to all forms of violence against women and girls and sets out to reduce the gap between men's and women's feelings of safety.

The Report shines a light on the experiences of women in the justice system; those who come into conflict with the law, those who are victims, and those working across the system. For some, the report will not be revolutionary. However, it brings to the surface a range of strong evidence which clearly illustrates that the experience of women is different to men, and as a result, policy must be formulated in a gendered way which recognises the inherent nature, and gender inequality, that exists in our society, and within justice as a microcosm.

I urge those who have a role within the justice system to take note, and to heed the warnings of what can happen when policy is not designed with a gendered lens – ultimately women suffer.

I consider this work to be a foundational stone and the basis on which we collectively strive to make strategic changes to the way justice is delivered, in gendered and intersectional ways, which improve outcomes, equality, and fairness for women in the justice system.

We must all now work with justice partners, and others, to effect the changes we wish to see and determine how that may best be achieved.

A handwritten signature in black ink, appearing to read 'Siobhian Brown', with a long horizontal flourish extending to the right.

Siobhian Brown MSP - Minister for Victims and Community Safety

2. Executive Summary

The Minister for Victims and Community Safety brought together a Women's Justice Leadership Panel, composed of senior women across the justice system, to examine several themes in which women's experience of justice varies from that of men, including:

- Caring Responsibilities and 'Hidden Sentences'
- Gaps between Policy and Practice
- Culture, Gender, and Sexism
- Victim and Offender Status
- Intersectionality and Data Gaps

This report summarises those discussions and presents the Panel's key findings. It aims to consolidate the evidence and seeks to promote greater understanding of gender and intersectionality – building the case for gendered and intersectional approaches to policy making across the justice system. It does not look to make specific recommendations but instead to guide the justice system to the changes it considers is required to deliver a sector that is truly and evidently responsive to the needs of women and girls.

The Scottish Government understands that Violence Against Women and Girls (VAWG) is underpinned by inequality and fuelled by societal and structural barriers. This report has drawn on a strong body of evidence, collating it and enhancing it, to further build the case for policy making which appreciates and understands intersectionality, and the impacts of gender within the justice setting.

The key findings are as follows:

1. Evidence

The remit called for the Panel to demonstrate how the experience of women in the justice system is different to men, and to promote consistent understanding of gendered issues within the justice system.

The Call for Evidence, the evidence presented by expert presenters, thematic evidence briefs, and the experiences and knowledge of the Panel has clearly demonstrated the many ways in which the experience of women in the justice system is different to men. The thematic discussion has highlighted these differences, and a number of common themes have arisen.

Women enter, participate, and face distinct challenges unlikely to be experienced by men in the same way. Gender, paired with other intersectional inequalities, is central to this, and there is considerable evidence to suggest that this impacts the experiences and outcomes for women in the justice system.

<p>The Panel concluded that there is strong evidence which supports the view that women's experience of the justice system is very different to that of men.</p>
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2. Research and Data

Although considerable evidence and data is already in existence, the Panel concluded that there is an urgent need to improve gendered and intersectional data collection, to support the identification of issues, increase the evidence base on these issues, and to ensure more effective and progressive policy responses.

Further and specific research on the issues identified within this report, in the Scottish context, must be commissioned to improve understanding and further build the case for gender competent and intersectional policy making across the justice system.

The Panel concluded that there is a need to improve gender and intersectional data collection and research across the justice system as well as deeper and meaningful engagement with women and girls with experience of the justice system.

3. Understanding Gender and Intersectionality

The Panel identified areas of best practice for justice organisations including intersectional and gender competent approaches. Both approaches identify gender as a key intersection and argue for bespoke policy making which recognises multiple intersectional inequality, structural inequality, and power dynamics.

In order to address the specific experiences of women within the justice system which have been highlighted by the Panel in this report, the Panel believes that an intersectional gender competent approach to policy is required within the justice system. Taking a gender competent approach to policy making would ensure that issues particular to women are purposefully addressed in policy design and practice. Similarly, an intersectional approach ensures that women are not considered as a homogeneous group. Accordingly, the experiences of women with other intersecting characteristics are also proactively considered.

Approaches that are intersectional and gender competent provide opportunities for decision makers to design policy which promotes equality, and challenges systemic disadvantage. This report shows that when organisations fail to understand gender and its impact, it can often lead to poorer experiences and outcomes for women.

The Panel concluded that there is a need within the justice system for an agreed understanding of an intersectional and gender competent approach which is used to inform both policy and practice.

4. Understanding Trauma

The adoption of person-centred and trauma informed practice provides opportunity for justice organisations, and services, to address gender-based disadvantage. Person-centred and trauma informed practice, paired with intersectional gender competency, provides avenues to develop bespoke policy which supports women's equality. Significantly, person-centred and trauma informed practice, at an operational level, can have a powerful impact on perceptions of justice and trust.

Women coming into conflict with the law have complex needs and face additional barriers which underscores the necessity of service provision. Expert services, particularly in cases of dissatisfaction, should be available quickly, and support should be joined up, consistent, and holistic. Consideration should be given to embedding gender experts in strategic decision making, and frontline services.

The Panel were clear that services provided should be person-centred and trauma informed, and consistent across the entire justice system.

3. Introduction

The experiences of women within the justice system are many and varied. A much smaller proportion of women than men come into conflict with the law in Scotland. Women are a minority of those convicted of criminal offences (17% of all convictions in 2019-20)¹. Many of the women who come into conflict with the law have also experienced high levels of trauma, violence, abuse and victimisation².

Women also experience crime in different ways³. Women are much more likely to experience sexual victimisation and to be victims of partner abuse, rape and other sexual offences, stalking, domestic abuse, 'honour based' abuse (including female genital mutilation, forced marriage and 'honour' killings), 'revenge porn', 'upskirting', 'spiking', and many others. The scale of such violence is felt across all of society, and by justice organisations.

Evidence highlights that existing justice systems around the world often deny women and their families protection, accountability and reparation, which can lead to impunity for perpetrators and a cyclical pattern of further violation of rights⁴. Globally, evidence suggests women face additional barriers to obtaining justice in their capacities as claimants, victims, witnesses or when they come in conflict with the law⁵. This is often driven by institutional, policy, and legislative failure to remove discrimination, gender bias, stereotyping, stigma, indifference, corruption and impunity⁶.

Failure to address these inequalities, through justice systems, perpetuates the harms caused by violence against women and girls. The Scottish Government is determined to challenge and confront this continuum of violence and abuse in all its forms and manifestations, and have committed to a range of policies and initiatives dedicated to this end⁷.

The [Vision for Justice in Scotland](#) prioritises better outcomes for women and girls, confirms our commitment to improve access to justice for victims, and places women and children at the heart of service delivery. The [National Strategy for Community Justice](#) emphasises the identification of needs and opportunities for support with trauma-informed responses across the justice system, aiming to shift the dial between custody and community in a way that promotes rehabilitation and reduces revictimisation.

[Equally Safe](#), Scotland's Strategy for preventing and eradicating Violence Against Women and Girls (VAWG), acknowledges that women and girls are at an increased risk of violence and abuse precisely because they are female. The Vision for Justice reflects the principles within Equally Safe, acknowledging that VAWG is underpinned by inequality, societal attitudes and structural barriers that perpetuate that inequality.

To further enhance our efforts to develop a justice system that works for women and girls, the Minister for Victims and Community Safety has taken forward a strategic examination of the justice system to support the development of an evidence base and thematic understanding of where gender intersects with the justice system. As part of this process, in January 2022, the Minister brought together a Women's

Justice Leadership Panel to consider how a gender informed justice system could better serve the needs of women and girls.

This report is a summary of the discussions and key findings of the Women's Justice Leadership Panel. It aims to summarise the evidence and seeks to promote greater understanding of gender and intersectionality – building the case for intersectional and gendered approaches to policy making across the justice system.

4. Women's Justice Leadership Panel

4.1 Membership

[Panel members](#) were appointed in December 2021. The first meeting of the group was held on 26 January 2022 and the Panel continued to meet regularly until the final meeting in March 2023. The Panel comprised of senior women, each with their own experience of working in roles across the justice system. The Panel members were appointed because of their own personal experience and not to represent the organisation with which they are currently affiliated.

Panel members:

- Ruth Charteris KC
- Jacqueline Clinton
- Hilary Sloan
- Rose McConnachie
- Jen Ang
- Harriet Wistrich
- Professor Vanessa Munro
- Mariam Ahmed

The views expressed within this report are those of individual Panel members and are not to be assumed as unanimously agreed. Also, they may not necessarily represent the views of the organisations to which Panel members are affiliated. Those organisations have not been invited to endorse the conclusions of the Panel. Rather, the Panel were selected, as senior women working within the justice system, to draw on their own first-hand experiences and understandings. The aim of this was to support impartiality and encourage open and frank discussion.

To support the Panel and ensure that lived experience was at the heart of the Panel's considerations, a Reference Group was set up. The purpose of the Reference Group was to contribute towards the outcomes of the Panel, providing direct lived experience, expertise, and knowledge from women who had been in contact with the justice system to support the Panel's considerations.

4.2 Remit

[The remit](#) of the Panel was:

- to demonstrate that the experience of women in the justice system is different to men, and
- to promote consistent understanding of gendered issues within the justice system

In addressing these issues, it is hoped that the Panel's work will support the operationalisation of a gender informed justice system which will lead to better outcomes for women.

The work included analysing regular sets of published data to see if there are lessons to be learned and initiatives to be taken forward. The Panel reviewed written evidence and oral evidence presented at Panel meetings.

The Panel was invited to provide challenge and opinion which may help to:

- support the need for system change.
- provide a consistent narrative and promote understanding of gender competency and cultural change.
- identify areas for improvement, prioritisation and levers that can unlock change.

5. Evidence and Thematic Discussion

A Call for Evidence was issued in October 2021 to leading experts in the field to gather information on:

- How women experience the Scottish justice system differently from men and in what ways their needs are not being met.
- What the impact on women is of a justice system that does not meet their needs.
- Best practice examples of gender-specific approaches in and across the justice system in the UK and internationally.

The responses to the call for evidence were analysed to identify five overarching themes that are central to women's experiences in the justice system. These themes, shown in the Figure below, formed the basis for the Panel's discussions.



The evidence gathered on these themes was further supplemented with analysis from Scottish Government Justice Analytical Services, case studies provided by the Reference Group, and presentations by guest speakers at each Panel meeting.

Through the identification of key areas of targeted and measurable activity, it is anticipated that the Panel's conclusions will inform and become an integral part of the future development and delivery of a number of strategies and initiatives, including:

- the Justice Vision for Scotland Action Plan,
- the Restorative Justice Action Plan,
- the Community Justice Strategy and Delivery Plan,
- Equally Safe, &
- the plans of other justice partners, contributing to achieving the goal of a truly person-centred justice system for all.

Key to success will be ensuring a consistency of approach and accountability across all of these activities in a truly holistic fashion.

Questions considered by the Panel

To support the development of the key findings, the Panel were asked to focus their discussions on fundamental questions:

- What do Panel members think are the main causes of the problems that women encounter in these types of cases/scenarios?

- What would a gender-responsive/competent system look like (in relation to the theme)?
- What difference would it make to women's experiences of the justice system?

In addition, and as part of the development of the conclusions within the final report, the Panel were asked to consider the following:

- how best to ensure that the conclusions of the Panel could be progressed.
- how success would be measured and evidenced.
- what mechanism was required to ensure that the work of the Panel was maintained, reviewed, and assessed for the longer term; and
- how to embed continuous feedback to all those who contributed to the work of the Panel.

5.1 Theme 1: Caring Responsibilities & Hidden Sentences

Evidence heard by the Panel

The Panel heard evidence from Professor Nancy Loucks OBE in her capacity as Chief Executive of Families Outside. Prior to Families Outside she worked as an independent criminologist, specialising in research on prison policy and comparative criminology. In 2012, she was appointed as Visiting Professor at the University of Strathclyde's Centre for Law, Crime & Justice.

[Families Outside](#) is a national charity in Scotland that works solely to support children and families affected by imprisonment. Their purpose is to improve outcomes for children and adults affected by imprisonment so they can live lives free from stigma and disadvantage.

Background

Women typically engage with the justice system in different ways from men – they enter for different reasons, with different backgrounds, and under different conditions. These differences include: experiences of victimisation; seriousness of offending; and being more likely to have primary childcare responsibilities than men.

Indeed, women can be impacted in their own right by virtue of having family members accused of a crime or imprisoned. 'Hidden sentences' refers to the significant harms experienced by having a loved one in prison or interacting with the justice system, including: "a reduction in household income, an increase in costs, poor mental health, stigma, negative media attention, and the loss of the practical and emotional support they previously relied on from the family member"⁸. Families Outside report that 83% of individuals supported by their organisation in 2020 were women, and that anecdotally, mothers, partners, sisters, and female friends make up the bulk of prison visitors. As such, women's interaction with the justice system is not typical, and their experience has a range of knock-on effects⁹.

Women's role as mothers and primary carers means that their criminalisation and imprisonment also affects children. Maternal imprisonment can have strong negative effects on children's future life outcomes.

More specifically, a mother's imprisonment leaves a child vulnerable to even poorer outcomes than those who experience their father's (or other family member's) imprisonment. Families Outside report that only 5% of children whose mother is imprisoned remain in the family home, with only 9% being cared for by their fathers, whereas most children with an imprisoned father remain with their mother. The Scottish Prison Service Survey 2019 found 61% of women in prison are mothers of children under the age of 18¹⁰. It is important to note that women's role as mothers, further impacts their experiences, including in relation to abusive relationships, family court processes, and access to justice. The following case study was provided by Families Outside.

Danielle's story

Danielle has two sons, aged 8 and 16. Prior to sentencing, a criminal justice social work report was prepared which outlined the consequences for Danielle's children should she receive a custodial sentence; a recommendation for a Community Payback Order was made. Instead, Danielle received a prison sentence; her eldest son was placed in residential care, and the younger with foster parents.

Danielle describes her time in prison as unexpected and terrifying: "I said no to everything and shut myself away." As a consequence of this, she was unaware of the option of family visits with her children or the support available to her. She did follow the advice of the local authority Housing service - to relinquish her tenancy voluntarily on the understanding that an application for accommodation on release would be considered more favourably.

When Danielle was released on home detention curfew (HDC), or "TAG", She was informed that her application for a tenancy would not be considered until the HDC has expired, and she presented as homeless. Although Danielle has now been out of prison for six months, her younger son remains in foster care and does not understand why he cannot live with his mum. Her older son has chosen to live independently at just 16.¹¹

Families Outside contend that the financial burden of imprisonment on the families of those in prison is significant, and also falls disproportionately on women. As does the burden of supporting people following their release from prison before they can establish their own income from either work or benefits¹². Support is often focused on those imprisoned, however, there are a range of invisible victims within the family who require support, and early intervention.

Families Outside raised the establishment of Community Custodial Units (CCUs) as an excellent opportunity to help increase the contact between mothers in prison and their children. This includes children's overnight stays with their imprisoned mothers – opportunities which would, in their view, support the implementation of Article 9 of the UNCRC. Whilst welcoming The Scottish Prison Service (SPS) progress through the SPS Family Strategy and Family Contact Officers, Families Outside stress that there are a number of areas where the unique role of families is emphasised by the SPS, but the unique needs of families are not represented. The SPS Throughcare Strategy¹³ describes the role families have in supporting reintegration at liberation but does not reflect the unique needs of families at this time.

The current (we understand a strategy for 2023 and beyond is being developed) SPS Family Strategy for 2017- 2022 sets out how SPS will review, develop, and deliver national and local policies and procedures relating to the care of children, young people and families who have a family member in prison based upon the following guiding principles:

- Family members are treated with fairness, dignity and respect.
- Families are included in their relatives' rehabilitation wherever possible.
- Every family is unique.
- The best interests of children are central to all decision making; and

- Effective partnership working is key to achieving successful outcomes.

The Strategy provides evidence on the impact of imprisonment, including how the existence of strong family bonds may be associated with desistance from offending.

Since Dame Elish Angiolini's Commission on Women Offenders Report in 2012, the Scottish Prison Service has committed to system wide reform with a focus on service re-design, alternatives to prosecution and remand, sentencing and prisons.

This has led to the Bella Community Custody Unit in Dundee, opening in August 2022; the Lilius Community Custody Unit in Glasgow, opening in October 2022; and HMP & YOI Stirling, which will replace HMP & YOI Cornton Vale.

Their new [Strategy for Women in Custody 2021-25](#) sets out a new approach, specifically designed for women, which takes full account of their likely experiences of trauma and adversity.

The CCUs are the first of their kind in the UK, and, although they were developed by looking at international comparisons and best practice, they are unlike anything anywhere else in the world.

Panel Considerations

Panel members were invited to provide their thoughts in response to the presentation and to discuss the impact of gender on the evidence heard. The general reflections are captured below:

- There is difficulty in ensuring the right services are available – especially when there has been dissatisfaction and mistrust of the system. The recurring problem is financial; not just support but also coordination.
- There is a perceived lack of understanding of the impact of sentences on women and their families. This includes cultural differences in family dynamics. It was suggested that an obligation of the state to assess impact of sentencing on women and children. (e.g., timing, impact, planning for measures in place) may present a way forward.
- More early intervention and support is required to reduce the impact of imprisonment on the families left behind.
- There is a perceived existing lack of understanding of dynamics of domestic abuse and power imbalances among practitioners across justice system. Unless all practitioners have the same level of understanding, then harmful attitudes such as victim-blaming will persist and impact on decision-making, the willingness of women to come forward, and also their wider experiences of the justice system.

- Many women who are coming into contact with the justice system have complex needs, but may be reluctant to disclose their family circumstances for fear of losing their children. Concerns around full disclosure of their circumstances, through fear, may lead to their wider needs not being met or understood. Women need to be made aware of their rights and how the information they disclose will be managed.
- Invisibility is a key concern – support is needed for kinship carers. The risk of children going into care as a result of imprisonment needs to be identified early.
- Who really knows the situation? How can the appropriate people know about individual and complex needs of each woman? Different parties may know various aspects of the case, but it is not a joined-up approach.
- There is a need for a person-centred and trauma informed justice system – including judiciary and wider agencies. There is a need to support others who are impacted by the decisions made by these bodies.
- There should be recognition that many problems and issues are silent and invisible.
- There should be a requirement to proactively address invisible harms occurring, via an audit of consequences, and risk assessment.

5.2 Theme 2: Gap between Policy & Practice

Evidence heard by the Panel

The Panel heard evidence from Dr Marsha Scott in her capacity as Chief Executive of Scottish Women's Aid. Dr Scott is a feminist activist, researcher and practitioner who has advocated, volunteered, researched, and worked in the violence against women sector in the UK, the United States, and Europe for 30 years. Prior to taking up post at Scottish Women's Aid in April 2015, Marsha worked for 10 years at West Lothian Council, where she helped set up and had strategic responsibility for the West Lothian Domestic and Sexual Assault Team.

[Scottish Women's Aid](#) work towards the prevention of domestic abuse in Scotland, and have a key role in coordinating, influencing, and campaigning for effective responses to domestic abuse. They work with a network of 34 specialist local Women's Aid groups, dedicated in supporting women, children, and young people who have experienced domestic abuse, and together they work towards a shared vision of a Scotland where domestic abuse is not tolerated.

Background

Policy development and implementation are often described as distinct and separate stages within policy cycles. In practice, the lines between policy development and implementation can become quite blurred. Despite well intentioned and thorough policy, stakeholders often report a gap between policy and practice.

The gap between policy and practice can occur in many forms and exists when real world implementation of policy does not fully align with the intended policy design. In response to the call for evidence, Dr Fiona Morrison, Dr Ruth Friskney, and Professor Margaret Malloch drew on their collective experience, and emerging findings from their ongoing research on court advocacy services for women and children affected by domestic abuse in Scotland. In their research, participants reported a gap between policy aspirations of a 'victim-focused' justice system and the everyday interactions that women and child victims of domestic abuse have with the criminal justice system¹⁴. Concerns were raised over the extent to which criminal justice professionals understood domestic abuse, and participants identified situations in which the criminal justice system generated additional risks for women and child victims of domestic abuse¹⁵. Court communication issues were also identified, for example, decisions such as the application of Non-Harassment Orders being granted, or otherwise, not being sufficiently explained to the victim¹⁶.

It is acknowledged that the Covid-19 pandemic has placed additional pressure on the justice system, and has created additional risk for women and child victims of domestic abuse. Participants reported that pandemic measures, designed to ensure safety, were on occasion having an adverse impact on women attending court¹⁷. Practical examples included: victims encountering perpetrators whilst queuing for entry into the court building; limits to court numbers restricting advocacy representation; and the negative impact of court delays on victims¹⁸. Dr Scott also provided an example of The Scottish Courts and Tribunals Service (SCTS) failing to

notify victims of domestic abuse that the court was closing as consequence of Covid-19 restrictions.

The following case study extract, provided by Women's Aid, illustrates the type of experience that women can have in the justice system.

Claire's Story

Claire says that when she left her ex-partner several years ago, the abuse 'didn't end; it just changed'. He continued to inflict as much damage as possible by stalking her through social media and in person, and by aggressively pursuing child residence through the family court despite no likelihood of success. As she puts it, 'He weaponised both children'.

'He would turn up on the doorstep at all times of the day, or hide in the bushes near the house watching me. I got a new dustbin and I came home one day to find that he'd scratched his signature on it. He was basically saying that I'd have to look at his name, touch something he had touched, every single time I put something in the bin.'

'A lot of us are ending up as litigants in person because we can't get legal aid. Some women who do get it are having to pay it back. It is unfair... He only wants parental rights and residence in order to control the [children's] lives and mine: he was never interested in them before... I offered him something he could have built on to salvage his relationship with his children but that wasn't enough for him. Instead, with full legal aid, he got solicitors involved in pursuing me; presenting files and files of paperwork to the court (which were thrown out); and as the sheriff put it, "wasting taxpayers' money".

'I'm expected to travel back [to home area] for family court hearings at 9.45 in the morning as the sheriff won't allow it to be transferred to here. It means I need to get childcare, which means getting family to stay over. But although I have to be there for 9.45, I might be sitting there until 4pm before it's called, so I don't get back until late evening. Despite the domestic abuse, I've been expected to wait in the same room as my ex for family hearings.

'There's a massive way to go in training sheriffs, sheriff clerks and reporters... My belief is that, if a man is convicted of committing domestic abuse in front of children, he should not be allowed to take you to the family court – ever. After running me over, pregnant, in front of the children, he pled guilty and bargained it down from assault with intent to reckless contact. I got £300 for the loss of my baby. He left court and was free to do it all over again, so he stalked and harassed me and the children for a further five years. They give out these pathetic sentences, and then women are left having to deal with an angry guy waiting for vengeance...'

Dr Scott highlighted in her presentation to the Panel that developing and implementing effective policy to support women in the justice system requires gender competency or understanding. A gender competent approach recognises the gender imbalances which are prevalent in society and enables the development of policy and practice that reflects and addresses these inequalities. Only by acknowledging these unequal power dynamics can institutions change in a way which promotes

women's equality and, consequently, improves women's outcomes and experience of justice.

Although at present there is no agreed definition of the concept of gender competence, Dr Scott outlined why gender competency matters, and how the concept can be integrated into institutions. Dr Scott set out that a gender competent approach starts with the simple acknowledgement that women and girls' lives are often very different from that of men and boys. Any analysis, research, policy, or legislation can be said to be "gender competent" when it reflects that principle¹⁹. Dr Scott stressed the importance of this, arguing that without this acknowledgement, the risk to gravitate towards a white male default becomes apparent.

Dr Scott argued that gender should be a primary consideration for policy makers rather than a strand, and that gender competence could be achieved by embedding gender experts in strategic decision making. Having familiarity with the dynamics of gender enables the development of policy and laws that disrupt the unequal distribution of power, prosperity, and safety in families, communities, and institutions and promotes social justice.

Panel Considerations

Panel members were invited to provide their thoughts in response to the presentation and to discuss the impact of gender on the evidence heard. The general reflections are captured below:

- There are issues relating to resourcing and capacity. This can lead to concerns that rapid decisions are being made without assessing the broader consequences, and that other resources might not be utilised effectively. For example, a perceived priority in restorative justice, over tackling the court backlogs for women.
- Consideration should be given to the intersectionality within Scotland's communities, and accessibility. There have been recent incidents of racism in which it was noted that women were unable to report this due to not having the right papers. It is important to ensure that women from different communities can access justice.
- Consideration could be given to women's support services being embedded in front line justice services to support day to day activity, e.g., within the police, court service etc. This could help and relieve some pressure points within the system and support innovation.
- The whole family approach in helping people understand why you need to look at women in a different way from men – instead of people thinking different treatment for women. It is about serving the whole community better and providing a clearer understanding.

- The gap between policy and practice in relation to the experience of women survivors of gender-based violence in the justice system can be evidenced from frontline services, such as support helplines, advocacy and legal advice surgeries, and direct work with victims.
- An example of the perceived gap between policy and practice in relation to women is the use of remand and presumption of short sentences. Theoretically, this should mean there are very few women in prison – however, remand is still being used to address issues such as housing problems, and abuse.
- There is also the gap between policy in practice with Equality & HR policies within justice workforce. For example, inequality within the legal profession – maternity is a key issue due to self-employment and not being able to consult at certain times of the day due to childcare. Increased understanding of gender competence within these organisations could aid the pursuit of women’s equality in many ways.
- The work of the First Ministers’ National Advisory Council on Women and Girls (NACWG) was highlighted. [Key issues](#) included:
 - (1) gender competent policy making
 - (2) coordination between civil and criminal justice systems
 - (3) first response from police and how accountability is managed within police reviews procedures
 - (4) fear and complexity for migrant women accessing safety.
- Consideration should be given to a gendered approach looking at risk differently for women when assessing bail or remand, sentencing, and parole.
- Women are often distressed and not presenting as dangerous or threatening, so the thresholds at which they are risk assessed should be different.

5.3 Theme 3: Culture, Gender, Sexism

Evidence heard by the Panel

The Panel heard evidence from two different sectors within the justice system: policing and the legal profession. The presentations focused on the culture, stigma, and sexism within these areas of the justice system, and the impact this has on women within both professions.

In addition to the presentations, an evidence note was prepared which highlighted how issues of culture, gender, and sexism manifest in other areas of the justice system (Annex A).

Guest Speaker 1. Clare Hussain is a member of the Scottish Women's Development Forum, and Misogyny Police Group.

The Scottish Women's Development Forum (SWDF) was established in 2003 to increase the representation of women in policing in Scotland. It strives to improve the retention, progression, and experience of all women across Police Scotland and the Scottish Police Authority.

Following a career in the Civil Service, Clare joined the police in 2008 and is a senior member of police staff in the Chief Data Office. Clare was elected as Chair of SWDF in April 2018 and is passionate about equality, inclusion, and enhancing the experience of all her colleagues in policing.

Guest Speakers 2. Professor Maria Fletcher and Seonaid Stevenson-McCabe, co-leads of the Women in Law Project ([100 Voices for 100 Years](#)).

Maria Fletcher is Professor of European Law at the University of Glasgow. She is currently Deputy Head of School and Director of Learning and Teaching. Maria's EU research interests lie in the field of justice and home affairs, human rights, citizenship and migration law. She is co-lead of the Women in Law Project, a collaborative project to research the past, document the present, and advocate for the future of women in (and of) law in Scotland and across the world. Maria is vice-chair and trustee of JustRight Scotland.

Seonaid Stevenson-McCabe is a Lecturer in Law at Glasgow Caledonian University and co-lead of the Women in Law Project. An LLB graduate of the University of Glasgow (2012), Seonaid went on to study an LLM in International Law. Seonaid previously worked at the International Criminal Court, before returning to Scotland to qualify as a solicitor. As a solicitor she trained commercially and, before joining academia in 2020, she worked at a law centre specialising in migrant and refugee rights. Outside of the academy, she is the Vice-Chair of JUSTICE Scotland, sits on the Board of Moray Rape Crisis and is on the Steering Committee of ProBonoSkills.com.

Background

Representation in the Justice Sector

Across the organisations that make up Scotland's justice system, women are not always equally represented in the workforce, especially when considering more senior roles. As part of evidence gathering for the Panel, in January 2022, Scottish Government conducted a [qualitative evidence review](#). A snapshot of that exercise is detailed below.

Justice Workforce²⁰

The disparity between women and men is similar when looking at the workforce of the Scottish Prisons Service, with a third (33%) of the organisation's staff in post being female in 2019-20, showing marginal increases in recent years (31% and 30% in 2018-19 and 2017-18 respectively).

The Crown Office and Procurator Fiscal Service's workforce presents a different picture, with over two-thirds (71%) of employees being females in 2020, broadly in line with the proportions seen in recent years. This includes around 74% of female staff at both administrative and legal level being recruited. According to the Law Society of Scotland, in 2020 more than two-thirds of new entrants to the legal profession were women. Therefore, the proportion of legal staff accurately reflects the male/female ratio of legal graduates in Scotland. Disparity remains however at senior staff level, with 39% of staff at this level being female in 2021.

Similarly, Scottish Courts and Tribunal Service has a predominantly female workforce overall, with two-thirds (67%) being females in 2019-20. However, disparity exists at director and non-executive director level, with just over three-fifths (61%) of these roles being occupied by male staff and 39% being occupied by female staff.

Women in Policing

Ms Hussain provided recent figures of women's representation across Police Scotland for 2021. 34% of Scotland's Officers are women, and the percentage rises to 61% for Police staff. Although this represents significant progress, there is no doubt more needs to be done, and SWDF are committed to supporting Police Scotland and the Scottish Police Authority (SPA) to attract, and retain women.

At senior level, representation varies from 20% to 37%, with the larger representation being seen among Police staff. However, there is a clear pattern with senior roles being predominantly held by men.

Significantly, Ms Hussain reflected on the fact that women have higher sickness absence, and are more likely to leave Police Scotland. SWDF have developed discrimination policies around pregnancy and menopause – seeking to challenge promotion disadvantages for pregnant women and introducing a menopause toolkit. The Forum also holds 'dare to talk' sessions to better understand the barriers and challenges for women.

Ms Hussain spoke of the need for 'intervention meetings' to discover the reasons why women are leaving Police Scotland, and to consistently review grievance policy to ensure that it is fit for purpose and that women have confidence in it. Furthermore, Ms Hussain spoke of the hesitancy in women to come forward with grievances due to feelings of loyalty, and anxiousness on how it may affect career progression, and pension.

In November 2021, the Forum approached leadership to set up a Sex, Equality and Misogyny Group. This group was established in January 2022. A number of subgroups have been established which are chaired by senior officers, intended to progress issues such as behaviours, training and awareness, and reporting policies and procedures. An action plan has been developed. There is a requirement, at operational level, to change culture and encourage open conversations so that people feel more confident and safer to report.

Women in Law

Ms Stevenson-McCabe and Professor Fletcher reflected that there were clear similarities between Police Scotland and the legal profession. Women tend to be more prevalent at junior levels, do not receive promotion as quickly as male counterparts, and are more likely than men to consider leaving the profession.

In 2015, it was reported for the first time that 51% of practising Scottish solicitors were women, in 2019 this figure increased to 54%, and more recently in 2020/21 women accounted for 67% of training contracts started. As such, there has been considerable progress in recent times, however, significant disadvantages remain:

- Women spend longer as senior associates or similar level before becoming partners,
- Men are more likely to be equity partners compared to women,
- Fewer than 30% of partners and solicitor advocates are women, &
- Women earn 77% of what men earn.

The lack of flexibility within the justice system was highlighted as a reason why women might leave the profession. The Profile of the Profession study 2018²¹ conducted by the Law Society of Scotland, found that 90% of respondents believed that greater flexible working would allow more women solicitors to reach senior levels. Significantly, 26% of women respondents described personal experience of discrimination compared to 10% of men²². Examples of gender discrimination have been documented, including Sheriffs commenting on solicitors clothing, particularly female solicitors²³.

There is a lack of data on gender and ethnicity within the Faculty of Advocates. Most recent data, from 2019, shows marginal long-term improvement in representation. In 2004, 23% of practising advocates were women, this increased to 27% in 2014 and remained at 27% for 2019. It was noted by Lady Poole that, at this rate of change, it would take approximately another 70 years to achieve a gender balance of 50%.

In the Judiciary, at the most senior level, there are nine Senators of the College of Justice who are women, as compared to 27 men. The Judicial Diversity Statistics for 2021 shows that:

- 24% of Sheriffs are women.
- 45% of Summary Sheriffs are women.
- 25% of part-time Sheriffs are women.
- 50% of Sheriffs Principal are women.
- 29% of post-holders in the entire Judiciary are women.

As part of the 100 years of women in law project individual experiences were collated, and the following themes emerged:

- There are clear challenges attempting to balance professional and family life.

I think balancing motherhood with work commitment is one of the biggest issues for women in law... society now expects women to work like they don't have kids and parent like they don't have a job... (Solicitor 1)

- Acknowledging and challenging gender perception, stereotypes, and structures.

One of the main issues ... is the attitude of employers. There is a perception that women will take up that caring role and as such many employers do not expect men to take that time to share the responsibilities (Solicitor 5)

Our socialisation, the media we consume, and our peer groups leave us with strongly held, yet under-analysed views about how women and men 'should' be... it is important for each of us to reflect on our individual biases and preconceptions and, as far as possible, to overcome them (Solicitor 6)

- Progress is acknowledged and there is hope for the future; but work still to be done.

Whilst it is reassuring to see that the restrictions that women previously faced in entering the profession are now no longer present, this means absolutely nothing if senior and management level positions continue to be dominated by males. For meaningful progress to be made in gender equality and the legal workplace, that needs to change (Solicitor 9)

In summary, Professor Fletcher and Ms Stevenson-McCabe reflected that more research and data are needed, and that more progress is required. The impact of representation cannot be underestimated, and in the words of Lady Hale (2014):

I take the view that 'difference' is important in judging and that gender diversity, along with many other dimensions of diversity, is a good, indeed a necessary, thing. However, the principal reason for this is not our different voice, but democratic legitimacy. In a democracy governed by the people and not by an absolute monarch or even an aristocratic ruling class, the judiciary should reflect the whole community, not just a small section of it²⁴.

Panel Considerations

Panel members were invited to provide their thoughts in response to the presentation and to discuss the impact of gender on the evidence heard. The general reflections are captured below:

- The evidence highlights the importance of recording data, and more research to better understand why women are leaving justice organisations, are promoted less frequently than men, and are more likely to be on sick leave.
- Consideration could be given to positive action to redress the gender imbalance. It is worth thinking creatively about places where there would be a clear benefit.
- The Scottish Women's Rights Centre and social enterprise JRS Knowhow receive funding, from the Scottish Government's Workplace Equality Fund, to take forward a project, which runs from now until June 2024, called [Learning with the legal sector](#).
- To enable women/mothers to work, it would be beneficial for flexible working to be the standard for all. Rather than addressing it with individuals as a problem in balancing personal lives/caring responsibilities.
- It would be advantageous for employers to scope affordable high-quality childcare.
- Employers should empower fathers to take advantage of the opportunity of paternity leave – this could take the onus off women.
- It is concerning that young women will have no concept of these issues and how they will affect them.
- There is a perpetual disconnect about how to prepare students for the issues that they will face whilst developing their career.
- Court culture may be impacted by only 29% of the judiciary being women. Broader representation will have a positive and cascading affect.
- It is important to think of the way business is conducted in the court room.
- Crown office is quite a different demographic as there is more women – about 70% and there is flexible working which is a benefit. Senior levels are still male-dominated – about 39% of women at the senior civil service level. More could be done to facilitate job share arrangements and to encourage part-time women to move up to senior levels.
- The Gender Equality Network in the Crown Office and Procurator Fiscal Service also looked at areas such as menopause and the gender pay gap. It would be

helpful to link up these existing networks across the justice sector to share best practice.

5.4 Theme 4: Victim & Offender Status

Evidence heard by the Panel

The Panel heard evidence from one of its own members, Harriet Wistrich, founder of the Centre for Women's Justice. Harriet is a solicitor with over 25 years of experience, who specialises in human-rights cases, particularly cases involving violence against women and girls.

The [Centre for Women's Justice](#) has a vision to 'eradicate male violence against women and girls', and their mission is to hold the state to account. In doing so, they undertake strategic litigation, monitor and challenge trends in policy, and raise awareness.

Assistant Chief Constable Bex Smith, an executive lead for Major Crime, Public Protection and Local Crime within Police Scotland, also presented on their progress in developing their [Violence Against Women and Girls Strategy](#).

In addition to the presentation, an evidence note was prepared, focussed on the 'victim' and 'offender' status of women in the Scottish justice system, and it explores how these statuses often overlap (Annex A).

Background

The Commission on Women Offenders²⁵ found that many women in the criminal justice system in Scotland were frequent reoffenders who had complex needs, relating to their social circumstances, previous histories of abuse, and mental health and addiction problems. The New Economics Foundation (2012)²⁶ found that the needs of most women who come in to conflict with the law make them similar to the broader population of women who have experienced abuse or trauma, and therefore require approaches which take this into consideration. As such, the separation of women in the justice system into 'victims' and 'offenders' misrepresents the experience and needs of those women²⁷.

The reasons why women come into conflict with the law can often be linked to their experience of domestic abuse and other forms of VAWG; for some women, their conflict with the law arises from their attempts to defend themselves by using force against their abuser, leading them to face charges for assault and other offences²⁸. Others are coerced by their abuser into committing offences such as benefit or mortgage fraud, theft, handling stolen goods, bringing drugs into prison, and hiding weapons or drugs²⁹. The failure to identify the vulnerabilities which can lead to crime, minor or otherwise, risks re-traumatisation and often results in poorer outcomes for women.

Earlier research³⁰ conducted by the Centre for Women's Justice, on 'women who kill', explored the extent in which the law itself, and the way the law is applied, prevents women accessing justice. The research included several interviews, and secondary data from domestic homicide reports and case files, from England and Wales. The report found that women are more likely to be killed by men who have a history of abusing them and a majority of women who kill their partners do so in the

context of being subjected to abuse from the men they kill³¹. In 77% of the cases referenced in this research, there was evidence to suggest that women had experienced violence or abuse from the deceased³².

Despite these findings, acquittals on the basis of self-defence appear small in number – of the 92 cases referenced, 43% of women were convicted of murder; 46% of women were convicted of manslaughter; and just 7% of women were acquitted³³. Additionally, women who kill violent partners report past failures of criminal justice system agencies to support them as victims of men's violence – 8 of 20 women referenced attempts to leave their violent partners and issues when seeking protection from Police and other agencies which led to under-reporting of domestic abuse. Women describe feeling trapped, at 'tipping point', and having exhausted all other safe alternatives – including criminal justice avenues³⁴. After a culmination of increasing coercive control, women often felt driven to kill perpetrators or face being killed themselves³⁵.

At trial, the ability to provide evidence, and to provide it 'well', was central to the outcomes of cases. Failing to disclose abuse, lack of trust in the criminal justice system, and lack of legal expertise, led to poorer evidence and convictions for murder and manslaughter³⁶. Stereotypes and commonly held myths on how victims should behave were also present, with women reporting being judged not only by jurors but by advocates and judges³⁷.

The 'double standard' report sets out evidence of the unjust criminalisation of victims of VAWG in England and Wales for alleged offending resulting from their experience of abuse, and proposes reform to law and practice.

The report sets out several key facts:

- At least 57% of women in prison and under community supervision are victims of domestic abuse³⁸. The true figure is likely to be much higher because of barriers to women disclosing abuse³⁹.
- 63% of girls and young women (16–24) serving sentences in the community have experienced rape or domestic abuse in an intimate partner relationship⁴⁰.
- Women are more likely than men to commit an offence to support someone else's drug use (48% to 22%)⁴¹
- Around half of arrests of women for alleged violence result in no further action, indicating widespread inappropriate use of arrest⁴².
- Women in prison have elevated levels of poverty and unmet need for housing, healthcare, and addiction recovery support⁴³.
- Arrest rates in 2014/15 were twice as high for black and 'mixed ethnic' women as for white women⁴⁴. Migrant women are overrepresented in prison, particularly on remand⁴⁵.
- Most women are imprisoned on short sentences, and most are imprisoned for non-violent offences⁴⁶.

- An estimated 17,000 children experience their mother's imprisonment each year. 13,600 pregnant women, on average, are held in prison each year⁴⁷.

Despite these stark statistics, criminal law and process have been criticised for failing to protect victims of domestic abuse and other forms of VAWG, who are accused of offending which derives from their own experience of abuse⁴⁸. Women and girls facing multiple disadvantages experience disproportionate and often overlooked forms of violence and abuse, and are often criminalised as a result. This experience can be acutely felt by black, Asian, minoritised and migrant women who experience additional layers of intersectional discrimination and cultural barriers to disclosure of abuse⁴⁹.

Women who sell or exchange sex can also face criminalisation when reporting abuse, recent research for the Scottish Government found⁵⁰. Women involved in prostitution stated that they felt unable to disclose rape or sexual assault to police, but also to health services and victim support, for fear of the police being informed and the women arrested⁵¹. The All-Party Parliamentary Group on Women in the Penal System Briefing Paper (3)⁵² estimated that, in England and Wales, there are around 37,000 arrests of women each year that resulted in no further action, and it is suggested that it is likely that this would be similar in Scotland⁵³.

Despite the high prevalence of rape and sexual abuse in England and Wales, and the increase in reporting, prosecutions and convictions have dropped to the lowest since records began⁵⁴. Abusers can manipulate the criminal justice system to extend control over their victims, and to evade punishment⁵⁵. Failings in criminal justice guidance and practice mean that women who should be protected from abuse instead find themselves arrested, detained, cautioned, or prosecuted⁵⁶. A lack of effective defences limits women's choices and often leads to guilty pleas⁵⁷. For those who choose to go to trial, the courts are ill-equipped to take proper account of the context of abuse in which their alleged offending took place⁵⁸.

Ms Wistrich argues that legislation, as it currently stands in England and Wales, is ineffective in these circumstances and that reform is required to protect survivors of domestic abuse. The use of self-defence requires a consideration of reasonable use of force and proportionality, which in the context of domestic abuse, is often contested and difficult to rely upon⁵⁹. In cases of coerced offending, the defence of duress should in theory be available, but research has shown that it is never effective in these sorts of cases⁶⁰.

The role of mental health in the criminalisation of women must also not be underestimated and can seriously impact the experience of subsequent custody for women with poor mental health⁶¹. The UN CPT (European Committee for the Prevention of Torture) highlighted significant concerns about women with serious mental health concerns in Scottish prisons, but that robust data in this area is lacking⁶². In England and Wales, 71 per cent of women in prison reported a mental health problem, compared to 47 per cent of men, while women comprised 19 per cent of self-harm incidents in prison despite accounting for five per cent of the overall prison population⁶³.

In a study by McMillan et al. (2021) covering four prisons in Scotland, 78 per cent of women were found to have had experienced a significant head injury, 40 per cent of whom had an associated disability⁶⁴. Additionally, 84 per cent of those who reported having a significant head injury had experienced repeated head injuries, predominantly resulting from domestic abuse (89 per cent of cases). A history of head injury in offenders can be associated with a greater risk of violent crime, and well as poorer mental health and drug problems⁶⁵.

Being in custody alongside other women who have histories of trauma can also present a significant risk of re-traumatisation, as they can be regularly exposed to the self-harm and mental health crises of others⁶⁶. In addition, the lack of privacy, harsh lighting, strip searches and other unwanted physical contact are among aspects of the prison environment that can be triggering for those with histories of trauma⁶⁷, while research suggests that women are more likely than men to continue experiencing the trauma-related effects of prison after release⁶⁸.

Panel Considerations

Panel members were invited to provide their thoughts in response to the presentation and to discuss the impact of gender on the evidence heard. The general reflections are captured below:

- The data from the report, regarding arrests without charge is stark – there may be a need for this type of data in Scotland.
- Consideration could be given to whether research is needed on legal defences and whether they are working effectively.
- Relevant research was highlighted, including Rachel McPherson’s work on self-defence and domestic abuse⁶⁹, and Dr Nughmana Mirza’s, currently progressing [research project](#) on South Asian women’s experience of justice in Scotland. Further, the Domestic Abuse (Scotland) Act 2018, [interim reporting requirement](#) may provide useful insights.
- A positive example is Police Scotland’s training on Domestic Abuse (DA Matters) – however it has identified that more needs to be done in terms of operationalisation.
- The Scottish Government are taking forward work on prostitution, seeking to develop a Framework which will consider the impact of stigma.
- The report highlights non-disclosure as a significant issue, and that there should be opportunity within practice to address this. The work on trauma informed approaches would seem an ideal opportunity.
- It is important for trauma informed approaches to reach operational levels. It has a powerful impact on the perception of justice for women, and it is these perceptions which act as barriers to disclosure.

- On community sentences, there is little evidence of women's experience. Anecdotally, women comply better but it is often in a complicated context, and many do not disclose due to a perception that it will lead to further scrutiny.
- Women are also impacted at the end of sentences, increasing numbers of women on remand, which has clear implications for their lives and families.
- The new community custody units provide a range of services for women, but these types of services are also required in community sentencing, particularly mental health. Women on the extreme ends of mental health are still being imprisoned.
- There is a need for trauma informed approaches to be embedded from day one, as elevated levels of distress and trauma are prevalent in the prison estate.
- There may be a need for organisations to understand the gendered nature of abuse – this lack of understanding leads to women being treated and labelled as perpetrators of crime.
- Minority ethnic women are often more likely to be seen as an aggressor. Issues regarding corroboration, and family involvement, are commonplace. There is a need for more data on this.

5.5 Theme 5: Intersectionality

Evidence heard by the Panel

The Panel heard evidence from Talat Yaqoob, co-chair of the First Minister's National Advisory Council for Women and Girls (NACWG), and chair of Women 50/50. Talat has led projects and campaigns across the third sector, specialising in gender equality, intersectionality, education and workplace equality and political participation. Ms Yaqoob provided an extensive presentation, drawing on a wide range of experience and knowledge.

In addition to the presentation, an evidence note was prepared, summarising intersectionality, and discussing the benefits of taking an intersectional approach when considering the experiences of women in the justice system (Annex A).

Background

The concept of intersectionality is used to articulate and analyse the lived reality of those who experience multiple and compounding inequalities. However, there are many different definitions and applications of the concept within academia and policy making⁷⁰.

Its roots exist in Black feminist activism; however, it is now often used to refer to the interactions between the nine protected characteristics defined in the Equality Act 2010⁷¹, plus wider characteristics that shape lived experiences of discrimination, inequality and privilege, such as socio-economic disadvantage, occupation, and care-experience. The Equality and Human Rights Commission⁷² definition applies the concept practically to equality and human rights monitoring:

“Intersectionality is an analytical tool that we use for the purpose of equality and human rights monitoring to show the distinct forms of harm, abuse, discrimination and disadvantage experienced by people when multiple categories of social identity interact with each other.”

The [Scottish Government evidence synthesis on intersectionality](#) summarises the foundational elements of intersectionality as:

- A recognition that people are shaped by their simultaneous membership of multiple interconnected social categories.
- The interaction between multiple social categories occurs within a context of connected systems and structures of power (e.g., laws, policies, governments). A recognition of inequality of power is key to intersectionality.
- Structural inequalities, reflected as relative disadvantage and privilege, are the outcomes of the interaction between social categories, power relations and contexts.

In particular, it is important to note that it is the interaction or “intersection” of two or more characteristics with power dynamics within a given context that gives rise to inequality, not just the presence of intersecting characteristics on their own.

An intersectional analysis involves a critical analysis of the experiences of individuals or groups based on their social positions⁷³. It is not to be confused with diversity. Rather, diversity can allow a more intersectional approach if representatives of those groups are able to influence and shape the discussion based on their experience of intersecting inequalities. It is often tempting to design policy or make decisions which are to the 'benefit of all', an activity which is sometimes referred to as novel intersectionality or generic intersectionality⁷⁴.

Ms Yaqoob noted some of the challenges around intersectionality in the Scottish context:

- “Whilst the term is being used more in Scotland there is not a coherent approach across the Scottish Government nor is there a clear, definitive, definition”.
- “Intersectional and disaggregated data is rarely made available or utilised in the analysis and development of policy”.
- “A diluted understanding exists which runs the risk of a ‘one size fits all approach”.
- “Further investment is needed in data collection, analysis and skills development across public, private and third sector”.
- “National and local data collection and social research is hindered by assuming an intersectional approach is too difficult or inaccurate ideas of ‘data protection concerns”.
- “Policy making in Scotland is largely siloed between communities and topic areas”.
- “An ‘additive approach’ which still puts one protected characteristic above others – there must be parity of esteem”.

As an example, research has found that minority ethnic people were more likely to contract and experience serious outcomes from Covid-19. Although there was no direct link, a number of mediating factors were identified, such as poverty⁷⁵. It is also important to understand these effects in the historical context of racism and discrimination experienced by minority ethnic communities, and the impact of stigma on health seeking behaviours. The Expert Reference Group on Covid-19 and Ethnicity (ERG)⁷⁶ recommendations highlighted that *“vulnerabilities to Covid-19 are consistent with an established pattern in which ‘intersections between socioeconomic status, ethnicity and racism intensify inequalities in health for ethnic groups”*.

Primarily, intersectionality is about understanding how systems interact to create compounding oppression and responding to those specific experiences. Ms Yaqoob illustrated this using the experience of elderly South Asian women and the health service as an example.

Mrs. Bibi Syndrome

- Elderly South Asian women have been found to be treated less well within the health sector and assumed to be exaggerating their symptoms when there is no physical illustration of their symptoms. They are more likely to be dismissed or assumed to be hypochondriacs.
- This is the compounding, intersecting inequalities of race, gender, age, and migration.

Within the justice sector, South Asian women may be subjected to similar forms of abuse experienced in other population groups, but it has been shown that the ways in which they perceive, and experience domestic abuse is unique to their cultures and communities⁷⁷⁷⁸. This includes suffering abuse for longer periods prior to seeking help, a general reluctance to access services, and a fear that seeking help may subject them to racist treatment⁷⁹.

Domestic abuse is believed to be under-reported within South Asian communities⁸⁰. A number of barriers to help-seeking behaviours have been identified for South Asian Woman experiencing domestic abuse, including: a lack of awareness of services, lack of English proficiency, structural barriers and economics⁸¹.

South Asian women's experiences of the police can be highly variable. In some cases, it can be sensitive to women's needs, and in others, the police response can reflect a failure to understand the complex issues which shape women's experiences of abuse and disclosure⁸². A research project exploring the interaction of police officers with South Asian women who contacted them as a consequence of domestic abuse found that most of the women were unaware of what support they could obtain from the police whilst living within an abusive relationship. However, the women experienced increased confidence after contacting the police and they provided messages of support for women in similar situations⁸³.

Researchers have argued that South Asian women can face "family abuse" at the hands of wider family, including their mother-in-law, and that such experiences do not fit within narrower definitions of domestic abuse and "intimate partnerships", thus rendering such experiences invisible⁸⁴⁸⁵.

Some women experiencing domestic abuse have no recourse to public funds due to their immigration status, for example if they are an asylum seeker or entered the UK on a spousal visa. This means they do not have access to publicly funded services and are therefore constrained in their ability to flee an abusive spouse as public money covers the cost of many Women's Aid refuge places⁸⁶. Immigration policies and insecure immigration status can intensify and create specific forms of abuse⁸⁷, including, for example, having their passports removed by their husbands⁸⁸.

Often intersecting discriminations will have an impact on public (and therefore police and jury) perceptions of who is an 'ideal victim', for example, black males are often categorised as 'ideal offenders' and not as 'worthy victims'⁸⁹.

Ms Yaqoob contends that there is a need for intersectional interpretations and applications of law if women are to be given full access to justice. An intersectional approach requires thinking about the lived experience of those experiencing compounding, and multiple discriminations. It collects and analyses disaggregated data about those experiences and designs and delivers systems which are non-hierarchical and respond to the needs of those often ignored.

Panel Considerations

Panel members were invited to provide their thoughts in response to the presentation and to discuss the impact of gender on the evidence heard. The general reflections are captured below:

- There are clear data gaps, which could aid the understanding of women's experiences of the justice system and how they are treated as victims.
- We need the disaggregated data, and competent analysis on what to do with that data.
- Another reason it would be important to hold this data is if we were to bring strategic litigation – looking at failures to craft specific policies – rather than relying on one case.
- There is also more that can be done with the data we do hold – how best do we make use of this? Lived experience voices are vital for good intersectional analysis.
- Police Scotland's work on a Violence Against Women's and Girl's Strategy has a particular strong focus on lived experience.
- There is a distinct lack of disaggregated data for people from ethnic minority backgrounds.
- There are ethnic minority women at risk, but due to insecure immigration statuses, they are scared to report and fear deportation.
- There is insufficient protection under existing legislation against extended family violence and honour-based violence.
- Ethnic minority representation is also limited, for example, many ethnic minority organisations are unrepresented within VAWG partnerships and are also often absent from VAWG strategic groups.
- The Centre for Women's Justice is in the process of working on a project relating to domestic abuse and minoritised women.

- There is a clear correlation between the concepts of a 'worthy victim' and prosecution of sexual offences, including interlinks with class and ethnicity.
- Looking across the justice system timeline there may be opportunities where an intersectional approach could be brought to influence and change outcomes for women. This may also provide opportunity to support diversion from prosecution.
- [The Hard Edges Scotland Report \(2019\)](#), highlights the complexity of the lives of people facing multiple disadvantages in Scotland.
- The other sphere which is hugely important is the judiciary – how judicial voices are influenced in what is a relatively homogeneous space.
- There may be opportunity to think about how the justice system intersects with other systems such as criminal, civil, and health.

6. Conclusion

Over several thematic discussions, extensive evidence has been considered on the many ways in which women's experience of justice varies from that of men. The Panel have explored, in detail, themes which have a clear impact on women:

- Caring Responsibilities and 'Hidden Sentences'
- Gaps between Policy and Practice
- Culture, Gender, and Sexism
- Victim and Offender Status
- Intersectionality and Data Gaps

The Scottish Government understands that violence against women and girls is underpinned by inequality and fuelled by societal and structural barriers. This report has drawn on a strong body of evidence, collating it and enhancing it, to further build the case for policy making which appreciates and understands intersectionality, and the impacts of gender within the justice setting.

Based on the discussions and evidence considered, the key findings and conclusions of the Panel are as follows:

1. Evidence

The remit called for the Panel to demonstrate how the experience of women in the justice system is different to men, and to promote consistent understanding of gendered issues within the justice system.

The Call for Evidence, the evidence presented by expert presenters, thematic evidence briefs, and the experiences and knowledge of the Panel has clearly demonstrated the many ways in which the experience of women in the justice system is different to men. The themes discussed have highlighted these differences, and a number of common issues have arisen.

Women enter, participate, and face distinct challenges unlikely to be experienced by men in the same way. Gender, paired with other intersectional inequalities, is central to this, and there is considerable evidence to suggest that this impacts the experiences and outcomes for women in the justice system.

The Panel concluded that there is strong evidence which supports the view that women's experience of the justice system is very different to that of men.

2. Research and Data

Although considerable evidence and data is already in existence, the Panel concluded that there is an urgent need to improve gendered and intersectional data collection, to support the identification of issues, increase the evidence base on these issues, and to ensure more effective and progressive policy responses.

Further and specific research on the issues identified within this report, in the Scottish context, must be commissioned to improve understanding and further build

the case for gender competent and intersectional policy making across the justice system. The Panel identified the following key areas for data collection and research:

- Research on the impacts of imprisonment on families left behind, from a gender perspective.
- Research on the application of gender competent, and intersectional approaches, in the justice system.
- Research on comparative justice system route maps with an aim of identifying where gendered and intersectional approaches would impact experiences and outcomes.
- Research, and data on the justice sector workforce, including on why women are leaving justice organisations, are promoted less frequently than men, and are more likely to be on sick leave.
- Research, and data, to better understand the effectiveness of legal defences, in relation to domestic abuse and other forms of VAWG, in the Scottish context.
- Data on women being arrested without charge, in the domestic context.
- Disaggregated data collection across the justice system to improve understanding and to support intersectional and gender competent approaches to policy making.
- Direct and meaningful engagement with younger women and girls to ensure that the conclusions of the Panel fully resonate with their experiences of the justice system, and where they view improvement is required.
- Lived experience peer research to further the understanding and implementation of intersectional policy.
- Research on women's experiences of different types of justice responses, including diversion, bail, remand, release and completing community sentences.

The Panel concluded that there is a need to improve gender and intersectional data collection and research across the justice system as well as deeper and meaningful engagement with women and girls with experience of the justice system.

3. Understanding Gender and Intersectionality

The Panel identified areas of best practice for justice organisations including intersectional and gender competent approaches. Both approaches identify gender as a key intersection, and argue for bespoke policy making which recognises multiple intersectional inequality, structural inequality, and power dynamics.

In order to address the specific experiences of women within the justice system which have been highlighted by the Panel in this report, the Panel believes that an intersectional gender competent approach to policy is required within the justice system. Taking a gender competent approach to policy making would ensure that issues particular to women are purposefully addressed in policy design and practice. Similarly, an intersectional approach ensures that women are not considered as a

homogeneous group. Accordingly, the experiences of women with other intersecting characteristics are also proactively considered.

Approaches that are intersectional and gender competent provide opportunities for decision makers to design policy which promotes equality, and challenges systemic disadvantage. This report shows that when organisations fail to understand gender and its impact, it can often lead to poorer experiences and outcomes for women.

A lack of gender understanding can result in harmful views, perceptions, and attitudes prevailing, which can impact decision making and damage victim confidence and experience. Justice organisations should proactively seek to build trust and understanding of silent and invisible harms, and seek to mitigate these through planning and risk assessment. There is also opportunity to look at risk through a gendered lens, for example, when assessing bail, remand, sentencing, or parole.

It is clear that women often choose not to disclose full details due to mistrust and fear. Therefore, it is vital that justice organisations understand gender and build these considerations into decision making throughout the justice journey.

Failing to understand the impacts of gender, or failing to create and implement policy, which is intersectional and gender competent, often results in varying degrees of disadvantage to women and children, from across the entire justice system.

<p>The Panel concluded that there is a need within the justice system for an agreed understanding of an intersectional and gender competent approach which is used to inform both policy and practice.</p>
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4. Understanding Trauma

The adoption of person-centred and trauma informed practice provides opportunity for justice organisations, and services, to address gender-based disadvantage. Person-centred and trauma informed practice, paired with intersectional gender competency, provides avenues to develop bespoke policy which supports women's equality. Significantly, person-centred and trauma informed practice, at an operational level, can have a powerful impact on perceptions of justice and trust.

Women coming into conflict with the law have complex needs and face additional barriers which underscores the necessity of service provision. Expert services, particularly in cases of dissatisfaction, should be available quickly, and support should be joined up, consistent, and holistic. Consideration should be given to embedding gender experts in strategic decision making, and frontline services.

<p>The Panel were clear that services provided should be person-centred and trauma informed, and consistent across the entire justice system.</p>

7. Annex A: Justice Analytical Services (JAS) Evidence Notes

Stigma, Sexism and Culture in the Scottish Justice System: Evidence briefing

1. The impact of judicial processes

- Responses to the Call for Evidence (CfE) highlight how women entering the justice system report feeling that communication can be inadequate, leaving them facing practical difficulties as well as feeling unsupported.
- Delays in scheduling court dates have proven traumatic for some women, especially victims of sexual crimes, with the COVID-19 pandemic exacerbating these problems.

2. Stereotypes and 'rape myths'

- Gender-based stereotypes and assumptions about victims' behaviour at different stages of the justice system can have a damaging impact, particularly on victims of gender-based violence.
- Women in contact with the justice system often report feeling that their experience is not understood. Trauma-informed approaches, both in Scotland and internationally, can have a positive effect in this regard.
- CfE respondents suggest that 'rape myths' may be particularly harmful in the Scottish justice system, with mock jury studies finding these to be pervasive.
- Respondents highlight the opportunity for change in the recommendations of the review chaired by Lady Dorrian, including a pilot of judge-only trials for rape cases and a new specialist sexual offences court.

3. Surveillance and judgement

- Young women can face additional surveillance and risk being criminalised through contact with justice services, particularly those from ethnic minority groups.
- Respondents note that women can often face social stigma within their communities on release from prison, suggesting that community-based alternatives would help avoid this.

4. Re-traumatisation from contact with the justice system

- Responses to the CfE note that initial contact with the police and the evidence gathering process can have the effect of re-traumatising victims of sexual crimes.
- Delays and lengthy court processes can mean a loss of agency for victims and cause problems in their day-to-day lives.
- A lack of empathy from court officials alongside demanding requirements in court can be traumatic for women and take years to recover from

5. Attrition and a loss of confidence in the system

- Attrition (where cases are lost throughout the justice system) in the Scottish justice system is markedly high for sexual violence and can lead to a loss of trust in the system amongst women.

- Aspects of the justice system unique to Scotland, such as the not proven verdict and corroboration requirement, are suggested by respondents as contributing to attrition rates and a loss of confidence in the justice system.

This evidence briefing focusses on the existing culture(s) within the Scottish justice system and how women can be affected by stigmatisation and sexism through contact with it. This theme, along with others covered by the Panel, has been identified from the responses to the Call for Evidence (CfE) on women's experience of the justice system in Scotland.

The briefing summarises written evidence given in these responses, as well as a limited amount of wider research relating to the themes discussed. However, the brief is not an evidence review and is not a comprehensive summary of the research area. There are clear overlaps between this theme and others within the work programme of the Panel, particularly those focussing on the boundaries between victims and offenders, and the gap between justice policy and practice. The briefing will therefore not deal with evidence on these topics where it can be addressed more appropriately elsewhere.

The brief covers five main areas:

- The impact of judicial processes for women in contact with the justice system;
- Issues with communication from official and delays in the system;
- The impact of gender stereotypes and 'rape myths';
- Re-traumatisation through contact with the justice system; and
- Attrition of cases in the Scottish justice system and a loss of confidence in it amongst victims.

The impact of judicial processes

Summary

- Responses to the Call for Evidence (CfE) highlight how women entering the justice system report feeling that communication can be inadequate, leaving them facing practical difficulties as well as feeling unsupported.
- Delays in scheduling court dates have proven traumatic for some women, especially victims of sexual crimes, with the COVID-19 pandemic exacerbating these problems.

Responses to the CfE acknowledge that law and justice, and the experience of contact with these systems, is gendered, meaning that they are experienced differently by men and women. Such differences are particularly stark when looking at sexual crimes, where women are disproportionately the victims and men the perpetrators. The responses contend that this gendered dimension to many crimes makes things like delays and communication problems particularly difficult for women.

- In regard to the trial process, delays, inadequate communication from officials and a fear of having their personal lives examined in court were mentioned by

respondents as particularly difficult for victims¹². Women complainers in rape trials are found to be especially vulnerable to these problems, research suggests. In particular, victims experience a loss of agency through being seen as 'a piece of evidence' within the trial process, and being silenced by its adversarial nature³.

- One of the most frequently cited issues in the CfE responses is the lack of communication from officials encountered by women in both the criminal and civil justice systems. CfE responses highlight how complainers of rape in particular have limited involvement in, and understanding of, trials proceedings, with many being unaware of the specifics of charges brought against the accused⁴. Additionally, insufficient information regarding case progression, trial dates and changes to court locations were reported⁵. This problem extends to after the trial has taken place, according to respondents to the CfE. Complainers report feeling abandoned post-trial⁶; often, they are not informed directly by the court about why particular decisions have been made, e.g., why a Non-Harassment Order has or has not been granted⁷. Respondents emphasise that in domestic abuse cases, communication is particularly vital, given that the outcome of decisions such as bail reviews can increase the risk of further victimisation.⁸
- Respondents also reported cases of good communication. In domestic abuse cases, victims described instances of good engagement with the Procurators Fiscal who would consult advocacy services, although respondents also stated that this practice was at times inconsistent, with advocacy services not being available to all⁹. Similarly, Brooks-Hay et al.'s (2019) qualitative research with victims of rape and serious sexual assault points to the positive impact that efforts to reach out can have¹⁰:

Nat: ...[the police officer] did a really nice thing, that was quite transformative [...] every single day for ten days she phoned [...] there wasn't actually anything going on, but she just kept phoning, every day, for two minutes, she was like, just to see how you are, are you alright, and it was very strengthening

'Nat' in Brooks-Hay et al. (2019)

- Delays were also frequently highlighted by CfE respondents as contributing to a lack of confidence in the justice system and a source of anxiety for victims.

¹ Burman, M. (2022) Call for Evidence response.

² Munro, V. E. (2022) Call for Evidence response.

³ Brooks-Hay, O., Burman, M., and Bradley, L. (2019) Justice Journeys: Informing policy and practice through lived experience of victim-survivors of rape and serious sexual assault. *Scottish Centre for Crime & Justice Research*. https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report_Aug-2019_FINAL.pdf

⁴ Munro, V. E. (2022) Call for Evidence response.

⁵ Burman, M. (2022) Call for Evidence response.

⁶ Munro, V. E. (2022) Call for Evidence response.

⁷ Morrison, F., Friskney, R. and Malloch, M. (2022) Call for Evidence response.

⁸ Ibid.

⁹ Ibid.

¹⁰ Brookes-Hay, O., Burman, M., and Bradley, L. (2019) Justice Journeys: Informing policy and practice through lived experience of victim-survivors of rape and serious sexual assault. *Scottish Centre for Crime & Justice Research*. https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report_Aug-2019_FINAL.pdf

The impact of delays were felt particularly by victims when coupled with other challenges, such as confusion about the relationship between criminal justice processes and child contact cases, or the requirement for evidential corroboration¹¹¹².

- The COVID-19 pandemic response also resulted in new problems with the increasing pressures on courts and systems, leading to further breakdowns in communication between officials and victims, which in some cases meant that women were having to use the same entrances to courts as their accused abusers¹³.
- Some advocacy services were also unable to attend court owing to restrictions during the pandemic¹⁴, which is likely to have had a marked impact on women of colour in particular¹⁵. Women of colour are more likely to access support from services led by and for women from minority ethnic groups, and to feel safer speaking about their experiences within them¹⁶.

Stereotypes and ‘rape myths’

Summary

- Gender-based stereotypes and assumptions about victims’ behaviour at different stages of the justice system can have a damaging impact, particularly on victims of gender-based violence.
- Women in contact with the justice system often report feeling that their experience is not understood. Trauma-informed approaches, both in Scotland and internationally, can have a positive effect in this regard.
- CfE respondents suggest that ‘rape myths’ may be particularly harmful in the Scottish justice system, with mock jury studies finding these to be pervasive.
- Respondents highlight the opportunity for change in the recommendations of the review chaired by Lady Dorrian, including a pilot of judge-only trials for rape cases and a new specialist sexual offences court.

In its recent independent report¹⁷, the Working Group on Misogyny and Criminal Justice describe how many women who bring complaints of rape to court are being failed by the system. That failure is described as being “due to the misogynistic attitudes which permeate policing, prosecuting and trial systems, which sustain myths and stereotypes about women, and inform decision-making at every level”. This analysis also applies to women in the justice system more broadly, respondents

¹¹ Friskney, R. (2022) Call for Evidence response.

¹² Burman, M. (2022) Call for Evidence response.

¹³ Morrison, F., Friskney, R. and Malloch, M. (2022) Call for Evidence response.

¹⁴ Ibid.

¹⁵ Prison Reform Trust (2017) Counted Out: Black, Asian and minority ethnic women in the criminal justice system [online] Available: <https://prisonreformtrust.org.uk/publication/counted-out-black-asian-and-minority-ethnic-women-in-the-criminal-justice-system/>

¹⁶ Ibid.

¹⁷ Scottish Government (2022) Misogyny – A Human Rights Issue [online] Available: <https://www.gov.scot/publications/misogyny-human-rights-issue/>

contend, and highlights the need for a better understanding of trauma amongst actors at all levels.

- Some victims report feeling a lack of empathy from police when they seek support, and feel that they are not taken seriously by officers¹⁸. International evidence highlighted in responses to the CfE shows the positive impact that a trauma-informed approach that focusses on the needs of the victim can have:

International example: Argentina's women's police stations

One in five police stations in the Buenos Aires province of Argentina, 128 overall, are *Comiseria de la Mujer* – women's police stations aimed at tackling gender-based violence (GBV). These are stations that do not hold cells, but give women access to contact with social workers, lawyers, psychologists and police. The first police stations of this kind were introduced in Brazil in 1985, with variations of the model now found across South America as well as elsewhere in the Global South.

The world's first study of how Argentina's women's police stations work to prevent GBV¹ found that the model increases access to justice, empowers women and prevents gender violence by challenging the patriarchal norms that sustain it. The authors state that the model overcomes some of the systemic problems faced when dealing with GBV, including the masculine and militaristic culture of frontline policing.

Women's police stations work with victims to prevent escalation in high-risk cases, using a multi-disciplinary team to make targeted interventions, taking GBV outside of the private sphere and normalising seeking assistance. The multi-disciplinary nature of the model, as well as coordinated work with other municipal and provincial agencies, means that information and resources can be shared and used more effectively. In addition, the stations run large-scale community engagement, tackling gender norms in the community that can perpetuate GBV. Evidence from Brazil shows correlations between the presence of women's police stations and a decrease in female homicide at a regional level, Carrington et al. (2020) note, although more research is needed.

Women have reportedly found these stations more welcoming spaces than regular police stations, with dedicated children's spaces making them more inclusive for those with childcare responsibilities. The study also highlights how this model gives victims agency by prioritising their wishes over a default criminal justice response. This is one of the ways in which the model aims to build trust, likely contributing to the very positive perceptions of it in the community.

¹ Carrington, K. et al. (2020) How Women's Police Stations Empower Women, Widen Access to Justice and Prevent Gender Violence, *International Journal of Crime, Justice and Social Democracy*, 9(1), pp.42-67

- Women accused of murdering their partner following domestic abuse face challenges due to a lack of understanding of domestic abuse amongst legal professionals, all-male legal teams, and additional evidential expectations. Women report having to 'prove' that domestic abuse has taken place, whilst

¹⁸ Burman, M. (2022) Call for Evidence response.

simultaneously being limited in what evidence can be led at trial due to character evidence restrictions¹⁹.

- Responses to the CfE highlight how it is vital that women's lived experience is understood in the justice system. In rape trials, such awareness could mean a better understanding of the reasons a person might submit to sex under pressure²⁰ and an understanding of how information given to the courts can pose a risk to victims of domestic abuse if mishandled²¹. Civil court processes are argued to be especially problematic for victims of domestic abuse, who describe being marginalised in child contact cases²². For example, women report being advised by solicitors against mentioning domestic abuse in case it be seen as an attempt to manipulate the process²³. Whitecross (2017)²⁴ suggests that such advice can undermine confidence in domestic abuse being treated seriously as a crime, as well as confidence in the legislative provisions that require abuse to be considered in civil decision-making.
- Respondents note that there is very little diversity in terms of the demographic make-up and backgrounds of judges in the Scottish judiciary and in senior levels of legal practice, despite the majority of law students²⁵ and two thirds of new entrants to the legal profession being women²⁶. This is mirrored in other areas such as the police and the prison service²⁷. However, respondents also note that more women as actors in the justice system would not necessarily equate to system change, as there are structural and cultural issues that are embedded within it^{28,29}.
- Victims of crimes such as domestic abuse, rape and sexual assault often describe feeling humiliated and frightened when having cases heard in court, but also that they feel a loss of control and dignity³⁰. Research undertaken with survivors of rape and sexual assault highlights this:

Pippa: ...when I say you've been raped before, it feels the exact same way when you're sitting in that courtroom, you have nothing, like you literally are stripped bare of everything and you don't have any control over it. You have not had any say in this, all you have told them is like your story and they just go and they do what they want with it.

'Pippa' in Brooks-Hay et al. (2019)

¹⁹ McPherson, R. (2022) Call for Evidence response.

²⁰ Munro, V. E. (2022) Call for Evidence response.

²¹ Morrison, F., Friskney, R. and Malloch, M. (2022) Call for Evidence response.

²² Ibid.

²³ Whitecross, R. W. (2017). Section 11 Orders and the "Abuse" Provisions: Family Lawyers' Experience and Understanding of Section 11(7A)-(7E). *Edinburgh Law Review*, 21, pp.269-275.

²⁴ Ibid.

²⁵ Munro, V. E. (2022) Call for Evidence response.

²⁶ Scottish Government (2022) Women in the justice system: evidence review [online] Available: <https://www.gov.scot/publications/women-justice-system/pages/6/>

²⁷ Ibid.

²⁸ Munro, V. E. (2022) Call for Evidence response.

²⁹ Brooks-Hay, O., Burman, M., and Bradley, L. (2019) Justice Journeys: Informing policy and practice through lived experience of victim-survivors of rape and serious sexual assault. *Scottish Centre for Crime & Justice Research*. <https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report-Aug-2019-FINAL.pdf>

³⁰ Burman, M. (2022) Call for Evidence response.

- These feelings are reportedly intensified by judicial proceedings, where ‘rape myths’ (assumptions regarding expected reactions to unwanted sexual contact) and gender-based stereotypes are used to blame victims and cast doubt on their character³¹. One of the elements of the justice system particularly open to this is in jury decision-making. The appropriateness of juries in sexual crime trials has been the subject of debate in recent years, with pre-trial education or screening for belief in ‘rape myths’ being examples of suggested measures to mitigate the risk of stereotypes influencing decisions³².
- The deliberative process of jury decision-making, however, remains opaque³³. Results from mock jury studies show that assumptions about gender roles, as well as the reactions expected from victims during and after an alleged sexual assault, can affect the outcome of decisions, particularly when combined with confusion or misinterpretation regarding the requirements of corroboration or the not proven verdict³⁴.
- The largest mock jury study undertaken in the UK was funded by the Scottish Government and involved 64 mock juries, with 863 individual participants³⁵. This study found that ‘rape myths’ were prevalent and that many participants believed that ‘real’ rape victims would have extensive injuries, that they would have called for help or fought back, and that false accusations of rape are common and difficult to refute³⁶. There is a concern that this belief in socio-sexual norms undermines recent legislative reforms³⁷.
- However, population-wide education campaigns aimed at debunking or challenging ‘rape myths’ are suggested as potentially effective, with Rape Crisis Scotland’s “I Just Froze”³⁸ campaign having been seen to influence discussion and provide an evidential base upon which to challenge problematic attitudes in the aforementioned mock jury study³⁹.
- Respondents also highlight the recommendations of the review group chaired by Lady Dorrian, which was principally tasked with improving the experience of complainers in sexual offence cases. The review’s report⁴⁰ was published in March 2021 and gives a series of recommendations, including a pilot of judge-only trials in rape cases. The pilot would seek to ascertain the effectiveness of this model and how it is perceived by complainers, the

³¹ Ibid.

³² Munro, V. E. (2019) Judging Juries: The Common Sense Conundrums of Prosecuting Violence against Women. *New Zealand Women's Law Journal*, 3, pp.13-34.

³³ Ibid.

³⁴ Munro, V. E. (2022) Call for Evidence response.

³⁵ Chalmers, J., Leverick, F. and Munro, V. E. (2021) The provenance of what is proven: exploring (mock) jury deliberation in Scottish rape trials. *Journal of Law and Society*, 48(2) pp.226-249

³⁶ Ibid.

³⁷ Munro, V. E. (2019) Judging Juries: The Common Sense Conundrums of Prosecuting Violence against Women. *New Zealand Women's Law Journal*, 3, pp.13-34.

³⁸ For more information on this campaign, see <https://www.rapecrisisscotland.org.uk/news/news/i-just-froze1/>

³⁹ Chalmers, J., Leverick, F. and Munro, V. E. (2021) The provenance of what is proven: exploring (mock) jury deliberation in Scottish rape trials. *Journal of Law and Society*, 48(2) pp.226-249

⁴⁰ Scottish Courts and Tribunals Service (2021) Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk’s Review Group [online] Available: <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>

accused and by lawyers, in light of divided opinion within the review group on this matter.

- Additionally, the review recommends the creation of a new specialist sexual offences court. In contrast to specialised domestic abuse courts, of which there are several kinds across Scotland, these would not sit within existing levels of court but would have a bespoke jurisdiction and sentencing powers. The review proposed a court where all of those involved in its operation are specially trained for sexual assault cases, enabling a trauma-informed approach⁴¹. Working groups have been set up by Scottish Government in relation to the recommendations of the review group and work is ongoing to assess evidence and feasibility for the Scottish context.

Surveillance and judgement

Summary

- Young women can face additional surveillance and risk being criminalised through contact with justice services, particularly those from ethnic minority groups.
- Respondents note that women can often face social stigma within their communities on release from prison, suggesting that community-based alternatives would help avoid this.

Responses from the CfE highlight how women, especially young women and those from working class or ethnic minority backgrounds, can often experience more surveillance and judgement, which can impact upon any contact with the criminal justice system⁴².

- Young women are more likely to enter secure care than young men, accounting for almost half of young people in secure care⁴³, possibly due to being seen as more at risk or in need of protection⁴⁴.
- Research has suggested that contact with the justice system through secure care can also criminalise young women where they may never have offended or posed a risk to others, as welfare needs, and the effects of structural disadvantage can be reframed as risks for offending⁴⁵⁴⁶. It is suggested that minor incidents involving these young women would be more effectively dealt with within the welfare system⁴⁷.
- Community-based approaches are also highlighted as alternatives for young women and for women in the justice system more generally. It is suggested

⁴¹ Ibid.

⁴² Crowley, A. (2022) Call for Evidence response.

⁴³ Scottish Government (2022) Children's Social Work Statistics, Scotland 2020-21. [online] Available: <https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2020-21/pages/6/>

⁴⁴ Crowley, A. (2022) Call for Evidence response.

⁴⁵ Trotter, C., Mclvor, G. and McNeill, F. (2016) Changing risks, risking change. In: Trotter, C., Mclvor, G. and McNeill, F. (eds.) Beyond the Risk Paradigm in Criminal Justice. London: Palgrave.

⁴⁶ Crowley, A. (2022) Call for Evidence response.

⁴⁷ Ibid.

that this may help mitigate the social stigma that those released from prison can face within their community⁴⁸.

- Asian and Muslim women often experience this stigma much more acutely⁴⁹. Additionally, while in prison, women from ethnic minority groups feel less safe and face discrimination from other inmates and from staff, and have poorer access to mental health support⁵⁰.

Re-traumatisation from contact with the justice system

Summary

- Responses to the CfE note that initial contact with the police and the evidence gathering process can have the effect of re-traumatising victims of sexual crimes.
- Delays and lengthy court processes can mean a loss of agency for victims and cause problems in their day-to-day lives.
- A lack of empathy from court officials alongside demanding requirements in court can be traumatic for women and take years to recover from.

Respondents to the CfE argued that many of the problems facing women in the justice system result from a lack of understanding about women's experiences and that this lack of understanding can increase the likelihood of re-traumatisation for victim-survivors⁵¹. It is noted that the UN Declaration on the Elimination of Violence against Women requires States to ensure that: "...the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions"⁵². Respondents state that, despite this, recent research has highlighted that 'secondary victimisation' continues to be a factor in various areas of the Scottish justice system⁵³.

- The first of these areas is in initial contact with the police when reporting a crime. Aspects of this contact that victims find difficult include the removal of personal belongings, the uncomfortable physical environment of police stations, and being processed by male police officers^{54,55}. Additionally, the

⁴⁸ McPherson, R. (2022) Call for Evidence response.

⁴⁹ Prison Reform Trust (2017) Counted Out: Black, Asian and minority ethnic women in the criminal justice system [online] Available: <https://prisonreformtrust.org.uk/publication/counted-out-black-asian-and-minority-ethnic-women-in-the-criminal-justice-system/>

⁵⁰ Ibid.

⁵¹ McPherson, R. (2022) Call for Evidence response.

⁵² OHCHR (1993) *Declaration on the Elimination of Violence against Women*. Available: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>

⁵³ Brooks-Hay, O., Burman, M., and Bradley, L. (2019) *Justice Journeys: Informing policy and practice through lived experience of victim-survivors of rape and serious sexual assault*. Scottish Centre for Crime & Justice Research. https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report_Aug-2019_FINAL.pdf

⁵⁴ Burman, M. (2022) Call for Evidence response.

⁵⁵ Brooks-Hay, O., Burman, M., and Bradley, L. (2019) *Justice Journeys: Informing policy and practice through lived experience of victim-survivors of rape and serious sexual assault*. Scottish Centre for Crime & Justice Research. https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report_Aug-2019_FINAL.pdf

statement process can be particularly traumatic for victims in sexual assault cases, as seen in research by Brooks-Hay et al (2019)⁵⁶:

Eleanor: ...The statement in total was 55 pages and then having to hear it being read back to you [...] it was brutal [...] afterwards I was a complete wreck. I was really quite unwell, sort of shaking and just feeling sick. The first time I'd been speaking to [the SOLO] I realised at the end of the day that I was over, like this, my body had just very slowly caved in.

'Eleanor' in Brooks-Hay et al. (2019)

- In the criminal justice system, lengthy processes and waiting for court dates impacts upon the ability of those affected to function at school, work, or as a parent⁵⁷. It is argued that this can also be a traumatic experience, with the feeling of a loss of agency inducing further anxiety about the trial process⁵⁸.
- Research has found that complainers find interacting with court officials particularly challenging in these circumstances, reporting a lack of empathy in the court room⁵⁹. Secondary victimisation can also occur when giving evidence at the investigation stage, as well as in court⁶⁰, while it is argued that post-trial support is often lacking⁶¹. There is also increasing demand for digital evidence in trials, which is argued to be an area where the risk for secondary victimisation is growing as it is used to question complainers' credibility⁶².
- Qualitative research highlights how the impact that trauma experienced through contact with the justice system can take years to recover from⁶³:

Beth: ...It was three years of re-traumatisation [...] I felt stuck for so many years because everything kept going wrong [...] they promised that they would keep me informed every step of the way, I remember the words [...] and they didn't. Once you'd reported it, that was it. And that was for years.

'Beth' in Brooks-Hay et al. (2019)

- Long-term trauma is often also felt by those who have been arrested by police and released without charge, particularly for violent offences committed by women in the context of domestic abuse⁶⁴. As well as potentially impacting future agency decisions relating to things like housing and child custody, confidence in the police can be undermined in these circumstances, and future reporting can be made less likely⁶⁵.

⁵⁶ Ibid.

⁵⁷ Burman, M. (2022) Call for Evidence response.

⁵⁸ Forbes, E. (2021) Beyond Glass Walls: How Domestic Abuse Victims Experience the Criminal Justice Process in Scotland. A Scottish Justice Fellowship Briefing Paper. *Scottish Centre for Crime and Justice Research* [online] Available: <https://www.sccjr.ac.uk/wp-content/uploads/2021/02/Dr-Emma-E.-Forbes.pdf>,

⁵⁹ Ibid.

⁶⁰ Burman, M. (2022) Call for Evidence response.

⁶¹ Munro, V. E. (2022) Call for Evidence response.

⁶² Ibid.

⁶³ Brooks-Hay, O., Burman, M., and Bradley, L. (2019) *Justice Journeys: Informing policy and practice through lived experience of victim-survivors of rape and serious sexual assault*. *Scottish Centre for Crime & Justice Research*. <https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report-Aug-2019-FINAL.pdf>

⁶⁴ Centre for Women's Justice (2022) Call for Evidence response.

⁶⁵ Ibid.

Attrition and loss of confidence in the system

Summary

- Attrition (where cases are lost throughout the justice system) in the Scottish justice system is markedly high for sexual violence and can lead to a loss of trust in the system amongst women.
- Aspects of the justice system unique to Scotland, such as the not proven verdict and corroboration requirement, are suggested by respondents as contributing to attrition rates and a loss of confidence in the justice system.

Respondents to the CfE noted that the Scottish Government has made concerted efforts in recent years to improve the position of women who experience the justice system as victims, for example in terms of privacy rights of rape complainers⁶⁶. However, attrition rates (where cases are lost throughout the justice system) in Scotland, as in the rest of the UK, remain high for such cases, and result in distrust of the Scottish justice system amongst complainants⁶⁷.

- It is well established that sexual violence is significantly under-reported in Scotland and internationally, with few cases making it to trial and even fewer ending in a conviction; attrition which is particularly pronounced in the case of rape and attempted rape⁶⁸. Whilst the effects of cross-examination and gender stereotyping in court have been discussed above, other aspects of the Scottish justice system have been identified over the years as potentially contributing to this attrition, including the not proven verdict and the corroboration requirement⁶⁹. Research has found that the not proven verdict may elicit a particularly negative impact for rape complainers and their confidence in the justice system, not least due to the confusion around its definition and deployment⁷⁰.
- Rape or attempted rape cases have a markedly higher rate of acquittals by both the not proven and not guilty verdicts than for other crimes or offences, with 25% of those accused in rape or attempted rape cases being acquitted compared to one per cent for all others (or five per cent if summary cases are excluded)⁷¹. Due to this fact, and that women comprise the vast majority of complainers in rape cases, responses to the CfE highlight how the debate around the not proven verdict therefore has a clearly gendered dimension⁷². A recent consultation into the not proven verdict and other reforms closed on 11 March 2022, with an analysis of the responses published in July 2022⁷³.

⁶⁶ Munro, V. E. (2022) Call for Evidence response.

⁶⁷ Ibid.

⁶⁸ Cowan, S. (2022) Call for Evidence response.

⁶⁹ Ibid.

⁷⁰ Munro, V. E. (2022) Call for Evidence response.

⁷¹ Scottish Government (2021) *The not proven verdict and related reforms: consultation* [online] <https://www.gov.scot/publications/not-proven-verdict-related-reforms-consultation/pages/6/>

⁷² Munro, V. E. (2022) Call for Evidence response.

⁷³ Scottish Government (2022) *The not proven verdict and related reforms: consultation analysis* [online] Available: <https://www.gov.scot/publications/not-proven-verdict-related-reforms-consultation-analysis/>

- Research on the civil justice system has also found that women can lose confidence in the system. In child contact cases, for example, women report being advised by solicitors against mentioning domestic abuse in case it be seen as an attempt to manipulate the process⁷⁴. It is suggested that such advice undermines confidence in domestic abuse being treated seriously as a crime as well as confidence in legislative provisions requiring abuse to be considered in civil decision-making⁷⁵.

⁷⁴ Whitecross, R. W. (2017). Section 11 Orders and the “Abuse” Provisions: Family Lawyers’ Experience and Understanding of Section 11(7A)-(7E). *Edinburgh Law Review*, 21, pp.269-275.

⁷⁵ *Ibid.*

Women in the Justice System: Victimisation and Offender Status Briefing

This evidence briefing focusses on the 'victim' and 'offender' status of women in the Scottish justice system. It explores how these statuses often overlap, what this overlap may mean for individuals, and how the justice system could respond more effectively to the needs of women offenders with experience of victimisation.

This theme, along with others covered by the Panel, has been identified from the responses to the Call for Evidence (CfE) on women's experience of the justice system in Scotland. The briefing summarises written evidence given in these responses, as well as a limited amount of wider research relating to the themes discussed. However, the brief is not an evidence review and is not a comprehensive summary of the research area.

The briefing focusses on five themes that emerged from the CfE response:

- The experience of women offenders in Scotland.
- Victims of abuse.
- The impact of past trauma.
- Community-based responses to offending.
- Impact on families.

Summary

The experience of women offenders in Scotland

- Women offenders are more likely to have committed less serious offences, to have primary childcare responsibilities, and to have experienced victimisation.
- Women in the Scottish justice system are likely to have complex needs, particularly around poor mental health and histories of abuse.
- Understanding the overlap between 'victim' and 'offender' is important for addressing the needs of women in the justice system effectively.

Victims of abuse

- Women who are victims of abuse can face criminalisation by reporting it, such as those with mental health problems or those who sell or exchange sex.
- Women's offending is often linked to histories of abuse, but disclosure may often be late in the justice process, with women from ethnic minorities facing particular barriers to reporting abuse.
- There is often a lack of understanding in the legal profession and justice process around the nature of abuse and how it can affect behaviour.
- This is particularly the case for women convicted of killing men, who have often suffered abuse from the deceased, but face additional barriers such as greater evidential expectations and character evidence restrictions.

The impact of past trauma

- Women with poor mental health and/or a history of suffering abuse are at risk of re-traumatisation through being in the justice system as offenders.

- Poor mental health is particularly prevalent in the women's prison system, while elements of the prison environment, and being housed alongside other women with mental health problems, can trigger trauma for offenders.
- There is a high prevalence of serious brain injury amongst women in Scottish prisons, often as a result of domestic abuse. This can be associated with violent offending.
- Young women constitute a disproportionate number of those in secure care when compared to the overall prison population, while they have a high rate of poor mental health and past sexual abuse.

Community-based responses to offending

- Campaigns aiming to divert women away from custody have highlighted how community-based responses can better address the multiple and complex needs of women in the justice system.
- Responses to the CfE note that community responses can address the underlying issues, such as drug addiction and mental health problems, that are behind many women's repeat offending.
- Examples of community-based programmes and problem-solving courts taking holistic approaches, dealing with relationship issues, mental health problems and substance abuse, were highlighted by CfE respondents.

Impact on families

- For women in custody, restrictions on contact such as those seen during the COVID-19 pandemic, or from large distances between prisoners and their families, can be a significant source of isolation and emotional pain.
- The children of women in custody can face 'secondary prisonisation' and stigma by having a mother in prison. They are also more likely to experience physical and mental health problems and end up in prison later in life.

The experience of women offenders in Scotland

Summary

- Women offenders are more likely to have committed less serious offences, to have primary childcare responsibilities, and to have experienced victimisation.
- Women in the Scottish justice system are likely to have complex needs, particularly around poor mental health and histories of abuse.
- Understanding the overlap between 'victim' and 'offender' is important for addressing the needs of women in the justice system effectively.

The needs of women offenders are distinct from those of male offenders, according to responses to the CfE and wider research⁷⁶⁷⁷⁷⁸. This is due to women who come before the justice process being more likely to have committed less serious offences, to have primary childcare responsibilities, and to have experienced victimisation⁷⁹. The Commission on Women Offenders⁸⁰ found that many women in the criminal justice system in Scotland were frequent reoffenders who had complex needs, relating to their social circumstances, previous histories of abuse, and mental health and addiction problems.

Research from the New Economics Foundation (2012)⁸¹ found that the needs of most women offenders in fact make them more similar to the broader population of women who have experienced abuse or trauma and therefore require an approach that takes account of this. It is because of this context that responses to the CfE suggest that the separation of women in the justice system into 'victims' and 'offenders' misrepresents the experience and needs of those women⁸².

By ignoring the vulnerabilities that place those arrested for petty theft, selling sex and drug offences, in particular, into the category of victim, offenders may be at risk of re-traumatisation in the justice system and issues relating to mental health, past trauma and relationship problems may go unaddressed⁸³. As will be discussed further on, this also applies to more serious cases, such as manslaughter and homicide in cases where there is a history of domestic abuse. Taking these categories as wholly separate may also serve to ignore issues in relation to prison conditions, separation of mothers from children during imprisonment, and diversion and community penalties⁸⁴.

Victims of abuse

Summary

- Women who are victims of abuse can face criminalisation by reporting it, such as those with mental health problems or those who sell or exchange sex.
- Women's offending is often linked to histories of abuse, but disclosure may often be late in the justice process, with women from ethnic minorities facing particular barriers to reporting abuse.
- There is often a lack of understanding in the legal profession and justice process around the nature of abuse and how it can affect behaviour.

⁷⁶ Munro, V. (2022) Call for Evidence response.

⁷⁷ Cowan, S. (2022) Call for Evidence response.

⁷⁸ New Economics Foundation (2012) Women's Community Services: A Wise Commission [online] Available: https://neweconomics.org/uploads/files/1136a324a128c3fce6_idm6y15h9.pdf

⁷⁹ Munro, V. (2022) Call for Evidence response.

⁸⁰ Commission on Women Offenders (2012) Commission on Women Offenders: Final Report [online] Available: <https://www.gov.scot/Resource/0039/00391828.pdf>

⁸¹ New Economics Foundation (2012) Women's Community Services: A Wise Commission [online] Available: https://neweconomics.org/uploads/files/1136a324a128c3fce6_idm6y15h9.pdf

⁸² Cowan, S. (2022) Call for Evidence response.

⁸³ Ibid.

⁸⁴ Munro, V. (2022) Call for Evidence response.

- This is particularly the case for women convicted of killing men, who have often suffered abuse from the deceased, but face additional barriers such as greater evidential expectations and character evidence restrictions.

The Centre for Women's Justice (CWJ)⁸⁵ argues that various stages of the criminal justice system treat victims as offenders, whether this be the arrest of victims when police are called out to domestic incidents, or when women with mental health problems reporting violence or abuse are not believed and are prosecuted for wasting police time. While the work of the CWJ predominantly focusses on England and Wales, responses to the CfE explain that the situation in Scotland is similar⁸⁶. The CWJ note that women from ethnic minorities may also face additional discrimination, due to racism and unconscious bias⁸⁷, while other intersecting issues including socio-economic status and disability create additional barriers to reporting⁸⁸.

Women who sell or exchange sex can also face criminalisation when reporting abuse, recent work for the Scottish Government found⁸⁹. Women involved in prostitution stated that they felt unable to disclose rape or sexual assault to police, but also to health services and victim support, for fear of the police being informed and the women arrested⁹⁰.

CfE respondents contend that there is now an understanding that women's offending or alleged offending is often a result of their experience of domestic abuse or other gendered violence. However, the dynamics of this are often not understood in practice in the justice system⁹¹. For example, research by the CWJ found that the late disclosure of abuse was common amongst women offenders, particularly in cases of coercive control, and that barriers to disclosure may be exacerbated for women from ethnic minorities where cultural factors surrounding the gender roles add greater complexity⁹².

⁸⁵ Centre for Women's Justice (2021) CWJ Manifesto: 3 - End The Unjust Criminalisation Of Victims Of Abuse. Blog post (22 Nov 2022) Available: <https://www.centreforwomensjustice.org.uk/new-blog-1/2021/11/22/cwj-manifesto-3-end-the-unjust-criminalisation-of-victims-of-abuse>

⁸⁶ Burman, M. (2022) Call for Evidence response.

⁸⁷ Ibid.

⁸⁸ Centre for Women's Justice (2021) Women Who Kill: how the state criminalises women we might otherwise be burying [online] Available: https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ_WomenWhoKill_Rpt_WEB-3+small.pdf

⁸⁹ Scottish Government (2022) The experiences of people who sell or exchange sex and their interaction with support services: lived experience engagement [online] Available: <https://www.gov.scot/publications/lived-experience-engagement-experiences-people-sell-exchange-sex-interaction-support-services/pages/7/>

⁹⁰ Ibid.

⁹¹ Centre for Women's Justice (2022) Call for Evidence response

⁹² Centre for Women's Justice (2021) Women Who Kill: how the state criminalises women we might otherwise be burying [online] Available: https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ_WomenWhoKill_Rpt_WEB-3+small.pdf

A gender- and trauma-informed approach to women's offending is necessary to improve women's outcomes, CfE respondents suggest⁹³. For example, it is suggested that understanding the dynamics of coercive control, and why, for example, a woman may feel forced to commit crimes, such as handling stolen goods, or use a weapon to resist anticipated violence, can be critical⁹⁴. Evidence also highlights how women offenders may be subject to increased 'responsibilisation' through being judged against different normative standards⁹⁵; women can be held to a greater degree of responsibility for offences than men, with their needs and experiences not sufficiently taken into account throughout the justice process.

It is noted in the response to the CfE that a lack of understanding of domestic abuse amongst the legal profession can have a particularly negative impact on women who kill their abusers⁹⁶. Additionally, greater evidential expectations, character evidence restrictions and all male legal teams present further barriers⁹⁷. A potential lack of understanding around domestic abuse exists outside of Scotland as well, research shows, with nearly 80 per cent of women who kill men in England and Wales having suffered violence and abuse from the deceased, but most receiving extremely lengthy prison sentences⁹⁸.

The needs of those women serving longer sentences, such as those described above, should not be overlooked in campaigns to reduce the number of women in prison, it is argued, as these campaigns often focus on less serious crimes; the experiences of these offenders are often not understood due to their lack of visibility in policy and advocacy debates⁹⁹. Evidence from the Prison Reform Trust's (2021)¹⁰⁰ research on women in long-term custody, for example, found that many report being hesitant to speak to staff for access to mental health interventions as they are concerned that it may be held against them later.

The impact of past trauma

Summary

- Women with poor mental health and/or a history of suffering abuse are at risk of re-traumatisation through being in the justice system as offenders.
- Poor mental health is particularly prevalent in the women's prison system, while elements of the prison environment, and being housed alongside other women with mental health problems, can trigger trauma for offenders.

⁹³ Centre for Women's Justice (2022) Call for Evidence response.

⁹⁴ Centre for Women's Justice (2021) CWJ Manifesto: 7 - End Victim Blaming. Blog post (22 Nov 2022) Available: <https://www.centreforwomensjustice.org.uk/cwj-manifesto#/7-end-victim-blaming>

⁹⁵ Munro, V. (2022) Call for Evidence response.

⁹⁶ McPherson, R. (2022) Call for Evidence response

⁹⁷ Ibid.

⁹⁸ Centre for Women's Justice (2021) Women Who Kill: how the state criminalises women we might otherwise be burying [online] Available:

https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ_WomenWhoKill_Rpt_WEB-3+small.pdf

⁹⁹ Prison Reform Trust (2021) Invisible Women: Understanding women's experiences of long-term imprisonment [online] Available:

http://www.prisonreformtrust.org.uk/wpcontent/uploads/2022/02/invisible_women.pdf

¹⁰⁰ Ibid.

- There is a high prevalence of serious brain injury amongst women in Scottish prisons, often as a result of domestic abuse. This can be associated with violent offending.
- Young women constitute a disproportionate number of those in secure care when compared to the overall prison population, while they have a high rate of poor mental health and past sexual abuse.

Understanding the role of offenders' past victimisation is critical for avoiding re-traumatisation, responses to the CfE suggest. Women who are victims of domestic abuse being arrested and later released without charge is one of the areas that CfE responses highlight in this regard. The All Party Parliamentary Group on Women in the Penal System Briefing Paper (3)¹⁰¹ estimated that, in England and Wales, there are around 37,000 arrests of women each year that resulted in no further action, and it is suggested that it is likely that this would be similar in Scotland¹⁰². CfE responses point to how this can be traumatic in the short- and long-term and may have far-reaching implications on victims' child custody or housing situations¹⁰³.

It is the issue of mental health that is most commonly highlighted on this theme in response to the CfE. Not only can mental health have a role in the criminalisation of women, as mentioned above, but it can seriously impact the experience of subsequent custody for women with poor mental health¹⁰⁴. It is noted that the UN CPT (European Committee for the Prevention of Torture) highlighted significant concerns about women with serious mental health concerns in Scottish prisons but that robust data in this area is lacking¹⁰⁵. In England and Wales, 71 per cent of women in prison reported a mental health problem, compared to 47 per cent of men, while women comprised 19 per cent of self-harm incidents in prison despite accounting for five per cent of the overall prison population¹⁰⁶.

Related to the above is the high prevalence of significant head injury (SHI) amongst women in prison in Scotland. In a study by McMillan et al (2021) covering four prisons in Scotland, 78 per cent of women were found to have had experienced an SHI, 40 per cent of whom had an associated disability¹⁰⁷. Additionally, 84 per cent of those who reported having an SHI had experienced repeated head injuries, predominantly resulting from domestic abuse (89 per cent of cases). A history of head injury in offenders can be associated with a greater risk of violent crime, and well as poorer mental health and drug problems¹⁰⁸; those women with a history of

¹⁰¹ Howard League for Penal Reform (2021) Arresting the entry of women into the criminal justice system: briefing three [online] Available: <https://howardleague.org/wp-content/uploads/2021/05/APPG-on-Women-in-the-Penal-System-briefing-3-FINAL.pdf>

¹⁰² Burman, M. (2022) Call for Evidence response

¹⁰³ CWJ (2022) Call for Evidence response

¹⁰⁴ Burman, M. (2022) Call for Evidence response

¹⁰⁵ Ibid.

¹⁰⁶ Prison Reform Trust (2021) Bromley Briefings Prison Factfile Winter 2021 [online] Available: https://prisonreformtrust.org.uk/wp-content/uploads/2022/01/Bromley_Briefings_winter_2021.pdf

¹⁰⁷ McMillan, T. M. et al (2021). Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: a cross-sectional study. *The Lancet Psychiatry*, 8, 512-520.

¹⁰⁸ Buchan, L. D. and McMillan, T. M. (2022) Prisoner knowledge about head injury is Improved by brief psychoeducation, *Brain Injury*, 36(3) pp.401-405

SHI were significantly more likely to have a history of violent offences than those without history of SHI, McMillian et al found¹⁰⁹.

Being in custody alongside other women who have histories of trauma can also present a significant risk of re-traumatisation, as they can be regularly exposed to the self-harm and mental health crises of others¹¹⁰. In addition, the lack of privacy, harsh lighting, strip searches and other unwanted physical contact are among aspects of the prison environment that can be triggering for those with histories of trauma¹¹¹, while research suggests that women are more likely than men to continue experiencing the trauma-related effects of prison after release¹¹². In addition to data on mental health in Scottish prisons, responses to the CfE argue that there should be more research on the experiences of LGBTQ+ people in custody, particularly focussing on transgender women and non-binary people¹¹³.

Young women also make up 46 per cent of the total of young people in secure care¹¹⁴ and show high levels of poor mental health¹¹⁵. Responses to the CfE highlight the fact that women in secure care often have histories of extensive and varied traumas, with sexual abuse having been experienced by 65 per cent of women compared with 23 per cent of men¹¹⁶. As in the case of women offenders in prison, the impacts of the experience of secure care can be long-lasting, significantly altering young people's childhoods and impacting on developmental transitions¹¹⁷.

Community-based responses to offending

Summary

- Campaigns aiming to divert women away from custody have highlighted how community-based responses can better address the multiple and complex needs of women in the justice system.
- Responses to the CfE note that community responses can address the underlying issues, such as drug addiction and mental health problems, that are behind many women's repeat offending.
- Examples of community-based programmes and problem-solving courts taking holistic approaches, dealing with relationship issues, mental health problems and substance abuse, were highlighted by CfE respondents.

¹⁰⁹ McMillan, T. M. et al (2021). Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: a cross-sectional study. *The Lancet Psychiatry*, 8, 512-520.

¹¹⁰ Prison Reform Trust (2021) Invisible Women: Understanding women's experiences of long-term imprisonment [online] Available:

http://www.prisonreformtrust.org.uk/wpcontent/uploads/2022/02/invisible_women.pdf

¹¹¹ Ibid.

¹¹² Burman, M. (2022) Call for Evidence response

¹¹³ Cowan, S. (2022) Call for Evidence response

¹¹⁴ Scottish Government (2022) Children's Social Work Statistics, Scotland 2020-21. [online] Available: <https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2020-21/pages/6/>

¹¹⁵ Crowley, A. R. (2022) Call for Evidence response

¹¹⁶ Ibid.

¹¹⁷ Crowley, A. R., Schliehe, A. K. and Vogel, M. (2021) Girlhood incarcerated: perspectives from secure care. In: M. Vogel and L. Arnell (eds.) *Living Like a Girl: Agency, Social Vulnerability Welfare Measures in Europe and Beyond*. Oxford: Berghahn.

While the number of women who come into contact with the justice system is much smaller than for men, Scotland has one of the highest rates of imprisonment for women in Western Europe¹¹⁸, although it has been noted that there are efforts to tackle this, particularly since the publication of the findings of the Angiolini Commission in 2012¹¹⁹. The focus of campaigns to divert women away from custody highlight how community responses can better address multiple and complex needs of women in the justice system, including those surrounding housing, employment and mental health¹²⁰.

In particular, campaigns have highlighted the harmfulness of imprisonment in relation to the relatively non-serious nature of most women's offending and the fact that most women receive sentences of less than 12 months¹²¹. The Commission on Women Offenders also argued that short-term prison sentences had little or no impact on re-offending, while prison is substantially more expensive than community disposals¹²². Responses to the CfE note that community responses can address the underlying issues, such as drug addiction and mental health problems, that are behind many women's repeat, low-level offending¹²³.

CfE respondents argue that a shift towards social justice is needed, rather than criminal justice and its focus on incarceration, to enable services to deal with social distress and economic destitution¹²⁴. They state that making prisons more 'gender-responsive' is not the answer, but that strengthening local communities and enabling them to support offenders should be prioritised as a means by which to meet women's needs more effectively¹²⁵. Research from Crowley, Vogel and Schliehe (2021)¹²⁶ outlines how the influences and structures around the lives of young women outside of custody settings, particularly around housing, employment and relationships, has a far greater impact on desistance than do those programmes conducted in custody and focussed on the individual.

Women's community services have been found to facilitate positive change by improving well-being. A 2012 study by the New Economics Foundation¹²⁷ found that over a three-month period, 44 per cent of women involved in these programmes demonstrated a measurable increase in well-being. The greatest increase in well-being was in the area of autonomy, as well as supportive relationships, optimism,

¹¹⁸ Burman, M. (2022) Call for Evidence response

¹¹⁹ SPICe (2018) A new approach to women offenders in Scotland [online] Available: <https://spice-spotlight.scot/2018/07/11/a-new-approach-to-women-offenders-in-scotland/>

¹²⁰ Prison Reform Trust (2021) Invisible Women: Understanding women's experiences of long-term imprisonment [online] Available: http://www.prisonreformtrust.org.uk/wpcontent/uploads/2022/02/invisible_women.pdf

¹²¹ Ibid.

¹²² Commission on Women Offenders (2012) Commission on Women Offenders: Final Report [online] Available: <https://www.gov.scot/Resource/0039/00391828.pdf>

¹²³ Ibid.

¹²⁴ Crowley, A. R. (2022) Call for Evidence response.

¹²⁵ Ibid.

¹²⁶ Crowley, A. R., Schliehe, A. K. and Vogel, M. (2021) Girlhood incarcerated: perspectives from secure care. In: Vogel, M. and Arnell, L. (eds.) Living Like a Girl: Agency, Social Vulnerability Welfare Measures in Europe and Beyond. Oxford: Berghahn.

¹²⁷ New Economics Foundation (2012) Women's Community Services: A Wise Commission [online] Available: https://neweconomics.org/uploads/files/1136a324a128c3fce6_idm6y15h9.pdf

and a sense of meaning and purpose. The report notes that facilitating long-term outcomes will also reduce need for a range of state services.

Similarly, the evaluation of Up-2-Us' 'Time for Change' project by Burman and Imlah (2012)¹²⁸ showed the importance of inter-personal relationships in achieving long-term goals for young women offenders. This took a relationship-based approach to support, assisting young women to resolve current or past conflicts or trauma and familial difficulties and emotional issues associated with their offending behaviours. Positive change was evident for many involved in the programme, including:

- increases in help-seeking behaviour in relation to substance abuse;
- a growing ability to identify/avoid risky situations likely to lead to arrest; and
- progress in repairing family relationships.

Programmes such as these that specifically cater to women's experiences and needs are particularly important given what has been described as the historical tendency to develop responses to offending around men¹²⁹. This has in part been due to men's larger numbers in the criminal justice system and their higher risk profiles¹³⁰, which are argued to present significant barriers to women offenders as risk assessments are designed around men's offending behaviour¹³¹. Research implies that this may be particularly concerning given that risk assessment instruments can already disadvantage minority groups and young people¹³².

Additionally, CfE responses point to the whole-system approach taken in Great Manchester since 2014, including the use of a problem-solving court¹³³. This has seen a 60 per cent reduction in the use of immediate prison sentences for women. Problem-solving courts also exist in other parts of the world, as seen in the following example from Canada:

International example: Dartmouth Wellness Court (Canada)

Wellness Courts in Nova Scotia, Canada take a holistic approach to the complex factors behind offending. This programme started in 2009 with the Dartmouth Wellness Court and has since spread to other areas of the region. The court operates from the provincial court and includes mental health, drug and alcohol programmes, while speciality courts have also been established for domestic abuse cases¹³⁴.

¹²⁸ Burman, M. and Imlah, N. (2012) Time for Change: An Evaluation of an Intensive Support Service for Young Women at High Risk of Secure Care or Custody. SCCJR [online] Available at: http://www.sccjr.ac.uk/wp-content/uploads/2012/11/Time_for_Change_SCCJR_-_Briefing_June2012.pdf

¹²⁹ Commission on Women Offenders, 2012

¹³⁰ Ibid.

¹³¹ Centre for Women's Justice (2021) Women Who Kill: how the state criminalises women we might otherwise be burying [online] Available: https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ_WomenWhoKill_Rpt_WEB-3+small.pdf

¹³² Trotter, C., Mclvor, G. and McNeill, F. (2016) Changing risks, risking change. In: Trotter, C., Mclvor, G. and McNeill, F. (eds.) Beyond the Risk Paradigm in Criminal Justice. London: Palgrave.

¹³³ CWJ (2022) Call for Evidence response.

¹³⁴ Courts of Nova Scotia (2022) Dartmouth Wellness Courts [online] Available: https://www.courts.ns.ca/provincial_court/NSPC_mental_health_program.htm

Rather than a trial court, participants accepted into the programme work with a team of professionals who help address the issues contributing to the individual coming into conflict with the law. The team consists of a Crown attorney, a defence attorney, a probation officer, three mental health clinicians (a social worker, a forensic nurse and an occupational therapist) and an addictions social worker, who monitor progress while holding the participant accountable for their crime¹³⁵.

Participation in the programme requires offenders to accept responsibility for offences they are charged with, allowing the case to be moved out of the traditional system. Qualitative research with practitioners and participants shows positive outcomes from participation in the programme, while the quantitative portion of the evaluation is forthcoming¹³⁶.

Impact on families

Summary

- For women in custody, restrictions on contact such as those seen during the COVID-19 pandemic or from large distances between prisoners and their families, can be a significant source of isolation and emotional pain.
- The children of women in custody can face 'secondary prisonisation' and stigma by having a mother in prison; they are more likely to experience physical and mental health problems and end up in prison later in life.

Women in the criminal justice system as offenders often have a more disjointed family unit than men and one that is more likely to be characterised by trauma¹³⁷. For this reason, family contact can be complex, with an individualised approach being most suited¹³⁸. However, restrictions on contact, such as that seen during the COVID-19 pandemic, or large distances between prisoners and their families, can be a significant source of isolation and emotional pain for many¹³⁹¹⁴⁰.

In addition to women in custody, the children of prisoners themselves can be adversely affected¹⁴¹; approximately 30 per cent of children with imprisoned parents will develop physical and mental health problems and there is a higher risk of these children also ending up in prison¹⁴². Research conducted with children whose

¹³⁵ Ibid.

¹³⁶ Dieleman, C. et al (2019) Nova Scotia's Wellness Courts: progressing justice [online] Available: https://www.courts.ns.ca/Provincial_Court/documents/WellnessCourtsReport_Nov5.pdf

¹³⁷ Prison Reform Trust (2021) Invisible Women: Understanding women's experiences of long-term imprisonment [online] Available: http://www.prisonreformtrust.org.uk/wpcontent/uploads/2022/02/invisible_women.pdf

¹³⁸ Ibid.

¹³⁹ Burman, M. (2022) Call for Evidence response.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Commission on Women Offenders (2012) Commission on Women Offenders: Final Report [online] Available: <https://www.gov.scot/Resource/0039/00391828.pdf>

mothers were imprisoned in England and Wales¹⁴³ found that children can experience 'secondary prisonisation' through changes in home and caregiver and the regulation of the mother and child relationship, as well as stigmatisation by virtue of their relationship with their mother. The authors also found that a child with an imprisoned mother is likely to suffer more negative effects of parental imprisonment than a child with an imprisoned father¹⁴⁴.

¹⁴³ Minson, S. (2018) Direct harms and social consequences: An analysis of the impact of maternal imprisonment on dependent children in England and Wales. *Criminology and Criminal Justice*, 19(5) pp.519-536.

¹⁴⁴ Ibid.

Women in the Justice System: Intersectionality Briefing

This briefing summarises intersectionality and discusses the benefits of taking an intersectional approach when considering the experiences of women in the justice system. The paper explains what intersectionality is and why it is important. It then provides a snapshot on what we know about intersectionality for women who are victims.

What is intersectionality?

The concept of intersectionality is used to articulate and analyse the lived reality of those who experience multiple and compounding inequalities. However, there are many different definitions and applications of the concept within academia and policymaking¹⁴⁵.

The term has its roots in Black feminist activism, and was originally coined by American critical legal race scholar Kimberlé Williams Crenshaw in 1989. She used it to refer to the double discrimination of racism and sexism faced by Black women.

More recently, the term has expanded and, is now often used to refer to the interactions between the nine protected characteristics defined in the Equality Act 2010¹⁴⁶, plus wider characteristics that shape lived experiences of discrimination, inequality and privilege, such as socio-economic disadvantage, occupation and care-experience. The Equality and Human Rights Commission¹⁴⁷ definition applies the concept practically to equality and human rights monitoring:

“Intersectionality is an analytical tool that we use for the purpose of equality and human rights monitoring to show the distinct forms of harm, abuse, discrimination and disadvantage experienced by people when multiple categories of social identity interact with each other.”

The [Scottish Government evidence synthesis on intersectionality](#) summarises the foundational elements of intersectionality as:

- A recognition that people are shaped by their simultaneous membership of multiple interconnected social categories.
- The interaction between multiple social categories occurs within a context of connected systems and structures of power (e.g., laws, policies, governments). A recognition of inequality of power is key to intersectionality.
- Structural inequalities, reflected as relative disadvantage and privilege, are the outcomes of the interaction between social categories, power relations and contexts.

¹⁴⁵ [Using intersectionality to understand structural inequality in Scotland: evidence synthesis - gov.scot](#)

¹⁴⁶ Under the Equality Act 2010, the nine protected characteristics are: age; disability; sex; gender reassignment; pregnancy and maternity; race; religion or belief; and sexual orientation

¹⁴⁷ [Measurement framework for equality and human rights | Equality and Human Rights Commission](#) p52

In particular, it is important to note that it is the interaction or “intersection” of two or more characteristics with power dynamics within a given context that gives rise to inequality, not just the presence of intersecting characteristics on their own.

Intersectionality in policy making – why it is important

We know that people who share a particular protected characteristic, for example women, are not a homogenous group, and that their experiences and outcomes will differ depending on the interaction of other protected characteristics they have and inequalities they experience. Looking at outcomes through the lens of a single protected characteristic provides a partial picture, taking intersectionality into account can provide a fuller picture.

An ‘intersectional approach’ is a way of identifying, understanding and tackling structural inequality in a given context that accounts for the lived experience of people with intersecting identities. For example, intersectionality helps us to understand how people experience services, such as education, justice and healthcare, differently as a result of their identity and unequal power dynamics. Understanding these differences is important in order to develop effective policies and services that better meet the needs of, and tackle the structural disadvantage experienced by, marginalised groups.

For example, research has found that minority ethnic people are more likely to contract and experience serious outcomes from COVID-19. However, evidence shows that this is not a direct link¹⁴⁸. A number of mediating factors were identified, including: poverty; being more likely to work outside their home during national lockdowns, and more likely to work in occupations with a higher risk of exposure to COVID-19, such as health and social care; reduced access to healthcare; and loss of income due to effects of lockdown. It is also important to understand these effects in the historical context, of racism and discrimination experienced by minority ethnic communities, and the impact of stigma on health seeking behaviours.

The Expert Reference Group on COVID-19 and Ethnicity (ERG)¹⁴⁹ recommendations highlighted that *“vulnerabilities to COVID-19 are consistent with an established pattern in which ‘intersections between socioeconomic status, ethnicity and racism intensify inequalities in health for ethnic groups”*.

Intersection and analysis

Intersectionality can be used in both qualitative and quantitative research. In an intersectional approach, researchers focus on addressing the power imbalance in research and ensuring marginalised groups are included as equals in the research process. Researchers also need to practice reflexivity (asking themselves questions about their own social positions, values, assumptions etc). In quantitative research, often, a sampling approach which is designed to be representative of a whole population may lead to problems with low sample size for smaller groups in the population or among those who may be more reluctant to take part in research.

¹⁴⁸ [Impact of COVID-19 on different ethnic minority groups - POST \(parliament.uk\)](#)

¹⁴⁹ [COVID-19 and ethnicity: expert reference group - gov.scot \(www.gov.scot\)](#)

Spotlight on intersectionality for women who are victims

Key findings:

Scottish Crime and Justice Survey (SCJS) data is published for the intersection of gender and age, but not other intersections

SCJS data shows that younger women are more likely to have experienced crime than older women.

Younger women are more likely than older women to have experienced partner abuse and sexual assault.

Small scale qualitative research projects have explored the experiences of women from South Asian communities and those with no recourse to public funds (NRPF) who experience domestic abuse, and how this differs from a standard conceptualisation of domestic abuse, due to a range of intersecting factors.

Small scale qualitative research with women with learning disabilities found high levels of experiences of gender-based violence, which were so commonplace and normal for the women that they did not see it as something to be reported. Those who did try to report their experiences said they were not believed.

In general, females are less likely than males to experience all forms of hate crime, around a third of all hate crime has a female or all female group of victims. The exceptions to this are disability aggravated hate crime, where almost half of victims identify as female and transgender aggravated hate crime, where just over half of victims identify as female.

The available evidence on the experiences of women with other protected characteristics in the justice system points to how experiences differ between groups of women. There is less evidence however, on women with multiple intersections and how their experiences may differ again.

Experiences of crime, sexual assault and age

The [Scottish Crime and Justice Survey](#) (SCJS) provides results at a population level as well as by a number of demographic and geographic characteristics. The intersection of gender and age is the only intersectional analysis reported in the SCJS.

In 2019-20, SCJS data shows that younger women (16-24) were significantly more likely to be victims of crime (20.7%) than women aged 45-59 or women aged 60+ (11.6% and 6.2%) respectively.

SCJS¹⁵⁰ data shows that in 2018-20, women aged 16 to 24 were more likely than any other age group of women to have experienced partner abuse within the 12 months prior to interview (10.2%).

¹⁵⁰ The SCJS asks about sensitive topics including partner abuse and sexual assault as part of a self-completion module of the SCJS, and data is published based on 2 year's worth of pooled data, most recent 2018-2020. Respondents are asked about experiences within the 12 months prior to interview

Similarly, in 2018-20, the SCJS found 8.1% of females age 16-24, and 8.1% of females age 25-44, had experienced a serious sexual assault¹⁵¹ since the age of 16, which is significantly more than for females age 60 + (3.4%). In the last 12 months 2.5% of young females age 16-24 experienced a serious sexual assault, which is a significantly higher proportion than for women of older ages.

The SCJS further found that the proportion of females in the youngest age group, 16-24, who had experienced less serious sexual assault¹⁵² since the age of 16 was significantly higher (22.6%) than for women age 60+ (9.8%). In the last 12 months, 11.2% of females age 16-24 experienced less serious sexual assault, which is significantly higher than for women in all other age groups (2.6% for females age 25-44, 1.2% for females age 45-59 and 0.1% for females age 60+).

Domestic abuse and ethnicity

Qualitative research exploring the experiences of domestic abuse for women of South Asian ethnicity, and those who have insecure immigration status acknowledges the intersection of multiple factors such as race, ethnicity, immigration status, religion, socio-economic status, and cultural systems and practices, in shaping women's experiences of domestic abuse.

South Asian women may be subjected to similar forms of abuse experienced in other population groups, but it has been shown that the ways in which they perceive, and experience domestic abuse is unique to their cultures and communities¹⁵³¹⁵⁴. This includes suffering abuse for longer periods prior to seeking help, a general reluctance to access services, and a fear that seeking help may subject them to racist treatment¹⁵⁵.

Domestic abuse is under-reported within South Asian communities¹⁵⁶. A number of barriers to help-seeking behaviours have been identified for South Asian Women experiencing domestic abuse, including: a lack of awareness of services, lack of English proficiency, structural barriers and economics.¹⁵⁷

and since the age of 16. Both psychological and physical partner abuse are asked about. Serious sexual assault and less serious sexual assault are asked about.

¹⁵¹ SCJS "more serious sexual assault" includes the following: forced sexual intercourse; attempted forced sexual intercourse; other forced sexual activity; attempted other forced sexual activity

¹⁵² SCJS "less serious sexual assault" includes: indecent exposure; sexual threats, unwanted sexual touching

¹⁵³ Gill, A. and Virdee, G. (2021) 'Intersectional interventions to prevent violence against women in Black and minority ethnic communities'. In *Domestic Abuse across the life course*, L Radford and RK Thiara (eds). Jessica Kingsley Publishers: London.

¹⁵⁴ Burman, E. and Chantler, K. (2005) 'Domestic violence and minoritisation: Legal and policy barriers facing minoritized women leaving violent relationships', *International Journal of Law and Psychiatry* 28(1): 59–74

¹⁵⁵ BMA. (2014) *Domestic Abuse*. BMA Professional Policy Division and the Board of Science. Available from: <https://www.bma.org.uk/collective-voice/policy-andresearch/equality/healthcare-for-vulnerable-group/domestic-abuse-report>.

¹⁵⁶ Mirza, N. (2015) *Family Abuse in Scotland - Contesting Universalisations and Reconceptualising Agency*, PhD Thesis: University of Edinburgh. <https://era.ed.ac.uk/handle/1842/15938>

¹⁵⁷ Mirza, N. (2015) *South Asian women's experience of family abuse: exploring the police response*, Scottish Institute for Policing Research (SIPR): Research Summary No: 21 February 2015

South Asian women's experiences of the police can be highly variable. In some cases, it can be sensitive to women's needs, and in others, the police response can reflect a failure to understand the complex issues which shape women's experiences of abuse and disclosure¹⁵⁸. A research project exploring the interaction of police officers with South Asian women who contacted them as a consequence of domestic abuse found that the majority of the women were unaware of what support they could obtain from the police whilst living within an abusive relationship. However, the women experienced increased confidence after contacting the police and they provided messages of support for women in similar situations¹⁵⁹.

Researchers have argued that South Asian women can face "family abuse" at the hands of wider family, including their mother-in-law, and that such experiences do not fit within narrower definitions of domestic abuse and "intimate partnerships", thus rendering such experiences invisible^{160/161}.

Some women experiencing domestic abuse have no recourse to public funds due to their immigration status, for example if they are an asylum seeker or entered the UK on a spousal visa. This means they don't have access to publicly funded services and therefore constrains their ability to flee an abusive spouse as public money covers the cost of many Women's Aid refuge places¹⁶². Immigration policies and insecure immigration status can intensify and create specific forms of abuse¹⁶³, including, for example, having their passports removed by their husbands¹⁶⁴.

Gender Based Violence and Disability

A study "Our Bodies, Our Rights"¹⁶⁵, focused on disabled women's reproductive rights in Scotland. Although gender-based violence was not the focus of the

http://sipr.ac.uk/Plugin/Publications/assets/files/Research_Summary_21.pdf

¹⁵⁸ Mirza, N. (2015) South Asian women's experience of family abuse: exploring the police response, Scottish Institute for Policing Research (SIPR): Research Summary No: 21 February 2015

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¹⁵⁹ McLaughlin E, Wheate R and McGowan M, (2018) 'A confident approach in responding to the needs of domestically abused South Asian Women – laying the foundation for Police Scotland 2026 Strategy'.

http://sipr.ac.uk/Plugin/Publications/assets/files/South_Asian_Women_Domestic_Abuse_Police_Scotland.pdf

¹⁶⁰ Mirza, N. (2015) Family Abuse in Scotland - Contesting Universalisations and Reconceptualising Agency, PhD Thesis: University of Edinburgh. <https://era.ed.ac.uk/handle/1842/15938>

¹⁶¹ Sadaf, L. (2012) Marital violence against Pakistani women in Scotland. PhD thesis, University of Glasgow. <http://theses.gla.ac.uk/4965/>

¹⁶² Conway E. (2013) Family secrets and social silence : women with insecure immigration status and domestic abuse policy in Scotland [Family secrets and social silence: women with insecure immigration status and domestic abuse policy in Scotland - Enlighten Theses \(gla.ac.uk\)](http://www.enlighten.org.uk/theses/theses/1842/15938)

¹⁶³ Anitha, S (2011) 'Legislating Gender Inequalities: The Nature and Patterns of Domestic Violence Experienced by South Asian Women with Insecure Immigration Status in the United Kingdom', Violence Against Women 17 (10): 1260–1285.

¹⁶⁴ Hague, G., Gangoli, G., Joseph, H. and Alphonse, M. (2006) Domestic Violence, Marriage and Immigration. The Violence Against Women Research Group, University of Bristol.

¹⁶⁵ Wiseman, P. and Ferrie, J. (2018) Our Bodies, Our Rights: Research Report, Scottish Learning Disabilities Observatory, University of Glasgow and Engender, <https://www.engender.org.uk/files/our-bodies-our-rights-additional-research-report.pdf> summarised in Batchelor, S. Armstrong, S and MacLellan, D. 2019

research, the scale of gender-based violence and intimate partner violence reported was striking. All of the 12 women with learning disabilities participating in the research reported experiences of intimate partner violence, including physical violence, rape, forced prostitution and gang rape. This was in addition to experience of parental abuse and violent victimisation as children and adults, sexual violence as children, and violence experienced in care settings and residential facilities by staff and residents.

Women with learning disabilities in *Our Bodies, Our Rights* said that, because violence was so much a part of their lives for as long as they could remember, they considered it to be normal and didn't see it as something to be reported. Where women did report, they said they were not believed and were not put in contact with supportive services or organisations such as Rape Crisis or Women's Aid.

Separately, researchers have further observed that the "links between disability and domestic abuse have been under-examined nationally and internationally, resulting in the marginalisation of disabled women in research, policy and practice"¹⁶⁶.

Experience of hate crime

A hate crime is any crime which is perceived by the victim or any other person, to be motivated (wholly or partly) by malice and ill-will towards a social group. In Scotland, the law recognises hate crimes as crimes motivated by prejudice based on disability, race, religion, sexual orientation, and transgender identity. Sex, (or gender or misogyny), is not included as a hate a crime aggravator, however women can be victims of hate crime, related to the protected characteristics listed above.

Hate crime is under- reported. Different groups in society might be more or less likely to report being a victim of hate crime. Therefore, hate crime which is reported to the police is not necessarily characteristic of all hate crime experienced in Scotland. Analysing hate crimes reported to the police does not allow us to fully understand the scale of, or women's experiences of hate crime. Research¹⁶⁷ into police recorded hate crime in 2018/19 estimates that the victims are male, or an all-male group in around two-thirds (63%) of hate crimes, and 32% of victims are female or all female group. Females are less likely than males to be victims of hate crime across all the aggravators, with the exception of disability where victimisation is evenly split across male (50%) and female (49%) victims, and transgender aggravated crime where 55% of victims are female or an all-female group.

¹⁶⁶ Batchelor, S. Armstrong, S and MacLellan, D. (2019) Taking Stock of Violence in Scotland - Chapter 7 Gender based violence https://www.sccjr.ac.uk/wp-content/uploads/2019/09/Taking-Stock-of-Violence-in-Scotland_2019.pdf

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