

Domestic Abuse Court Experiences

Research: the perspectives of victims and witnesses in Scotland

This research reports on 22 victims' and witnesses' experiences of court since the introduction of the Domestic Abuse (Scotland) Act 2018 (DASA) in April 2019. The Act aimed to expand understandings of domestic abuse, improve the criminal justice system's ability to tackle domestic abuse effectively and increase courts' capacity to protect victims, witnesses and associated children. This in-depth qualitative study contributes to a programme of work to meet the Ministerial 3-year reporting requirement of DASA (S14(2) (f)) to provide: 'information about the experience of witnesses (including witnesses who are children) at court'. Early implementation of the Act (2019-22) coincided with the advent of COVID-19, which had an unprecedented impact on those experiencing domestic abuse and the operation of the justice system; these findings should be considered in that context.

Key findings

According to the 22 adult and child victims/witnesses involved in the research:

- The new law better reflects how adult victims experience domestic abuse: participants reported a range of psychological, physical and, for some, sexual harm over time. However, there was limited awareness of what constitutes criminal behaviour under DASA amongst the public (including victims/witnesses) and the professionals that participants encountered.
- Many participants felt DASA and/or its provisions were under-utilised. Most reported a continued focus on single/severe incidents of physical violence rather than ongoing abuse. Many felt the justice system struggled with prosecution of psychological abuse, particularly regarding verbal, telephone and online abusive behaviour.
- Most parents/child witnesses reported that harm to children was insufficiently recognised; they felt perpetrators were not held accountable for the impact that domestic abuse had on children and that children's safety and specific needs/vulnerabilities were inadequately addressed. Many victims felt that abuse of a third party – for example, family and friends – had not been taken account of adequately throughout the process.

- Although there were some positive examples of reporting to the police, this was not the experience of the majority of participants. The immediate aftermath of reporting domestic abuse was a time of particular vulnerability for victims and witnesses. Most participants felt an onus was on them to keep themselves safe during this time.
- Participants had inadequate knowledge of decision-making processes and the rationale for decisions made throughout the investigation and court proceedings. They cited a lack of communication, collaboration and involvement/transparency in decision-making. Far from being at the centre of the justice process, they felt on the periphery and marginalised by it.
- Participants reported that going to court was difficult and, for many, frightening and traumatic. Feeling uninformed, giving evidence in an adversarial process, court adjournments and delays significantly impacted on their mental health.
- Participants raised the potential for court to empower and provide a sense of closure to victims and witnesses, particularly when support and advocacy was provided.
- Participants had significant concerns that the investigation, prosecution and sentencing for domestic abuse offences did not adequately reflect the sustained level, severity or impact of abuse experienced.
- Safety was not consistently ensured for all participants before, during or post proceedings. This was contrary to their expectations that reporting would stop abuse and provide safety for themselves, family and friends. Non-harassment orders (NHOs) offered some protection and reassurance for victims.
- Advocacy and support were reported as the most significant mechanisms for minimising trauma and enhancing feelings of safety; however, participants identified gaps in provision, particularly earlier in the process and post court.

Methodology

The study's qualitative design enabled in-depth exploration of participants' experiences of the justice system in the context of domestic abuse; 22 adult and child victims and witnesses were interviewed. Demographic and court case data were collected from support agencies involved. A thematic approach to analysis was employed. The study received ethical approval from the University of Edinburgh and the Scottish Government.

Research aim and questions

The research explored victims' and witnesses' experiences of court since implementation of the Domestic Abuse (Scotland) Act 2018 in April 2019. Participants described their journey through a domestic abuse court case in detail: police investigation; court preparation; being at court; and after court. Research questions centred on expectations, impact, safety, trauma, inclusion, information, justice, and support. Participants were also asked how the court process might better support adult and child victims/witnesses.

Participants, scope and context of the research

The research draws on the views and experiences of: 13 adult victim complainants; 4 young victim complainants (in relation to abuse in their own relationships); and 5 court cited child witnesses (in relation to an adult complainant case). All were involved in

(closed) domestic abuse court cases. Twelve participants were involved in Domestic Abuse (Scotland) Act 2018 (DASA) cases and 14 were involved in cases with a domestic abuse aggravator. For participants in this research the average time from reporting to case closure was 9.6 months. During the research period (2019-2022) COVID-19 significantly impacted the running of the criminal justice system, including court processes (e.g. court delays) and service availability and delivery, as well as victims' experiences of domestic abuse (e.g. during lockdowns). Further research is needed to examine victims' and witnesses' (and potentially other key actors') experiences of the ongoing implementation of the Act as the justice system recovers from the pandemic.

Research Findings: the justice journey

Experiences of reporting to the police and the investigation

Police practices were described as inconsistent, with some positive and sensitive practices identified. In a small number of examples, victims appreciated the police making explicit reference to the Domestic Abuse (Scotland) Act 2019 and its definitions – informing victims and witnesses about its scope, helping them identify a course of abusive behaviour over time and making them aware of how evidence-gathering was adjusted accordingly. Victims and witnesses felt particularly vulnerable immediately after reporting domestic abuse. Most felt that the onus was on them to keep themselves safe at this time. Participants lacked knowledge about the rationale behind evidence-gathering processes. Many felt important evidence was disregarded or overlooked. Several described proactively collecting and pushing for particular evidence to be considered during investigations.

Experiences of preparing for court

For most, the period between first reporting domestic abuse and the case being heard at court was lengthy and characterised by a lack of communication about case progress, high levels of anxiety and a range of unmet needs (including therapeutic support for family members, contact with justice agencies and access to specialist advice). During this pre-trial period many participants reported continued abuse or harassment, undermining their sense of safety. Release of the accused from custody and bail conditions further impacted on safety, particularly when any changes were not communicated to victims in a timely or effective manner. Participants reported a lack of effective communication about what charges were being brought and why. Parents interviewed did not understand why DASA's aggravation in relation to a child was not applied to their case: all child and parent interviewees detailed children being subjected to, witnessing and being adversely affected by domestic abuse. Several parents and children believed that a video recorded joint investigative interview would mean a child would not be required to give evidence in court. However, when this turned out not to be the case, and a child was required to give evidence, this became a source of distress and undermined trust in the process. Specialist support and advocacy services, where available, were highly valued during the pre-court period; participants particularly appreciated a named worker supporting them to prepare, set expectations and to explain special measures in detail to them. Participants felt these workers were key to ensuring that the prosecution (and their Victim Information and Advice Service) was informed about victim/witness requests/needs in court and their views on Non-Harassment Orders (NHOs) should there be a conviction. Many participants noted that access to support and information at an earlier stage in the legal process (for adults

and associated children) would have made a positive difference to their wellbeing, as would one named justice contact connected to the court case.

Experiences of going to court

Participants reported that going to court was distressing, frightening and traumatic. The ability of courts to accommodate the needs of victims and witnesses, and their safety, was central to the overall quality of participants' experiences. Persistent findings related to: the negative impacts of delayed proceedings; the emotional (and practical) costs of going to court; the inadequacy of special measures at court in protecting witnesses from harm and distress; the impact of giving evidence in an adversarial process; feeling uninformed and excluded from the management of the criminal case; and not being aware of or understanding the rationale for decisions made about the case. Waiting to give evidence at court was described as particularly stressful. There were further negative consequences for participants who then did not give evidence due to a late guilty plea from the accused. Some participants raised the potential for the court to empower, and provide a sense of closure to, victims and witnesses. Whilst most victims did not want to re-live experiences of abuse in adversarial court settings, they did want the full facts and circumstances of their abuse to be represented. Support and advocacy were identified as crucial to improving experiences of being at court.

Perspectives on sentencing and protection

For most participants, the legal process did not deliver a fulsome sense of justice. Despite most cases resulting in a guilty verdict/plea, participants raised significant concerns that prosecution and subsequent sentencing for domestic abuse offences did not reflect the sustained nature or severity of abuse experienced nor the impact it had on their lives. Parents and children did not feel sentencing reflected harm done to children. Participants reported that court disposals did not prompt change in the accused's abusive behaviour and thus did not prevent domestic abuse. There were a range of views about the efficacy of Non-Harassment Orders (NHOs). For some, NHOs offered some sense of protection and reassurance of a more robust police response if breached. Several were especially fearful that abuse would restart when an NHO lapsed. However, for many, NHOs were not viewed as an adequate form of protection and several participants reported breaches. This had negative consequences for participants' wellbeing and their ability to 'move on' and live free from abuse. Several parents and child witnesses expressed a wish that associated children were included in the order (only 3 NHO's covered children); a number recounted abuse through child contact. When the accused was found not guilty, participants were especially negative about the justice system. This group were left especially vulnerable, with bail conditions and other protective measures ending abruptly. Overall, participants spoke of feeling unsupported after court and identified a need for trauma recovery support in relation to the domestic abuse and the court process.

Considerations for the future

Victims and witnesses valued their involvement in this research and felt that involving adult and child survivors in changes needed could significantly improve the system. According to participants, priorities for change are:

- To increase public and professional awareness of DASA and what amounts to criminal behaviour; some participants suggested clear national messaging

- Effective and expansive use of DASA definitions when responding to domestic abuse, including prosecution of psychological abuse and recognition of harm to children
- Consistent practice in the investigation of domestic abuse. Victims suggest police explain the law to complainers and build a case collaboratively with them
- Improve communication and collaboration with victims and witnesses in relation to processes and rationale behind case management, decision-making and evidence giving. Ensure victims' and child witnesses' whole story is heard before sentencing
- Further efforts to maximise victims' and witnesses' safety at all stages of the process, including immediately after reporting and post court
- Reduce court delays and the number of adjournments
- Increase access to support and advocacy, provision to begin earlier and last longer
- Increase attention on vulnerability and needs of younger victims and third parties
- Remove adult and child victims/witnesses from court settings: remote, earlier, pre-recorded evidence would reduce trauma and promote trauma recovery

How to access background or source data

The data collected for this <statistical bulletin / social research publication>:

- are available in more detail through Scottish Neighbourhood Statistics
- are available via an alternative route <specify or delete this text>
- may be made available on request, subject to consideration of legal and ethical factors. Please contact Justice_Analysts@gov.scot for further information.
- cannot be made available by Scottish Government for further analysis as Scottish Government is not the data controller.



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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

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