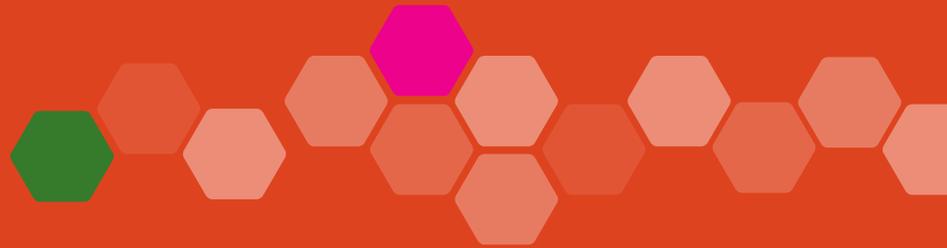


Domestic Abuse Court Experiences Research: the perspectives of victims and witnesses in Scotland



CRIME AND JUSTICE

Domestic Abuse Court Experiences Research: the perspectives of victims and witnesses in Scotland

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Contents

Acknowledgements	4
List of Abbreviations	5
Executive Summary	6
Key findings	6
Methodology	7
Research Findings: the justice journey.....	8
Considerations for the future	9
1. Introduction	11
The Domestic Abuse Court Experiences Research (DACE).....	11
The Domestic Abuse (Scotland) Act 2018: legislative context	13
COVID-19, domestic abuse and the implementation of DASA.....	16
Scotland’s policy context in brief	17
Scotland’s research context – domestic abuse court experiences.....	20
Methodology	22
Conclusion	26
2. Domestic Abuse (Scotland) Act 2018: shifting understandings of domestic abuse	27
Introduction	27
Headline findings	27
How DASA reflects victim-survivors’ experiences	27
Ways forward from participants’ perspectives	34
3. Police reports and investigation	35
Headline findings	35
Introduction	35
Initial reports and statements	35
Further evidence gathering.....	39
Decisions to proceed	40
Follow up support and communication	40
Ways Forward from participants’ perspectives	41
4. Pre-Court and preparation for court	42
Headline findings	42
Introduction	42
Delays	43
Protection and safety	43

Communication.....	45
Support and advocacy	47
Ways Forward from participants' perspectives.....	51
5. At court.....	52
Headline findings	52
Introduction	52
Giving evidence	56
Support and information at court	59
The potential for court to empower and provide closure	60
Ways Forward from participants perspectives.....	61
6. Sentencing and Protection	62
Headline findings	62
Introduction	62
An overview of court outcomes	63
When the accused was found not guilty	68
Post-court domestic abuse	68
Ways forward from participants' perspectives	69
7. DASA: Enhancing Implementation	70
Introduction	70
Reflections on the Domestic Abuse (Scotland) Act 2018.....	71
Sharing power with adult and child victims and witnesses.....	75
Appendix 1: Research Questions	78
Appendix 2: Overview of roles and responsibilities	80
Roles and Responsibilities of key justice and victim/witness agencies across the criminal justice journey	80
Appendix 3: Example Topic Guide (Adults).....	85
Appendix 4: Helping you feel safe in an interview infographic	90
Appendix 5: Example pages from booklet to support interview	91

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Content warning

As participants shared their experiences of abuse and the difficulties faced in their journeys through the justice system, it is important to be aware of the potentially distressing and triggering content of this report.

List of Abbreviations

CCTV	closed-circuit television.
COPFS	Crown Office and Procurator Fiscal Service
DA	Domestic Abuse
DACE	Domestic Abuse Court Experiences
DASA	Domestic Abuse (Scotland) Act
EDDACS	Edinburgh Domestic Abuse Court Support
GDPR	General Data Protection Regulation
JAS	Justice Analytical Services
IRD	Inter-agency Referral Discussion
NHO	Non-Harassment Orders
PF	Procurator Fiscal
SCIM	Scottish Child Interview Model
SCRA	Scottish Children's Reporter Administration
SCTS	Scottish Courts and Tribunal Service
UK	United Kingdom
VIA	Victim Information and Advice
VSS	Victim Support Scotland

Executive Summary

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

1. Introduction

The Domestic Abuse Court Experiences Research (DACE)

The research aims to explore victims' and witnesses' experiences of court since the introduction of the Domestic Abuse (Scotland) Act 2018 (DASA) in April 2019. This in-depth study with 22 victims and witnesses contributes to a programme of research to meet the Ministerial 3-year reporting requirement of the Domestic Abuse (Scotland) Act 2018 (S14(2)(f)) to provide:

'information about the experience of witnesses (including witnesses who are children) at court'.

This report draws upon the views and experiences of 13 adult victim complainants, 4 young victim complainants (in relation to their own relationships) and 5 court cited child witnesses (in relation to an adult complainant case). It contributes detailed descriptions from participants about their experiences of: reporting domestic abuse to the police; preparation for court; being at court; and after court. Research questions centred on expectations, impact, safety, trauma, inclusion, information, justice, and support¹. Victims' and witnesses' perspectives on how the court process might better support victims, witnesses and families are incorporated into the report.

This study's context is one of early implementation of DASA and COVID-19 -- important parameters when considering the findings. The 22 participants reported domestic abuse to the police after April 1st 2019 and their cases were closed (trial and sentencing processes concluded) when they were interviewed and by April 1st 2022. Of these, twelve participants were involved in Domestic Abuse (Scotland) Act 2018 (DASA) cases² and 14³ were involved in cases with a domestic abuse aggravator (as described in S1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016)⁴, which is also covered by the reporting requirement. In a qualitative study of this nature the findings cannot claim to be fully representative of all court experiences but rather they provide in-depth insight and understanding of participants' experiences. Furthermore, it is important to recognise that many of these cases were impacted by the context of COVID-19 - a time of unprecedented upheaval to the justice system and associated services, during which the courts had to close entirely for a period of time and where social-distancing requirements meant that they operated at significantly reduced capacity for an extended period.

¹ The research questions are in Appendix 1; child and adult expert victim-survivor consultants advised on an interview workbook to support interviews, which is shown in Appendix 5.

² DASA charges accounted for 4.7% of all domestic abuse charges reported in 2020-21, (1,581 charges reported - an increase of 48% on the 2019-20 total of 1,065 then 3.5% of all domestic abuse charges reported). ([Domestic Abuse and Stalking Charges in Scotland 2020-21, COPFS \(PDF, 1MB\)](#))

³ 4 DASA cases also included additional DA aggravated charges

⁴ To note, 83% of all domestic abuse charges reported in 2020-21 were reported with a statutory aggravation under the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (27,658 charges)

The scale of the problem: domestic abuse in Scotland

The most recent Scottish Crime and Justice Survey (2018-20) partner abuse findings⁵ reveal that: 16.5% of adults said they had experienced at least one incident of partner abuse since the age of 16, including psychological and/or physical abuse. Of all respondents with a partner or who were in contact with an ex-partner in the last year, 3.2% had experienced at least one incident of partner abuse in the previous year (31% of these had experienced more than one incident). A third of respondents reported children living in their household (32%) and 71% of these said children were present during the most recent incident. Under one-in five (16%) said that the police came to know about the most recent incident.

Counted separately, 3.6% of adults reported in the survey that they had experienced at least one type of serious sexual assault (forced sexual intercourse/activity) since the age of 16. Half (51%) of those who had experienced forced sexual intercourse said the perpetrator had been their partner and a further 14% said it was their ex-partner. According to the survey respondents, the police came to know about a fifth of these serious sexual assaults. Partners were most likely to be perpetrators of sexual threats.

The criminal justice system context

There were 65,251 police recorded domestic abuse incidents in Scotland in 2020-21 (and 62,907 in 2019-20); whilst there was an increase during COVID-19 (and fluctuations within lockdown periods), statistics reflect a steady increase over the last 5 years. Two-fifths (40%) of these incidents included the recording of at least one crime or offence; the Domestic Abuse (Scotland) Act 2018 accounted for 4% of the crimes and offences recorded as part of a domestic abuse incident.⁶ Domestic abuse incidents resulted in 33,425 charges identified as being related to domestic abuse reported by the Crown Office and Procurator Fiscal Service (COPFS) in 2020-21; 92% of these were prosecuted.⁷ The last year for which statistics across the system are available in relation to the Act is 2020-21:

- Police Scotland recorded 1,665 Section 1 offences under the Act⁸
- 1,581 charges were reported under this legislation (4.7% of all domestic abuse charges reported); 95% of these were prosecuted⁹
- 420 people were proceeded against in court in this time period, resulting in 383 people being convicted. The aggravation concerning involvement of a child was proven in 90 of these cases¹⁰

Whilst the percentage of DASA offences are rising year on year, the majority of domestic abuse offences and charges remain those subject to the domestic abuse statutory

⁵See [9.3 Partner Abuse - Scottish Crime and Justice Survey 2019/20: main findings](#)

⁶ See [Domestic abuse: statistics recorded by the Police in Scotland - 2020/21](#)

⁷ [Domestic Abuse and Stalking charges in Scotland, 2020-21](#)

⁸ [Domestic abuse: statistics recorded by the Police in Scotland – 2020/21](#)

⁹ [Domestic Abuse and Stalking charges in Scotland, 2020-21](#)

¹⁰ [Criminal proceedings in Scotland: 2020-2021 \(supporting documents\)](#)

aggravator; these offences include common assault and breach of the peace. Of the 27,658 charges reported to the Crown Office and Procurator Fiscal Service (COPFS) with a statutory domestic abuse aggravator in 2020-21, 25,784 were marked by COPFS for proceedings in court. The number of convictions (which can include multiple charges) for a case with a statutory aggravation were 6,515 in 2020/21.¹¹

The report structure

The report's introduction sets the legislative, COVID-19, policy and research context for the study and outlines the methodology. Chapter 2 examines victims' and witnesses' perspectives on the Act and its intention to promote a 'modern understanding' of domestic abuse. In Chapters 3 to 6, different stages of criminal court processes are considered: reporting and investigation; preparation for court; being at court; sentencing and protection. The views participants expressed on how the court process might better support victims and witnesses provide sections at the end of each chapter on 'ways forward'. Chapter 7 lays out overarching messages from the findings, in light of the current policy context, and concludes with victim-survivors' perspectives on the Ministerial reporting requirement.

The Domestic Abuse (Scotland) Act 2018: legislative context

The Domestic Abuse (Scotland) Act 2018 (DASA) was introduced to improve how the justice system responds to domestic abuse and to ensure the criminal law reflects 'a modern understanding of what is domestic abuse'¹². The Act criminalises a course of behaviour that is abusive of the person's partner or ex-partner. This includes spouses, civil partners, cohabitantes and those in intimate personal relationships (S11) and recognises the continuation (and often escalation) of abuse post-separation. Abusive behaviour includes 'violent, threatening or intimidating' behaviour (S2(2)(a)) that is likely to cause physical or psychological harm. This course of abusive behaviour can include physical violence, threats, sexual violence, stalking and homicide (that could be prosecuted under pre-existing laws), as well as psychological and emotional abuse (that could not be or were difficult to prosecute under pre-existing laws). It cannot include abusive behaviour prior to April 1st 2019. Key policy objectives were to:

- better reflect how victims experience a pattern of abuse over time
- criminalise psychological harm including fear, alarm and distress (S1(3))
- enable prosecution of various types of abuse that take place over time (on at least 2 occasions) as a single course of conduct
- recognise cumulative 'relevant effects' on victims such as making the person dependent, subordinate, isolated, controlling their activities and restricting their freedom of action; frightening, humiliating, degrading and punishing the person (S2(3)(a)-(e))
- more effectively criminalise entirely non-physical abuse

¹¹ [Criminal proceedings in Scotland: 2020-2021 \(supporting documents\)](#)

¹² [Policy Memorandum Domestic Abuse \(Scotland\) Bill 2017](#) Para 18 (hereafter referenced as the Policy Memorandum).

This abusive behaviour can be directed at the victim, a child of the victim (under 18) or at another person (S2(2)(b)) and includes making use of a third party, abuse towards pets, and property. It is an offence in terms of the effects of such behaviour *on the victim* – the partner or ex-partner. (To note that abusive behaviour directed at a third party, including a child, could be prosecuted as a *separate* criminal offence committed against that person¹³.) An aggravation in relation to a child (child aggravator) (S5) was introduced to recognise harm done to children by domestic abuse, such as ‘causing the child to suffer fear, alarm or distress’ (S5(10)). The perpetrator’s involvement of a child in the offence (S5(1)(a)) can be recorded by court and impact sentencing if it were proven that: there was direct abusive behaviour towards the child; the child was made use of in abusing the victim; the child saw, heard or was present during abuse; and/or the child was adversely affected by abuse (S5(2)-(4))¹⁴.

The Domestic Abuse (Scotland) Act 2018 Act (DASA) also includes associated reforms to criminal procedure, evidence and sentencing (S12 and Schedule). These reforms apply to both DASA offences and other offences subject to the statutory aggravation involving abuse of partners or ex-partners¹⁵, such as common assault, threatening behaviour and stalking. Of key relevance to this study is the:

- status of adults as vulnerable witnesses in relation to the Act (already applied in domestic abuse aggravated cases and to any child witness)
- efforts to enhance victims’ safety in relation to sentencing to ensure they are not subject of a further offence by the same person
- requirement for courts to consider a non-harassment order (NHO) for victims and any children residing with them or/and a child to whom a S5 aggravation relates

All domestic abuse complainers and child cited witnesses are vulnerable witnesses and therefore automatically entitled to standard special measures when giving evidence: a screen in court obscuring the witness from the perpetrator; a supporter; a CCTV live link from a secure location outwith the courtroom. Victim Information and Advice (VIA), part of COPFS (see below), contact the victim/witness and apply for these measures. They can also discuss non-standard measures if appropriate, such as: evidence by prior statement (written/pre-recorded statements form part of the evidence); evidence by commissioner (all evidence is given out of the courtroom before trial, including questioning from defence lawyers); and closed courts (to the public) whilst the victim/witness gives evidence.

¹³ For example, threatening and abusive behaviour could be prosecuted under [Section 38 of the Criminal Justice and Licensing \(Scotland\) Act 2010](#); behaviour that is abusive of a child could be prosecuted under [Section 12 of the Children and Young Persons Act 1937](#).

¹⁴ To further specify, for the last category, S5(4) states that ‘if a reasonable person would consider the course of behaviour, or an incident of A’s behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both)’. The [Domestic Abuse \(Scotland\) Act 2018 Explanatory Notes Para 36](#) (hereafter referenced as Explanatory Notes) explains that it could cover circumstances when a child’s general wellbeing and development is considered likely to be adversely affected.

¹⁵ Under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

A Non-Harassment Order (NHO) against the partner or ex-partner can help protect the victim and associated children through an order banning the convicted person from carrying out behaviour specified in the order that causes, or intends to cause harassment, fear, alarm, distress, for example, contacting the victim and child. Breaches are a criminal offence which can be punished by up to 5 years in prison or a fine.

In summary, the creation of a specific offence of domestic abuse aims to shift understandings of domestic abuse and to 'improve the ability of the police and prosecutors to tackle abuse effectively'¹⁶ and courts' capacity to protect the safety of victims, witnesses and associated children¹⁷.

Key criminal justice and victim/witness support agencies in DASA implementation

Prior to the Act's implementation, key agencies undertook a national programme of training on the new Act and its key provisions. This involved: 14,000 police officers; all Crown Office and Procurator Fiscal Service (COPFS) legal¹⁸ and VIA staff; and the judiciary (including High Court Judges and Sheriffs) who received training through the Judicial Institute. Their roles and responsibilities, alongside those of key third sector partners, are summarised below (see Annex 1 and the [Victims' Code](#) for further information):

- Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) follow a detailed [protocol](#) of procedures and practices in the investigation, reporting and prosecution of domestic abuse
- The police respond, investigate, take statements from witnesses, and report the case to the Procurator Fiscal (PF, a prosecution lawyer for [COPFS](#)). The police communicate with the victim/complainer about their case up to the PF's decision to prosecute (or not); this includes the police informing the victims about bail/any conditions of bail
- The PF decides whether to prosecute (based on admissible evidence available)¹⁹ and, if so, in which court and on what charge/s. They cite prosecution witnesses including child witnesses
- The [Victim Information and Advice](#) (VIA) service is part of COPFS. VIA staff role is to: inform domestic abuse victims/child witnesses about the progress of their case and decisions made; refer to specialist services; contact victims/child witnesses about special measures and apply to court for special measures for all vulnerable

¹⁶ Policy Memorandum Para 19.

¹⁷ Policy Memorandum Para 149.

¹⁸ Additionally all COPFS legal staff undertake training on domestic abuse, which includes training on the dynamics of abuse, including coercive and controlling behavior. The DASA face to face training was supplemented by an e-learning module and detailed written guidance on the Act.

¹⁹ To note, if there is sufficient evidence, which includes evidence from at least two sources, there is a presumption in favour of prosecuting in domestic abuse cases

witnesses²⁰. VIA and the PF gather information on victims' wishes for a NHO. VIA informs victims and witnesses of court outcomes

- PFs prosecute in the public interest²¹, aiming to prove the case against the accused through evidence led before the court. A defence agent (lawyer) represents the accused, including questioning witnesses on behalf of the accused. A 'plea negotiation' between the PF and defence agent can happen whenever the accused offers to plead guilty to any of the charges
- Sheriffs/Judges preside over cases in court and make sentencing decisions. In solemn cases juries decide if the accused is guilty or not, with direction from the judge. If the accused is convicted, the sheriff/judge makes sentencing decisions and decisions on NHOs in domestic abuse cases; the PF informs the court of the victim's wishes in regards to NHOs
- [The Scottish Courts and Tribunal Service](#) (SCTS) provide staff and facilities to support sheriffs/judges and to enable court cases to be heard; their responsibilities include providing separate waiting rooms for victims and setting court dates
- [Victim Support Scotland's Court Service](#) provides court familiarisation visits and information; they can sit with witnesses in waiting rooms and potentially sit in court as a supporter (see Special Measures)
- [ASSIST/EDDACS](#)²² are specialist domestic abuse support/advocacy services, independent of the justice system. They provide a named key worker for the victim/child cited witness throughout the case. Their focus is on risk assessment, safety, support and ensuring VIA/COPFS are informed of victims' and child witnesses' needs, safety and views in relation to the case, including Special Measures and NHOs. They also have access to the restricted court information system (run by SCTS) so can inform victims/witnesses of progress of their case
- [Women's Aid](#) provide specialist support for women, children and young people experiencing domestic abuse across Scotland (not only court witnesses); they provide holistic one-to-one and group support within communities and their refuges

COVID-19, domestic abuse and the implementation of DASA

It is widely acknowledged that COVID-19 increased many victims' and witnesses' exposure to domestic abuse and increased isolation, fear and anxiety at a time of decreased access to support networks and services²³. Victims' and witnesses' in this study experienced the justice system at a time of significant upheaval, an important context to take into account when considering findings. Significant impacts of COVID-19 on the criminal justice system and victim/witness agencies include:

²⁰ If VIA has not heard from an eligible victim/witness they will apply for certain standard special measures on their behalf

²¹ To note, the PF prosecutes the cases in the public interest in the summary courts and the Sheriff and Jury courts. Advocates Depute prosecute in the public interest in the High Court.

²² Specialist domestic abuse support and advocacy services - see Appendix 2. ASSIST (Advocacy, Support, Safety, Information, Together) covers most of the Central West of Scotland. EDDACS (Edinburgh Domestic Abuse Court Support) is part of Edinburgh Women's Aid.

²³ See, for example, Morrison, F & Houghton, C 2022, 'Children's human rights in the contexts of domestic abuse and COVID19', International Journal of Human Rights.

<https://doi.org/10.1080/13642987.2022.2057963>

- the widespread effects of public health measures, that aimed to reduce the spread of COVID-19, on operations and capacity
- no criminal trials taking place between March 2020 and July 2020
- public health measures substantially reducing the capacity to progress criminal trials for much of 2020 and 2021, resulting in a significant backlog
- challenges in providing support for victims/witnesses in a virtual rather than face-to-face context, at speed
- challenges in communication about cases

Public health measures were introduced just 11 months after DASA came into force so this undoubtedly had an impact on the legislation's implementation in the period of the study. It is difficult to distinguish the impact that COVID-19 had on the system from problems that existed pre-COVID with the functioning of the justice system, although the pre-pandemic research context in the section below provides a useful touchstone for this.

Importantly, domestic abuse remained a high priority for the Scottish Government, the courts, key justice and third sector agencies during the COVID-19 pandemic, despite the challenges. This was reflected in high level partnership working operations, the prioritisation of domestic abuse in court scheduling, the shift to remote services and public messaging efforts aiming to assure victims and perpetrators of a robust justice response to domestic abuse.

There remains a significant backlog in domestic abuse criminal court cases. The *Vision for Justice* (alongside other policy/ Parliamentary initiatives) details ongoing concern about the exacerbation of delays in the criminal justice system due to COVID-19 (to note that delays existed pre-pandemic), the length of time for cases to progress, and the uncertainty and stress this causes victim-survivors²⁴. *The Vision for Justice and Recover, Renew, Transform (RRT) programme*²⁵ focus on improving court capacity and justice innovation post lockdown, as detailed in the policy context below.

Scotland's policy context in brief

The Act fits with the ambitions and ongoing delivery plans of the Scottish Government's [Equally Safe Strategy \(2016\)](#) and, more recently, [The Vision for Justice in Scotland \(2022\)](#). *Equally Safe's* priorities include early and effective interventions, preventing violence, maximising the safety and wellbeing of women, children and young people, and ensuring perpetrators receive a robust and effective response. Key objectives include ensuring: justice responses are robust, swift, consistent and coordinated; perpetrators are identified early, held to account by the justice system and are supported to change their behaviour; and that relevant links are made between the experiences of women, children and young people in the criminal and civil justice systems.

²⁴ [The Vision for Justice in Scotland](#) – see p.6

²⁵ [SCTS News - Reducing the Criminal Trials Backlog](#)

The Vision for Justice aims to ensure that all parts of the justice system and associated services deliver person-centred services and embed trauma-informed practices. The law should be easy to understand and accessible. Key transformation priorities for justice services, third sector partners and the legal profession include: timely, clear communication; individuals and families being involved in decisions that affect them; treating people with empathy and kindness and providing the support they need to thrive; realising where people are affected by trauma; and responding in ways that reduce re-traumatisation²⁶²⁷.

Equally Safe and the *Vision for Justice* state the importance of a gendered understanding of domestic abuse and specific consideration of how women and children experience justice. They state that hearing the voices of victims and witnesses, and ensuring their rights are respected, are at the centre of both policy and practice change²⁸. A key aspect of this is to 'share power with those with lived experience of trauma, including service co-design and active participation and collaboration'²⁹.

New initiatives in Scotland

There are a number of initiatives, pilots and policy/practice developments of interest to this study, stemming from pre and post pandemic reviews³⁰. The [Victims' Code for Scotland](#) commits criminal justice agencies, alongside victim and witness support organisations, to provide the best service possible, using the principles of the Victims and Witnesses (Scotland) Act 2014 (S1 and 1A) as minimum standards of service that:

- a victim or witness should be able to obtain information about what is happening in the investigation or proceedings
- the safety of a victim or witness should be ensured during and after the investigation and proceedings
- a victim or witness should have access to appropriate support during and after the investigation and proceedings
- in so far as it would be appropriate to do so, a victim or witness should be able to participate effectively in the investigation and proceedings
- victims should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner
- victims should, as far as is reasonably practicable, be able to understand information they are given and be understood in any information they provide
- victims should have their needs taken into consideration

²⁶ [The Vision for Justice in Scotland](#) - Our Transformation Priorities, p.5.

²⁷ [The Vision for Justice in Scotland](#) – Principles, p.30.

²⁸ [Equally Safe](#) - Objectives and [Vision for Justice](#) - Transformation Priorities.

²⁹ [The Vision for Justice in Scotland](#), p.30

³⁰ In particular the SCTS led work of the Evidence and Procedure Review. Information on that can be found here – [SCTS Evidence and Procedure Review](#)

- when dealing with victims who are children, the best interests of the child should be considered, taking into account the child's age, maturity, views, needs and concerns
- victims should be protected from secondary and repeat victimisation, intimidation, and retaliation

The **Scottish Child Interview Model (SCIM)** is an evidence based, trauma informed, approach to Joint Investigative interviews by police and social work. It is being piloted in several local authorities, prioritising solemn cases. It seeks to secure best evidence for court processes, and to inform assessment of risk to the child and other children while promoting children's right to recovery.

The Bairns Hoose (Scotland's Barnahus) aims to ensure children who have been victims or witnesses of abuse have access to a coordinated approach to trauma-informed recovery, support and justice (by 2025). The Bairns Hoose is designed to provide a child-friendly, safe and welcoming setting for children to go to once a crime has been reported and provide a single setting through which evidence can be given, and child protection, health and recovery services accessed.

Virtual Summary Criminal Trials Project recommends specialist online courts be set up for domestic abuse cases across Scotland following a pilot of virtual domestic abuse summary trial courts, allowing victims (complainers) and witnesses to give evidence virtually from a remote building supported by Victim Support Scotland. Should it be rolled out in each sheriffdom, as recommended, it has potential to increase protection, reduce trauma, capture best evidence, reduce delays and reduce the length of court processes.

Summary Case Management Pilot in three sheriff courts pilots a new approach to resolve domestic abuse cases at the earliest opportunity, reducing the burden of trial preparation on victims and witnesses. It includes early disclosure of evidence, allows the defence to engage more meaningfully with the COPFS, and early judicial case management. It aims to reduce the number of cases set down for trial unnecessarily and reduce the volume of late guilty pleas and late decisions on discontinuation.

The **Scottish Sentencing Council** is developing sentencing guidelines for domestic abuse offences and commissioned a **review** in 2022 to inform the work.

Scotland's research context – domestic abuse court experiences

COVID-19 and domestic abuse research

There is a useful body of research into domestic abuse policy and practice during COVID-19 by the Scottish Government³¹, academics in Scotland³² and international studies³³. This emerging body of research mainly focuses on practitioners perspectives, although [scotlandinlockdown](#) helpfully includes 12 survivors perspectives. The specific concerns raised in Scottish studies in relation to the criminal justice system in Scotland, were: the significant mental health effects of COVID-19, court delays and rescheduling on victims and witnesses, delaying trauma recovery; impact and risk of domestic abuse being magnified by lockdown and amended criminal justice procedures; safety planning curtailed; issues around bail conditions including lack of clarity, breaches, gaps in coverage; victim-survivors losing faith in the justice system including confidence in reporting (especially reporting breaches of orders); and difficulties accessing up-to-date information, challenges for advocacy services in relation to effective advocacy for clients and increased demand for services as ongoing case numbers increase. Particular concerns were raised in relation to children experiencing domestic abuse during COVID-19: being exposed to increased levels of abuse; lack of visibility of children in policy responses and public messaging; lack of access to services; limited engagement with online services; the whole family being affected by court delays; anxiety and inability to 'move on' for court cited child witnesses; and further abuse of women and children through child contact and uncertainties caused by civil processes.

Research with victims/witnesses pre-pandemic

Research carried out in Scotland on victims' and witnesses' experiences of the prosecution of domestic abuse and gender-based violence pre-pandemic is an important context in ascertaining ongoing or COVID-19 specific problems; we therefore draw on three key Scottish studies that pre-date the implementation of the Act and the pandemic.

Forbes' 'Beyond Glass Walls' research (2019) focuses on reporting to the police and the ensuing criminal justice response to domestic abuse. It involved 34 victims and their advocacy workers. She reports on the ad hoc availability of advocacy and support for victims and witnesses, as well as the inconsistent use of risk assessment in the justice system. In relation to the court process, Forbes points to the emotional cost borne by victims and witnesses in waiting for court cases to progress and conclude, further finding that the criminal justice process is not equipped to deal with the depth and range of victims' and witnesses' emotional responses to abuse. The research also highlights the

³¹ [Coronavirus \(COVID-19\): domestic abuse and other forms of violence against women and girls during Phases 1, 2 and 3 of Scotland's route map \(22 May to 11 August 2020\)](#); [Coronavirus \(COVID-19\): domestic abuse and other forms of violence against women and girls - 30/3/20-22/05/20](#)

³² Houghton, C, Morrison, F and McCabe, L (2020) [Domestic Abuse: Children's Rights Impact Assessment in the Independent Children's Rights Impact Assessment on the Response to COVID-19 in Scotland](#); [Scotland in Lockdown](#) Team (2020) [Left Out and Locked Down: Impact of COVID-19 Lockdown for Marginalised Groups in Scotland](#); Morrison, F. & Houghton, C. (2022): [Children's human rights in the contexts of domestic abuse and COVID-19](#), *The International Journal of Human Rights*; Morrison F, Malloch M & Friskney R (2022) [Scottish Government Call for Evidence: Women in the Justice System – a strategic approach](#).

³³ See, for example, [DAHLLIA-19](#) reports and international synthesis.

sense of powerlessness that victims and witnesses experience throughout the court process.

Brooks-Hay and colleagues '[Justice Journeys](#)' report (2019) on the experiences of 17 victims of rape and sexual violence as they navigated the justice system. While not explicitly about domestic abuse, definitions of domestic abuse encompass sexual violence and domestic abuse, and rape and sexual violence are all intimate partner crimes. Brooks-Hay and colleagues highlight the stark disparity between victims'/survivors' expectations and their experiences of the justice system. They point to inadequate communication about the justice journey from officials to victims/survivors, as well as concern about the lengthy duration of the process. Victims/survivors reported feeling uncomfortable in police and court buildings, highlighting concerns about their safety during the justice journey. The research also underlines the ways in which victims/survivors felt 'marginal' in the legal process and that the 'system' was weighted to the accused and not adequately addressing the interests of victims/survivors.

The Equally Safe [Everyday Heroes Report on Justice](#) (Houghton and MacDonald 2018) is one of the only studies to focus explicitly on child victims and witnesses in relation to the prosecution of domestic abuse in Scotland. This involved 47 children and young people aged 6 to 25, 44 of whom had experienced gender-based violence including domestic abuse (some experienced multiple forms). Their priorities for action to improve the justice system included the need to:

- strengthen processes and methods to enable children and young people to participate in the justice system
- increase access to consistent, specialist support and advocacy workers throughout the justice process
- improve information and communications processes for children and young people throughout the justice journey
- make practical improvements to ensure the criminal justice system is child- friendly and to reduce re-victimisation and trauma
- hold the perpetrator to account for the abuse and ensure that young and adult victim/survivors do not feel to blame or on trial
- involve children and young people with experience of gender-based violence in improving the justice system through direct dialogue with those working in the justice system

The DACE study has been undertaken as part of a programme of research on victims' and witnesses' experiences of court since the implementation of the new Act and is the first to include the perspective of child cited witnesses.

Methodology

The study started in August 2021 with fieldwork undertaken between November 2021 and April 2022. Twenty-two in-depth qualitative interviews were undertaken with victims and witnesses, 12 of whom were involved in Domestic Abuse (Scotland) Act 2018 (DASA) cases (details below). A brief summary of the study methodology is outlined below; research questions and tools are provided in the appendices.

Research Design

Study design was informed by research parameters outlined by Scottish Government, Justice Analytical Services (JAS) who commissioned this work. Consultation on study design was supported by input through staff from partner agencies (ASSIST, Edinburgh Domestic Abuse Court Support (EDDACS), and [Scottish Women's Aid](#)), two adult survivor groups convened by Scottish Women's Aid, and a children's advisory group convened by Glasgow East Women's Aid. This process informed recruitment processes, information for potential interviewees, and data collection materials. Study design paid particular attention to maximising research participants' choice and control, and ensuring their safety and access to support before, during and after taking part. The context of COVID-19 required that data collection was adapted for remote (online or telephone) and face to face data collection scenarios.

Recruitment and Engagement

Participants were recruited through our three specialist partner agencies ASSIST, EDDACS, and Scottish Women's Aid network members who were funded for their time supporting the study. This recruitment approach was used to ensure potential and actual participants had access to specialist support from a known individual, to help them make an informed choice to participate as well as to have support during and after an interview, and to ensure only individuals who met the strict eligibility criteria were approached.

Prior to data collection, extensive work was undertaken with partner agencies to clarify eligibility criteria and ensure they held a strong understanding of the research approach and questions. Work with partners also supported a degree of purposive sampling: identifying perspectives we wished to prioritise and proactively reaching out to individuals who fit this profile. This included (but was not limited to) lesser heard perspectives such as victims and witnesses from minority ethnic communities and male victims. Particular efforts were also made to prioritise perspectives of those whose cases had been prosecuted under the new law. One challenge for recruitment was the relatively small pool of suitable participants due to eligibility criteria. Key criteria included:

- an individual had been cited as a witness in a domestic abuse court case
- cases commenced ('first reported to the police') after 1st April 2019
- all relevant court hearings were concluded prior to interview
- a case was prosecuted under the new Act (DASA) or as a Domestic Abuse Aggravated crime

Sample

The sample had three distinct groups:

- **Adult victims (n=13):** those aged 18+ when subject to domestic abuse
- **Young complainant victims³⁴ (n=4):** those aged 17-22 who were under 18 when first subject to domestic abuse from a partner or ex-partner
- **Child victim/witnesses (n=5):** children of an adult victim/primary complainant

Table 1: Overview of sample and (court) cases

Summary of adult victims interviewed						
Number (and gender)	Age Range	No. of cases with DASA charges ³⁵	No. of cases with DA Aggravated charges	No. of cases with NHO ³⁶	Victims/witnesses who gave evidence	Guilty verdicts
13 (11 female, 2 male)	20 – 54 yrs.	8 (5 no DASA charges)	6	10	7 gave evidence 6 guilty plea prior to giving evidence	9 guilty (for 1 or more charges) 3 not guilty 1 unknown
Summary of young complainants interviewed						
4 (4 female)	17 - 22 yrs.	2 (2 no DASA charges)	4	2	1 gave evidence 3 guilty plea prior to giving evidence	4 guilty verdict (for 1 or more charges)
Summary of child witnesses interviewed ³⁷						
5 (3 male, 2 female)	12 - 17 yrs.	2 (3 no DASA charges)	4	2	2 gave evidence 3 guilty plea prior to giving evidence	3 (for 1 or more charges) 2 not guilty

21 of 22 participants identified as White Scottish or White British and one as 'Black Minority Ethnic - other'.

Court type and location

Cases took place across 11 court sites in the following locations: Airdrie; Ayr; Edinburgh; Glasgow; Hamilton; Kilmarnock; Lanark; Livingston; Paisley; and Selkirk. There were 20 summary cases and 3 solemn cases³⁸.

³⁴ This categorisation reflected those of partner advocacy services, recognising that the experiences (and possibly rights) of young complainants (who may still legally be children during court processes) were distinct from both adult victims and other child victim/witnesses.

³⁵ Just 1 DASA case involved S5 aggravation in relation to a child (child aggravator).

³⁶ Across the sample 3 NHOs included both a child (or children) and adult.

³⁷ Across the study only one child interviewee related to an adult interviewee, both of whom discussed the same court case. One other interviewee discussed two distinct court cases meaning that 22 distinct court cases were discussed across the dataset.

³⁸ Cases described by interviewees in this study took place across 11 distinct court sites. One interviewee described two cases in different court sites accounting for a total of 23 court cases across 22 interviewees.

Child cited witnesses

Of the study's 13 adult interviewees, six had children who had been cited witnesses in their cases. One of these was interviewed for the study. This means that information about the experiences of 10 child cited witnesses are included in this study: four through an interview with the child only; one through an interview with both the child and the mother (adult victim); and five others through their mothers' perspectives (mothers were adult victims).

Data collection

Despite planning for the possibility of face to face interviews, the context of COVID-19 meant the majority of interviews (20 out of 22: 90%) were conducted remotely. In most of these cases interviews were conducted via Microsoft Teams, although four took place via telephone in line with participant preferences and access issues and one telephone interview involved a translator.

Given the significance of rapport building and trust when undertaking research on sensitive subject matter, careful consideration was given to enabling this in a remote interview setting. Steps taken included providing a physical 'care package' to each potential participant prior to interview. This included information about the interview, an interview workbook to help manage expectations and guide the conversation, and items to promote comfort and communicate care (hot drinks sachets, snacks, a fidget or stress toy and pens). Additional steps included the option: for a 'pre-call' to see or 'meet' the interviewer; to have a known support worker (or in the case of children, a parent) present online or in person (depending on COVID-19 restrictions); and an infographic to explain participants' rights and steps to support wellbeing within an interview (see Appendix 4).

Interviews were in-depth, qualitative and semi-structured. They focused on the five steps in a court journey (police contact; post statement; court preparation; court; after court) and were supported by visual prompts (see Appendix 5). Interviews were designed to enable participants to determine the interview pace and what to share. Quantitative demographic and case data were collected with support of partner agencies (subject to participants' consent).

Interviews were recorded via TEAMS or a separate encrypted audio recorder, transcribed and stored securely on the University of Edinburgh server. All data was managed in line with UK GDPR and data security requirements.

Analysis

Data from interviews was transcribed and inputted into NVivo 12³⁹ for coding and analysis. A reflexive thematic approach to analysis was adopted and undertaken with input from all three core research staff to ensure a robust and consistent approach. The approach to coding was both deductive and inductive: exploring predefined themes of interest and considering new codes and themes informed by participant responses. Throughout analysis substantial consideration was given to: identifying positive practice; considering how prevalent a particular finding was across the sample; and looking for contradictory

³⁹ NVivo 12 is a computer assisted qualitative data analysis programme.

data and/or outliers. Prior to finalising the analysis, a number of sense-checking and prioritisation exercises were undertaken with emerging findings, shared with key stakeholder groups (practitioners from partner agencies; members of the Research Advisory Group; and survivor reference groups). Findings are carefully reported in subsequent findings chapters. Quotations are usually provided as typical examples, indicating there was widespread prevalence across the data.

Limitations

The study was subject to a number of limitations informed by the research questions and context. These included:

- The context of COVID-19 meant that for the majority of the data collection period we were limited to undertaking remote interviews only. We believe that this significantly limited the pool of potential child participants and possibly young complainants who felt willing or able to take part. Both parents and workers voiced concerns that for some children, online interviews would be a less easy context than a face to face interview for building rapport and fostering a sense of safety, reflecting findings about engaging children in remote services⁴⁰. This meant the process of engaging children in the research took additional resources and resulted in a slightly smaller sample than originally planned.
- Additionally, COVID-19 meant both services and potential participants were under increased pressures, limiting their ability to engage with research activities. Several services cited reduced staff capacity specifically as a limiting factor to their engagement.
- The pool of potential participants was small, due to strict eligibility criteria (see above). Relatedly, while the sample size (n=22) is comparable to other in-depth research of this nature, the findings are not necessarily generalisable to the wider group of victims and witnesses. The findings were 'sense checked' in a reflective session with 12 support/advocacy workers from different areas and agencies. The group felt findings were reflective of their clients' experiences as did national representatives of support/advocacy organisations on the study's Research Advisory Group. The sample size, and specifically the small representation of male and minority ethnic participants, prevents meaningful analysis relating to gender or ethnicity of victims and witnesses.
- The sample has a potential bias, due to recruitment routes used. While these routes were designed to promote participant wellbeing, their use means the study does not capture perspectives of children or adults who had been through courts without advocacy or Women's Aid support.
- The context of COVID-19 meant it was not always possible to separate the impacts of COVID-19, and related measures, on service delivery from the impacts of policy and standard practice. COVID impacted on all services staff capacity and placed

⁴⁰ See [Coronavirus \(COVID-19\): domestic abuse and other forms of violence against women and girls during Phases 1, 2 and 3 of Scotland's route map \(22 May to 11 August 2020\)](#); Houghton, C, Morrison, F and McCabe, L (2020) [Domestic Abuse: Children's Rights Impact Assessment in the Independent Children's Rights Impact Assessment on the Response to COVID-19 in Scotland](#)

additional pressures and restrictions on service delivery. However, it is not possible to identify whether and how victims' and witnesses' experiences would have been significantly different if services were working outwith the COVID-19 context. Thus, the inclusion of Scottish research prior to lockdown provides a helpful touchstone.

- 'Case data' from participants was sometimes partial and was dependent on information known to services and/or participants' own limited access, knowledge and memory of events, charges and court outcomes. However, ASSIST and EDDACS had access to the (restricted) Scottish Court information system so could provide detailed and accurate data on cases (accessed for 20 of the interviews undertaken).

Ethics

Across the study there were a substantial number of ethical considerations including informed consent, child protection protocols, participant support and care in anonymisation of findings. The study was subject to ethical review both within Scottish Government and the University of Edinburgh and was approved by University of Edinburgh's Social and Political Science's Research Ethics Committee. A copy of the application for ethical review is available upon request. The study was overseen and supported by a Research Advisory Group made up of subject area experts and policy officials and convened by Scottish Government Justice Analytical Services, which maintained oversight of ethical issues throughout the course of the project.

Conclusion

The report will now consider how the Act's policy aims have been translated into practice in its first three years of implementation (two of which occurred during the COVID-19 pandemic), from the perspectives of these 22 victims and witnesses.

2. Domestic Abuse (Scotland) Act 2018: shifting understandings of domestic abuse

Introduction

The Domestic Abuse (Scotland) Act 2018 (DASA) aims to ‘reflect a modern understanding of domestic abuse and to ensure that victims and perpetrators are clear what amounts to criminal behaviour and that this can be addressed through the justice system’⁴¹. The chapter considers study participants’ awareness of DASA, their perspectives on the new law and shifts in understandings, and assesses whether the Act and its provisions reflect how victims experience abuse. It sets the context for Chapters 3-6 which provide detailed comment on aspects of the court journey.

Headline findings

- The new law better reflects how adult victims actually experience domestic abuse. Efforts to reflect children’s experiences through the child aggravator correctly describe key aspects of abuse but do not adequately reflect how parents and children experienced abuse together.
- Victims, witnesses and some professionals (as reported by study participants) had limited awareness of the Domestic Abuse (Scotland) Act 2018. Victims and witnesses in this study needed more information about what constitutes criminal behaviour under the new law.
- Victims in this study felt there were missed opportunities to use DASA and its provisions and that there remained a focus on single or/and ‘serious’ incidents in some cases of ongoing abuse.
- Victims and witnesses supported criminalising psychological abuse. However, they felt that the system struggles with prosecuting this, particularly in regards to verbal, telephone and online abusive behaviour.
- Many victims felt that abuse of a third party – family, children, friends – had not been taken account of adequately throughout the process.
- Victims who were parents and child cited witnesses did not feel that the perpetrator’s involvement of children was taken seriously enough. It was reported that new provisions in the Act to protect children (the child aggravator, the non-harassment order) were under-utilised.
- Victims and witnesses in this study felt there was some way to go for their whole story – the full facts and circumstances of domestic abuse - to be reflected in the criminal justice process.

How DASA reflects victim-survivors’ experiences

Without doubt the new law better reflects the experiences of victims: all participants experienced a pattern of ‘violent, threatening or intimidating behaviour’ (S2(2)(a)) over time

⁴¹ Policy Memorandum Para 18.

(far exceeding the two occasions required by the Act). All participants related experiences of psychological harm (S1(3)), which was combined with physical violence for most and some additionally spoke about sexually violent behaviour (S2(4)(a)). Most spoke of an escalation over time and/or a fear of escalation. For some this was post-separation, which underlines the importance that ex-partners are included under DASA. This description was typical for many participants in the study:

... It got progressively more and more abusive throughout. So, I had quite a lot of injuries on and off, a lot of emotional abuse, mental abuse, like every type of abuse you could think of, it was there. He threatened to kill me... (Adult 4)

Victims and witnesses appreciated what they often referred to as the shift to 'historic abuse' - a recognition of the abuse they had suffered over time. However, most victims had experienced abuse for years and the Act only covers abusive behaviour since April 1st 2019, so these victims felt the charges represented only a fraction of abuse:

I think there was a lot in it that they couldn't charge him with because of the date... all these messages are from years and years...it's like, can't really do anything about it now... 12 years of abusive messages there...But nobody really listened to that. (Adult 8)

To charge as a single 'course of conduct' made sense to most victims as it had potential to reflect their 'whole experience': the full facts and circumstances of their abuse. However, in relation to abuse post-April 2019, most victims and witnesses in the study did not feel that the 'whole story' was accounted for in the criminal justice process, nor that all aspects of abuse 'counted' in relation to charges and sentencing. Most victims and witnesses felt the focus remained on a small number of the 'more serious' physical or sexual assaults, discounting elements of their story which led to their confusion, frustration, anger and feelings of violation.

Awareness of DASA

Most adult victims were not aware of the Act prior to reporting. The few adult and child participants that had awareness prior to reporting described being made aware through adverts on TV, posters and buses.

Many participants remained unclear what amounted to criminal behaviour in relation to the Act though some expressed appreciation of the range of abuse included. In several cases adult victims were supported by the police to identify the abusive behaviour as criminal. These participants often used the language reflected in the Act to describe their experiences, including coercion, control, fear, distress, harm. This participant was pleased that the stalking of her and her daughter by an ex-partner was included:

I think the new law is really good as well though that's come in, the stalking under the domestic abuse and stuff. (Adult 7)

There were a few examples where the victim reported/disclosed one incident and the police officer (mainly) or health professional used DASA to sensitively help the victim reflect on, identify and report further abusive behaviour that had taken place over time.

These participants appreciated the sensitivity and knowledge of the professionals and DASA's shift in understanding as to 'what counted' as criminal behaviour. The professionals reassured them that the justice system could now respond to all aspects of their experience⁴².

I didn't believe myself that it was domestic abuse, I just went in and told what was going on. I was really just saying how frightened I was because of the baby and his behaviour, and confused. So I did go right back with them to the very beginning and a lot of pieces of the jigsaws have come together since. (Adult 10)

Those who had no knowledge of DASA, until the research project, reacted with frustration to learn there was a law about a pattern of abuse that they felt could have been applied and yet no-one had told them⁴³. These victims felt that their abuse was not looked at holistically – in relation to the variety of abuse suffered and length of time. Many used similar language in critiquing a 'single incident' focus (or several incidents with different charges), as exemplified by this quotation:

The one...the incident thing that goes to court...with a case that involves domestic abuse, it's not just that one incident that actually matters. (Adult 2)

Criminalising psychological abuse

All but one victim⁴⁴ and all child witnesses spoke of a course of psychologically abusive behaviour causing psychological harm including 'fear, alarm and distress' (S1(3)); the Act reflects their reality and the most common, ongoing and overwhelming component of abuse. Victim accounts suggest that the operationalisation of this aspect of the Law seemed most difficult for the police, especially when the abusive course of conduct was entirely non-physical (a new crime under the Act). This victim experienced persistent online psychological abuse and harassment causing mental ill-health:

I didn't know that it was the law that should be looking at it [abuse] in its entirety and thinking about the psychological aspect of it. I had no idea that was a factor, because when I asked about what point does it become a crime, I'm told it wasn't. (Adult 2)

Victims felt it was particularly difficult to explain psychological abuse and its effects, and for this to then be believed and taken seriously. As one adult victim explained:

This new stuff... it's hard to explain that to people, for them to actually understand what is going on, the manipulation kind of sense. (Adult 8)

42 Policy memorandum Para 18

43 These victims spoke of a pattern of abuse post-April 2019 (some but not all also spoke of pre-2019).

44 This victim was the outlier in that he did not describe ongoing psychological harm and fear in relation to his ex-wife; as the only male victim of a female perpetrator in this study no generalisations can be made but is an area of interest in the field.

Victims and witnesses used common language about persistent, relentless, overwhelming, psychological abuse. Whilst for some this was direct threats, verbal abuse, name calling, mind games in person, for many the means was constant abusive phone and online communication - 'just abuse after abuse via messages' (Adult 8)⁴⁵. As cases progressed, victims spoke about perpetrators using social media and physical actions/surveillance from a distance to cleverly and subtly let them know they were at risk, being watched, and under the perpetrator's control. This woman and child lived under constant threat and were followed often:

Nobody would believe, it's extreme stuff. But stuff that you would think, 'This woman's absolutely lost her mind.' But he knows how to... He was flashing lights in as well, to my bedroom. I couldn't prove that, so they were like, 'What you'll need to do is you'll need to try and prove that,' ...this is him still telling me that he's still watching me. (Adult 7)

Many felt, and some were told by police officers, that unless there was a direct physical threat it was not deemed serious enough to take further within the criminal justice system. It was particularly difficult for victims to explain and convince others, the police and their social networks, of the serious 'effects' of this behaviour on their lives, even though these reflected the relevant effects of DASA (S2(3)(a-e)) such as controlling, humiliating and isolating the victim. The most common effect was frightening the victim, with several participants reporting feeling scared to leave their house. Several spoke about coercive control of their time, activities and movement. This illustration speaks of the draining effect of such abuse:

It takes it out of you, it really does ... always kind of need to be one step ahead. Just right, if I do this how's he going to react to it? Or if I make too much of a mess... (Adult 13)

Many of the victims spoke about intense stalking behaviour, but just two mentioned specific stalking charges (one using DASA, one using the offence of stalking, S39 of the Criminal Justice and Licensing (Scotland) Act 2010)⁴⁶. A significant number of victims were hypervigilant, with some undertaking their own surveillance of the perpetrator to gather evidence or/and to deter him. Many undertook intense safety planning every day (such as changing routes to work/school or varying walking routes during lockdown). For some participants this continued during and post the court case, as exemplified by one adult victim:

This was relentless, this was every time I walked out the door. And then he appeared again, he was coming up beside me, he was doing all this mad stuff. I 'phoned the police and the police were like, 'There's no evidence.' They said, 'You need a dashcam.' ... Things just kept going. And I wouldn't go out the house until I got these cameras in my car. It's just horrific. (Adult 7)

45 The Explanatory Notes to the Act capture this well (18-23).

46 To note overlap between [stalking](#) and partner abuse offences. There has been a significant reduction in stalking cases with a DA marker since DASA came into effect.

Phone and online abuse seemed particularly difficult for the system to deal with, despite many victims using multi-media avenues to collect 'evidence' of messages, videos, emails, posts. A number of victims spoke of tens and hundreds of messages, often every day, sometimes within an hour. DASA charges were applied in some cases and the Communications Act⁴⁷ was mentioned by a few participants (though featured in only one case record). Participants spoke of common responses by police and other professionals, that minimised the issue and most often told them to block and ignore. It was particularly difficult to speak of and prove indirect and veiled threats that were common and terrified victims. Some perpetrators' abusive behaviour included sharing of intimate photos or films. Victims' feelings about this and their fears about this being shared with friends, families, children, workmates echoed the legislative wording: 'frightening, humiliating, degrading or punishing [the partner/ex-partner]' (S2(3)(e)). For example, one victim described:

[Perpetrator name]'s put up some naked photos of you on Facebook, and I was like, for goodness sake. Now... I work in ... a male environment, and [Perpetrator] ... for the same ... company, so all his friends were my colleagues, so most of my colleagues have seen my naked photos. (Adult 1)

Third party abuse

The DASA Section 1 offence is framed as one of abusive behaviour towards a partner or ex-partner in order to refer to the specific dynamics of domestic abuse (in marriage, civil partnerships, intimate personal relationships) that differ from abuse in the family⁴⁸. Abusive behaviour directed at another person is an offence in the Act (S2(2)(b)) but only insofar as it effects the victim. Many participants spoke of third parties being subject to abusive behaviour from the perpetrator: family members especially but also friends, neighbours, workmates. Participants spoke of the importance of the third party being protected and recognition that the other person also suffered fear alarm and distress in particular but also some 'relevant effects' such as control, isolation, humiliation. This is not recognised in the offence unless effects are on the victim - the partner/ex-partner (though criminal behaviour to others can be prosecuted as a separate offence⁴⁹). How third parties are included or not in the victims' justice process was confusing to study participants who felt these people were an integral part of the whole picture of domestic abuse. This is exemplified by the following victim:

All the death threats as well. I don't know why that didn't even get put into a charge because the fact that he had threatened my mum and my...my life and my mum's life and my dad and my daughter's. (Young Complainant 1)

This abuse of others often escalated if protective measures were in place for the victim (e.g. phone calls blocked, protective orders, house move) and the perpetrator could not

⁴⁷ The UK Communications Act 2003 Section 127 relates to improper use of public electronic communications network through sending 'a message or other matter that is grossly offensive or of an indecent, obscene or menacing character'.

⁴⁸ Policy Memorandum Para 65.

⁴⁹ A separate prosecution for threatening and abusive behaviour towards a friend was mentioned by one participant. Abusive behaviour to a child could be prosecuted, for example, under Section 12 of the Children and Young Persons (Scotland) Act 1937 but there were no examples of this in this study.

directly abuse them so easily. As one young complainant explained after being moved to refuge due to abuse during the court process:

... If you know that he doesn't know where I stay, your next concern should be my mum and dad because he knows where they stay. (Young Complainant 1)

The Act's definition of abusive behaviour includes making use of a third party to harm the victim or behaviour to property (S10(3)); the Explanatory Notes specify that property includes pets (para 53). Examples of such behaviour were common in participants' accounts. For example, study participants report abusive and threatening behaviour from a number of family members (e.g. adult son or mother in-law), using others to contact the victim when the perpetrator was ordered not to do so, and/or using others social media accounts to abuse the victim. There were numerous threats to property, including to belongings (children's belongings, phones, etc.), vandalism of parents' property or setting fire to property and a couple of instances of cruelty and threats to pets. Such threats or actions instilled significant fear into victims, families and children. As one adult victim explained:

They [perpetrator and his mother] were just so horrible to me and it was so frightening... he trashed my house, he smashed the wall... I felt as soon as I had [baby] in my arms, I just had to protect him. (Adult 8)

A number of victims expressed concern for past and future victims of the same perpetrator and did not know what to do with this information; this included perpetrators grooming young girls as well as adult women. One victim decided to speak to the Caledonian perpetrator programme worker about her concerns about the risk the perpetrator posed:

...there was so much in the court I couldn't talk about, I wasn't allowed to talk about. The predatory kind of behaviour that he has, the dislike to women, you know, concerns me. He's got no empathy when he does anything, and it's all quite scary... you read the articles like the Sarah Everard, and stuff, there's a sexual element to it with the domestic, and I could see [Perpetrator] being, maybe not at that level, but I can see it progressing. (Adult 4)

Reflecting Harm to Children

The Act's introduction of the 'aggravation in relation to a child' (S5) aimed to recognise how serious it is for a perpetrator to involve children in an offence, and that children are 'adversely affected' by living with domestic abuse. This involves courts hearing evidence about how the child is likely affected by abuse, court decisions taking account of that, and an order for protection after the court case that can now include children (Non Harassment Order – restricting what the perpetrator can do). Most parent and child participants had little awareness of this aspect of the Act and a common perception was that the law did not cover children at all:

I think that's a really important point about the new law, emotional abuse and fear and alarm and distress, all of those things should be covered, so I'm sorry they didn't use that for [Victim's Son]...it doesn't actually cover children. (Adult 4)

Participants spoke of children being adversely affected in all 10 DASA cases where the adult complainant had children (10 of 12 DASA cases in this study), as did all parents in the DA aggravated cases (a further 6 cases); affects illustrated graphically through the child cited witnesses' testimony. In just one of the 10 DASA cases involving children the S5 child aggravator was applied⁵⁰. When discussing this new provision with interviewees they were at a loss as to why this was not used in their case. In three of these DASA cases the NHO included a child (or children) as well as the adult victim; others concurred with the parent who said 'I just wish my daughter was included in the order' (Adult 5) as discussed in Chapter 6. Parent victims and child witnesses across the study expressed concerns as to the limited extent in which the harm to children was recognised through the justice system; even though these cases involved 10 child cited witnesses overall.

When informed of the aggravator and what it covered, participants felt that it accurately reflected their experiences and could provide an important recognition of harm. Each element of the aggravation (S5(2)-(4)) was reflected in the following illustrations given by parent and child participants in the study.

Section 5(2) of the Act includes behaviour directed at a child and making use of a child to direct behaviour at the non-abusive parent, which was found to accurately reflect the experience of all mother and child participants in the study (whether or not they were DASA cases). Child participants spoke of perpetrators abusing them in front of their non-abusive parent, threatening and violent behaviour scaring the whole family and surveillance tactics through children aimed at controlling/finding the mother. Mothers spoke of abusive behaviour towards their children that frightened, degraded, controlled them and restricted their freedom of action⁵¹, reflecting the 'relevant effects' of the Act (S2(3)(a)-(e)).

He was getting my two-year-old to call me a cow and a slag and just laughing away and absolutely loving every minute of what he was doing. (Adult 13)

Participants reported an array of ways in which children saw or heard or were present (S5(3)) at multiple 'incidents' of mental and physical abuse over time; none spoke of one incident, some spoke of an escalation in relation to behaviour involving children. All mothers and children spoke of the perpetrator 'causing the child to suffer fear, alarm or distress' (S5(10)); they described babies up to adult children experiencing this. Some described a number of children being harmed in different ways, illustrated by this quote:

... He nearly killed me. But it was in front of my daughter. My daughter was trying to drag him off me and smacking him and punching him and screaming to get him off me. And it happened in front of his mum and like the two younger ones were sitting in the room at the time... was just a pure burst of rage and I just knew for a fact like if I don't stop it now, even though we're not together, if I don't stop it now, he's not

⁵⁰ The criminal proceedings bulletin figures 2020/21 indicate that, of 381 convictions under DASA, 90 had a child aggravation proven. It would be of interest to ascertain and scrutinise: numbers of children affected by DASA cases/ number of aggravators applied; number of child cited witnesses in DA cases.

⁵¹ Reflecting DASA S2(2)(b)) - behaviour directed at a child of B that has relevant effects on B.

going to stop. (Adult 6)

Finally, the S5 aggravator covers a course of behaviour (or an incident forming part of a course of behaviour) that a reasonable person would consider likely to 'adversely affect' a child usually residing with one of the partners (or both) (S5(4))⁵². Most parent and child participants felt children were adversely affected by the perpetrator's abusive behaviour, including babies 'sensing' distress, young children feeling unable to leave their mothers, children and teenagers suffering from stress and anxiety, some children's sleep and continence being negatively impacted, and children living in a state of fear and alarm. Mothers in the study described efforts to maintain care, education, well-being and basic needs of their children that were continually thwarted by the perpetrator's abusive behaviour and its effects:

He [her son] escapes school to come back here 'cause he thinks that he needs to keep me safe. And he's only [young]. (Adult 11)

In summary, the aggravator reflects parent and children's experiences; it is not clear why it was not used in all DASA cases in this study where there were children. For any of these elements to be proven, one single source of evidence is required, not necessarily from the child (although several cases involved child cited witnesses). Whilst parents and child victims and witnesses reported numerous professionals (and other adults) being aware of the adverse effects of domestic abuse on the child's general wellbeing, education and development, they did not report health or education professionals being involved in the court case.

Both child and adult participants in this study felt that the perpetrator was not held sufficiently accountable for harm to children nor was it adequately recognised that they experienced abuse together. They commonly spoke of abusive behaviour towards the whole family: how they both/all experience abuse, sometimes in different forms but with common, ongoing shared elements such as the abusive behaviour causing ongoing fear, alarm and distress. Here this is succinctly described by one participant:

[my son] suffered when I suffered ...it does impact the entire family that's under the one roof (Adult 3).

Ways forward from participants' perspectives

Increase public and professional awareness of DASA and what amounts to criminal behaviour.

Enhance DASA implementation in relation to course of conduct, psychological abuse, third parties and harm to children.

⁵² This includes 'causing the child to suffer fear, alarm or distress' (S10(10)) and the Explanatory Notes elaborate 'likely that a child's general wellbeing and development would be adversely affected' (Para 36).

3. Police reports and investigation

Headline findings

- Police practices were described by study participants as inconsistent, with some positive sensitive practices identified but often framed as an exception or associated with a single individual or encounter.
- Victims and witnesses in this study had a lack of understanding or clarity about the rationale behind evidence-gathering processes. In many cases, they felt important evidence was disregarded or overlooked. In some cases, victims and witnesses were required to proactively collect and push for particular evidence to be considered.
- The immediate aftermath of reporting domestic abuse was often marked as a time of particular vulnerability for victims and witnesses. Most participants felt that the onus was on them to keep themselves safe during this time.
- In a small number of examples, victims appreciated the explicit use of DASA by the police - informing victims and witnesses about its scope, helping victims identify an abusive course of conduct and making them aware how evidence-gathering was adjusted accordingly.

Introduction

In this section we report on participants' experiences of reporting to the police and further contact points in the leading up to court. For all participants, experiences of court began with, and were inextricably bound to, experiences of police. Contact with police marked victims' and witnesses' initial encounter with the justice system, stemming from their decision to report domestic abuse or reports by another individual (particularly in the case of children).

Initial reports and statements

In all cases, participants described how their decision to contact the police (or the police's initial contact with them) followed a pattern of abuse, threats, or violence, most of which had never been previously reported. In most examples, an initial call to police was made during a moment of crisis or fear: including late at night or from hospital after sustaining an injury. Many participants were navigating multiple life challenges while making these initial reports. As one young complainant described:

Well, the first time it was when my daughter ...she was in the hospital premature born... we got her home when she was a month old. And that was the first time when I phoned the police 'cause [I] had to report him saying he was going to set the house on fire. (Young Complainant 1)

Recognising these potential inter-related vulnerabilities of victims and witnesses provides important context to understanding experiences of reporting domestic abuse, highlighting the need for an understanding of trauma among justice professionals including the police.

Challenges associated with reporting and statements

Providing statements inevitably meant participants were asked to recall and recount distressing and traumatic events. Timescales for providing statements varied, with many requiring repeated re-telling with different officers or statements about extensive and multiple charges being spread across several occasions. A young complainant noted that the complexity and extent of the abuse she reported (spanning 3 years) required initial statements to take place over multiple meetings across a two week period – complicated by her need to organise childcare arrangements. Others described the inadequacy of a single opportunity to respond to questions and recall experiences. An example from a child was:

I was just to remember the order of it, 'cause it was still blurry 'cause of the state of mind I was in at the time, like, how it was quite stressful. (Child 5)

As this illustrates, expectations of providing a full and linear narrative can run counter to the challenges of recalling traumatic experiences in a context of distress. Subsequently, many participants expressed frustration that their accounts to police did not represent their experiences. As one adult victim explained:

I felt like I should have said more. 'Cause there's been, like, things in the past that I've never ever reported and I wish now that I had done it then. (Adult 11)

This sense of a 'missed opportunity' was expressed by many. Even when participants were able to provide a full account, they noted concerns that it had not been 'heard' or adequately recorded, as described by a young complainant:

I felt like they weren't writing things down. Like, they were putting things in their own words ... see when they read over my full statement, I was like, that's not even true. Like, I didn't even say that, you haven't put that down right. (Young Complainant 4)

Attitudes towards, and treatment of victims and witnesses

The attitude of some police officers taking statements had a significant impact on individuals' experiences of giving a statement and how much of their experiences they felt able to share. Promisingly, some examples of police practice were reported as sensitive and rooted in an understanding of domestic abuse. Such experiences were often presented as counter to prior expectations or experiences – suggesting enduring fear of police attitudes despite some positive practice. An adult victim provided an example of this:

Police came out, it was two female officers, very, very nice, they were understanding ... softly spoken and spoke to me like - I don't want to say spoke to me like a victim, but spoke to me like an adult who needed help, you know, it wasn't a case of, another domestic, another argument, another junkie, you know, like what I have had in the past. (Adult 1)

As this quote illustrates, in cases when individuals felt properly listened to, believed, and understood, experiences of reporting abuse to the police could represent moments of relief

and in a few cases could also contribute to an increased sense of safety. In a small number of cases, participants also described that police explained or referred to 'the new law.' In such examples, by explicitly outlining their potential to investigate patterns of abuse (rather than isolated incidents), the police were viewed as demonstrating some understanding of coercive and controlling behaviour.

I suppose it's that [second time around] the police have been better at understanding that it's holistic, rather than treating everything individually...it's only the most recent officers who looked at it holistically... (Adult 2)

Several accounts highlighted variability in police responses and attitudes, noting that good practice was often associated with an individual officer rather than being standard. This was complicated by the need for participants to engage with multiple police officers, compounded when abuse was unrelenting and contact with the police was a regular occurrence, as described by one victim:

I got to the point where I was phoning the police just about every week because it [the abuse] was...he wasn't stopping. (Young Complainant 1)

In most cases interviewees described difficult encounters with the police, including those where they felt the ongoing nature of their abuse was not recognised. As one adult victim reported:

I said, 'Look, can I ask at what point this becomes a crime, because he's doing all these individual things step by step, do you know,' and I'd phoned the police maybe 15 times by this point over things that I knew he'd done ...and I was told, 'Everything's looked at individually,' it's not holistic. (Adult 2)

For another participant, where the accused was a police officer, reporting was particularly challenging which she noted was responded to with neither sensitivity nor care. This woman's awareness of the direct links and professional relationships between the accused and those taking her statements undermined her confidence in the process. In the quote below she suggests the importance of particular sensitivity in cases such as hers:

I think that when someone's reporting that it's a police officer that's involved [in perpetrating domestic abuse], I think a bit of care would have gone a long way, ... So, I do think, you know, when there is a callout to a domestic, especially when it's a police officer, that a bit of thought needs to go into how they're approaching the victim, because the victim's already petrified of talking to a police officer. (Adult 4)

Numerous examples were given of police communication that lacked sensitivity. This was particularly significant in the context of abuse of a sexual nature. One particularly concerning example involved a young female complainant (17 at the time of incident) who was required by police to watch and confirm her identity on a 'sexual tape' in front of police and family members.

Participants' experiences of police attitudes and responses were often perceived to be associated with aspects of their (the victims') identities and biographies. Characteristics

(such as age, gender, addiction, family associations, previous police contact, and mental health) were all noted to affect the degree to which victims' and witnesses' felt they were taken seriously and respected. An example given by a young complainant was:

Even now it's still as if the police just push it to the side, like, 'Oh you're...oh this...oh your [police] record and all that,' and that's all they see you for... And especially because the police that were coming out, some of them knew me, which was ... which really wasn't fair as well (Young Complainant 1)

Insensitive, dismissive, and disrespectful attitudes from police were memorable and set individuals' wider expectations of the justice system. An example is noted below, showing how past experiences impact individuals' confidence and likelihood to report future abuse:

I didn't have much faith in the police before but see now, it's down to a zero because they just...they don't care... it's just made me feel like now if anything else does happen, I know, like, myself, I'm not going to report it to the police, 'cause they haven't been much help to me. (Young Complainant 1)

As this quote illustrates there is a need to recognise how individual police encounters have significant impact on victims and witnesses' future propensity to report and subsequently support their access to safety.

Statements from children/child witnesses

In the case of children, statements were recorded in a variety of ways and settings: in police stations, schools, or homes; via phone⁵³ or in person; and through both joint investigative interviews and situations with only police personnel. As with adults, children were often required to provide multiple reports and statements at different times and in different settings. Children reported mixed experiences of providing a statement – with the two oldest children in this study describing experiences in more neutral or positive terms. An example of this was:

I didn't think it was going to happen that soon, do you know what I mean? Like, 'cause there'd been arguments and fall outs and stuff. And then I was giving a statement to the police all of a sudden and I was like, 'Oh right, this is serious' ...it wasn't really stressful through it, like. It was just a shock. (Child 5)

Encouragingly evidence from one child highlights the potential of the joint investigative interview setting to support children to feel at ease:

[Giving the statement] was really casual, like I didn't feel like it was - like - a police - like you could tell you were walking into a police building ... But the actual room itself, it wasn't formal, it was more like with toys, and like bright colours, and stuff... we went into the room. .. and they told us that there was, like, cameras, and we were being recorded. And we were with a police, and a social worker ... But I think

⁵³ Children's evidence and statements are not normally taken by the police by telephone interview. It is likely that this interview was conducted by telephone due to the pandemic and the public health measures that were in place at that time.

it was, like, quite helpful, like the way they done it, like it didn't felt really, like, under pressure, and stuff. (Child 4)

For younger children, the challenge of providing a statement to police was associated with isolation from a known 'supporter' and the number of questions asked of them. This linked to statements from other parents and older siblings who described worrying about younger children's wellbeing when required to provide statements separated from family support. This was explained by a child:

[I] just didn't like the fact that I had to speak to them [the police]. They weren't that bad, but they just kept on asking me questions and but, when they were speaking to me, they didn't let my mum in the room... I wanted my mum to come in with me... It would have helped if my mum could have come in and just was there with me. (Child 2)

In keeping with several adults' accounts, one child voiced concerns about not being taken seriously or fully 'heard' by the police whose manner was described as intimidating and unsympathetic:

They [the police] came to the house and it was quite late at night, I think it was like half six, seven maybe 'cause I was doing my maths homework. And they came in. And they didn't sit down or anything, they just kind of stood over.... They were just kind of like taking the other person's side instead of listening to the whole story (Child 3, 13 years)

Further evidence gathering

Alongside evidence captured through initial reports and statements, the police were responsible for additional evidence gathering prior to decisions about whether to proceed to charge and what charges would be brought. A recurring theme across many interviews was frustration and lack of clarity about why some evidence was disregarded or not collected. Several interviewees raised concerns that they believed relevant evidence or intelligence was not pursued by police often despite participants' efforts to bring it to the police's attention; such as following up potential witnesses or using phone, text, email records. Police decisions about which evidence to pursue or not were not always clear to interviewees, adding to these concerns.

These experiences were pertinent to experiences of court outcomes explored in Chapter 6. When the reasoning for such decision making was unknown to participants, both adults and children felt that significant aspects of their abuse, or its scale, was unrecognised – subsequently detracting from their overall sense of justice.

In several examples, individuals describe variable responses from different police officers to the same evidence – in some cases after a complaint or request for a case review had been raised. An example is reported by one adult victim:

I actually went to the police with a lot of stuff like to say listen, look at all this. Like messages and everything. And they were just a bit like, 'Well there's not really

enough there to have like, to charge him, it's just more cheek.' And it wasn't until he had [assaulted the neighbour] and then came back to me for them to actually have arrested him over all the same stuff that I did actually tell them about. (Adult 8)

Furthermore, a notable and recurring theme was the role that victims and witnesses themselves took in relation to capturing evidence – often noted to be encouraged or suggested by the police themselves and linked to the protective or safety measures they were also encouraged to adopt. Although some examples were given of police proactively capturing additional witness statements, hospital records, CCTV, and text messages, most participants perceived that the onus was on them to capture additional evidence. A typical example of this is provided by one adult victim:

[The police said] 'What you need to do is start recording this' and, 'Well, you'll need to change your telephone number if he's phoning you 25 times a day', and 'You need to get a separate phone number for him to phone for contact with his daughter.' (Adult 12)

Decisions to proceed

In most cases, participants were unclear about the rationale of police decisions about whether to proceed with a case, which charges were being brought, and what evidence was submitted to COPFS. As well as the lengthy delays to the process (see section 4), the lack of transparency about decisions to proceed acted to reduce victims' and witnesses' sense of control in the process.

Furthermore, although in most cases participants described a desire to see the accused charged and brought to justice, there were also examples where interviewees described how the decision to proceed to prosecution was taken out of their hands and went against their desire to stop the process. An example of this is provided by an adult participant:

Once I'd sort of triggered that process by contacting the police, there was kind of no way to kind of stop it, if you know what I mean. I didn't really want the prosecution to proceed, in all honesty. (Adult 14)

This was a particular concern for parents whose children were expected to provide statements or could be required to testify in court. Several parents noted their desire to protect their children from these experiences by withdrawing from a case – and their frustration upon realising that this withdrawal was not possible.

Follow up support and communication

The period after providing a statement was marked for many by an absence of communication or support. This is exemplified by a young complainant:

Having to say the actual words [in a statement] is the hardest bit. And then, like, you don't really get any support after it. Like, you're just, kind of, left high and dry, oh well you've given us the information and then you're just left there sitting pure depressed all day. (Young Complainant 3)

Communication or its absence was particularly significant in this period for supporting participants' sense of safety and their ability to maintain a sense of control over, or feel centred by, the justice process. Knowledge about charging and custody arrangements were particularly critical for helping safety plan, as one adult explained:

Police that I'd spoken to, he actually kept me updated over the next couple of days 'till eventually he did get him. And he phoned me after he got him, just to warn me he has picked him up, but they have had to release him... they did [tell me] he has been charged and they have sent a report to the procurator. (Adult 6)

Such information could support participants to maintain some (albeit limited) sense of control and understanding of the processes they were involved in. However, most interviewees did not feel this information had been forthcoming. Instead they described being left 'in the dark' or having to persistently request information, as one young complainant reported:

There was no communication between me and the police. I had to constantly be phoning them to find ... chase stuff out. And it was just all the lack of communication, the fact that I had to keep phoning to find out anything. (Young Complainant 1)

Ways Forward from participants' perspectives

Ensure consistent and effective use of DASA when responding to domestic abuse – police explaining the law to complainers and building a case collaboratively with them.

Improve communication with victims and witnesses about police processes and the rationale behind decision making, including the gathering and use of evidence.

All encounters with the police are respectful to victims, sensitive and trauma informed.

Increase recognition by police of the potential impact of trauma on victims and witnesses: particularly when taking initial statements and gathering further evidence.

Further efforts to maximise victims' and witnesses' sense of safety in the period after reporting – recognising particular vulnerabilities associated with this time and ensuring the onus is not on victims to keep themselves safe.

4. Pre-Court and preparation for court

Headline findings

- In most cases in this study, 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, minimal support and associated anxiety.
- During this pre-trial period many victims and witnesses in this study reported continued abuse or harassment from perpetrators, undermining their sense of safety.
- Changes to custody arrangements and bail conditions further impacted on victims' and witnesses' sense of safety. Such changes were not always communicated to victims effectively or in a timely manner. Several participants were not informed that the accused had been granted bail and only realised when the accused subjected them to further threats or harm.
- There was a lack of effective communication with victims and witnesses about which charges were being brought and why.
- Several parents and children felt they had been wrongly led to believe that a video recorded/ joint investigative interview would mean that a child would not be required to give evidence in court. When this turned out not to be the case, it became a source of distress and undermined trust in the process.
- Specialist support and advocacy was highly valued during this period. Workers supported participants to prepare for court, set expectations and discuss the range of special measures available. These services were valued for support with communication to Victim Information Advice/Crown Office and Procurator Fiscal Service about witnesses' needs/views in relation to special measures and NHOs. Many participants noted that access to support or advocacy at an earlier stage would have made a significant and positive difference to their wellbeing.

Introduction

In this section we report on participants' experiences of preparing for court. The period between victims initial contact with police (through providing statements or other evidence gathering activities) and a case being heard at court varied significantly in length. As noted earlier in the report, these timescales are likely to have been exacerbated by the COVID-19 pandemic. Across the 19 cases where details were known, the mean length of time between first reporting and a final court hearing was 9.6 months. For nine participants this process spanned over a year. For most participants, this period was characterised by poor communication and uncertainty over case progress; a lack of access to therapeutic support; and themselves and those in their close networks being subject to ongoing threats and abuse. We explore in more detail the impact that court preparation had on victims and witnesses.

Delays

Delays were substantial and represented one of the most difficult aspects of the process for adult and child participants. Participants reported multiple phases of anticipating and preparing for court dates, as dates were often cancelled and rescheduled at short notice. One adult provides a typical example of the disruption and distress this caused:

I think the court dates got changed, oh, I lost count it was so many ... I definitely found that extremely hard, because, you know, first of all you're planning your days off work, you're then mentally trying to prepare yourself. My family, my mum and my stepdad live down south. They travelled up one of the occasions, and then for them to get here, to be then told, oh, court's not going ahead now. So, the inconsistencies of it all, was extremely stressful. (Adult 3)

Although a small number of interviewees were able to put thoughts of their court case to one side, most participants described their lives being 'put on hold' in the lead up to court, with little opportunity to process or move beyond experiences of abuse.

Interviewees recognised several reasons for delays including the context of COVID-19 which was felt to have significantly exacerbated the issue. In many cases there was little clarity about the reasons for such delays and rescheduling of hearings, as explained by an adult:

It was always the Procurator Fiscal and his lawyer, delayed it for whatever their reasons were. It was just delayed all the time. (Adult 3)

Delays left participants feeling exposed and vulnerable, with several reporting a view that the court process was used by the accused to continue to assert control. This is typified by one adult where she describes how the accused's repeated failure to attend court acted to protract the legal process:

I think I was quite wary because it had gone on that long. We were meant to go to court before, but he would never turn up. So, we would get warrants out for him. So, it constantly went on and on and on. (Adult 11)

Difficulties for participants were compounded by COVID-19 'lockdowns'. They reported being isolated from support from schools and extended families, and co-parenting arrangements breaking down. One adult describes the stress caused by lockdown combined with the uncertainty about the court process and the eventual outcome:

It was quite stressful. I think it was during lockdown.[My son] was just like dead anxious and stressful not sure what's going to happen, not, I didn't know what was going to happen. I think I was just fearful [his Dad] was going to get the jail, like get imprisoned. I don't know why I was worried about that. I don't know. (Adult 7)

Protection and safety

For many participants, the period of preparing for court was reported as a time where risk, threats and abuse continued. While remand brought some degree of physical safety, the

temporary nature of these arrangements meant it was seen as a reprieve from abuse rather than a solution. There were mixed views about whether bail conditions improved participants' sense of safety. For a small number, bail conditions were described as preventing further threats or abuse. However, for most they afforded a more limited sense of safety, as exemplified in the exchange between the interviewer and adult participant:

Interviewer - Did you feel reassured by [the bail conditions]?

Respondent - Yes and no, 'cause he's...he doesn't care about the law at all. So, I think always constantly had it in my mind that he's going to come. (Adult 11)

For other participants it appeared that the risk intensified between charging and court proceedings, describing how reporting to police fuelled the accused's anger towards them and their families.

It was a mix [of feelings], to be honest [when I found out charges would be brought]. I was glad because I thought, well, they've obviously believed me, so thank God for that, and at the same time I was like... what they [the police] don't realise is how difficult that is. Like you just know for a fact the minute he finds out about that like he's going to be absolutely fizzing. And if [the court/police] don't put conditions in place like he's coming for you, do you know what I mean? And all you can think about is your weans. (Adult 6)

The efficacy of bail conditions were also limited by circumstances such as child contact arrangements and the employment or living arrangements of the accused; all of which potentially brought the accused into proximity with victims and witnesses.

When they released him, they said that he's released on bail under the condition that he doesn't approach you, doesn't come into your street itself. But because he works like half a mile away from me at the time, they couldn't stop him being in the area. (Adult 6)

As this quote illustrates, many interviewees felt bail conditions didn't adequately address the risks they faced and that the police had limited powers to protect them from the accused between initial reports and court proceedings. Several victims' and witnesses' described dealing with ongoing and explicit threats to their own or family members' safety while awaiting decisions about court.

Some felt that the police often minimised or overlooked the risks at this time. This was noted to be particularly pertinent when abuse was emotional or conducted online, as noted by one victim:

They've said, 'Look, try and get this in proportion, he might be saying this online, but you're physically safe and try and block it out. Try not to let this get to you.' But it's still...it does, you can't just stop it getting to you. (Adult 2)

Examples where police had failed to inform participants in a timely manner about bail being granted intensified their sense of risk, anxiety and being ‘kept in the dark.’ As one adult victim stated:

Eventually the police sergeant phoned me the following afternoon to tell me that he’d been released on bail, and he was released about an hour ago to two hours ago, and, if I’m in the house, make sure I get out, because he’ll be there any minute. (Adult 1)

Victims’ and witnesses’ actions to protect self and family

In some cases participants felt the onus was on them to protect themselves, even when police were aware of risks. This is exemplified by an adult:

I should be able to go out and walk through the park at night on my own without being worried that my husband’s going to come up beside me. You know, it shouldn’t be up to me to keep safe, it should be up to [the police] to protect everyone, and I was like, that’s what was getting me... You’re not keeping me safe. You’re telling me how to keep myself safe, but I’m asking your help to keep him away from me, and it wasn’t happening. (Adult 1)

In these circumstances, participants felt a lack of understanding from police about the dynamics of abuse and the nature of the ongoing risks they faced.

Young complainants in this study were females who were under 18 when the abuse from a partner began; they described a lack of consideration for their age-related vulnerabilities and their need for safeguarding. This included two cases where a perpetrator was significantly older and the victims described how these men had targeted them; one young person felt her previous contact with police as a teenager meant they saw her as ‘trouble’ when she reported. There is some evidence that recognition of 16 and 17 year olds rights as children in need of protection may have been overlooked. This is exemplified by one complainant:

I was only 16. He was a grown man going about telling ... ‘Oh my bird’s 16/17’. And then ... I said that to the social worker and even the social worker...they were saying, that is obviously grooming⁵⁴. I’m like, but why can the police not see that? It’s as if they’re just pure trying to look past that. (Young Complainant 1)

Communication

Alongside delays and concerns raised about safety and bail conditions, the majority of child and adult interviewees expressed anxiety due to uncertainty about the court process

⁵⁴ To note, whilst this young person describes ‘grooming’ behaviour (as did some older women), the ‘grooming’ offence (at S1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005) itself applies where a child is under 16 (the age of consent for sexual activity), so the police could not pursue it as such for a 16 year old. ‘Abusive behaviour’ and ‘relevant effects’ as defined under DASA do offer an opportunity to prosecute such a course of behaviour from an older/more powerful perpetrator and there is no lower age limit as to the ‘partner/ex-partner’.

and a lack of information or opportunity to ask questions. This is exemplified by one young complainant:

When I first found out about court, I think I just went like, 'Oh no!' to be quite honest. ... I think it was just that constant worry... 'What's going to happen or how's it going to happen?' 'Who's going to be there?' Things like that, 'Who's going to be watching me?' 'What if I said the wrong things?' (Young Complainant 3)

As a result, victims and witnesses often lacked a sense of control and felt disempowered by the process. Interviewees gave examples of mistakes with names and addresses in communication about the court process, or letters being sent to old addresses, which added to individuals' sense of being lost in a system. As one adult explains:

I've got citations with wrong names, wrong addresses, my name spelled wrong. Every single citation, whether it's mine or the witness's, pretty much names are still wrong. (Adult 1)

While opportunities for contact with advocacy, witness information services and victim support all provided some opportunity to address questions and concerns, the quality of information and its timelines appeared to vary depending on available services and individual cases. This quotation from an adult typified this:

I had to keep phoning ... because nobody was bothered, like nobody was contacting us and I was, like, I feel so unprepared. I feel unprepared. Reading the court document, I just feel that we don't know anything about what we've to do, we don't know anything about ... (Adult 12)

Citations

Victims and witnesses reported receiving formal citations through several routes including: handed to them by police; via letter or text message; or (in the case of a child) a request to attend a police station to pick up the citation. In most cases the citation preceded court specific support and this heightened victims and witnesses' fears. As a young complainant described:

I had letters through my door saying that I was to go to court, and I think I was just...I was really nervous about it. And I think sometimes I couldn't sleep just thinking about it the next day. (Young Complainant 2)

For children's citations, three interrelated issues were raised: timing, expectations, and control. In the accounts shared in this study, children appeared to be cited particularly close to court dates, resulting in minimal time to prepare. One adult victim explained:

I'd been in email and phone contact with the Victim Information team to say, 'Look, we haven't received this from the police, is [my daughter] definitely being cited? Because she needed to know and there's all this information on the website about preparing for court.' And if you're a child ...you might get a court visit or you might get a video walkthrough or something like this. But because she didn't know if she was going or not, nobody was asking us if we wanted any of this. (Adult 12)

Several children (and their parents) believed that they would be able to participate in a video-recorded interview, rather than testifying in court. Thus citations to children, to attend court, were particularly unexpected and sources of anxiety for both children and adult victims. As one child explained:

I think the only thing that was really bad was they told us we most likely wouldn't have to give a statement again or go to court. And then a year later, we found out, like, we had to do it. (Child 4)

In several cases, parents did not want their children to be cited. Of these cases, two parents wanted to withdraw from their case to protect their children from having to attend court but were prevented from doing so. One of these parents described the process:

I knew I would have to testify; I'd built myself up for that. I said I don't care about me; I just don't want [my daughter] to have to go through everything that she's already been through ... But obviously it's a legal obligation, she absolutely had to. We got told that when we picked [the citation] up, like she absolutely has to go. If you don't bring her then we have to arrest you ... that's what that woman told me at the police station. (Adult 6)

One 11 year old boy described changing his mind about wanting to engage with the legal process after undertaking a joint investigative interview. After re-establishing a relationship with his Dad, he no longer wished to give evidence in court, leaving both him and his mum feeling trapped in a legal process over which they had little control. He explained this:

I was told I might have to go to court, but I just ... I wasn't going ... I just, I didn't want to go... then my mum tried to text them. Like my mum texted them and said I just really didn't want to go. (Child 2)

Support and advocacy

Victims and witnesses identified significant support needs during this period, relating to both their interdependent emotional wellbeing and advocacy needs. Individuals with access to a specialist advocacy and support worker, noted the value of practical and informational support, and of these workers providing a conduit between the courts, COPFS and victims and witnesses. As one adult victim explained:

The EDDAC worker talked me through it all and they talked me through what the courtroom would look like and stuff. So, they were really clear with me. (Adult 10)

Participants reported that these workers fulfilled a vital role by: explaining what to expect; arranging transport and expenses; supporting their understanding of options for special measures⁵⁵; liaising with VIA about their preferences for special measures and ensuring

⁵⁵All victims of domestic abuse are entitled to use standard special measures. In addition to standard special measures other non-standard special measures can be applied for. The Victim Information and Advice service (VIA) are responsible for contacting eligible witnesses in advance of the trial to explore appropriate special measures with them.

prosecutors were informed of their views on Non Harrassment Orders (NHOs) should the accused be convicted; and providing emotional support on the day of court (see next section). Their experience and knowledge of the justice system was invaluable to individuals navigating these processes for the first time, as one adult victim described:

I had no idea what to expect, to be honest, because I've never really had to do anything like that before, so I don't think anybody can prepare you for that, to be honest, ... But the preparation for it – I mean [my Women's Aid worker] as well as ASSIST – I had a lady from ASSIST, she was fantastic. She fought tooth and nail to make sure she knew every last detail about it. See if it wasn't for ASSIST, I wouldn't have known a thing. (Adult 6)

For all individuals whether supported by an advocacy worker or not, communication with prosecutors was via the COPFS Victim Information and Advice service (VIA)⁵⁶. Two individuals spoke of valuing VIA but both noted its limited capacity and scope, as described here:

I've spoken to them [VIA], but you don't get an individual caseworker, ...it's like everyone shares the case, so although they've all been very helpful, there's some things which you've maybe said to one person, the following week that's maybe not been noted, and then there's certain people you can open up to more than you can to others. (Adult 1)

In other cases, participants described additional support provided via the Witness Support service. Similarly, this was noted to have limited scope and was mainly accessed on the day of court – rather than in the lead up to the process. One adult victim, for example, spoke of this:

I think one of the big gaps that was there was see the preparing for court aspect? Told I was getting a witness supporter, and then I asked, and they just said, you'll go up, you'll give your evidence, then the defence'll ask you questions. (Adult 2)

Options and advocacy for special measures

In the lead up to, and preparation for court, finding out about and negotiating special measures was incredibly important to interviewees. As a 13-year-old child described:

The police were trying to get me to, like, actually go into court, and not give evidence by commission[er]. And my mum kind of told them, like, 'If you make her go to court, I'm just going to drop all the charges, because I don't want to put her through that.' Because, like, giving a statement put me in, like, a really bad place, and stuff, and really messed with my head, so she didn't want me having to go

⁵⁶ All cases of domestic abuse and cases with child witnesses are referred to the Victim Information and Advice Service (VIA) within COPFS. With the victim's permission and where services are available, VIA may refer the victim to specialist support or advocacy services and share information with these services about progress and outcomes of the case.

through all that again. (Child 4)

Despite the fact that all domestic abuse and child witnesses are automatically entitled to standard special measures (and non-standard special measures can be applied for in certain circumstances), victims and witnesses consistently reported uncertainty and anxiety about the special measures which would/could be provided, and their sufficiency to maximise their sense of safety in court. All those going to court expressed a need for additional support arrangements such as separate court entrances, which weren't always available (some thought due to COVID, others limits of the court building) and separate waiting rooms which most often included court witness support (see next chapter). Interviewees reported varied practice in relation to special measures when giving evidence, depending on the court and the nature of charges. The most discussed examples of standard special measures were of screens and for some participants, in particular children, a court supporter. It was felt that remote livelink was rarely put forward as an option available to adult victims, rather this was something a victim/witness had to proactively seek. Support workers and advocacy workers were noted to play a role in supporting victims and witnesses understanding of the range of special measures and in some cases helping them liaise with VIA to request specific standard special measures:

I then had to ask the person at Women's Aid, I think she got in touch with the actual courts [COPFS] herself on my behalf and asked about, if I could get a screen or a video link, so I don't actually have to face my husband ... I was told, 'We'll look into it, it's not normally something you'd get, because it's normally done for more serious crimes.' (Adult 1)

Children and parents reported perceptions of a more proactive approach taken in arranging special measures for child victims and witnesses, remote live link seemed to be a genuine and available option for children as well as screens, seemingly dependent on age although participants were not clear on this. Examples were shared of Procurator Fiscals proactively encouraging victims to use special measures, in particular screens, which was often appreciated. However, as one young complainant describes, this was not always in line with victim preferences:

They were asking me if I wanted a screen, and I said to them ... I was like, no because if I have a screen, he's not going to be able to see my ... I want him to see my face and I want to be able to see him, so then his true reactions will come out. (Young Complainant 1)

However, special measures were not a panacea for victims' and witnesses' fears about court appearances. In some cases, the nature of special measures brought their own anxieties and loss of control. Another young complainant described such concerns:

I knew that I would be in a room, and it would be, like, a FaceTime call through to the other room where he could see me - but I wouldn't be able to see him. And I think that just made me really nervous knowing that he's going to be able to see me, 'cause I didn't want him to. (Young Complainant 2)

Advocacy and support to child witnesses

In the period prior to court, interviewees reported similar support needs for both child and adult victims and witnesses. This included: regular, timely and clear communication about forthcoming court process; opportunities to ask questions; a sense of choice in aspects of the process wherever possible; and access to support from a named individual who they could get to know prior to court. Across those interviewed, these needs were only partially met. This quotation from a child exemplifies the lack of information about going to court:

I knew [when I went to court] I had to say something to somebody, but I didn't really know about it that much. (Child 1)

Several children and parents noted that, where available, specialist child support and advocacy was only accessible to them shortly prior to court – sometimes accessed for the first time in the week before first attending. There was a perception that this was related to the late notice of some children's citations. This is exemplified by one child's description:

And then, we found out that they were making me go in and make evidence by commission, and then that's when we started speaking with [ASSIST Worker]. But I think they gave us quite, like, short notice, like, and stuff, like I think I should have got longer with [ASSIST Worker] than what I did. But in the short time that I had, it was really beneficial. (Child 4)

When children did receive access to specialist support (either via domestic abuse court advocacy services or Women's Aid), it was highly valued and noted to help with children's understanding of the process ahead. One child explains:

I knew about [court] from ASSIST way before that. Which was good 'cause it was, like, a, sort of ... 'It's not as bad as you think it'll be, you'll go there and you'll do this, this is, like, what will happen.' 'He's going to court on this day. They'll probably send it to trial. Like, this is where it is. This is what it looks like.' (Child 5)

The potential for children to have both pre court visits and, or a known supporter on the day of being at court was reported to as helpful in reducing fear and anxiety. The management of children's expectations about the process was also noted to be a key role of advocacy or support workers.

[My ASSIST worker] made sure that I wasn't, not like in a good way, but knowing that I wasn't expecting too much. Because he asked, like, 'How long [in prison] do you want [the accused] to get,' and I was like telling him, and he was like, 'There's mostly likely a chance he probably won't, but this is what will happen if he does, and how, like, if he gets out, what we can do from there,' and things like that. (Child 4)

However, despite these provisions there was recognition that there were inherent difficulties for children in giving evidence about domestic abuse that involved their parents. One adult spoke strongly about this:

They were saying like, 'Oh well bring him down, he can have a look about the court room and make him feel comfortable.' And I'm like, but it's not really about that, do

you know what I mean? It's more the fact that it's his dad [that he has to testify against]. (Adult 7)

Ways Forward from participants' perspectives

Reduce delays and the number of adjournments that victims' and witnesses' experience; improve communication about decisions.

Take action to improve victims' and witnesses' sense of safety in the period leading up to the trial, including clear communication about restrictions on the accused.

Provide clearer communication about the process and next steps, particularly in relation to child witnesses.

Increase access to support and advocacy, with provision to begin earlier.

Increase attention to the vulnerability and needs of younger victims.

5. At court

Headline findings

- Going to court was rarely a singular event for participants in this research. Many attended multiple hearings for the same case, some were victims or witnesses in other cases about domestic abuse involving the same accused, and others were involved in civil justice proceedings.
- The overall quality of participants' experiences of being at court varied. This ranged from it being a difficult experience, through to it being a frightening and traumatic experience. Such varied experiences spanned different types of court hearings, as well as different types of criminal cases. The ability of courts to accommodate the needs of victims and witnesses were central to the quality of participants' experiences.
- Persistent findings related to the negative impacts of delayed proceedings; the 'emotional cost' of going to court; giving evidence in an adversarial process; feeling uninformed and excluded from the management of the criminal case; and not being aware or understanding the rationale for court decisions.
- While there were negative findings about being at court, participants raised the potential for court to empower, and provide a sense of closure to, victims and witnesses. Support and advocacy were identified as crucial to improving experiences of being at court.

Introduction

In this section, we report on adult and child participants' experiences of being at court as a victim or witness in criminal proceedings relating to domestic abuse. As discussed in the previous chapter, adult victims as well as child witnesses are classed as vulnerable witnesses in domestic abuse cases, with a right to standard special measures to help them give evidence, these are: screens; a supporter and giving evidence from a secure location outwith the courtroom, in the same building or another location. It is also possible to request a separate entrance to the accused, if available, and separate waiting rooms with a court witness supporter. The increased focus on the perpetrator's behaviour through the Domestic Abuse (Scotland) Act 2018 (DASA) sought to reduce the risk and impact of re-victimisation of victim(s) involved⁵⁷, including when at court. DASA reforms aimed to reduce the possibility of the accused using the system to exert control and influence over the complainer⁵⁸. It is important to note that the experiences of court in this study include a period when delays in court proceedings were exacerbated through COVID-19 and public health measures impacted the operation of the courts and associated services/response times as discussed in Chapter 1.

⁵⁷ Policy Memorandum Para 44

⁵⁸ Policy Memorandum Para 7

Getting to court, being at court and leaving court

The process of getting to court provoked feelings of anxiety for many participants. They were often fearful of meeting or being confronted by the accused and the accused's friends and family. Before going to court, participants described working with support and advocacy workers to carefully plan their transport and arrival at court in order to avoid the accused. However, several participants described occasions where such plans were not able to be implemented. This is exemplified in the extract below:

I felt great [before going to court], she'd [advocacy worker] mentioned about even if I'm in court, that I go in through like a separate access door and stuff like that. When I contacted the court and said that they suggested separate access or remote, they said separate access isn't doable, they don't actually have a different access door, so that one obviously...I don't know whether they do or not, but they said they didn't. (Adult 2)

The physical layout of court buildings and lack of separate entrances / exits for victims and witnesses left many participants feeling vulnerable and exposed. As highlighted in the extract below, entering and exiting the court building provided opportunities for the accused to intimidate victims and witnesses:

[...] he was sitting outside as if he was waiting to see if I was ... who I was coming in with. And that's what I don't like. I think they should be completely separate because then that is pure intimidation. (Young complainant 1)

Some participants described queuing alongside the accused before and once they entered court buildings. During the COVID-19 pandemic, they reported being unable to stay in the building when court was not sitting (for example, at lunchtime) and having to sit in a car or go elsewhere, most had not planned for this and felt isolated and unsafe.

Many participants attended multiple hearings for the same case, and some were also victims or witnesses in other cases about domestic abuse involving the same accused. Several participants were involved in civil justice proceedings: for example, child contact cases that also involved the same accused. There were thus potentially cumulative impacts from going to court.

Witness rooms

Once court officials were aware participants were witnesses in proceedings, they were usually then escorted to a witness room. This offered a place to wait, before giving evidence, protected and kept away from the accused. While the safety that this offered was welcomed, many participants described feeling 'trapped' and uncomfortable in witness rooms. They felt it was unfair and were angry that they were unable to move freely in the court building but the accused was. These factors not only contributed to negative experiences of being at court, but also risked witnesses' ability to give evidence in proceedings. As these participants report:

Why are they not in a waiting area? Why do they get the freedom to walk around, and they can go to the toilet, and they can go to the café, and they can go out for

fresh air, so they're at their best to go in and sit for their trial. We're not at our best because we're in a witness room, crammed in with other people that are also witnesses. It's hot, there's no windows that will open more than a crack, there's no air. (Adult 12)

I was just left in a room all day to...had to ask to go to the toilet in case they were wandering about. So, I felt like I was treated like the animal. Although they were just trying to keep me safe, I was just a bit like, hold on a minute here, like, why am I being treated like this? And it was a room that had no window. Couldn't see anything. (Young Complainant 3)

Delays at court and lengthy proceedings

Across the study participants described negative impacts on their wellbeing arising from repeated rescheduling of hearings and the length of time they had to spend at court waiting to give evidence. While some of this may be attributed to the pandemic, victims rarely ascribed, or reported being told, that this was the reason. One child explained the the impact of such an experience:

And then we went. And we got there, and they kept moving about rooms and then they changed the court, so we had to then move. And then we had to walk past dad quite a few times. (Child 3)

The child had to wait at court for seven hours before finding out that the case he had been cited to give evidence for was being rescheduled again. The child described feeling 'sad and angry' that he had had to wait so long and felt scared passing his dad in the court building.

For a minority of participants the length of time at court was because of the nature of the case: for example a trial for rape lasting several weeks. However, for the majority, participants reported that delays at court were connected to the way the case was managed. For example, the accused was late, plea bargaining taking place between the Procurator Fiscal and the accused's legal representation and, in one case, the wrong video evidence of another child not involved in the case being played in court.

Pleas and bargaining at court

Across the study, several adults and children had experience of charges being reduced or dropped on the day of court. Such plea deals and bargaining were often a source of confusion, coupled with feelings of disempowerment and frustration. Participants were often unaware of the rationale for such plea deals being made. This is exemplified by one adult victim:

Someone came into the court and basically said, 'We've done a plea bargain with [the accused], he's been charged on counts one and two have been put in, and counts three...And, I was like what? Has he been charged with this or charged with that? (Adult 1)

Pleas and bargaining were especially challenging in the context where participants had described experiencing a heavy emotional cost during the court journey - from reporting to the police, preparing for court, and then spending a considerable time waiting at court. Some participants felt that bargaining and late pleas unnecessarily extended court processes and saw them as examples of the accused's continued attempts to assert control over them. Pleas and bargaining were significant decisions and resulted in participants' evidence not being heard.

While some participants described feelings of relief at not having to give evidence, other participants described the process as being anticlimatic and feeling it was 'unfinished'. Participants reported anger and distress that their evidence and perspective was not heard by the court. They felt their attempts to access justice had been thwarted, as exemplified in the following extract:

The Procurator Fiscal came in and told me they got a plea out of him. It was a bit of mixed emotions, this is great, he's admitted it and I don't need to go in and my daughter didn't need to go in. I'm like right, is that it? 'Cause you work yourself up so much, I wanted to say my piece. (Adult 13)

Feeling 'out of control' of criminal proceedings

A persistent theme across interviews was the lack of status that victims and witnesses had in proceedings. There was a strong negative feeling that victims and witnesses were 'kept out' of the management of 'their' case. Participants did not view court proceedings or the management of the criminal case to be sufficiently orientated to victims and witnesses, they did not feel their needs, experience, knowledge or views were central. A significant concern amongst participants was that they did not feel that the case that was led at court necessarily reflected the extent of abuse they had reported⁵⁹. This was illustrated in the following quote by one adult participant:

I think that's what makes it harder, it's the knowing that he did this to me, and yet, it's not been recognised, like it wasn't mentioned in the court, it wasn't part of the trial, and, you know, it's almost like my injuries was irrelevant. (Adult 4)

One adult participant expressed the view that victims and witnesses should be able to give evidence regardless of whether a plea is reached. In this case, it was connected to a common feeling that the abuse that had been reported had not been fully recognised in the court process.

Most participants felt they did not meaningfully engage with the Procurator Fiscal (PF) and they perceived this as a fault in the process; several participants felt this led to the victim and PF being under-prepared at court. There were a small number of positive experiences. For example, one adult participant appreciated her 'quick chat' with the PF before giving evidence, she was reassured when the PF said she understood the victim's

⁵⁹ When considering reports of domestic abuse, the Procurator Fiscal must first assess whether there is sufficient corroborative evidence that a crime has been committed by the accused. If there is insufficient evidence in law, no proceedings can be taken. Where there is a sufficiency of evidence, there is a presumption in favour of prosecution in all cases of domestic abuse. In cases involving violence or the threat of violence, there is a further presumption that proceedings will be taken in the Sheriff Court or High Court.

fear of being asked about dates and times, recognised this was a result of trauma and said she would take this into account in court. Such direct contact was rarely reported as part of participants' experience in this research. The most common feeling was that there was no one 'on their side' at court. Participants felt strongly that court systems and processes marginalised victims and witnesses. The extract below gives lucid examples of how court processes can feel disempowering for victims:

There was no opportunity to sit down with the Procurator Fiscal, to talk about the process, what the likelihood is of what could potentially happen, what am I likely to be asked by the defence. Do you know, I feel the defendant seems to get their legal support and a lot of intensive kind of input, and as the victim of it, you get nothing. You're left kind of sitting in the dark and just not knowing anything. That [made me] feel completely powerless, I already felt completely out of control and powerless with the whole situation. I thought by doing this legally and trying to do the right thing, I'm going to try and take a bit of control back, but when we'd asked about speaking to somebody and so on, [I was] just shut down at every step, do you know, and I thought, that's not really helpful. (Adult 2)

Giving evidence

Across the study all 13 adults and four young complainants were originally cited as witnesses. Nine gave evidence in proceedings (8 adults, 1 young complainant) and in the remaining eight cases guilty pleas were submitted by the accused.

All participants reported being anxious about the prospect of giving evidence, concerned about being subject to any cross examination, the questions they might be asked and whether they would be believed. However, as noted earlier, giving evidence was viewed as an important part of telling the court about the abuse experienced and one of the few ways to be able to seek justice for it. Giving evidence, was also the only way that participants were able to participate in proceedings, as exemplified by one adult:

Because I had to stand up for myself. I had to tell that defence lawyer. Because nobody stood up for me in court, like there was nobody telling my story, nobody telling them how I saw things or what happened – I had to do that myself. (Adult 6)

This account shows how pressurised giving evidence can become, not just because of the experience of giving evidence but also because it was seen as the single opportunity that victims and witnesses had to ensure that they and their interests, the whole 'story' of their abuse, are directly represented in the court process.

Being cross examined

Many participants who gave evidence found the adversarial nature of cross examination to be traumatic and were often left feeling undermined and belittled because of the questioning they were subject to:

The second I came out of court, and I mean the second I got out that door, I just collapsed and broke down and said, 'No wonder,' – the first thing I said was, 'No wonder women don't go through that process, like they just cut out after that and go

I'm not doing it.' The way I got spoken to and the way I got treated – no one even battered an eyelid at him, but I got called all the worse mothers, junkies, everything, absolutely every part of anything you could possibly do wrong as a mum I got accused of (Adult 6)

The impact of being cross examined is described by one adult:

I got taken back into the little room next to the door. And the policewoman came through. I didn't ... I never knew the police in there. And the policewoman just said like, 'You did amazing.' And [the procurator fiscal] said, 'You answered everything.' She says, 'We've got everything that we needed.' But I just stood crying. And I think it was more the fact that his...the way his lawyer was to me. It just ... even now ... when I think about it now, I just felt stupid. She made me feel so small. (Adult 11)

Participants reported that during cross-examination, a focus on dates and times was especially confusing. They found that lengthy questioning, in some cases lasting hours, and not being able to review their statement in advance, acted to undermine their ability to give their best evidence in proceedings. These points were illustrated well in the following extract from an adult's interview:

I didn't see my statement, so I found it really difficult, and I was worried that it would come across that I wasn't confident that these events had happened, because she didn't say, 'On this date did this happen? Or on this date tell me about it?' She just said, 'Tell me about an incident that you were,' ... you know, so she was leading ... so I had to give the date, I had to give all the details and I found that I was worried about not being able to perform as well. (Adult 12)

A few participants reported that the Procurator Fiscal or Sheriff intervened, due to their treatment by the defence during cross-examination. While these interventions were welcomed, there was a strong sense across many participants that such interventions were not as frequent or as robust as they felt they should have been.

The behaviour of the accused during victim/witness cross-examination

Several participants identified the actions of the accused to be particularly undermining when they were giving evidence. They provided examples of the accused acting in ways that they viewed as deliberate attempts to disrupt their giving of evidence. The following extract from a young complainant provides a vivid example of this:

Like, even when I was sitting breaking my heart during the trial, he was sitting laughing. Laughing at me. And clinking his handcuffs. (Young Complainant 3)

A minority of participants reported that such behaviours were challenged during proceedings by Sheriffs and Procurator Fiscals, pointing again to the potentially protective role that they can have when victims and witnesses gave evidence. However, such challenges did not appear to happen routinely.

Special measures

Across the study all nine adults (including one young complainant) and two children who gave evidence had one or more special measures in place when they gave their evidence.

A strong theme from the data related to participants' frustration that access to remote videolink was not offered routinely to victims and witnesses. Several suggested that both adult and child victims' and witnesses' should be completely removed from the court arena in domestic abuse cases and supported to give evidence quickly and safely. Only one adult participant in this study got the opportunity to give evidence via remote videolink. He described having to 'fight' to get this special measure, as highlighted in the following extract:

When I phoned them and asked, I just said, 'Is there any way for me to give evidence from a different location,' and I was more told it was almost a case of, my case isn't extreme enough, sorry, that's how it kind of came across, that it wasn't important enough. (Adult 2)

Several participants raised serious questions about the adequacy of screens in offering protection or reassurance to victims and witnesses while giving evidence. This related to the close proximity of the accused and that victims and witnesses were still aware of the accused when giving evidence:

I had a screen, yeah. But he kept kicking his foot, so where he was sitting, there was a screen, but he kept kicking his foot out, to let me know that's where he was. (Adult 4)

Child witnesses

All five child participants were cited as witnesses but only two gave evidence in proceedings. In the three other cases pleas were submitted by the accused (two of which were submitted while children were waiting in court to give evidence). Both children who gave evidence did so remotely by video link (within the court building). For the remaining three who were cited but did not have to give evidence, two were offered a remote link and one was due to give evidence by commissioner.

Like adult participants, children were anxious about giving evidence. Despite efforts from those directly involved in proceedings, child participants thought that going to court was especially intimidating for children and that this was not always recognised or fully understood by those working in courts. As one child explained:

Like when I went, the procurator and the judge, they were nice. But sometimes they can be...they don't recognise that it's a ten-year-old kid they're talking to, they just treat them like an adult, like they can handle everything. But they can't because they're a ten-year-old and they're going to this big place. (Child 3)

Children appreciated being able to give their evidence outwith the court. This helped address some concerns that children, and other vulnerable witnesses, might have about giving evidence in person. The benefits were illustrated in this extract:

I think if I actually had to stand, like, in front of the [accused], or like, other witnesses there, and like, other people hearing my statement, I think that would have been a bit harder for me. Yeah, and I think if I broke down, he would see me, like, vulnerable, if I was standing in front of him when I was giving my statement. I didn't want him to know how weak he had made us. (Child 4)

While giving evidence remotely offered some protection, the protection was limited. There were similarities between children's experiences of giving evidence remotely and adults that were cross-examined in person. In the extract below, a child's mother reflects on her son's experience of being cross-examined and the ensuing impact on him:

The defence lawyer called him a liar several times in the court and said he was nothing but a little liar. To hear that, when he's gone through so much, to be told he was a liar. So [now] there's a lot of guilt from [my son] that he was accused of lying and obviously he was very worried about what was going to happen after that. (Child 1's mother)

A further and significant challenge for child witnesses related to court rules on the contamination of evidence. This meant they were unable to have the non-abusing parent with them while giving their evidence and then unable to talk about their experience of this until their parent's evidence was complete. While advocacy workers fulfilled an important role in being there with children, this was nonetheless distressing for children and their parent, as illustrated in the following extract:

[My daughter] had done her evidence, we weren't allowed to talk about anything. She couldn't tell me anything about how her court experience had been, she wasn't allowed to, which I found really hard as a parent. I couldn't support her at all. I had to keep saying to her, 'You can't tell me. You can't tell me anything.' It was horrible. (Adult 12)

While special measures should be available routinely to children, like with adults in domestic abuse cases, interviews with children revealed that, at least in these cases, their implementation was not smooth. This contributed to stress and anxiety for children and their parents. For example, one parent described that due to a technical problem with the video link, there was pressure on her child to give evidence in open court. Furthermore, it was not clear to participants why children in this study were not routinely offered the opportunity to give evidence by commissioner. Further research is needed to fully understand how special measures are implemented for children involved in criminal proceedings.

Support and information at court

Support and information provided by support and advocacy workers and others, like Victim Support and VIA, were viewed by participants as being critical in helping victims and witnesses feel safe, understand what was happening and advocate on their behalf when they were at court. They waited with participants, providing emotional support at what was an incredibly anxious and stressful time:

I was sitting in a car with that woman. And that woman was fantastic that day. I mean I just met her that day, but she was lovely, she was really nice. She helped support me all day that day. (Adult 6)

However, support and advocacy at court was a scant resource and at times some participants were left feeling not as supported as they perhaps might have wanted. Participants felt that the court service support did not necessarily meet the more holistic needs of victims and witnesses on the day:

You're definitely just left to it – that's it, completely unsupported. I mean even the Victim Support, she was allowed in to sit with me while I was through the trial, like she was allowed to sit there just to ensure that ... I don't know, like I had somebody sitting with me. She was allowed in with me, but she wasn't allowed with me after it. As soon as I was out the court room, she had to take me to the front door and that was me. (Adult 6)

The potential for court to empower and provide closure

While going to court was not an easy experience for any of the participants, a minority viewed court as being a way to 'reset the terms' of the relationship between them and the accused. Court offered a way to become empowered and provide closure on the abuse that they had experienced and their relationship with the accused. In the extract below, an adult explains that giving evidence in court 'gave her a voice', it was a way to show publicly that the accused no longer controlled her, and she found it to be a cathartic experience:

I really wish my son and my daughter-in-law heard the way I was in court, because I know for a fact my ex would have been sitting behind that screen thinking, 'She's totally changed. She's got a voice.' Because he couldn't silence me in that court. He could not control me in that court, and I got everything I wanted to say out. And it was good. It was good. (Adult 3)

Likewise, another adult highlighted that going to court was a way to make public the abuse that had taken place and to ensure other women could become aware of what the accused had done:

I wanted him to admit that he was guilty but then the bottom line was, what if it made out that I was a liar and stuff? And I think in a way I wanted other people to find out. 'Cause his ex-wife was saying, 'God, I hope it goes to the papers so that other women are aware of what he is.' Just wanted the truth out, really. But there would have been a lot more came out and he knew that and that's why he pled guilty as well. (Adult 7)

Ways Forward from participants perspectives

Greater communication, engagement and collaboration between police, procurator fiscal and victims/witnesses in relation to the prosecution of the case, decision-making about the accepting of pleas and in relation to what evidence is led.

Effective communication of procedural and court decisions to victims and witnesses.

Giving evidence from a remote location should be the default special measure made available to all victims and witnesses in domestic abuse cases; a small minority of victims in this study wanted their 'day in court'.

Options for earlier, safer, pre-recorded evidence should be explored for all victims and witnesses to reduce trauma and promote trauma recovery; many participants in this study suggested removal of adults and children experiencing domestic abuse from court settings.

6. Sentencing and Protection

Headline findings

- For many participants, the legal process did not deliver a fulsome sense of justice. There were significant concerns that the prosecution and subsequent sentencing for domestic abuse offences did not reflect the sustained nature or severity of abuse they had experienced nor the impact it had on their lives.
- Participants reported concern 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) as a protective measure. For some, NHOs offered a sense of protection. However, for many participants, NHOs were not an adequate form of protection.
- Even with NHOs being in place, some participants experienced continued abuse and harassment. Several reported being especially fearful that when an NHO lapsed abuse would restart. This had negative consequences for participants' wellbeing and their ability to 'move on' and live free from abuse.
- Where the accused had been found not guilty or admonished, participants were especially negative about the justice system. This group were left especially vulnerable, with bail conditions and other protective measures ending abruptly, leaving them without ready access to protective measures like NHOs.

Introduction

In this section we report on findings of victims' and witnesses' experiences on sentencing and protection. The Domestic Abuse (Scotland) Act 2018 (DASA) reforms aimed to ensure sentencing reflected the seriousness of domestic abuse and ensure that the safety of victims and associated children were a key consideration of court during sentencing. Most cases in this study (and most domestic abuse cases in Scotland) were heard in summary court where a S1 DASA conviction can be imprisonment for a maximum of 12 months or a fine (maximum £10,000) or both (S9(a)); in Sheriff solemn proceedings imprisonment can be for a maximum 5 years; High Court imprisonment can be for a maximum of 14 years or a fine (or both) (S9(b)). When sentencing, courts must have particular regard to ensure the victim is not subject to a further such offence and must consider whether to make a Non-Harassment Order (NHOs) to protect victims and associated children (Schedule 1 to the Act, paragraph 9) from further harassment and abuse, recognising the high incidence of repeat offences in domestic abuse cases⁶⁰ and harm to children. To note that one limitation of the Act is that abuse pre-April 2019 cannot be included in the offence and therefore reflected in sentencing.

We discuss the views of victims' and witnesses' in this study on court outcomes resulting from the prosecution of domestic abuse. As with other stages of the court journey, participants were often unclear on what sentences had been imposed, what offences these related to, and the rationale for sentences. We begin by providing an overview of

⁶⁰ Policy Memorandum Para 152

court outcomes for participants that were interviewed. We then explore in more detail victims' and witnesses' views on court outcomes and disposals and the implications these had for their sense of justice and protection from abuse.

An overview of court outcomes

These tables use advocacy service administrative data and participants' accounts to provide a summary of court outcomes and disposals. This includes protective measures that were made.

Table 2: Court outcome overview

Court outcome	Adult Study Participant	Young Complainant	Child Study Participant
Not Guilty	2	0	2
Guilty plea (pre victim testimony)	5	3	3
Guilty (post victim testimony)	6	1	0
TOTAL	13	4	5

Table 3: Sentencing overview (for 18 of 22 cases where guilty verdict)

Sentence type	Adult Study Participant	Young Complainant	Child Study Participant
Prison/ Detention (YOI)	0	2	1
Community Payback Order	6	2	1
Fine	4	0	0
Restriction of Liberty Order	0	2	0
Caledonian Programme ⁶¹	3	1	1
Absolute Discharge	0	0	1
Probation	1	0	0
Unknown	1	0	0
Non-Harassment Order	10 (2 of which covered Adult victim and one child. The rest Adult only)	3 (All Adult only)	2 (1 of which covered Adult victim and one child. The rest Adult only)

Divergence between experiences of domestic abuse and court outcomes

While most cases resulted in a guilty verdict, the majority of participants reported that the final court outcome did not reflect the severity of their experience of domestic abuse. This included cases where the accused had been found guilty of offences as well as those where the accused had been found not guilty. Views were linked to the bargaining and plea deals that occurred throughout the legal process, which led to charges being dropped and/or guilty pleas to lesser offences accepted. For example, one participant described a charge of assault, that had resulted from an attempted strangulation, being reduced to a charge of breach of the peace. This had implications on the sentencing options available and contributed negatively to her overall sense of justice.

Participants were concerned and angry that offences, relating to abuse that had been sustained over many years, were 'rolled up' into singular or 'minor' charges. While some abuse predated the introduction of DASA, as discussed in Chapter 1, participants maintained the view that charges did not reflect the scale or the severity of abuse they had

⁶¹ The Caledonian Programme is a perpetrator programme and can be imposed alongside community sentences.

experienced since the implementation of the Act (April 2019). Nor was it perceived by participants to adequately address the impacts that abuse had and continued to have on their lives. These points are reflected well in the following extracts from an interview with a child:

I think they could have got a conviction if they'd looked at all of this stuff. 'Cause it's like the wee, tiny bit of the iceberg they looked at, when there's all this stuff underneath. And like they said that they'd do everything, but they just left a whole big chunk out. So, it was quite frustrating that they didn't do their job, kind of. (Child 3)

Thus, we see key divergence between victims' and witnesses' views about the appropriate sentence in light of their experience of domestic abuse and the sentences imposed. There may be evidentiary and other prosecutorial reasons underpinning decisions on what charges are progressed, the verdicts reached and the sentences then ordered. However, participants were mainly unaware of these reasons and/or had not understood them. This lack of knowledge, contributed to strongly held views that the whole of the domestic abuse 'iceberg' was not exposed or addressed in the court process, and justice had therefore not been achieved.

As shown in the table 3, when the accused had been found guilty, most court disposals involved fines, community payback orders and/or referral to a perpetrator programme. In such cases, participants were not persuaded that these sort of court disposals were adequate or appropriate for addressing offending relating to domestic abuse or keeping them safe.

A contrary and minority view was expressed by one adult. She highlights the importance of the symbolic nature of the legislation in protecting victims and describes a community payback order as an effective way to ensure accountability and provide some sort of 'payback' for the abuse that she had experienced:

I'm actually happy that he actually got those sentences and got the court order, because the fact is that he now is learning that it's the payback for his behaviour. And I'm hoping that he's going to learn his lesson that if you do something then you have to pay for it. And he understands that there is a law to protect his wife and children, there is a law that he cannot really hurt his wife or abuse his wife and children. (Adult 5)

Limitations in sentencing

As illustrated in the Sentencing Overview a minority of court disposals involved a custodial sentence (n=3). Participants reported frustration that sentencing options were limited and less severe owing to the domestic abuse offences they experienced being heard in Summary Courts rather than Solemn Courts. In the extract below, an adult reflects on the differences in sentencing options in these different contexts:

So, you know, if [accused] had been dealt with in a Solemn Court, the fact that he had those charges, he would have had up to five years [custodial sentence]. Where he's now been given nothing, where now he's got three years of doing community

payback and social work and stuff like that. But, you know, again, it doesn't make me feel any better, because to me that's [a] pittance compared to what he's done to me. (Adult 4)

Participants expressed anger that sentences for multiple offences could be served concurrently and sentences served were likely to be less than those that had been ordered by the Court.

Despite these strong views on the limitations of sentencing, some participants described feelings of guilt and responsibility for court disposals, unveiling the complexity and at times contradictory emotions victims and witnesses may experience in the prosecution of domestic abuse. These are highlighted in the following extract from an interview with a child participant reflecting on their father's sentence:

He's pled guilty, he's going to get a punishment. There was an element of justice there. And then there was also the feeling of feeling terrible for him because you once cared about this person, and we've had to go to court against him and you never picture yourself in that. You never want to. So, it's, sort of, really difficult to find the balance of having sympathy for them and realising that they did wrong and that needs to be addressed. (Child 5)

Protection offered by Non-Harassment Orders⁶²

When the accused had been found guilty, 15 out of 18 participants were granted an NHO. Across this group, the duration of NHOs (where known) varied, with the shortest NHO lasting 1 year and the longest 10 years. For some participants, an NHO offered a sense of protection for the future; it gave confidence that, should abuse and harassment continue, there was an efficient route back into the criminal justice system. This is illustrated in the following quotation from a young complainant:

I knew he wasn't going to get the jail. That was what I was wanting. But I knew he wasn't going to get it. So, I said to myself, like, a non-harassment order is the next best thing. None of this, like, rubbish where, oh I need to phone the police to report it. And at least now if he does anything, he gets the jail on the spot and there's no of this messing about going back and forth to courts and all that all the time, because that's what does pure drain you 'cause it's like, is this going to happen, is it not going to happen? (Young Complainant 1)

When considering the protection offered by NHOs, participants frequently weighed whether a custodial sentence or an NHO would offer longer protection. While these measures are not mutually exclusive, several concluded that an NHO would likely outlast

⁶² An NHO is an order a court can make following conviction to protect the victim from further harassment. It can require the offender to refrain from such conduct in relation to the victim as may be specified in the order for such period (which includes an indeterminate period) as specified in the order. Breach of an NHO is a criminal offence, punishable by up to 5 years imprisonment on conviction on indictment. In domestic abuse cases, an NHO can also include conditions intended to protect a child who usually lives with the victim or in respect of whom the child aggravation in the Domestic Abuse (Scotland) Act 2018 has been proven.

any custodial sentence ordered⁶³. While NHOs were viewed as offering protection for longer, participants also highlighted key areas where they felt NHOs fell short.

Individuals who are included or excluded from an NHO

Several adult participants were critical that the NHOs did not extend to their children. In some cases, the court's decision to exclude children from an NHO, was perceived to be because of the accused's current or future child contact arrangements. This limited the protection NHOs offered to adult victims. It also shows how risk may be considered and mitigated differently across adult and child victims. This is notable in the following example, where the duration of NHOs varied across family members, with the youngest child (perhaps the most vulnerable) having protection from an NHO for the shortest period:

Yeah, so my mum got 20 years for her non-harassment order, and me and my wee brother got 10 years, and my wee sister got 18 months, because it's his child, so I think the court kind of need to give him a chance. (Child 4)

Concerns about who was included or excluded from an NHO extended to adult children, new partners and wider family members and friends. NHOs cannot be used to protect adult children, however participants reported that adult children and other individuals were often subject to abuse and harassment from the accused and were concerned that they were not included in NHOs, as demonstrated in the following extract:

No, the NHO was just about me. It was just on me, definitely. Because when he approached [my younger son]'s car, the two of them work for the Council ... and [younger son]'s like that, 'If you're going to hit me, hit me.' And he's like that, he says, 'It's your mother I can't hit.' He says, 'But I'll fucking hit you.' He says, 'But I can't do it just now, I'm at my work.' So as far as I'm concerned, he would assault my son, when he's not at work. (Adult 3)

NHOs purpose as a deterrent or a 'quicker route' to future protection

While NHOs may act as deterrent to some, participants tended not to conceptualise NHOs in this way. Rather, NHOs were viewed as a future route to protection, a route only accessible after abuse and harassment had continued. Participants were anxious that NHOs did not change behaviour nor did they necessarily stop abuse. In the following extracts, an adult reflects that while glad to have an NHO in place, she remained hyper-vigilant, ensuring she always had a copy of the NHO with her:

Yeah. I've actually got photocopies of [the NHO] and got it laminated so I've got one in my bag, I've got one in the car. I'm fully prepared so I've always got one on my person. If anything does come up, I can just whip it out and say, 'I've got this.' So yeah, I'm pleased that I've got that. (Adult 13)

In this second extract, another adult participant elaborates on her views on the limitations of NHOs:

⁶³ To note that partners in the research explained that this was a way that advocacy workers supported victims/witnesses to 'manage expectations' and 'reframe disappointment' in outcomes.

But it's whether he's going to acknowledge that he needs to stay away from us, and it just depends on him. Some people actually listen and keep by that piece of paper, but others might not. And at the end of the day, it is just writing on a piece of paper. It just depends on the person that it's been given against. (Adult 13)

The view that the protection offered by an NHO relies on the accused's acceptance of its conditions was shared by many participants. There was a further shared view that NHOs in and of themselves were not an adequate deterrent for abuse nor did they change abusive behaviour. Thus, NHOs were not seen to offer the immediate protection that a custodial sentence might; rather they were viewed as a route to future protection in the event of abuse continuing. Such concerns are outlined in the following extract where an adult describes her distress in learning that an NHO had been ordered following the accused's repeated breach of bail conditions:

The Procurator Fiscal phoned me to tell me that he's been given a non-harassment order and not to contact me, at which point I just burst into tears on the phone, totally inconsolable. Because I'm like, what is the point, what is the actual point of giving the non-harassment order when he's done this, he's breached ... he's up in the one court case, the first court case, he was up for four different separate breaches of bail, and now you've given a non-harassment order. At which she said, 'But it's the judge that has passed this this time, so if he breaches it, he'll go to prison.' Well, he's breached it [NHO] twice, plus more and he's still walking free. (Adult 1)

Breaching and manipulating the conditions of NHOs

Several more participants provided vivid accounts of breaches of NHOs. They also gave examples of the conditions of NHO not being breached but perpetrators' behaviour continuing to be a source of distress and fear. One participant described occasions where the perpetrator would turn up to places where she was and watch her. While this did not breach the conditions of her NHO, it caused her considerable distress. Other participants highlighted social media as being a particular route to continue to harass and not breach the conditions of the NHO that were in place. The limits of NHOs, when the conditions are not expansive enough, were highlighted in the extract from an adult's interview:

Unless he directly contacts me, he's not breaching it, so it's got to be direct communication with me, and because he doesn't... I think they have to... especially in cases involving domestic abuse, they need to widen the scope of what a non-harassment order can cover, because the psychological impact of all the posts online and the threats that are being held over me and the threats that he's given to friends and so on, is having a huge impact. (Adult 2)

A temporary form of protection

Participants viewed NHOs as a temporary form of protection. Several participants had significant concerns about what would happen once an NHO had lapsed. They described feeling very frightened and anxious that once the NHO lapsed, abuse would restart. These views, are articulated in the following extract from a young complainant:

I mean, he's got a non-harassment order for me for three years. That's only a bit of paper telling him not to come near of me. After three years, it's just going to go back to normal. And he's just going to keep doing it because he's never ...he's not had anybody tell him, 'Oh it's wrong.' That won't matter to him anyway.... I mean, he just keeps getting chance after chance. (Young Complainant 1)

Once an NHO had expired, study participants feared that there was the risk of abuse continuing or 'going back to normal'. Further, for victims whose NHOs were about to end the fear of then becoming individually and financially responsible for seeking their own legal protective measures was already causing great stress.

When the accused was found not guilty

Where the accused had been found not guilty or given an absolute discharge, participants had significant concerns about their safety and protection. In these cases, once concluded, all protective measures ended. For example, special bail conditions ended, security alarms installed by the police stopped, and routes to protective measures like NHOs were closed. This group of participants reported feeling incredibly vulnerable and fearful of the repercussions of taking part in criminal proceedings. An adult victim's description typifies these feelings:

You've got protection during the court process. Because I had the bail conditions in place. He wasn't allowed to come near us. People were phoning and checking in on me, making sure I was okay. Getting safety alarms sent to the house, and then suddenly, once the court's finished and the not guilty has happened, then that all gets taken away. And then you're just left that he could come to my door again. (Adult 10)

These accounts revealed the impacts of ending protective measures on victims' and witnesses' sense of safety.

Post-court domestic abuse

For many participants abuse continued, even after sentencing, including custodial sentences and the implementation of protective legal measures like NHOs. For example, continuing to harass victims with unsolicited mail and encouraging family members to engage in harassment. This has especially negative consequences for participants' wellbeing and their ability to 'move on' and live free from abuse. The continued and pervasive impacts of domestic abuse, the on-going constraints domestic abuse imposed on victims' lives and shortcomings in the justice system's ability to protect victims were highlighted in the following extracts from an adult interview:

I don't go out ever. If I go out, my daughter-in-law is either with me or my son. I don't go out myself and I'm struggling to move on. (Adult 3)

This shows that even when participants had 'positive' court outcomes, their everyday lives continued to be impacted and indeed curtailed by domestic abuse. Some felt the only escape would be to move significant distances away, in secret. This underlines the need

for sentencing to challenge and squarely address abusive behaviour. It also highlights the need for continued risk management of perpetrators of domestic abuse post sentencing and continued support for victims and witnesses once court cases have concluded.

There was one outlier in relation to the common experience of ongoing abuse and fear:

Because right from the very beginning, I'd been saying, look I don't want this to proceed, I'm not worried about anything, like, I don't feel, like threatened by her, or anything like that. Because I don't, like. But then they've obviously gone on the cautious side with it, because of the nature of some of the offences, and stuff like that. And they've given her a non-harassment order, and stuff, so like, you know, the legal system has been a lot more concerned about it, than I have. (Adult 9)

Ways forward from participants' perspectives

Ensure sentencing better reflects the seriousness of the domestic abuse suffered by victims and any associated children. Victims and witnesses need to be informed of the rationale for sentencing decision-making and to feel their views and experiences 'count'.

Sentencing and NHOs need to provide enhanced safety and protection to victims and any associated children; their views on safety are important factors in decision-making.

Consideration needs to be given to the safety and protection of 'third parties' including adult children, family and friends.

7. DASA: Enhancing Implementation

Introduction

From the perspectives of the 22 victims and witnesses in this study, the Domestic Abuse (Scotland) Act 2018 (DASA) offers an opportunity for the justice system to reflect the seriousness and reality of domestic abuse as intended⁶⁴. The Act better reflects how adult victims experience domestic abuse - as a range of abuse over time. DASA's aggravation in relation to a child (S5) reflects key aspects of parents' and children's experiences of domestic abuse and the adverse effects of domestic abuse on children. However, the experiences of these 22 victims and witnesses identify many challenges in the implementation of the Act so far: in the police and COPFS tackling such abuse effectively and in courts' capacity to minimise trauma and promote safety of victims, witnesses and associated children⁶⁵. The COVID-19 context exacerbated such challenges, particularly (but not only) in relation to court delays. For participants in this study, the average time from reporting to case closure was 9.6 months⁶⁶ which had a significant impact on their lives and trauma recovery.

This study's research questions⁶⁷ asked participants to describe their journey through a court case since the implementation of DASA and their responses are discussed in detail in Chapters 3-6. In summary, the criminal justice process did not meet their expectations (nor the minimum standards of the [Victims' Code for Scotland](#)): they reported that they were not safe before, during or after the court process; they felt that court outcomes did not reflect the seriousness of the crime nor the full facts and circumstances of their case; lengthy court cases exacerbated the cumulative impact of domestic abuse (which they endured pre, during and post proceedings); trauma recovery was stymied and in many cases court was a site of further trauma; and there were significant, lasting mental health effects in relation to both the abuse and the court case. Specialist advocacy and support services were reported as the most significant mechanisms for minimising trauma, through improving a sense of control and enhancing feelings of safety. When certain professionals explicitly used DASA to sensitively help the victim identify domestic abuse over time and build a case, this was positively received by participants. This could be done more consistently, by all relevant professionals. There remain significant concerns and gaps in relation to safety, delays, effective communication and collaboration, victim-centred practice and wrap around holistic (including therapeutic) support to promote recovery.

Victim-survivors in this study recommended urgent change to the criminal justice response to domestic abuse; their ideas for change are outlined in the 'ways forward sections' of each chapter and summarised in this concluding chapter. Some of the ideas involve effective implementation of the Act itself, to realise its intentions and ambitions. Other ideas ally with current directions of change, in particular as laid out in the [Victims' Code for Scotland](#)⁶⁸, the [Vision for Justice in Scotland](#) and initiatives below. It is hoped that the

⁶⁴ See Chapter 2 for a full discussion of this.

⁶⁵ DASA intentions in Policy Memorandum (Para's 19 and 149).

⁶⁶ Based on 19 of 22 cases; we do not have waiting period data.

⁶⁷ See Appendix 1 and 3.

⁶⁸ Using the principles of the Victims and Witnesses (Scotland) Act 2014 (S1 and 1A) outlined in Chapter 1.

findings of this research will be considered in relation to implementation, scope and urgency of these directions of change:

- The virtual summary criminal trials project board recommends specialist online domestic abuse summary courts across Scotland to allow victims/witnesses to give evidence virtually from a remote building, with support - this is a key priority for victims/witnesses in this study.
- The child witness-focused initiatives of pre-recording high quality evidence-in-chief (SCIM) so as to remove the need to attend court at all and to bring support, recovery and justice together (Barnahus) both reflect urgent requests from child witnesses but, importantly, also adult complainants in this study and in summary as well as solemn cases.
- The Scottish Sentencing Council's work on domestic abuse guidelines are important in relation to this study's findings on post court safety and victims'/witnesses' perspectives on sentencing; pilots to resolve cases earlier are important developments in relation to victims' and witnesses' perspectives on reducing lengthy and traumatic court processes.

This concluding chapter summarises gaps and suggested changes in light of DASA intentions, the [Victims' Code for Scotland](#)⁶⁹ and [The Vision for Justice in Scotland](#) and concludes with messages from victim-survivors to the Scottish Government.

Reflections on the Domestic Abuse (Scotland) Act 2018

The Act's language and provisions reflect victims' experiences far more accurately than the previous focus on individual incidents, as discussed in Chapter 2. However there is some way to go to ensure the law is easy to understand and accessible to all experiencing domestic abuse⁷⁰. The potential of the Act is demonstrated by positive examples of professionals utilising it, in sensitive collaboration with victims, to identify and prosecute a course of abusive behaviour over time. However, some areas of practice were reported to remain focused on single and/or 'serious' incidents. Non-Harassment Orders (NHOs) can contribute to safety and the child aggravator has potential to reflect the harm to children and non-abusive parents. Participants felt that there could have been enhanced application of DASA and its provisions in relation to many of their cases; many felt their 'whole story' was not heard. This suggests: extending the use of DASA to more domestic abuse cases; ensuring investigations and prosecutions reflect victims' and witnesses' 'whole experience', including psychological harm; proactively using DASA's provisions/orders and considering their potential scope; ensuring sentencing reflects the seriousness of crimes, particularly in summary court; and enhancing attention on harm to children. Relatedly, how children are currently recognised as victims of domestic abuse in law may benefit from further consideration. The interactions between child contact, when parents separate, and the protective orders of DASA, was also identified as requiring further investigation.

⁶⁹ Using the principles of the Victims and Witnesses (Scotland) Act 2014 (S1 and 1A) outlined in Chapter 1.

⁷⁰ As per the Vision for Justice Way Forward.

Ensuring safety of victims, witnesses and associated children

The safety of victims and witnesses in this study was not ensured during and after investigation and proceedings⁷¹, reflecting abuse survivors' safety concerns in pre-pandemic studies (e.g. Brooks-Hay et al., 2019). As detailed in the report, victims in this study said that most perpetrators continued to exert control and instill fear through the court system, despite DASA reforms. Safety was the major concern of victims and witnesses and the main reason for reporting domestic abuse; they expected that reporting would stop abuse and provide safety for themselves, family and friends⁷². This study, although based on a small sample size, provides strong qualitative evidence of secondary and repeat victimisation, intimidation, and retaliation towards study participants⁷³. Though some participants felt safety could only be achieved through imprisonment, NHOs did offer some victims temporary protection and increased confidence that further abuse (i.e. expected breaches) would receive a more effective police and prosecution response. However in the majority of examples in this study, NHOs did not include associated children, incurring risks for both women and children. Consequently, most participants appealed for NHOs to be considered for all associated children. Also, participants felt the scope of NHOs should be considered carefully – in terms of times and activity covered, and the need to include 'third parties'.

The involvement of victims and families in decision making

The Vision for Justice calls to embed trauma informed person-centred practices, where individuals and families are involved in decisions that affect them⁷⁴. This was an important need identified in this study. There were repeated reports of victims being excluded from decision-making and being unaware of the decisions that were made. The involvement of relevant family in decision making was important to victims and witnesses in this study. Whilst they felt domestic abuse affected all family members, including children, adult children, new partners, parents etc., they felt that the relational aspect of abuse was inadequately recognised in decision-making, particularly in the way that their safety was interconnected. Child cited witnesses themselves reported not being party to or understanding decision-making and that justice professionals did not understand the impact of decisions on the children's lives. Participants' calls for change included improved collaboration between the police, procurator fiscal and the victim/witness to build the case together and for sheriffs and judges to listen to the impact on victims and families before making sentencing decisions. Participants stressed how the safety and needs of the whole affected family needed consideration in decision-making throughout the case.

Victim-centred investigations and proceedings

Victims and witnesses in this study felt they were on the margins of 'their case' and felt excluded from the point of giving their statement; such marginalisation in proceedings echoing wider pre-pandemic research (Brookes-Hay et al., 2019). They felt they had no say in what happened next, yet they had more to contribute to 'build the case' once the

⁷¹ Counter to principles set out in sections 1 and 1A of the Victims and Witnesses (Scotland) Act 2014.

⁷² DASA Policy Memorandum Para 152.

⁷³ Reflecting the safety concerns of rape and sexual violence in Brooks-Hay and colleagues (2019).

⁷⁴ Vision for Justice Transformational Priority.

initial trauma of the incident/statement had passed. They felt their evidence (or 'story') became a tool in a process over which they had little control. They felt uninformed of next steps and decision-making in relation to proceedings and court appearances. They identified the emotional costs of going to court (reflecting findings from Forbes 2019) and in particular from ⁷⁵ that the law was on the perpetrator's side and it was an 'uphill battle' for the victim. They outlined how they felt the perpetrator had greater representation, power and support during the court processes than victims and witnesses. This echoes the experiences of gender based violence victims in Brookes-Hay and colleagues (2019), who felt the system was weighted to the perpetrator. Similarly, participants spoke of the 'emotional costs' of a lengthy process, again echoing Forbes (2019), and of repeated periods of waiting (for proceedings to begin; to appear in court; and for cases to close). They also noted that justice professionals failed to comprehend the depth of the emotional impact caused by the process and the abuse. Suggestions from participants in this study for victim-centred change included: giving evidence soon after reporting; having someone 'on their side', representing them; removing both adult and child victims/witnesses from the adversarial court arena; early 'closure' for victims/witnesses; and access to immediate and ongoing trauma recovery support for victims and associated children.

Timely and clear communication⁷⁶

The lack of timely and clear communication was a major issue for participants in this study; an issue undoubtedly impacted by COVID-19, although also identified in earlier studies. Victims and witnesses in this study described struggling to find out what was happening in the investigation or proceedings and a lack of effective communication from justice agencies⁷⁷ as detailed in the Chapters 3-6. This impacted victims' and witnesses' sense of safety, control and choice and undermined trust in the system. Many spoke of feeling powerless, again echoing Forbes' study (2019). Specialist advocacy and support workers played a key role in enhancing communication, supporting access to information and promoting understanding. However, participants in this study echoed young survivors in the Everyday Heroes report (Houghton and MacDonald, 2018) appealing for improved information and communication processes for victims/witnesses. There were repeated suggestions from adult and child participants to have a single named justice contact for their court case, to counter repeated difficulties by many victims to access even basic information.

Access to appropriate support during and after the investigation and proceedings⁷⁸

As detailed in chapters relating to the court journey, evidence from this study identifies specialist (domestic abuse) support and advocacy workers⁷⁹ as the most significant mechanism to maximise victims' and witnesses' choice, trust and safety, and help them navigate the court process. This was found for both adults and children. The relational nature of these services enabled ongoing support with a single named worker, supported

⁷⁵ This was a commonly used phrase by participants alongside the need to battle/fight for their rights.

⁷⁶ A Vision for Justice transformational priority.

⁷⁷ Also found in Brookes-Hay and Colleagues (2019).

⁷⁸ As per principles set out in sections 1 and 1A of the Victims and Witnesses (Scotland) Act 2014.

⁷⁹ In this study all such cited services were provided by ASSIST, EDDACS or Scottish Women's Aid.

by trusting relationships and caring, victim-centred support. However issues remain around access to advocacy and support, including in relation to timing, remit, geographical reach, and duration of support. The limited duration and remit of advocacy and support provision did not fully meet needs identified by participants for short and longer term trauma recovery, wider mental health and rights support. Nor did it cover all family members who were affected by the case. Participant suggestions included early access to support for all affected children, not just the child cited witnesses, to continue for as long as they need it. Another suggestion was for holistic ongoing, 'wrap around' support for victims and witnesses from initial reporting to post-court, including times when many felt they were particularly vulnerable and/or were ready for specific support to move on with their lives (trauma recovery, safety, rights, benefits, careers, etc..).

Trauma and domestic abuse-informed responses

Scotland's *Vision for Justice* (2022) transformation priorities are that justice services, third sector partners and the legal profession must be person-centred and trauma-informed⁸⁰. This would be an important step towards improving responses in relation to needs identified by victims' and witnesses' in this study. Participants reported few encounters with justice professionals where they felt their needs were central or the main driver for decision making – particularly in court processes, including opportunities to build trust, respect, collaboration, and a sense of safety – were consistently exercised by professionals other than those in the third sector. Opportunities for victims and witnesses to experience a sense of choice and empowerment, key aspects of trauma recovery, were limited. Positive encounters made a significant difference, such as: the police officer stating how serious she was taking the case; the reassuring chat with the procurator fiscal (PF) before giving evidence; the court witness service saying what a strong woman the victim was; interjections by the PF and Sheriff. Negative encounters, such as defence agents making them feel to blame and disbelieved were re-traumatising. Overall, child and adult participants reported a general lack of understanding and empathy in the system in relation to their experiences of domestic abuse and its impact on their lives. An oft repeated statement was that justice professionals did not understand the impact of abuse and needed to. Specific suggestions for change included that defence lawyers should not be allowed to make them feel 'horrible', 'small' and 'call them liars'. Many felt that responses throughout the process could be more tailored and sensitive to the realities of domestic abuse and its effects, and to their particular position (e.g. as a child, a man, a vulnerable young woman but also geographically and professionally).

Recognising the impact of domestic abuse

Impacts of domestic abuse described by participants included all the relevant effects identified in DASA, including ongoing fear, alarm and distress; effects on health and well-being and relational impacts on those around them. Engagement in the justice process itself was a source of further harm and distress for those involved in this study, with varied and far reaching effects. While the nature of distress and harm varied in nature and significance, it was often determined in part by the type of abuse, the length of the court process, experiences at court, the actions of those responsible for abuse, and outcomes of

⁸⁰ Training for justice professionals as part of Scotland's National Trauma Training Programme is being developed.

court. Effects of abuse and the court process intersected with cumulative impacts on many aspects of individual's lives, including: employment; families; wider relationships; mental health; physical health; housing; schooling and community. Young victims (under 18 when domestic abuse began from a 'partner') outlined particular vulnerabilities and impacts, suffering abuse at a key transitional time of their lives. Parents expressed concerns about maintaining their caring and nurturing relationships with their children. Their resilience and parenting efforts under pressure were described in the study but they felt were not adequately recognised nor supported through justice and other agencies' responses and measures. Children described impacts on themselves but also how they recognised and responded to their mothers' or siblings' well-being. Many participants expressed concern about falling of a 'cliff edge' in terms of support (and protection) once the court case ended and most spoke to researchers about seeking further support. The need for holistic and therapeutic support from the moment domestic abuse comes to the attention of any agency, throughout and beyond any contact with the criminal justice system, was expressed by many victims and witnesses, in relation to themselves, their children and families.

Sharing power with adult and child victims and witnesses

Key tenets of both the The Vision for Justice in Scotland and Scotland's *Equally Safe* strategy are to share power with those with lived experiences of trauma and domestic abuse and to ensure victims and witnesses are at the centre of both policy and practice change, including service co-design and active participation and collaboration⁸¹. It seemed fitting, therefore, to finish the report with perspectives from study participants on the ministerial duty in the Domestic Abuse (Scotland) Act 2018 'to provide information about the experiences of witnesses including witnesses who are children (S14(2)(f))'.

Participants described feeling empowered through the opportunity to be involved in this research, despite it being a difficult experience. They felt that Ministers hearing their views was crucial, that Ministers needed to actively listen to victims, hear directly from them and be aware of the impact of national decisions on victims' lives. Of particular importance was involving victim-survivors to ensure change happened:

I think more people that have this voice, to be able to help make a difference, is what's needed, so anything I can say that might change something, then great.
(Adult 4)

Children and young complainants felt that it was particularly important, and less likely, that Ministers would listen to children and young people and involve them in making change. As one child witness explained:

I think just kind of listen to young people. Because they might not be adults or older people or people in charge but they still have valuable points and you still need to listen to them. So if they say that you could actually do this to make something better for everyone else then they shouldn't just go, 'Oh, you're a child, that's not a

⁸¹ See, for example, [The Vision for Justice in Scotland](#), p.30.

valid idea.' I think they should listen to them. (Child 3)

Participants' key messages to the Minister were the urgent need to radically improve the criminal justice response to domestic abuse, to use the new Act more effectively and to involve victim-survivors in such change. Key themes emerged of enhancing justice, safety and support, encapsulated here through quotes from an adult, young complainant and child (and described throughout the report):

You [the Minister] need to restructure the whole thing from start to finish... More support is needed for victims that do stand up and speak out, and courts' decisions need to think about the victim's safety after the courts have finished. (Adult 4)

Stuff needs to change. It's not good enough. And especially for the younger girls. I mean, it's not fair for you to constantly be battling...even years after it's all happened, it's not fair. You need to have more support, you need to have a routine and all that. You need to just...not even be left alone, 'cause the minute you're left alone your mind starts going all over the place, that's when you feel it .(Young Complainant 1)

Make sure people have got the time they need to prepare, because it does take a lot to kind of wrap your mind around it, and really, like, take into consideration what you're about to do. Because it can be really stressful, and have a big impact on people, and really make sure they have someone there to talk to. (Child 4)

Participants felt Ministers had a specific role to diminish the power of the perpetrator and empower adult and child victims and witnesses through improved public awareness of DASA, clear messaging about domestic abuse and reassurance of an enhanced criminal justice system response. Several victims/witnesses suggested clear national messages about DASA, what amounts to criminal behaviour and some felt education on healthy relationships was also important. Victims and witnesses required reassurances (and proof) that, should they report, the criminal justice system (police, COPFS and courts) would take victims and witnesses seriously, make perpetrators accountable, and protect and support adult and child victims and witnesses. This is exemplified by a participant's request whose own situation was exacerbated by her migrant status, and the additional control this afforded her ex-partner:

The Minister should make sure the men who feel they are powerful – of course, false power – or they think that they can do anything they want to do and act like thugs, and they can actually make their wife and children suffer, the message should make sure that men do not have this false attitude...make sure that the women actually have power, all this has to be clear to the woman that, you know what, you're not alone, we protect you (Adult 5).

Finally, adult and child victim-survivors felt they themselves should empower others experiencing domestic abuse, demonstrating immense strength, empathy and kindness. Despite the criticisms of the criminal justice system contained in this report, many messages from adults and children to other victim-survivors were to report abuse, as they

felt it was the right and only thing to do. Key messages were to keep going, to be strong, to stand their ground and to know they will get through it and move on. This report ends with supportive messages from an adult, young complainant and a child reflecting common empowering messages to others:

Try and remain calm, positive and powerful and you'll get there ... At the end of the day, they're, women haven't done anything wrong, it's the men that do wrong ... And it's the men that are there to get questioned and sentenced (Adult 3)

Tell them to keep their head high and keep yourself right. (Young Complainant 4)

Like, but it'll be hard, but you will get through it. You just need to put up a brave face, but it's okay to show emotion and know that you can get through it. (Child 4)

Appendix 1: Research Questions

Research Questions

The research questions are in bold with the suggested topics from Scottish Government underneath. These were considered with woman and child survivor expert consultants and developed into interview topic guides and workbooks – see appendices 3 and 5.

For children who have been cited witnesses in a domestic abuse court case or to whom the DASA child aggravator applies:

- 1. What were children’s expectations of going to court? Were these met/not met?**
- 2. How do children describe their ‘journey’ (in their own words) through a domestic abuse court case?**
 - How did they feel about the ‘journey’ through the court case overall? Was it a positive or negative experience? Why?
 - Did they go to court? What was the experience like?
 - Did they give evidence by commission^[1]? How did their experience of giving evidence (e.g. pre-recorded, live link) make them feel?
 - What are their experiences of telling their story? Did they feel able to? How do they feel when telling it? How many times/to how many people did they have to tell it?
 - Did they feel included/listened to/respected/believed? If not, why not?
 - Were their information and communication needs met? Did they understand what was happening/what was going to happen?
 - Did they feel safe at any/all stages of the court process? If not, what made them feel unsafe?
 - Did the process feel ‘trauma-informed’? Did they feel cared for by the professionals in the justice system? Was the support they received helpful?
 - Did they feel that what they wanted was taken into consideration?
- 3. How do children describe the impact that going to court had on them?**
 - How did they feel when the case was over? Was it what they wanted/expected?
 - Overall, did they feel that going to court had made their situation better or worse, or made no difference?
 - What was the most helpful thing that happened/someone did? What was the least helpful thing that happened/someone did?
 - What do they think could have made their court experience better/easier for them?
- 4. In what way, if any, did COVID-19 affect children’s court experience?**
 - What was their experience of remote courts like?
- 5. How might the court process better support child victims and witnesses?**

For adults who have been victims/witnesses in a domestic abuse court case:

1. What were adult victims/witnesses expectations of reporting domestic abuse and going to court? Were these met/not met?

2. How do adult victims/witnesses describe their experience of a domestic abuse court case?

- How do they describe their experiences in court? Did they feel that they were taken seriously by those in the justice system? At all stages? (e.g. when reporting emotional abuse and/or a pattern of abusive behaviours)
- Did they feel that they were well-informed/listened to/respected/in control? Was what they wanted taken into consideration?
- Were their communication and information needs met? If not, why not?
- To what extent do victims/witnesses feel that the case brought against the accused accurately reflects the abuse that they experienced? If not, why not?
- Did the process feel 'trauma-informed'? Was the support they received helpful?
- What were victims/witnesses' experiences of courts granting/not granting Non-Harassment Orders?
- Where relevant, what are victims/witnesses' views of the child sentencing aggravation? Did they feel that the impact on their children (where relevant) was acknowledged and/or informed court decisions?
- Where participants have children, did they feel that their best interests were taken into consideration? What happened?

3. What are the perceived impacts of the court experience on victims/witnesses?

- Did going to court make a difference for the victim/witness? If so, how?
- Do victims/witnesses feel safer as a result of reporting the abuse and the case going to court? If not, what could have helped them to feel safer?
- Where the victim/witness has a dependent child, what impact do they think the court case had on their child(ren)? And/or their family as a whole? What could have been done to make it easier for their child(ren)/family?
- What do victims/witnesses think could have improved their justice experience?

4. How do adult victims/witnesses think COVID-19 affected their experience of the justice system?

- How do victims/witnesses describe their experiences of remote courts?

5. How might the court process better support victims and witnesses?

Appendix 2: Overview of roles and responsibilities

Roles and Responsibilities of key justice and victim/witness agencies across the criminal justice journey⁸²

Reporting, investigation and prosecution of domestic abuse

There is a detailed [protocol](#) of procedures and practices that will be followed by Police Scotland and COPFS in the investigation, reporting and prosecution of domestic abuse.

The police respond to domestic abuse reports; take statements; carry out the initial investigation (gathering evidence and witness statements); report the case to the Procurator Fiscal⁸³ with draft charges where there is sufficient evidence of a crime (see the [Police Scotland/COPFS joint domestic abuse protocol](#)). The police role is to protect members of the public and prevent, detect and investigate crime. Where a child is present, attending officers assess a child's general wellbeing, risk and safety, make all efforts to speak with a child and establish if they are a witness to the 'incident' or/and if there is a child protection concern⁸⁴. Consequent action might include an inter-agency referral discussion (IRD); Joint Investigative Interview conducted by trained police officers and social workers⁸⁵ or/and a referral to the Children's Reporter (SCRA)⁸⁶. The police notify victims of the decision to report a case to the Procurator Fiscal and also whether the accused is being kept in custody meantime or liberated on an undertaking to appear at court. The Procurator Fiscal can instruct the police to carry out further investigation (if they feel more evidence is required).

The Procurator Fiscal (PF, a prosecution lawyer working for [COPFS](#), Scotland's public prosecution service) decides if there is sufficient corroborative evidence, that is evidence from at least 2 sources, to establish both that a crime was committed and that the accused committed the crime and whether it is in the public interest to prosecute. If there is sufficient evidence, there is a presumption in favour of prosecuting in domestic abuse cases. Once a decision is taken by the Procurator Fiscal to either prosecute or not, it is COPFS who will notify the victim of decisions and outcomes in relation to the case from that point (see VIA below).

⁸² Participants in the study found it difficult to discern different roles, they connected most criminal justice professionals to 'court' and felt the system was confusing.

⁸³ This protocol outlines the procedures and practices that will be followed by Police Scotland and COPFS in the investigation, reporting and prosecution of allegations involving domestic abuse. Joint domestic abuse protocol | COPFS

⁸⁴ See paras 12-19 of the Joint protocol

⁸⁵ SCIM Scottish Child Interview Model is being piloted in several local authorities, prioritising solemn cases. It focuses on best evidence at the earliest opportunity through pre-recorded 'evidence in chief' – the aim is to remove the need for children to give evidence in court and reduce trauma

⁸⁶ The Children's Hearings (Scotland) Act 2011 introduced a specific ground of 'close connection with a person who has carried out domestic abuse'; in 2021/22 this was the ground of referral for 1811 children.

When a decision is made to prosecute, the PF considers all the facts and circumstances of the case, and decides what charges the accused should face, based on the evidence. The PF will also consider what forum and court the case should be heard in, whether as a summary case in the Sheriff Court or as a solemn case which is likely to proceed before a jury in either the Sheriff or High Court. In any case where there is evidence to support a prosecution under DASA S1, the PF will consider whether there is evidence to support adding a child aggravation to the charge in terms of S5 of the 2018 Act. Only 1 source of evidence is required to prove a child aggravation. COPFS cite witnesses for the prosecution. Where the accused is reported in custody or by way of an undertaking, the PF also decides on whether to oppose bail or to not, and if not, whether it is appropriate to seek additional special bail conditions, such as requiring the accused to reside at an alternative address and preventing the accused from approaching or contacting the victim (referred to as the complainer) or other witnesses. Decisions on bail and bail conditions are made by the Sheriff after hearing from the PF and the defence agent (the accused's lawyer).

Preparation for court

All domestic abuse cases, and cases involving child witnesses or other vulnerable witnesses, are referred to the [Victim Information and Advice](#) (VIA) service within COPFS. VIA is responsible for providing information about the court process and keeping the complainer, child witness or other vulnerable witness updated on the progress of their case, including bail decisions, hearing dates, verdicts and sentences. VIA's role also involves contacting vulnerable witnesses in advance of a trial to explore appropriate special measures with them to assist them in giving their evidence at trial; VIA then apply to the court for these special measures (see below). If VIA do not hear from the victim/witness they will still apply for the standard special measures they feel are appropriate. VIA can also pass on information from the witness to the PF, including the witness' views on a non-harassment order. VIA also provide advice on other support available and can refer the complainer to Victim Support Scotland (VSS) or/and to specialist support or advocacy services, if available. They may share information with such services about the progress and outcome of the case.

There are additional support arrangements that can be made for victims and witnesses who feel vulnerable such as entering the court building through a different entrance, waiting in a separate room, and requesting comfort breaks when giving evidence. There are [Special Measures](#) to help victims and witnesses when they are giving evidence. As all domestic abuse complainers (victims) and child cited witnesses are deemed vulnerable witnesses in terms of section 271A(5)(a)(i) of the Criminal Procedure (Scotland) Act 1995 they are automatically entitled to the use of standard special measures⁸⁷ when giving evidence, these are:

- a screen in court that obscures the witness from the perpetrator
- a supporter– this can be a member of the VSS court witness service or a named person can be requested (e.g. friend, relative, support worker)

⁸⁷[Vulnerable victims and witnesses \(special measures\)](#)

- CCTV link when the witness can give live evidence from a secure location outwith the courtroom, in the same court building or in another location
- The Sherriff/judge makes the decision about what is allowed in each case

A letter from VIA specifically invites eligible victims/witnesses to make contact to discuss their preferences prior to any application for Special Measures being submitted to the court, victims'/witnesses' are directed to further information on the website in this letter. VIA also advises what special measures will be automatically requested on their behalf should they prefer not to engage in any discussion⁸⁸. VIA's role is to advise all vulnerable witnesses of the available special measures and discuss the witness' options and preferences with them. Support services may also inform VIA of victim and witnesses' views about special measures. VIA will then submit Vulnerable Witness Applications to the court to seek/arrange the relevant special measures.

There may be cases where VIA/COPFS identify that a non-standard measure is desirable, based on information in the police report or from the witness. If non-standard special measures are required for a particular witness in a case then COPFS VIA staff will discuss those with the complainer directly and COPFS will apply to the court to grant the non-standard special measure. These are evidence by prior statement, evidence by commissioner and closed courts (members of the public not allowed in whilst victim/witness giving evidence):

- 'Evidence by statement' means that the sheriff/judge may allow the statement given by the witness to the police to form part of the evidence. The statement will be read (if it is a written statement) or played (if it is a pre-recorded statement) in court at the trial. This statement cannot form all of the evidence so the victim/witness will still have to give some evidence at the trial or at an Evidence by Commissioner hearing, including giving evidence under cross-examination.
- 'Evidence by Commissioner' is when the sheriff/judge allows the victim/witness to give all their evidence away from the courtroom before the trial takes place. This will include questioning by the lawyers representing the accused. The evidence will be filmed, and the recording will be played in court at the trial.

The Vulnerable Witnesses (Criminal Evidence)(Scotland) Act 2019 created a rule for child witnesses under 18 to ensure that they will be allowed to have evidence pre-recorded in advance of the trial in the most serious cases, usually by 'evidence by commissioner'. In High Court cases, evidence by commissioner is likely take place in relation to child witnesses⁸⁹, this doesn't apply in summary cases.

At Court

Victim Support Scotland's Court Service can help witnesses with court familiarisation visits, information about court/special measures and practical help. They can sit in court with witnesses in waiting rooms and they can act as the court supporter while the witness gives evidence, in terms of special measures applications. VIA make arrangements with

⁸⁸ Different default special measures apply depending on the age of the witness – but these are defaults in the event that the witness does not request different standard measures

⁸⁹ In compliance with the 1995 Act s271AZA

SCTS and VSS where required to support witnesses giving their evidence, including arranging a separate entrance or waiting room for the witness at court.

At court, the PF prosecutes the cases in the public interest in the summary courts and the Sheriff and Jury courts. Advocates Depute prosecute in the public interest in the High Court. PFs will, wherever possible, seek to meet with complainers and children who are witnesses in domestic cases, at court, on the day, before the trial starts and the witnesses give evidence. In some solemn cases, the PF may meet witnesses to find out more about the alleged crime ('precognition') before a case goes to court.

The defence agent represents the accused. If the accused pleads not guilty and the case goes to trial they will ask witnesses questions on behalf of the accused (cross-examination). The accused person is entitled to the presumption of innocence and the prosecutor must prove the case against the accused by leading evidence before the court. Sometimes an accused person may offer to plead guilty to one or more charges on the condition that the prosecutor accepts a plea of not guilty to other charges, or that the charges are amended in some way. This is known as plea negotiation. The prosecutor will consider any offer by an accused person to plead guilty to certain charges on the basis of the facts and circumstances of the individual case and will consider if it is in the public interest to accept the offered plea. A plea of guilty represents an admission and an acknowledgement on the part of the accused that they accept responsibility for their conduct. It also means that complainers and witnesses will not need to give evidence in court. It is entirely up to accused if, when and at what stage they wish to tender a plea of guilty or not.

Judges and Sheriffs sitting in the Sheriff and High Court are legally qualified and act independently in considering cases and making decisions. In summary criminal courts in the Sheriff Court, criminal cases are heard at trial and decided upon by Sheriffs, who will sentence the accused if they plead guilty or are convicted after trial. In solemn proceedings, cases proceed to trial before a jury of 15 members of the public who decide whether an accused person is guilty or not. A Sheriff in the Sheriff Court and a Judge in the High Court provides the Jury with legal directions in the case and if convicted, sentences the accused.

In domestic abuse cases if an accused is convicted, the prosecutor advises the court of any views expressed by the complainer in relation to whether they wish a Non-Harassment Order (NHO) to be imposed, but the decision on whether or not to impose a NHO is made by the Sheriff. Following conviction, the court must consider whether to make a NHO and must make such an order for the victim or/and children⁹⁰, unless the court is satisfied that there is no need for them to be protected by such an order. A letter from VIA informs the victim/witness of the court outcome including any NHOs.

The Scottish Courts and Tribunal service (SCTS) provide administrative support for the Scottish Courts and judiciary⁹¹ and are responsible for the operation of courts across

⁹⁰ A NHO can be applied in DASA or DA aggravated cases and can, in addition to the victims, include a child usually residing with the victim/perpetrator or both, or/and a child subject of a s5 child aggravator.

⁹¹ The duties of SCTS/staff are set out in part 4 of the [Judiciary and Courts \(Scotland\) Act 2008](#)

Scotland (i.e. property, services, officers, staff), taking account of the needs of those involved in proceedings, for example, ensuring there are separate waiting areas. Their role includes fixing dates for court hearings.

Specialist support and advocacy services

[ASSIST/EDDACS](#) are specialist domestic abuse support/advocacy services aiming to ensure victims/witnesses are safe, informed and supported throughout their involvement with the criminal justice system. They work in partnership with justice agencies mentioned. They support victims of domestic abuse where a person has been charged or is likely to be charged, and child cited witnesses are involved. ASSIST offers support to victims in over a third of local authorities and has a children/young person support/advocacy team and a young adult advocacy service; EDDACS offers support to adult female victims and is part of Edinburgh Women's Aid which also offers a children/young persons' support service. Both services contact the victim after receiving referrals from police (mainly), or VIA or other services/self-referrals. Their focus is on risk assessment, safety, information and support. A named key worker discusses the victim's/witnesses' views on risk and safety, court, bail conditions, safety measures and shares the information with VIA/PF, including information on victim's/witness' views and safety regarding NHOs. They keep the victim/witness updated on case progress and outcomes through access to the (restricted) Scottish Courts information system⁹² and sometimes VIA. They inform victims and child cited witnesses⁹³ of the range of special measures options and pass views onto VIA/COPFS. They discuss victim's/witnesses' views of the outcomes and any further support needs, signposting to other services.

⁹² SCTS portal

⁹³ To note that ASSIST has specific court advocacy services for children and young people whereas EDDACS does not but links closely with Edinburgh Women's Aid children's service and provides such services where possible.

Appendix 3: Example Topic Guide (Adults)

- Introductions
- Reassurances
- Checking understanding of the project and the interviewees potential contribution
- Consent: verbal and written
- Share workbook/slide images and check if/how 5 steps reflect the journey to court that interviewee experienced to shape interview

SECTION 1: Sharing your story (giving a statement /evidence)

- 1. Can you start by telling me about where your journey began?**
 - Acknowledge abuse before reporting and the time (years/months) before came to report it to police
- 2. Can you tell me about reporting what had happened to the police?**
- 3. What was it like to give a statement?**
 - Where and when did that that happen?
 - Tell me about the people who were involved? (the police, the response/attitudes, others friends/family)
 - How did that feel? (heard/ respected/safe/ believed or not)
 - What, if anything, made that feel safe/unsafe?
 - What if anything, was helpful/ unhelpful?
- 4. (If relevant) Can you tell me what it was like for your children [or others present] to give a statement**
 - Did you feel they were properly supported?
(Further prompts as above)
- 5. Did you understand what would happen next?**
 - Did you know what was going to happen to your statement/ what it was for
 - After your initial statement - did you have to give another statement?
(If yes – how did you feel about that? If no – would you have wished to?)
- 6. What happened next for you (and your children)?**
- 7. What happened to the person who hurt you [or their language to refer to them] at that stage?**
 - Arrested?
 - In custody?
 - Special bail conditions?
- 8. Looking back at the process of giving a statement (and/or pre-recorded evidence), is there anything you wish had been different?**

SECTION 2: Finding out about court

Mention cited witnesses, charges brought if known, & no. cases (from agency records)

- 1. Can you tell us about the first time you heard about going to court?**
 - Who told you? When was that?

- How did that feel? Was there anything you were worried about?
- (If not mentioned) Can you tell us about the formal 'citations' (requests to attend court) that you received?
 - How did you receive these
 - What was that like?

2. How did you find out about the charges that were being brought?

- Did you understand the charge?
- Did you feel that the charge brought against the accused properly reflected the abuse that you had experienced?
- This is where they may refer to more than one case and multiple charges.
- Did you know about the (S1) charge under the new DASA law – was this considered? (Range of abuse, course of conduct, over time)
- (If relevant), did you know about the child aggravator (S5)? If a child adversely affected etc. by DA, was it used?

3. When you first heard about court, what did you expect would happen? (Was that different to what did happen)?

- To what degree did you 'trust' the process at this stage?
- Did you get help to understand what would happen at court?

4. What, if anything, felt helpful/ unhelpful about the way you found out about going to court?

- Looking back, is there anything you wish had been different?

SECTION 3: Preparing for court

1. How prepared did you feel about going to court?

- How did you find out about what would happen at court?
- Did anyone help you get ready?
- How did you feel about the information you received about going to court? Was there anything else that would have been useful to know? Did you get a chance to visit the court?
- Were you asked about special measures? Or did you ask? For you/other witnesses? (experience of Victim Information Advice – VIA? Others e.g. support and advocacy?)
- What, if anything, felt helpful or made it easier?
- What if anything made it harder?

2. What happened for you and your family in the run up to court?

- How safe did you feel in the run up to court?
- [if relevant] How safe did your children feel in the run up to court?
- Did you experience any changes (or delays) to the plans for court [proceedings]?
- Is there anything you wish had been different? Is there anything that might have helped?

3. What did you hope or expect to happen by going to court?

SECTION 4: Being at Court (and hearings)

1. **Can you tell me about what it was like being at court? (clarify if remote or in person – clarify how many times they've been to court)**
 - Was it like how you had expected it to be? Why?
 - How did you get there? Did you go on your own? Was there anyone with you on the day to support you?
 - What was it like being in the building/ online? What happened when you were there?
 - How safe (or in control) did you feel at court?
 - Did anyone support you there? Tell me about the witness service role?
 - Did you feel like your wellbeing, needs and safety was considered?
 - What, if anything, made you feel supported or unsupported?
2. **Did courts arrange any supportive arrangements for being at court? e.g. separate entrances and were any 'special measures' in place to support you to give evidence (screens; remote live link etc.)? any supportive arrangements for being at court? e.g. separate entrances**
 - How did you find this?
3. **If you gave evidence at court, what was that like?**
4. **Did you feel listened to and heard?**
 - Did you feel like your circumstances were understood?
 - How did you feel about how you were represented (PF role)?
 - How was the process of being cross examined (defence lawyer)?
 - Did you feel you were taken seriously?
 - E.g. (if relevant) were they supported to communicate?

OR If you didn't get a chance to give evidence, how did you feel about that?

5. **(If not mentioned) Can you tell me about the different people involved and the roles they played?**
 - Prompt: PF (and VIA); sheriff; witness service, defence lawyer... who else?
 - How did you experience them/ how did they make you feel?
6. **(Where relevant) Can you tell me what it was like for your children/other witnesses to go to court**
 - Did you feel like they were properly supported?
 - Arrangements? Special measures?
 - What impact did this have on them (see prompt questions above)
7. **Can you tell me about leaving court and how you felt after?**
8. **Was going to court different to what you hoped or expected?**
 - Is there anything you wish had been different
 - Was your situation/DA, wellbeing and safety considered (if not already asked)
 - What if anything was helpful/ unhelpful?

SECTION 5: Sentencing, Impact and Use of the new law and provisions

Have the sentencing details in advance if possible, per charge, case details, mention time from start to finish of the case, number of hearings if known (from supporting agency)

- 1. What was the outcome of the court case?**
- 2. How did you find out about the outcome, the sentence?**
 - Did you have to wait a long time?
 - Who was there to support you at that time?
 - What, if anything, felt helpful
- 3. How did you feel about the final outcome/sentence?**
 - Did you understand the reasons for the outcome?
 - Did you feel that the outcome reflected the abuse you (and your children/others) experienced?
- 4. Reflections on the new law (DASA: includes recognising DA as a course of abusive behaviour over time; covers all forms of abuse, including psychological abuse, control, etc.; from April 1st 2019)**
 - If used, do you think this helped, any comments?
 - If not used, what do you think of the new definition/law? do you think this could have applied to your situation?
- 5. (Where relevant). Did you feel that the impact on your children/others involved such as friends/family members was acknowledged and/or informed court decisions?**
- 6. (Where relevant) We know that the law aimed to make sure that courts took into account harm caused to a child when sentencing and DASA introduced a new 'child aggravation' when a child was adversely affected by abuse (explain detail)**
 - Was a child aggravator considered in your case (by COPFS)? (may be covered earlier)
 - Did you feel the court process took into account harm to children?
 - Did you feel that harm to children was considered in sentencing?
 - What do you feel about this?
- 7. (Where relevant). What were your experiences of courts granting/not granting Non-Harassment Orders? Was it for you? You and your child(ren)?**
 - What do you think of the length and who it covers?
 - What do you think of this as a protective order for you (and your children, if relevant)
- 8. To what degree did you (and your family if relevant) feel like justice has been achieved?**
 - Can you explain?
 - What would you tell other women who were in similar situations and about to go to court?
 - What do you wish had been different?

SECTION 6: (Where relevant) Further COVID Context Questions

We're conscious that you were going through some or all of this process during COVID restrictions. Can you tell us what impact this made?

- What worked/ felt helpful? / And what was challenging or felt less helpful?

SECTION 7: Final reflections and impact

1. **Looking back now, how did the whole process of the court case impact on you (and - if relevant - your children, other family, friends)?**
 - What impact has it had on you? (And your life more broadly – i.e. both practical and emotional impacts)?
 - Are any of these impacts still with you (good or bad)?
 - Do you feel any safer because of court?
 - If not, what could have helped them to feel safer?
 - (Where relevant) What impact did the court case have on your children/ And/or their family as a whole?
 - What could have been done to make it easier for their child(ren)/family?
2. **What are the key things you think would make the court process better for other women/adult victims and child(ren) in the future?**
3. **Is there anything else you'd like to share/ that I haven't asked you?**
4. **What would your message be to the Government minister who is responsible for the justice system?** *(to explain – the government minister will be going to the Scottish Parliament next year to tell the members of parliament how things are working in the courts and how people like you experience it)*

ENDING and WRAP UP

- Clarify access to support and that worker will provide a follow up check-in – say when if you know
- Explain what happens next with research (timescales and feedback commitment)
- A chance for questions
- What will you do now to relax?**
- Thank you and acknowledgement of their contribution and how important it is

Appendix 4: Helping you feel safe in an interview infographic

Helping you feel safe in an interview



Taking part is always your choice. You can change your mind at anytime.



No interview can take part without your consent. And someone must make sure you understand what is involved



It is up to you what you tell us. You should never be put under pressure to talk about anything



You can take a break, skip a question or stop an interview at anytime



You will have access to support during the interview and someone will check in with you afterwards



You can change your mind about us using your words in our research up to 2 weeks after an interview



We will never use details that identify you in our reports or presentations



It is our duty to store information you share securely. Researchers follow strict UK GDPR rules



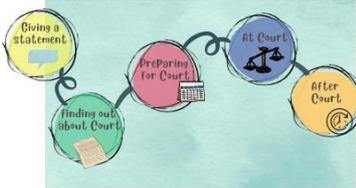
We only pass information on if something made us worry about you or someone else being seriously harmed



Our research will be made available to you when the project is over

Appendix 5: Example pages from booklet to support interview

We know everyone's court experience is different, and that it's never simple. But to help you in the interview, we worked with survivors of domestic abuse to help identify different steps of the process.



First steps

- Do these steps look like the ones you experienced?
 - Are there steps missing?
 - Are there steps that aren't relevant for you?
- What steps in this journey do you have something to say about?
- Are there steps in this journey you don't want to talk about?

The DACE Project

This interview is a guided conversation. That means that you are in charge and lead the way.

When we go through the journey we will stop at different steps and ask you questions.

Below are examples of types of questions we might ask

What helps you and others going through court ...

- To feel safe
- to feel listened to and heard
- to feel believed and taken seriously
- To feel supported
- To understand what is going to happen?

Which people make a difference?

- Who was involved
- How did you feel about them
- What was helpful
- What was unhelpful?

On the next pages you will also find questions about things which might happen at different stages of the journey. If it's helpful you can use them to help guide you through the interview or even write on the pages of this booklet.

After court



The DACE Project

- How did you find out about the outcome of the court case?
- How did you feel about the final outcome or sentence?
- Looking back now, what impact did the court journey have on you (and - if relevant - your children)?

Finishing off

The DACE Project

- What do you think would make the court process better for others?
 -
 -
 -
 -
 -
- What would your message be to the Government Minister responsible for the justice system?

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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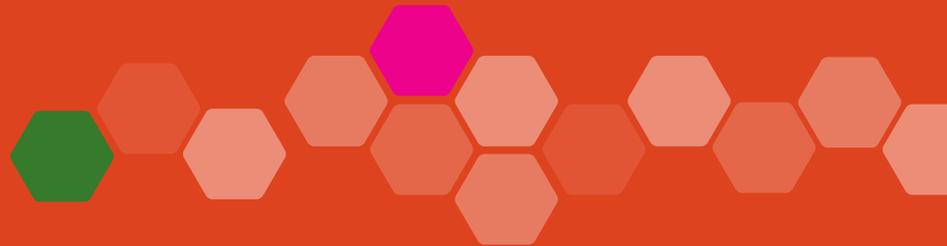
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