

Domestic Abuse (Scotland) Act 2018 – Interim Reporting Requirement

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Overview of Findings

The information collected to fulfil the Domestic Abuse (Scotland) Act 2018 Reporting Requirement provides an early indication of how the Act has bedded in since 2019.

The Reporting Requirement requires the publication of both statistical information relating to the progress and outcomes of domestic abuse cases in court and information about the experiences of victims and witnesses in domestic abuse cases, including child witnesses, as well as information about court business. The Reporting Requirement period covers the first three years of operation of the Act which is the period 1 April 2019 to 31 March 2022.

It is important to note that this is an Interim Report and presents a partial view of the data relating to the first three years of the Act and it is therefore too early to draw firm conclusions. In addition, for two of the three years covered by the Reporting Requirement, the justice system was significantly affected by the COVID-19 pandemic and this impacted on the statistics presented and the research undertaken, as well as the lived experience of victims of domestic abuse.

A central aim of the Act is to enable the prosecution of various types of abuse, including emotional and psychological abuse, which takes place over a period of time, under a new domestic abuse offence. Early indications show an increase in the use of the legislation over the two years for which statistical data is available. Criminal proceedings data indicates an increase in the number of people convicted of the new offence (from 212 in 2019-20 to 383 in 2020-21). Similarly, the figures show an increase in the use of the new statutory sentencing aggravation intended to reflect the harm caused to children by domestic abuse since the Act came into force, from 39 in 2019-20 to 90 in 2020-21 (around a quarter of all convictions for the offence). However, the impact of the pandemic makes it difficult to draw firm conclusions about the criminal justice statistics presented in the report.

The Act also provides for a number of associated reforms to criminal procedure, evidence and sentencing. These reforms, whilst not specifically focused on court procedures, are intended to help to minimise the trauma for the complainer. Research undertaken to generate information about 'the experience of witnesses (including witnesses who are children) at court' found that going to court was experienced as difficult and distressing for many of the victims and witnesses who participated in the research.

Overall, the evidence on victim and witness court experiences, and the criminal justice system as a whole, suggests the continued existence and/or the exacerbation (due to the COVID-19 pandemic) of known issues relating to the experiences of vulnerable witnesses at court; rather than new issues specific to or resulting from the Act. These included long delays; lack of communication, involvement or understanding of procedures; and the importance of kind and respectful treatment and availability of specialist support. It is important to note that

these findings are drawn from three small-scale research studies (69 research participants in total) and cannot therefore be generalised to all domestic abuse victims and witnesses. Small samples are fairly typical of research studies on domestic abuse due to their highly sensitive nature.

The research also sought to elicit the views and perceptions of victims and witnesses of specific provisions of the Act. Evidence on this was limited, in part due to a lack of awareness and understanding of the Act amongst victims. Indicative findings suggest that there were mixed views on the scope, application and protection offered by non-harassment orders, and other measures designed to address the harmful impact of domestic abuse on children.

A number of areas for improvement were identified in the research which included improved knowledge, communication and information sharing; increased use of remote and/or earlier pre-recorded evidence; quicker and more efficient processes; and, expanding support and ensuring safety for victims at all stages of the justice process.

Further statistical data will be provided in a Final Report in 2023 which will include information on the outstanding elements of the Reporting Requirement, including the statistics on the final year of convictions data, journey times through court and Non Harassment Orders issued under the Act.

1. Introduction

This report sets out the information that has been gathered by the Scottish Government to meet the statutory Reporting Requirement of the Domestic Abuse (Scotland) Act 2018 as set out Section 14 of the Act.

The Reporting Requirement requires the publication of both statistical information relating to the progress and outcomes of domestic abuse cases in court and information about the experiences of witnesses in domestic abuse cases, including child witnesses, as well as information about court business. The Reporting Requirement period covers the first three years of operation of the Act which is the period 1 April 2019 to 31 March 2022. The information that is required is as follows:

- The number of cases for the new domestic abuse offence and statutory aggravation where criminal proceedings are undertaken
- Where the offence is prosecuted:
 - how many occasions is the offence labelled as being aggravated by reason of involving a child in the committal of the offence
 - how many occasions is the offence provided as being aggravated in this way
- The number of cases for the offence where a conviction results
- The number of cases where a non-harassment protective order is imposed in favour of:
 - The direct victim of the offence
 - Children affected by the committal of the offence
- Average length of time in cases from the start of criminal proceedings to a finding or verdict as to guilt
- Information about the experience of witnesses at court including children
- Information from the Lord President on how court business is arranged, including in different areas or types of court, so as to ensure the efficient disposal of cases involving those sorts of offences.

The full Reporting Requirement is set out in [Annex 2](#).

The Reporting Requirement covers a period of three years from when the Act came into force (1 April 2019). The Reporting Requirement is being met in two parts:

- An 'Interim Report' (this report) which covers the statistical data (s14: 1,2,3) in part; information about experiences of witnesses at court (s14: 2(f)) in full, and information on court business (s14: 4) in full.
- A 'Final Report' which will cover the remaining statistical data. This will be laid in Parliament in 2023 once the statistical data for the year 2021-22 is available for analysis.

A detailed schedule of which data will be published in which report is provided in [Annex 3](#).

It is important to note that whilst the information in this report provides a vital contribution to the broader evidence base on the Act, it does not represent a full evaluation of the impact of the legislation. Neither of the years which the statistical data covers (2019-20 and 2020-21) are likely to be fully representative of its future use¹. The context within which the data and evidence was gathered was one of early implementation of the Act. Furthermore, two of the three years of the reporting period coincided with the COVID-19 pandemic. This significantly impacted on the workings of the justice system, associated services and the lived experience of victims/witnesses of domestic abuse. These factors are important context for understanding the circumstances in which the Act was implemented and the evidence presented in this report.

A full description of the legislation and the reporting requirement, and the context and background is provided in the next section. This includes a summary of the impact of the COVID-19 pandemic on the justice system and experiences of victims of domestic abuse. The reader is also directed to [Chapter 10](#) which provides a more detailed explanation of the scope and limitations of the evidence gathered for this report. Of particular note is the above context and a general observation that the small-scale and self-selecting nature of the samples (research participants) involved in the victim/witness research mean that it is not possible to know whether the findings are representative of the experiences of victims and witnesses in domestic abuse cases as a whole.

Whilst not explicitly required by the Reporting Requirement, evidence about victim and witness experiences of the justice system as a whole (i.e. from the point at which a report is first made to the police) that arose from the research is included (see [Chapter 7](#)) as it provides useful context to understand the findings on victims' and witnesses' 'at court' experiences ([Chapter 5](#)). It also reflects the fact that some participants found the system confusing, and that distinguishing between different stages, organisations and legislation/charges was problematic. In a similar vein, emerging findings from the research in relation to the Act ([Chapter 6](#)) and suggestions for improvement ([Chapter 8](#)) are also included.

¹ For example, the time-lag in cases coming to court following an offence means the figures for 2019-20 do not cover a full year. Similarly, the full course of conduct for charges under the domestic abuse offence needed to have taken place on or after 1 April 2019 for the charge to apply. Therefore there will have been a time lag before such crimes could be reported to the police and subsequently prosecuted in court, so 2019-20 does not effectively cover a full year under the Act.

2. Structure of the Report

The report starts with an overview of the legislation and reporting requirement, and the context and background in [Chapter 3](#). [Chapter 4](#) presents the statistical findings followed by the main findings from the research on victim and witness experiences of domestic abuse court cases in [Chapter 5](#). [Chapter 6](#) provides a summary of emerging findings relating to the operation of the Act from the perspectives of victims/witnesses in the research. [Chapter 7](#) provides a description of the common themes emerging from the victim and witness research concerning the wider ‘justice journey’, including key findings related to different victim and witness groups such as children and young people. Areas for improvement identified in the research are summarised in [Chapter 8](#). Information on court business is provided in [Chapter 9](#). The report concludes with a description of the methodology, scope and limitations of the evidence gathered for this report in [Chapter 10](#).

Terminology

Throughout the report, the Domestic Abuse (Scotland) Act 2018 is referred to as ‘the Act’. In some cases where the report references evidence sources it may be referred to as ‘DASA’.

The term ‘survivor’ is often used to describe people who have experienced domestic abuse. The Reporting Requirement requests information on experiences of ‘witnesses’. In this report, we mostly use the term ‘victims’ as victims are also witnesses. In some of the cases referred to in the research, the person accused of a domestic abuse offence was not convicted. The use of the term ‘victim’ is not intended to cast doubt or otherwise comment on the outcome of individual court cases and is simply used as a term to describe persons reporting to have experienced domestic abuse.

3. Context and Background

Policy and Legislative Context

The [Domestic Abuse \(Scotland\) Act 2018](#) came into force on 1 April 2019. This Act created a new statutory offence of engaging in a course of behaviour which is abusive of a partner or ex-partner.

The Act is intended to improve how the justice system responds to domestic abuse. The offence of 'abuse of a partner or ex-partner' is intended to ensure that the criminal law reflects that domestic abuse can often be a course of conduct which takes place over a sustained period of time and that a course of abusive behaviour can consist of both physical violence and threats which could have been prosecuted under previously existing laws, and psychological and emotional abuse which were much more difficult to prosecute under previously existing laws.

By enabling abuse of various types which takes place over a period of time to be prosecuted as a single course of conduct within a new criminal offence of domestic abuse, the criminal law better reflects how victims actually experience such abuse. It ensures that a course of conduct of entirely non-physical abuse of a person's partner or ex-partner is criminalised. [Annex 4](#) provides further detail on the conditions and criteria for the offence to apply.

Along with the introduction of the new domestic abuse offence, the Act provided for a statutory sentencing aggravation intended to reflect the harm caused to children by domestic abuse. The aggravation can be applied where the perpetrator uses a child in committing the offence; directs behaviour at a child in committing the offence; where the child sees, hears or is present when the abuse is taking place; or where a child is likely to be adversely affected by the perpetrator's behaviour. Where the aggravation is proven, the court is required to take account of this in sentencing the offender and state how the sentence differed from that which the court would otherwise have imposed. This ensures that the harm caused to children by the abuse of their parent or carer is formally recognised and recorded.

The Act also provides for a number of associated reforms to criminal procedure, evidence and sentencing. These reforms are intended to reduce the possibility of an accused person using the processes of the justice system to further exert control and influence over the complainer and help to minimise the trauma for the complainer while ensuring the proper administration of justice is achieved (as set out in the [Policy Memorandum](#)). The reforms include prohibiting the accused from personally conducting their own defence or precognition of the complainer and providing for a presumption that the court shall impose a non-harassment order on a person convicted of domestic abuse unless, in the particular case, the court concludes such an order is not necessary to protect the victim.

The Reporting Requirement includes an obligation to report on statistical information, and to provide *“information about the experience of witnesses (including witnesses who are children) at court”* (Section 14; 2(f)) of both aggravated domestic abuse offences and DASA Section 1 offences. Additionally, the Act requires Scottish Ministers to request information from the Lord President of the Court of Session on how court business is arranged to ensure the efficient disposal of domestic abuse cases in Scotland’s courts. The reporting period covers three years from 1 April 2019, the day on which section 1(1) of the legislation came into force. The full Reporting Requirement is provided in [Annex 2](#).

Domestic Abuse in Scotland

The Scottish Government and statutory partners gather a range of data to understand the prevalence and trends over time of domestic abuse in Scotland. The latest statistics are presented briefly below. Further information is available in the links to the statistical bulletins described below.

Prevalence of domestic abuse in the Scottish population

The [Scottish Crime and Justice Survey](#) (SCJS) provides an estimate of overall prevalence of ‘partner abuse’² in the population, including unreported crimes. According to the SCJS in 2018/20, 16.5% of adults in Scotland said they had experienced at least one incident of ‘partner abuse’ since the age of 16. The proportion of respondents who in the 12 months prior to interview had experienced any partner abuse was 3.2%.

The survey shows that women (since the age of 16) were almost twice as likely as men to have experienced partner abuse (21.2% and 11.2% respectively), similar to the position in previous years. When looking at experiences of partner abuse in the 12 month period prior to interview, experiences of partner abuse were more common for women than men (3.7% and 2.6% respectively).

As noted above, a key aspect of the new legislation is the criminalisation of psychological abuse, including coercive and controlling behaviour, and, the recognition that domestic abuse is often a pattern or course of behaviour experienced over time.

The SCJS shows that **psychological abuse** is more commonly experienced than physical abuse. The proportion of respondents who said they had experienced at least one incident of psychological abuse since the age of 16 (14.6%) was higher than those reporting having experienced at least one incident of physical abuse (10.7%). 8.8% of respondents experienced both psychological and physical abuse. Victims were also more likely to have experienced psychological abuse than physical abuse in the 12 months prior to interview (2.9% compared to 1.3%). Women were

² Partner abuse in the SCJS is defined as ‘any form of physical, non-physical or sexual abuse, which takes place within the context of a close relationship, committed either in the home or elsewhere. This relationship will be between partners (married, co-habiting or otherwise) or ex-partners’. This definition is consistent with the definition adopted by Police Scotland in recording domestic violence. More information is available at [Scottish Crime and Justice Survey 2019/20: main findings](#).

more likely to experience psychological abuse than men (3.4% and 2.4% respectively). However, the proportion who experienced physical abuse did not vary between women and men (1.5% and 1.0% respectively).

In terms of a **course of behaviour**, the SCJS shows that partner abuse is often experienced on multiple occasions. Around two-thirds (67%) of those who experienced an incident of partner abuse in the 12 months prior to interview also experienced at least one incident prior to this period. Excluding those who responded “don’t know/can’t remember” or who did not wish to answer, around three-in-five respondents (59%) had experienced more than one incident.

Another key aspect of the Act is its recognition of the **harm caused to children** by domestic abuse. The SCJS shows that children were living in the household when a partner abuse incident took place in around a third of incidents (32%). In the majority of these cases (71%) the child was present in the most recent incident.

Domestic abuse reported to the Police

The definition of domestic abuse used by Police Scotland is:

“Any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct, and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse may be committed in the home or elsewhere including online”³.

Domestic abuse is an under-reported and often hidden crime. The SCJS shows that approximately one in six partner abuse incidents are reported to the police (16%).

In terms of recorded crime, statistics on [Domestic abuse in Scotland](#) reveal that just under 65,000 (64,807) incidents of domestic abuse were recorded by Police Scotland in 2021-22, a one per cent decrease from 2020-21 and the first year this figure has shown a decrease since 2015-16.

It is important to note that not all incidents result in a crime being recorded⁴. Of the 64,807 incidents of domestic abuse recorded by the police in 2021-22, 39% (25,226) included the recording of at least one crime or offence. This equated to approximately 34,000 associated crimes and offences (i.e. more than one crime or offence may be recorded for some incidents). The most frequently recorded crime or offence was ‘common assault’ which accounted for 32% of all crimes and offences. This was followed by ‘threatening and abusive behaviour’ which accounted for 21% of all crimes and offences (Scottish Government, 2022a).

³ See [Crime and justice statistics: domestic abuse - data sources and suitability](#)

⁴ The definition of domestic abuse used by Police Scotland, is not restricted to behaviour where criminal conduct has been identified and recorded. Police Scotland use the interim Vulnerable Persons Database (iVPD) to collate disparate pieces of information about incidents into a single file, allowing officers to build a narrative about people who have reported or been involved in an incident with a domestic abuse element. Some of these incidents will amount to criminal conduct, whereas others will not.

The latest [Recorded Crime National Statistics](#) show that there were 1,760 crimes recorded under the **Domestic Abuse (Scotland) Act 2018** in 2021-22, the third year this legislation has been in place. This was a 7% increase compared to 2020-21 (from 1,641 to 1,760) and a 5% increase compared to 2019-20 (from 1,681 to 1,760). Of those crimes, 92% (or 1,627) involved a female victim and 8% (or 133) had a male victim. These proportions are similar to those in the previous year, at 94% and 6%, respectively.

As described in the Introduction section, crimes under the Domestic Abuse (Scotland) Act 2018 relate to a course of conduct of at least two incidents (all occurring after the Act came into force), where criminal conduct has been recorded between the same victim and perpetrator. However these circumstances alone do not necessarily amount to a crime under the Domestic Abuse (Scotland) Act 2018 and officers must consider which crimes and/or offences are the most appropriate to be recorded.

In line with the SCJS findings, the Domestic Abuse in Scotland statistics show that women are more likely to be victims of domestic abuse than men. Where gender information was recorded, around 4 out of 5 (81%) incidents of domestic abuse involved a female victim and a male suspected perpetrator, a slight increase from 80% in 2020-21; and 15% involved a male victim and a female suspected perpetrator, a slight decrease from 16% in 2020-21.

Prior to 2021-22, levels of recorded domestic abuse had been growing over the longer term. Although there was a 1% decrease in 2021-22, the number of incidents remains higher than in 2019-20 (Scottish Government, 2022a).

The Crown Office and Procurator Fiscal Service (COPFS) publishes data on DASA-related charges in its bulletin [Domestic Abuse and Stalking Charges in Scotland 2021-22](#) which may be of interest to readers.

Detailed statistics on the prosecution of domestic abuse, including DASA-related charges, are provided in [Chapter 4](#).

The Research Context

This section provides a brief summary of some of the academic evidence on the experiences of victims of domestic abuse and other forms of gender based violence (GBV) of the criminal justice system (CJS) (predominantly) in Scotland. Evidence sources are mostly drawn from pre-pandemic research referenced in the research reports prepared for this Reporting Requirement. This means that there may be other relevant research which is not captured here. However, the evidence provides important context for the information presented in this report which echoes some of the key themes evidenced below.

Research on victim experiences of the criminal justice system highlights a range of issues. These include victims reporting feeling unsafe, powerless and unheard during the process; poor communication from justice organisations and the

emotional cost on victims and witnesses of engaging with the CJS (Forbes, 2021; Brooks-Hay et al., 2019; Holder, 2015). Common themes are summarised below:

- Research undertaken in Scotland has reported victims feeling uncomfortable in police and court buildings, and highlighted concerns about their **safety** (Brooks-Hay et al., 2019). Wider evidence has reported on the way in which some perpetrators exploit the system to further their abuse and control of the victim, so called 'legal systems abuse' (Douglas, 2018) and 'procedural stalking' (Neilson, 2004).
- Research in Scotland has highlighted how victims of domestic abuse and related crimes have reported feeling **marginalised** and excluded from the legal process. Feelings of powerless can, it is argued, impact on victims' mental wellbeing and their ability to provide the best evidence (Brooks-Hay et al., 2019; Forbes, 2021). This is echoed in wider UK and international evidence, alongside reports of victims feeling that the accused is afforded more rights and representation than they are (Holder, 2015).
- A lack of or **poor information provision** about justice processes is reported in both Scottish and wider evidence, as is a concern about the lengthy duration of the process, including waiting in court, and the negative impact this can have on victims. (Brooks-Hay et al., 2019; Forbes, 2021; Holder, 2015).
- It is well-documented that involvement in the justices system can be distressing and **re-traumatising** for victims of gender-based violence (Forbes, 2021; Bell, 2007; Anderson, 2015, Thomson, 2015). Forbes, for example, reports that the criminal justice process is not equipped to deal with the depth and range of victims' and witnesses' emotional responses to abuse, and that support and advocacy can be ad-hoc and inconsistent. Other research has highlighted how the legal process does not adequately address the interests or needs of victims/survivors, and cites a lack of respectful and empathic treatment (Brooks-Hay et al., 2019; Holder, 2015).

Other themes reported in the evidence base include victims not being believed or listened to, and dissatisfaction with decision-making, particularly in relation to sentencing and charge negotiation (Holder, 2015; Murphy-Oikonen et al., 2020).

In contrast, **victim satisfaction** has been found to be associated with key aspects of 'procedural', 'distributive', 'effective' and 'therapeutic' justice which include a sense of inclusion in the court process, respectful and meaningful engagement, provision of adequate information, provision of support throughout and after proceedings, a sense of unbiased, fair delivery of justice and a belief that outcomes are fair and correct (SCCJR, 2019). Other evidence has found that, for some women, engagement with the CJS can be an empowering experience (Hoyle & Sanders, 2000; Lewis, 2004; Bell, 2007 - cited in Lombard et al., 2022).

A Crown Prosecution Service survey of victims and witnesses (of all crime types) in England and Wales (CPS, 2015) found that victim satisfaction was associated with:

- Perceiving the sentence to be fair and a guilty case outcome

- Effective communication from the CPS including a named contact
- Being informed when charges were dropped and having the sentence explained to them
- The case not being a sensitive offence (like a domestic abuse offence for example)
- Being treated with respect and having their needs met (e.g. giving evidence remotely, access to support services etc.)

In contrast, dissatisfaction was associated with the ‘emotional effect’ of the case (which we would expect to be greater for victims of domestic abuse), not being treated with dignity and respect, and feeling that the sentence was not severe enough.

Consideration of the evidence so far has related to female adult victims who form the majority of victims of domestic abuse. It is important to note, however, that for some types of victims and witnesses (e.g. men, children and young people, people of non-white ethnicity etc.), their experiences and needs may differ. Wider evidence in respect of this is referenced in the relevant sections in this report where appropriate. The following description is limited to a very brief coverage of some of the evidence on the experiences of children and young people. This is presented to provide context to the findings in this report on child witnesses, which the Reporting Requirement specifically refers to.

[The Everyday Heroes Report on Justice](#) (Houghton & MacDonald, 2018) reported on children and young people’s priorities for action in relation to gender-based violence and inequality in Scotland. The research which involved 47 **children and young people** and captures their experiences of:

- Not being heard and/or their views not being taken seriously (e.g. on contact with the accused);
- Children feeling excluded and not knowing what was happening;
- The need for accessible, consistent and specialist support earlier in the process;
- Children feeling that the process was too long;
- Not being child-centred or victim-centred with some children feeling that they or their mothers were made to feel that they were ‘to blame’;
- The need for more training of professionals on understanding children’s lives, diversity and best practice in taking their views into account;
- Experiences of ongoing abuse; and,
- The lack of regard towards domestic abuse in family courts⁵.

Key priorities for children were the importance of choice, the need for more accessible, child-friendly and victim-centred information and processes, the

⁵ Evidence on a ‘pro-contact’ culture in family courts and associated safety risks to victims and children is documented elsewhere e.g. Morrison, 2015; Hester & Radford, 1996; Brooks-Hay et al., 2019.

importance of professionals being knowledgeable about GBV, children's rights and meaningful participation, and, specialist support from a known, trusted adult.

Challenges with capturing victim experiences

A final note in this brief summary of evidence is how challenging it can be to robustly measure domestic abuse victim experiences. Small sample sizes (number of research participants) are fairly typical of this type of research because of the sensitivities involved. Measuring victim experiences with larger samples is rarely undertaken (e.g. via a representative survey). In the CPS survey discussed above, for example, there were only 113 responses⁶ from victims of domestic abuse, out of sample of over 8,000 domestic abuse cases (who received an invitation to participate). As a result, the findings for this group were limited and could not be generalised to the wider population⁷.

Implementing the New Legislation During the COVID-19 pandemic

It is important to note that two of the first three years (2020-2022) of the implementation of the Domestic Abuse (Scotland) Act 2018 coincided with the COVID-19 pandemic. This inevitably impacted on the workings of the justice system, associated services and the lived experience of victims of domestic abuse. This section sets out a brief summary of some of the evidence around the impact of the pandemic on the justice system and on the prevalence and nature of domestic abuse in Scotland. This is important context for understanding the circumstances in which the Act was implemented and the evidence presented in this report.

Impact of the pandemic on the justice system

The COVID-19 pandemic significantly impacted on the operations of the justice system. Court closures increased the backlog of civil and criminal cases and placed additional strains on organisations, affecting the delivery of critical services by justice partners (Scottish Government, 2021a). Restrictions placed limitations on the types and volume of cases which could be heard in court. The effect was more significant for cases tried on indictment because of the particular difficulties in holding jury trials while implementing social distancing measures. No jury trials took place between April and July 2020. High Court trials re-commenced in July 2020, though the number of trials was considerably reduced due to public health measures. Sheriff and jury trials re-commenced in October 2020, with measures in place to enable juries to participate remotely, though again, initially, not to pre-pandemic volumes.

⁶ Although domestic abuse cases represented over a quarter of victims in the CPS population, an opt-in approach was adopted for this group that meant a very low response rate was achieved.

⁷ See p62 for a summary of the findings related to victims of domestic abuse. Factors covered include access to support services, experiences of reporting and giving evidence, and satisfaction with communications and treatment by justice professionals.

Pressures on the justice system resulted in the adoption of new measures such as increased use of virtual and electronic technology, remote proceedings and early prison releases. The Scottish Government's '[Justice Vision and Priorities delivery report- key achievements and impact of Covid 19](#)' noted that, despite the work undertaken by statutory partners to mitigate the impact of delays, these had been particularly felt by witnesses and victims of crime - potentially increasing the risk of them withdrawing from cases and reducing the quality of the evidence gathered (Scottish Government, 2021b).

The impact of the pandemic on the justice system included but was not limited to changes in:

- offending behaviour and the types of crime reported to and recorded by police;
- case processing and prioritisation by COPFS and SCTS; and,
- reductions in court capacity and the types of court available for cases to be heard (Scottish Government (2021c).

The [Criminal Proceedings in Scotland National Statistics](#) goes into more detail on the impact of the COVID-19 pandemic on the justice system. [Chapter 9](#) describes some of the measures taken to prioritise domestic abuse court cases during the pandemic.

Impact of the pandemic on experiences of domestic abuse

Emerging academic evidence indicates that the pandemic exacerbated experiences of domestic abuse in Scotland due to restrictions in movement and an increase in social isolation (e.g. Scotland in Lockdown 2020⁸). International evidence suggests that restriction measures led to an increase in both the incidence and severity of domestic violence during the pandemic (Sharma & Borah, 2022).

As noted above, levels of recorded domestic abuse incidents have been growing over the longer term, with a small decrease (1%) in 2021-22. In 2020-21, the 4% increase in domestic abuse incidents year-on-year is the same as that seen in 2019-20, when the pandemic was not a factor. Some caution is therefore advised before necessarily attributing observed changes in domestic abuse incidents solely to COVID-19⁹ (Scottish Government, 2022a).

More statistics on the impact of COVID-19 on domestic abuse incidents can be found in the monthly [Coronavirus \(COVID-19\): Justice Analytical Services monthly data reports](#). These reports were published monthly between June 2020 and March 2022. Findings showed an increase in recorded incidents of domestic abuse at various points during the pandemic. For example, the June 2020 report showed an increase of 9% between April and June 2020 (during the first lockdown) compared to the equivalent period of the previous year (Scottish Government, 2020a).

⁸ See [Scotland in Lockdown](#) website.

⁹ The second COVID-19 lockdown started in Scotland on 5 January 2021 and ended on 2 April 2021; therefore a very small proportion (1.2% or 810 incidents) of the 2021-22 incidents occurred during this time.

Research involving interviews with service providers undertaken by JAS (Scottish Government, 2020b,c,d) which explored the impact of COVID-19 restrictions on people experiencing domestic abuse and other forms of violence against women and girls, highlighted a number of challenges for victims and specialist services. These included:

- disruptions in criminal court processes resulting in long delays associated with increased anxiety and stress among victims and loss of trust in the justice system;
- difficulties for individuals to leave their abusers and access specialist support;
- children experiencing domestic abuse more severely during lockdown, and perpetrators extending their abuse via child contact;
- victims experiencing significant mental ill health;
- impact of changes to criminal justice procedures on the increased risk of domestic abuse (e.g. early prisoner release; delayed court cases and extended periods of police undertakings);
- reduced capacity amongst key service providers.

Similar findings were also flagged by the Scotland in Lockdown report (Armstrong & Pickering, 2020) which was funded by the Scottish Government's Chief Scientist Office. The research found some indications that abuse had intensified during lockdowns. It also reported challenges for victims in accessing services and increased risk of abuse and neglect of children and difficulties in detection (due to school and childcare closures)¹⁰. Challenges in victims leaving abusive situations and accessing support were compounded by a lack of emergency accommodation, leaving victims feeling unsafe. There were also reports of new forms of digital abuse (e.g. via child contact).

“Covid-19 significantly disrupted the operation of both criminal and civil justice processes; the cessation of court business over lockdown led to a backlog of cases, and delays in justice processes impacted on survivors in numerous ways. Service providers and survivors spoke of delays and uncertainties about criminal and civil justice processes, and a lack of communication regarding, for example whether trials, or child welfare hearings were going ahead, and whether they were taking place digitally or in-person.” (p85)

In contrast, some research participants, who were not living with the abuser, reported feeling more safe as a result of reduced contact due to COVID-19 restrictions¹¹. However, subsequent research with survivors separated from their abusive partners reported an increase in economic abuse, online abuse and the manipulation of child contact arrangements during the pandemic (Brooks-Hay et al., 2022).

¹⁰ These findings were also echoed in other research examining support provision to victims of domestic abuse (Pederson & Miller, 2021) and in research on children's human rights in the context of the Covid-19 pandemic (Morrison & Houghton, 2022)

¹¹ The research involved interviews with victims of domestic abuse (n=11), plus interviews (n=18) and surveys (n=22) with support service providers in Scotland.

Other research has identified comparable findings including increases in severity of abuse and service demand, lack of housing, the impact of bail on victim safety, perpetrators using lockdown as a tool of abuse, and heightened anxiety due to court delays and uncertainties (SWA, 2020; Pederson et al., 2021).

Emerging evidence suggests consistent themes in relation to impacts on children, in particular challenges in detecting and supporting children experiencing domestic abuse (remotely), an increase in child contact-related abuse, the limited participation of children in remote hearings and decision-making, and major delays/uncertainties in criminal trials causing fear and distress for children (e.g. Morrison & Houghton, 2022; SWA, 2020).

Taken together, this evidence demonstrates how the pandemic significantly impacted on the experience of victims of domestic abuse, and how associated changes to the justice system negatively impacted on victims and their families. Some of the issues raised echo those of the evidence presented in this report in particular the impact of long delays/uncertainty and poor information provision and communication on victims.

4. Criminal Justice Statistics

This section sets out the currently available statistics required to meet the Reporting Requirement. The section of the Reporting Requirement which the data covers is provided at the start of each section.

The statistical information provided in this report demonstrates usage of the Act during the first two years of implementation. The nature of the course of conduct offence meant that the first year of implementation did not effectively cover a full year as it took time for cases to build up and progress through the system, and the second year coincided with the COVID-19 pandemic and widespread impact across the justice system. Whilst this information provides a vital contribution to the broader evidence base on the implementation of the Act, neither of the years covered here (2019-20 and 2020-21) are considered to be fully representative of its future use. Statistics from future years will provide a better understanding of how the Act has impacted on how domestic abuses cases are prosecuted in court.

The most recent published [Criminal Proceedings in Scotland](#) National Statistics bulletin provides data for the first two years of the reporting period only. Criminal Proceedings data for the final year of the reporting period (2021-22), alongside SCTS data for all three years on non-harassment orders and court journey times will follow in the final report (see [Annex 3](#) for more details). Further information on the Criminal Proceedings data, including data quality and counting methodology can be found in the [technical annex](#) to the bulletin.

Main Findings

- Limitations on the data available mean it is too early to fully assess the impact of the legislation (see Scope and Limitationss).
- There were 252 people proceeded against for the domestic abuse offence in 2019-20, of which 212 (84%) resulted in a conviction. The number of people proceeded against under the Act increased by two thirds to 420 people proceeded against in 2020-21, with 383 of these (91%) resulting in a conviction.
- The offence in the Domestic Abuse (Scotland) Act 2018 was the only crime type to show an increase in the number of proceedings in 2020-21, when the COVID-19 pandemic and subsequent court closures impacted heavily on the capacity for cases to be heard in court.
- The majority of proceedings for the domestic abuse offence took place in sheriff summary courts, 92% of all proceedings in 2019-20 and 89% in 2020-21.
- There was a 5% increase in convictions for the domestic abuse aggravation between 2018-19 and 2019-20, up from 7,751 in 2018-19 to 8,174 in 2019-20. This was followed by a 20% decrease to 6,515 convictions in 2020-21,

where there were widespread decreases across proceedings and convictions for almost all crime types owing to reductions in court capacity during the pandemic.

- There were 90 people with a conviction with a statutory aggravation for domestic abuse in relation to a child in 2020-21, compared to 39 in 2019-20. The child aggravation was proven in around a quarter (23%) of all convictions under section 1 of the 2018 Act in 2020-21, up from 18% in 2019-20.

Proceedings and Convictions for the Domestic Abuse Offence

Sections 14:2 (a) and (c)

This data is taken from the [Criminal Proceedings in Scotland National Statistics](#) bulletins 2019-20 and 2020-21. Criminal Proceedings in Scotland data is calculated on a 'main charge' basis, where the crime or offence for which a person is proceeded against or convicted relate to the 'main charge' involved. If there are multiple charges in a single case, the 'main charge' is the crime or offence receiving the most severe penalty in court. For context, in 2020-21, 451 people were proceeded against where the domestic abuse offence accounted for at least one charge in a proceeding, of which 420 people had a main charge of the Domestic Abuse (Scotland) Act 2018. Criminal Proceedings counts individuals proceeded against and convicted, so if multiple people are proceeded against in the same case they will each be counted separately¹².

Table 1 below provides the number of people proceeded against and convicted with a main charge of an offence at Section 1 of the Domestic Abuse (Scotland) Act 2018, for crimes committed on or after it came into effect on 1 April 2019. It is important to note that data for 2020-21 covers the first full year of the impact of the COVID-19 pandemic on the justice system and subsequent court closures, and should not be viewed as indicative of longer term trends. Further information on this is available in the [Criminal Proceedings in Scotland statistics](#).

Table 1: People proceeded against and convicted with main charge under the Domestic Abuse (Scotland) Act 2018, by court type, 2019-20 and 2020-21

	2019-20		2020-21	
	Proceedings	Convictions	Proceedings	Convictions
Total	252	212	420	383
High court	1	1	2	1
Sheriff solemn	19	17	45	43
Sheriff summary	232	194	373	339

Source: [Criminal Proceedings in Scotland 2020-21](#)

¹² Further information on counting definitions for Criminal Proceedings statistics can be found online: [Criminal proceedings in Scotland 2020-2021](#)

There were 252 people proceeded against under the Act in 2019-20, of which 212 (84%) resulted in a conviction. The number of proceedings under the Act increased by two thirds to 420 proceedings in 2020-21, with 383 of these (91%) resulting in a conviction. Court closures throughout much of 2020-21 resulted in reductions in the number of proceedings and convictions for almost all crime types that year. **The Domestic Abuse (Scotland) Act 2018 was the only crime type to show an increase in the number of proceedings that year.** This may in part reflect efforts by SCTS to prioritise cases involving vulnerable persons throughout the pandemic and is also likely to reflect the fact that the number of cases concluded in 2019-20 was lower than will be the case in future years as it will have taken time for cases to progress to court after the Act came into effect in early 2019-20.

The conviction rate for offences under the Act was 84% in 2019-20 and 91% in 2020-21. However, in any normal year we would advise caution in comparing changes in conviction rate over time as they are a complex function of a range of different factors, for example the strength of evidence required for cases to be put forward for prosecution. Further caution is required for the pandemic year where other factors, such as the difficulty in holding evidence-led trials due to public health restrictions, may have led to a higher proportion of concluded cases involving a guilty plea being made than in a non-pandemic year, resulting in higher conviction rates.

In each year, the majority of proceedings took place in sheriff summary courts, 92% of all proceedings in 2019-20 and 89% in 2020-21. Sheriff solemn courts accounted for 8% and 11% of proceedings in 2019-20 and 2020-21 respectively, with a total of three proceedings taking place at the High Court over the two years (under 1% in each year). No proceedings were held in Justice of the Peace courts in either year.

Additional Statistical Data on the Domestic Abuse Offence

This information is not required by the Reporting Requirement but may provide some useful additional context on convictions under the Act. It is taken from the [Criminal Proceedings in Scotland 2020-21](#) National Statistics bulletin.

The majority of people (62% in 2019-20 and 56% in 2020-21) convicted for the domestic abuse offence received a community sentence. Just under a fifth (18% in 2019-20 and 19% in 2020-21) received a custodial sentence with an average sentence length of around a year (363 days in 2019-20 and 438 days in 2020-21). The remainder received either a monetary disposal (13% in both 2019-20 and 2020-21) or 'other sentence' (7% in 2019-20 and 12% in 2020-21), such as an admonishment or absolute discharge.

In 2020-21 the vast majority of people convicted of the domestic abuse offence were male (369 convictions or 96%). The proportion in 2019-20 was 98% (207 convictions). In 2020-21 39% of people convicted of the domestic abuse offence were in the 21-30 age group and a further 31% of people were in the 31-40 age group. Over 40s accounted for 26% of all convictions and under 21s accounted for the remaining 4%.

Convictions for the Statutory Domestic Abuse Aggravation

Section 14:2 (b) (ii)

The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 created a statutory aggravation of domestic abuse, which came into force on 24 April 2017. An offence is aggravated if in committing the offence the person intends to cause or is reckless about causing their partner or ex-partner to suffer physical or psychological harm. The aggravation can only be applied where there is evidence capable of proving it and evidence from a single source is sufficient to prove that an offence is aggravated. The aggravation requires to be proven in court to apply to a conviction. It is taken into account in sentencing if proven. If the aggravation is not proven in court it should be removed from the court record.

Table 2 presents the number of convictions under the statutory domestic abuse aggravation. Whilst the reporting period starts in 2019-20, the data below covers the full time period of the aggravation being in force.

Table 2: People convicted with the domestic abuse aggravation recorded against the main charge, by court type, 2017-18 to 2020-21

	2017-18 ¹	2018-19	2019-20	2020-21
Total	4,327	7,751	8,174	6,515
High court	5	17	38	22
Sheriff solemn	64	205	288	207
Sheriff summary	4,248	7,513	7,821	6,283
Justice of the Peace	10	16	27	3

Source: [Criminal Proceedings in Scotland 2020-21](#)

¹From 24 April 2017

Convictions for the statutory domestic abuse aggravation increased over the first three years of its use. The data for 2017-18 is not considered to be a fully representative year as the aggravation did not come into use until 24 April 2017 and the time-lag in cases coming to court following an offence means the figures for 2017-18 do not cover a full year. **There was a 5% increase in convictions for the aggravation between 2018-19 and 2019-20, up from 7,751 in 2018-19 to 8,174 in 2019-20. This was followed by a 20% decrease to 6,515 convictions in 2020-21,** where there were widespread decreases across proceedings and convictions for almost all crime types owing to reductions in court capacity during the pandemic (Scottish Government, 2022b). It is possible that following the introduction of the specific domestic abuse offence in 2019-20, some offences which were previously categorised as other offences, for example common assault, with the domestic abuse statutory aggravation applied, may now be recorded as part of the course of conduct falling under the definition of the new domestic abuse offence. Data for future years is required to establish the extent to which this may have occurred.

Additional Statistical Data on the statutory domestic abuse aggravation

This information is not required by the Reporting Requirement but may provide some useful additional context on convictions under the Act. It is taken from the [Criminal Proceedings in Scotland 2020-21](#) National Statistics bulletin.

In 2019-20, the most common crime types with the statutory domestic abuse aggravation that people were convicted of were Breach of the peace (44% of domestic abuse aggravation convictions), followed by Common assault (27%) and Crimes against public justice (19%). In 2020-21, the most common crime types were Breach of the peace (37% of domestic abuse convictions), followed by Crimes against public justice (31%) and Common assault (22%).

In 2020-21 the vast majority of people convicted of an offence with a domestic abuse statutory aggravation were male (5,767 convictions or 89%). This percentage was unchanged from the previous two years.

Convictions for the statutory domestic abuse-child aggravation

Section 14:2 (c)

The statutory aggravation for domestic abuse in relation to a child under the Domestic Abuse (Scotland) Act 2018 came into effect on the 1 April 2019. This applies to offences where behaviour is directed at a child, or a child is used to direct behaviour at the partner/ex-partner. The aggravation can only be applied where there is evidence capable of proving it and evidence from a single source is sufficient to prove that an offence is aggravated. It is only applied to offences under the Act.

Table 3 presents the number of convictions under the statutory domestic abuse in relation to a child.

Table 3: People convicted with the domestic abuse-child aggravation recorded against the main charge, by court type, 2019-20 and 2020-21

	2019-20	2020-21
Total	39	90
Sheriff solemn	1	8
Sheriff summary	38	82

Source: [Criminal Proceedings in Scotland 2020-21](#)

There were 90 people with a conviction with a statutory aggravation for domestic abuse in relation to a child in 2020-21, compared to 39 in 2019-20.

This covers a course of conduct that has taken place on or after 1st April 2019 and as there will have been a time lag before such crimes could be reported, the 39 people with a conviction in 2019-20 does not reflect a full year under the Act. The child aggravation was proven in around a quarter (23%) of all cases where there was a conviction under section 1 of the 2018 Act in 2020-21, up from 18% in 2019-20.

5. Evidence on Victim and Witness Experiences of Domestic Abuse Court Cases

Main Findings

- Overall, the evidence on victim and witness court experiences suggests the continued existence and/or the exacerbation (due to the COVID-19 pandemic) of known issues relating to the experiences of vulnerable witnesses at court; rather than new issues specific to or resulting from the Act.
- Reports of a lack of communication, involvement and/or explanation of procedures and decision-making was a common theme across the research. This was reported to exacerbate victims' stress when attending court and contribute to feelings of powerlessness and marginalisation throughout.
- The research reported on the negative impact of court delays, as well as other procedural matters including late pleas and bargaining, on both adult and child victims/witnesses' mental wellbeing.
- Kind and empathetic treatment was reported to make a significant difference to victim/witness experiences of the justice system, including their court experience.
- The vital role that advocacy and support services played in improving victim/witness experiences of court was emphasised. Gaps in service provision were identified, particularly earlier in the process (after reporting) and after the court case had concluded.
- A common theme was that safety was not consistently ensured for victims and witnesses (and their families), with reports of continued abuse at all stages, including at court and post sentencing.
- Going to court was reported as difficult and distressing by most research participants, and particularly intimidating for children. For some victims, it was reported that going to court could be empowering and provide a sense of closure. Overall, special measures were welcomed although some research participants said they were not always seamlessly implemented or tailored to individual needs.
- Other issues relating to child victim and witness experiences at court included negative experiences of cross-examination, and court rules on the contamination of evidence which restricted child to parent contact.

As noted in [Chapter 3](#), the Act also provides for a number of reforms to criminal procedure, evidence and sentencing which are intended to reduce the possibility of an accused person using the justice system to further exert control and influence over the complainer and to help to minimise the trauma for the complainer while ensuring the proper administration of justice is achieved (as set out in the [Policy Memorandum](#)).

This section presents the research evidence gathered to meet **Section 14(f)** of the reporting requirement. It is drawn from three research studies which included two victim experience surveys and one in-depth interview-based study involving victims and witnesses, including children and young people. The reports can be accessed via the following links:

An online survey for female victims of domestic abuse

[Domestic Abuse \(Scotland\) Act 2018 and the Criminal Justice System: Women's experiences two years in the emerging findings](#) (SCCJR, 2022)

An online survey for male victims of domestic abuse

[The Domestic Abuse \(Scotland\) Act 2018: emerging findings of male victims' experiences of the Criminal Justice System](#) (Scottish Government, 2022c)

In-depth qualitative research with adult and child victim/witnesses

[Domestic Abuse Court Experiences Research: The perspectives of victims and witnesses in Scotland](#) (Houghton et al., 2022)

[Justice, Safety and Support: what children and adults told researchers about the new law on domestic abuse](#). (Scottish Government, 2022d)

Throughout Chapters 5-8 the research reports are referred to as the 'women's survey report', the 'men's survey report' and the 'qualitative research report' (the interview-based study). [Chapter 10](#) provides a summary of the methodologies used in the research projects.

As noted in the Introduction, the research was not strictly limited to experiences at court but also covered the wider 'justice journey' (see [Chapter 7](#)), and victim and witness views and experiences of key aspects of the new legislation including the prosecution of psychological abuse, experiences of non-harassment orders and the child aggravator ([Chapter 6](#)). This reflects the way in which research participants described their experiences and provides useful context for understanding victim and witness experiences of court. It also allowed a victim-centred approach to be taken¹³ and recognised that some participants found the system confusing, and that distinguishing between different stages, organisations and legislation/charges was problematic. Recognising that victims/witnesses in the research were often unaware of the legislation and/or which charges were brought (where relevant), findings relating to victims' perceptions of the Act ([Chapter 6](#)) are tentative.

¹³ For example, by allowing research participants to focus on what was important to them and to cover only those aspects that they were comfortable discussing.

Given the small sample sizes (number of research participants), the findings cannot be generalised to domestic abuse victims and witnesses as a whole. This, alongside a context of early implementation of the Act and the impact of the COVID-19 pandemic on the justice system, means that it is not possible to draw firm conclusions from the evidence at this stage.

General findings on court experiences of victims and witnesses

The evidence on court experiences is drawn from a sample of approximately 30 victims/witnesses¹⁴. Most of the evidence on court experiences is based on the qualitative research which involved interviews with 22 adults, young complainers and child victims and witnesses who were involved in a domestic abuse court case during the first three years of the implementation of the Act.

- Overall, the evidence on victim and witness court experiences suggests the continued existence and/or the exacerbation (due to the COVID-19 pandemic) of known issues relating to the experiences of vulnerable witnesses at court, rather than new issues specific to or resulting from the Act.
- Reports of positive experiences of attending court were limited. Positive experiences were associated with research participants' feelings of safety, a sense of control and choice (e.g. in how/where to give evidence), the extent to which they felt informed/involved in court procedures and decisions, and, the extent to which their treatment by professionals was trauma-informed (i.e. whether they felt listened to, believed, respected and supported).

“From my own experience, I felt valid and listened to. I felt the system was successful.” (Women’s survey report, p41)

“Excellent service from Police. Procurator Fiscal’s Office and support organisations.” (Men’s survey report, Respondent 11, p19)

- There was insufficient data to report on male victims’ experiences of court (as so few cases in the sample reached court). However, overall, the men’s survey report found that the majority of respondents reported feeling that there was a system-wide gender bias against them. The majority of respondents felt that their experiences of abuse were minimised and that they were not taken seriously or believed by the justice system. This is covered in more detail in [Chapter 7](#).
- It is interesting to note that whilst research participants voiced concerns about court delays and adjournments, as well as other matters relating to poor

¹⁴ The women’s survey included five cases that had gone to trial; the men’s survey included 3 cases (against their partner/ex-partner) and 4 cases (against them) that were referred to court (unclear how many of these had gone to trial); the qualitative research included 22 cases of which all had been referred to court and concluded.

information provision and communication, participants did not raise the COVID-19 pandemic in and of itself as a specific issue.¹⁵

Preparing for court

- Long delays whilst waiting for trials and waiting to give evidence was reported to have negatively impacted on victims' and witnesses' mental health.
- Alongside delays, the majority of children and adults interviewed expressed anxiety due to uncertainty about the court process and a lack of information or opportunity to ask questions.

"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, Qualitative Research Report p46)

- Lack of communication about or involvement in decision-making was a common theme across the research. Some research participants reported in interviews that they were not kept adequately informed about the progress of cases. Similarly, it was reported that citations to appear in court were received via a variety of routes, and, in most cases, preceded court-related support. These issues were reported to have heightened victims' and witnesses' anxiety about court, particularly where the rationale for decisions was misunderstood and last minute pleas or bargaining were involved.
- Not having control over when and/or whether victims and witnesses would need to give evidence, and, in some cases, in what form (evidence by commission, in court etc.) is reported to have contributed to participants' feelings of marginalisation, as well as undermining their trust in the system.
- The vital role that advocacy and support services provided in helping victims prepare for court was highlighted e.g. arranging special measures.

Giving evidence and attending court

- Overall, special measures¹⁶ were welcomed by victims and witnesses in the research. However, some issues were raised in relation to limited choice and individual needs not consistently being met e.g. one young complainer in the

¹⁵ It is not clear whether this is because the delays in their cases were unrelated to the pandemic, or they were unaware that the pandemic was a part of the reason for the delays, or simply that they did not refer to the pandemic when discussing with researchers.

¹⁶ Special measures are provisions designed to help vulnerable witnesses to give their best evidence in court and to reduce stress associated with giving evidence. They include things like using a screen in court, using a web link in another location to give evidence, having an in-court supporter, and evidence by commissioner (where the witness gives their evidence before the court case has started).

qualitative study was reported to feel a loss of control and anxiety about the accused being able to see her when giving evidence remotely.

- When interviewed, adult victims and witnesses who gave evidence (a total of 11¹⁷) expressed a strong preference for providing their evidence remotely. However, only one adult participant was able to give evidence via video link. A further issue raised was the proximity of the accused to the victim when they were giving evidence behind a screen.
- Going to court was reported as difficult and distressing for most research participants. The research reports that many participants were fearful of meeting or being confronted by the accused and the accused's friends and family. Lack of a separate exit/entrance for victims/accused was reported as problematic, increasing the risk of having to queue alongside the accused before entering the court building. Even where safety was provided at court e.g. by separate waiting rooms for victims, there is evidence that some participants reported feeling 'trapped' and uncomfortable.

"I was asked to appear early so that I would not cross paths with my attacker, having arrived early I was asked to go to a witness room upstairs. Going there I crossed the path of my attacker before getting into the court room. Was then told that the court had moved room and had to go to another witness room, once again crossing the path of my attacker [...]" (Respondent 13, Men's Survey Report p.19)

- Participants who gave evidence found the adversarial nature of cross examination distressing. Lengthy questioning, a focus on dates/times and not being able to review their statement in advance was felt by victims and witnesses to undermine their ability to provide the best evidence.

"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, Qualitative Research Report p57)

- Although welcomed where it occurred, some research participants felt that there was a need for more frequent and robust interjections by the Procurator Fiscal or Sheriff during cross-examinations and in response to the sometimes intimidating behaviour of the accused at court (e.g. laughing).
- Despite this, for some victims, it was reported that going to court could be empowering and provide a sense of closure, particularly when support and advocacy was provided.

¹⁷ In the qualitative research, all nine adults and two children who gave evidence used one or more special measure when giving evidence.

- Kind and empathetic treatment was reported to make a significant difference to victims' and witnesses' experience of the justice system, including their court experience. However, some research participants felt that professionals did not always comprehend the emotional impact of the court process.

Sentencing and court outcomes

- It was reported that many victims and witnesses in the research felt that sentences were too lenient and did not reflect the severity of the abuse.

“To be honest I still don’t understand why the judge or sheriff would be so lenient on him at the same time lifting the restrictions of the non-harassment order that made me feel like the justice system does not care for the safety of women and children” (Women’s Survey Report p40)

“I feel let down by the courts [...] despite conviction the sentence of absolute discharge gave the perpetrator the message that she could continue to control me.” (Men’s Survey Report, Respondent 16, p19)

- The qualitative (interview-based) research reported that some research participants felt excluded from and disempowered by court case outcomes, particularly decisions concerning ‘plea bargaining’ where an accused may plead guilty to some but not all of the charges against them¹⁸. Whilst some felt that these kinds of decisions denied them ‘their day in court’, others were reported to feel relieved that that they did not need to attend court.
- Where the accused was found not guilty, participants were reported to be especially negative about the justice system and expressed feeling vulnerable following removal of bail conditions and other protective measures.
- There were a range of views about the efficacy of Non-Harassment Orders (NHOs) as a protective measure. This is discussed in [Chapter 6](#).

Support during and after court

- Specialist support and advocacy services, where available, were highly valued by victims and witnesses in the research. It was reported that research participants felt support workers played a crucial role in ensuring that their needs were taken into account by the prosecution (e.g. special measure requests) and the courts (e.g. views on NHOs), and were vital for improving their experiences of court.

¹⁸ In Scotland there is no plea bargaining as such (a term usually used to describe bargaining between the accused and the judge), but plea negotiation. Prosecutors will consider any offer to plead guilty to lesser or amended charges. When considering whether or not to accept pleas of guilty or not guilty in relation to various different charges against an accused, the Crown will consider, among other factors, the distress and inconvenience a trial may cause to the victim and other witnesses and the available evidence against the accused. Only when the prosecutor considers it to be in the public interest will a plea of guilty to lesser or amended charges be accepted.

- Across the research, support and advocacy services were reported to play an important role in minimising trauma and distress.
- Gaps in support provision were highlighted in the qualitative research report, particularly earlier in the process (after reporting) and post court.

Children and young people’s experiences of court

The findings below are based on interviews in the qualitative research with five child cited witnesses (aged 12-17)¹⁹ and the views of parents whose children were cited as witnesses²⁰. Given the small number, it is not possible to draw firm conclusions from these findings at this stage. That said, the findings broadly echo those of pre-pandemic research²¹.

- As with adults, the research reported on the negative impact of court delays on child victims’/witnesses’ mental wellbeing.
- The lack of regular communication, involvement in and/or explanation of procedures and decision-making was also raised as a concern by child witnesses and parents. For example, several children (and their parents) believed that they would do a video-recorded interview. When they then received citations for children to attend court this was unexpected and a source of anxiety for both children and adult victims.
- The close timing of citations to court dates was reported to allow minimal time for children to prepare. A further issue was the lack of choice that parents had in whether children were cited, with a small number (2) withdrawing from their case to try to prevent this. Related to this was an example of a child wishing to withdraw, after establishing a relationship with his father, and being prevented from doing so.
- It was reported that going to court was especially intimidating for children and that this was felt by some research participants to not always be recognised or fully understood by those working in courts.
- Although special measures were offered to all child cited witnesses it was reported that they were not always seamlessly implemented. The research questions why children in the study were not routinely offered to give evidence by commissioner.

¹⁹ The qualitative research included in-depth interviews with five court cited child witnesses (age 12-17). This included 3 boys and 2 girls.

²⁰ Information about five other child cited witnesses was also included in the qualitative study through their mother’s perspectives when interviewed.

²¹ E.g. Houghton, C. & MacDonald, R. (2019) [Everyday Heroes: Justice Report](#)

- Like adults, giving evidence was reported to be a stressful experience for those children involved. Although the protection offered by giving evidence remotely was welcomed by children (and parents), the experience and impact of cross-examination was reported to be distressing for some.

“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, Qualitative Research Report p59)

- Another challenge for children and parents at court was the effect of the rules on the contamination of evidence, which meant that children were unable to be with their non-abusing parent when giving evidence or to discuss the case with them until their parent’s evidence was complete. Whilst support was provided by advocacy workers, this was nonetheless reported as distressing for both parent and child.
- A further but significant point on child contact was the reported cumulative negative impacts on child victims and witnesses where the family was involved in both criminal and civil justice (family court) proceedings.
- Like adults, it was reported that advocacy and support was highly valued by children, young people and parents as a means for minimising trauma. The need for children to have access to support at all stages of the process, including post-court, for as long as they need, was emphasised.
- Evidence on the experiences of young complainers is limited due to the small number of interviewees (n=4)²² but appears to broadly equate to those of adult and child victim/witness experiences of court. The qualitative research report indicates that there is some evidence that the rights of 16 and 17 year olds in need of protection may have been overlooked e.g. when reporting abuse. Further research is needed to understand on young complainers’ experience of court.
- Views on the application of NHOs for children were mixed. This is covered in the next section.

²² Four female young victim complainers (age 17-22 but who were under 18 when first subject to domestic abuse) were interviewed in the qualitative research study.

6. Emerging Findings Relating to the Domestic Abuse (Scotland) Act 2018

Whilst it was not within the scope of the Reporting Requirement to evaluate the effectiveness of the implementation of the Act, a number of emerging issues were raised in the research about some aspects of the Act which may be of interest or warrant further attention.

As noted in the introduction to the previous Chapter, victims/witnesses in the research were often unaware of the legislation and/or which charges were brought (where relevant) and it was therefore difficult to gather evidence on victims' perspectives on the Act itself. Most of the findings presented in this chapter are drawn from the qualitative research report²³ (comprising of interviews with 22 victims/witnesses), although efforts are made to report relevant findings from the other reports where appropriate. The findings presented below are therefore tentative.

- Overall, the research findings echo wider views that the Act is a leading piece of legislation which better reflects how victims experience domestic abuse.
- However, some victims felt the Act and its provisions could have been used more, and that there remained a focus on single or/and 'serious' incidents in some cases of ongoing abuse. Difficulties in prosecuting some forms of psychological abuse, particularly in regards to verbal, telephone and online abusive behaviour, were also reported. As the statistical findings in [Chapter 4](#) state, the time lag before DASA crimes could be reported may have contributed to this²⁴.
- Some research participants when interviewed felt that provisions in the Act aimed at protecting children (i.e. the child aggravator and NHOs) had been under-utilised²⁵. For example, some parents felt that NHOs were not as expansive as they could be e.g. not being applied to any children or only to some of them. It was reported that that child-contact arrangements were perceived by some victims as influencing decisions around this.

²³ The men and women's surveys had too few responses to questions about DASA provisions (e.g. NHOs) to report on.

²⁴ Although the Act came into effect at the start of 2019-20, the full course of conduct for charges under the domestic abuse offence needed to have taken place on or after 1 April 2019 for the charge to apply. If the majority of the alleged abuse occurred before 1 April 2019, it would have been difficult to use the new offence to prosecute it.

²⁵ In the qualitative research study, 1 DASA case involved a s5 aggravation in relation to a child (child aggravator). As noted in [Chapter 4](#), The Scottish Government [Criminal Proceedings Bulletin](#) figures 2020/21 indicate that, of 381 convictions under DASA, 90 had a child aggravation proven which represents nearly a quarter of convictions.

Across the sample of 22 cases in the qualitative research, 15 out of 18 guilty plea/verdict cases had a NHO granted, 3 of which included a child. The cases involved 10 child cited witnesses overall.

“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, Qualitative Research Report p66)

- Similarly, it was reported that many research participants in the interview-based study felt that abuse of a third party (family, children, friends) and the relational nature of abuse was not always taken account of.
- The interactions between family and criminal courts and how NHOs are applied in the context of child contact arrangements, was identified as an area that could be better understood. Forthcoming research funded by the Scottish Government explores the interactions between civil and criminal proceedings in the context of domestic abuse and child contact in Scotland²⁶.
- There were mixed views on NHOs overall, with some victims feeling they offered protection and provided them with confidence that should abuse and harassment continue, there would be a robust criminal justice response (e.g. a custodial sentence), whilst others voiced concerns about the temporary nature of the order and abuse restarting when the order lapsed which was reported to impact on victims’ ability to recover and move on.
- There were also concerns from victims in the research about perpetrators not adhering to the conditions of NHOs and reports of continuing abuse whilst NHOs were in effect, sometimes done in such a way as to not breach the NHO, and, after they expire.
- The qualitative research report states that there was limited awareness of the Act and what constitutes criminal behaviour amongst victims and witnesses in the study, and some professionals (as reported by study participants).

²⁶ See [Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings](#) for more information

7. Victim and Witness Experiences of the Scottish Criminal Justice System

Main Findings

- **The gap between expectations, intentions and lived experience** - The research suggests that there was a marked difference between victims' and witnesses' expectations of the process and their lived experience. For many participants, their experience of the criminal justice system was reported as distressing, lengthy and difficult to navigate.
- **Positive experiences of the justice system** – All three reports described some examples of positive experiences of the criminal justice system. These were characterised by factors such as being listened to and believed, kind and empathic treatment, and professionals providing a clear explanation of the legislation and the criminal justice process.
- **Communication, information and understanding of the justice system** – Many research participants reported a lack of effective communication from justice agencies and involvement/transparency in decision-making, as well as a lack of knowledge and understanding of the system and the law. This contributed to feelings of disempowerment and undermined victims' trust in the process.
- **Disempowerment and re-traumatisation** - The research found that all stages of the process were at times distressing and potentially re-traumatising for most research participants. Many victims and witnesses reported a sense of marginalisation and exclusion from the process. The importance of choice and being treated with kindness and respect was emphasised.
- **Victim safety and continued abuse** – The research found that safety was not consistently ensured for victims and witnesses (and their families) as their case progressed through the justice system. Views on the impact of sentencing on victims' safety was mixed, with many victims reporting how the perpetrators 'used' or 'exploited' the system to further their abuse.
- **Minimisation of abuse and dissatisfaction with justice outcomes** – A common finding across the research was victim dissatisfaction with the case or court outcome. Many research participants were reported to have felt that sentences were too lenient and did not reflect the severity of the abuse. Some research participants were reported as feeling confused and let down by system responses and decisions.
- **Support and recovery** - Measures put in place to support victims, such as special measures, interdicts and NHOs were welcomed, but were sometimes reported to provide temporary respite rather than permanent

safety. Advocacy and support services were reported as the most significant mechanisms for minimising trauma and enhancing victims'/witnesses' feelings of safety.

- **Considerations relating to children and young complainers (and other third parties)** – Many victims and witnesses interviewed emphasised the relational aspect of domestic abuse and felt that the abuse of a third party, including children and wider family and friends, was not taken account of adequately. Key themes of importance to children and young people included safety, trust, understanding the impact of domestic abuse on children, clear information and involvement in decision making, and support (for as long as they need it).
- **Experiences of male victims of domestic abuse** - The men's survey report found that the majority of survey respondents reported feeling that there was a system-wide gender bias against them – as men. A striking finding in the men's survey report was the number of male respondents who said that a malicious or false report had been made against them (by the alleged perpetrator).
- **Longstanding issues for female victims of domestic abuse** - Many of the themes identified in the research echo wider pre-pandemic evidence. This suggests that despite significant progress in legislation and policy in Scotland, female victims of domestic abuse (and related crimes) continue to convey negative experiences of the justice system in research.

This section describes the common themes across the three research reports relating to victim and witness experiences of the justice system as a whole. As noted, the Reporting Requirement in the Act focuses specifically on the experiences of victims and witnesses 'at court', but it is helpful to consider this in the context of their experience of the criminal justice system as a whole. Some of the findings presented below echo those of COVID-19-related research as well as that of wider pre-pandemic evidence (see [Chapter 3](#)). This suggests that some of the issues raised by research participants are longstanding ones which may have been exacerbated by the pandemic.

The gap between expectations, intentions and lived experience

It is widely reported that the Act is held up as an exemplar piece of legislation internationally, which reflects a modern understanding of domestic abuse and provides the necessary legislative tools to address new forms of criminal behaviour. The research findings broadly echoed sentiments that the Act is a leading piece of legislation which better reflects the lived experience of victims, as evidenced by their accounts of psychological, physical and, for some, sexual harm over time. However, the research suggests that in the early years of its implementation - beset by the COVID-19 pandemic as it was - there was a marked gap between the intentions of

the Act, and the lived experience of many of the victims and witnesses who participated in the research.

For many participants, their experience of the criminal justice system was reported as distressing, lengthy and difficult to navigate. There appeared to be discord between victim and witnesses' expectations of the process – primarily safety for them and their families but also expectations around procedural aspects such as witnesses not having to go to court, how/which evidence was used and consequences for perpetrators - and their actual experience.

For example, in the men's survey report, 16 out of 18 respondents said that none of their desired outcomes had occurred²⁷, with only one respondent reporting a positive outcome. This was reflected in the research with women and children which reported that overall, the process did not deliver a sense of justice for most victims in the research, even where cases resulted in a guilty verdict or plea.

Limitations were also raised in relation to the extent to which the process and sentencing ensured the safety and wellbeing of all victims' children and other third parties involved e.g. family and friends.

Victims and witnesses across the research reported concerns about the effectiveness of the system response to continued abuse – which research participants reported occurred at all stages of the process. In the women's survey, for example, some victims reported that perpetrators were able to breach their bail, interdicts and non-harassment orders reportedly without consequence. The qualitative research report found that, for some victims, the onus was on them to keep themselves safe, particularly immediately after reporting to the police. Victim safety is covered in more depth below.

When participants were asked for their general reflections on their journey through the system the findings were mixed. In the women's survey report, there were limited responses²⁸, with a small number of respondents reporting positive sentiments, such as being listened to and valued, whilst others reported frustration with long delays or felt that it was not worth it. When asked on the advice they would give to a friend, the most common response in the women's survey was that engaging with the criminal justice system (CJS) was 'the right decision' (Figure 20, p36). In contrast, the men's survey reported that almost all respondents said that the system had got 'nothing' right (14 out of 15).

Positive experiences of the justice system

All three reports described some examples of positive experiences of the criminal justice system. Both the women's survey and the qualitative research reported positive encounters with the police. For example, in the women's survey the most common response to a question about how respondents felt when they spoke to the

²⁷ These included being in control of their lives and their and their children's safety.

²⁸ 13 people answered this question 'Reflecting on your general experience of the Scottish Criminal Justice System to date, if you had known what it would be like, would you have chosen to become involved with the process?' (p 36)

police was that they felt ‘the Police Officers dealt with the situation respectfully’. However, a fifth of respondents felt that ‘the police officers treated the perpetrator with more respect than me’.

“The initial police officers believed me and didn’t question anything I said (make it seem like they doubted it). Nothing was minimised and nothing was dismissed. It was the most empowering thing that they could have done.” (Women’s Survey Report, p41)

Positive experiences at various stages of the system were characterised by the following factors:

- Being listened to and believed;
- Professionals providing a clear explanation of the legislation and the criminal justice process, and, help and advice on how to navigate the system;
- Good communication skills - this was central to how women (who completed the survey) experienced the CJS regardless of the outcome;
- Kind and empathic treatment made a significant difference to women’s experiences as a whole;
- Support with safety planning without putting the onus on victims.

These findings align with previous research which has found that victim satisfaction is associated with respectful and meaningful engagement, the provision of adequate information, and access to support, as described in [Chapter 3](#) (SCCJR, 2019).

Overall, the research reports that positive experiences were limited, however, and mostly depended on the response of one individual rather than a consistent approach at an institutional level.

Communication, information and understanding of the justice system

A common theme across the women’s survey report and the qualitative research report was difficulties experienced by victims and witnesses due to a lack of communication and involvement/transparency in decision-making.

Poor communication, or the absence of it, was reported to have a negative impact on the victims in this research. It was reported to exacerbate victims’ feelings of a lack of control which the women’s survey report stated was a common theme at all stages of the process, but particularly at the pre-court stage.

“PF [Procurator Fiscal] decided to drop rape charges at this point but continued with attempted rape charges however no one told me about the dropped charges until a week before the court case. Communication with VIA²⁹ very poor.”
(Women’s survey report p31)

Similarly, the qualitative research reported that many victims and witnesses felt uninformed and excluded from the management of the criminal case, unaware of or not understanding the rationale for decisions made about the case.

²⁹ VIA – Victim Information and Advice service provided by COPFS

A lack of knowledge and understanding of the system was a common theme. For example, the qualitative research study reported participants' lack of awareness or understanding of the rationale behind evidence-gathering processes. The report states that some participants felt that important evidence was disregarded or overlooked, with some victims reporting that they proactively collected and pushed for particular evidence to be considered during investigations.

The qualitative research also reported poor communication and/or understanding of which charges were being brought and why e.g. parents not understanding why a DASA child aggravation was not applied to their case. This was also evident during the pre-court process. For example, it was reported that several parents and children believed a video recorded joint investigative interview would mean a child would not be required to give evidence in court, only to later find out this was not the case. This was reported as distressing for the victims and witnesses concerned and undermined their trust in the process.

These findings suggest that many victims in this research did not feel the system consistently delivered 'procedural justice' for them (loosely defined as perceptions of fairness of processes, decision-making and treatment). This includes things like the provision of adequate information about the process, a sense of inclusion, and meaningful and respectful engagement (SCCJR, 2019). Delays and frustrations with the progress of cases suggests that there may have also been challenges in delivering some aspects of 'effective justice' (whereby the process is efficient, legal and accurate).

Disempowerment and re-traumatisation

The research found that all stages of the process were at times distressing and potentially re-traumatising for most research participants. The period after reporting domestic abuse to the police was reported to be a time of particular vulnerability for victims and witnesses, especially with regard to safety. Long delays whilst waiting for trials, and waiting to give evidence were also described as stressful. Other factors reported to impact on research participants' wellbeing included feeling uninformed or excluded, a perception that some professionals did not comprehend the emotional impact of the process and abuse on victims/witnesses and – related to this - having to give evidence in an adversarial process. The women's survey research reported that even where an outcome of a case resulted in a woman being protected from harm, the process was often felt to be damaging and traumatic.

This was attributed to a lack of regular communication from the authorities and poor understanding, knowledge and/or involvement in the processes and decisions made within it (as discussed in the previous section). These findings echo those of wider pre-pandemic research as discussed in [Chapter 3](#).

In the women's survey, respondents were asked at different points whether CJS responses made them feel more or less in control. From the data available, it appears that the majority of respondents did not feel in control at any of the stages covered in the report findings (after reporting to police, after PF investigation,

awaiting court)³⁰. For example, during the time waiting for trial, the most common response to a question about whether respondents felt ‘in control of what was happening’ was ‘no’ (n=9), compared to zero responses for ‘yes’, and two responses to ‘sometimes’ (Women’s Survey Report, p34).

The importance of choice was highlighted as important for victims and witnesses when giving evidence and requesting special measures. The women’s survey reported mixed views on special measures. One respondent, for example, stated that she could not have given evidence without it, whilst another suggested that it was disempowering saying that “*having a screen made me feel like I had done something wrong*” (p34). As noted, victims and witnesses interviewed in the qualitative research who gave evidence (n=11) expressed a strong preference for providing their evidence remotely. However, only one participant was able to give evidence via videolink. This evidence suggests that victims of domestic abuse are not a homogenous group and that individual needs and circumstances will vary.

Although there was limited evidence on this aspect in the men’s survey, one respondent indicated that choice over how to report abuse was important, stating that:

“The online form was really helpful as I was too scared to call the police.”
(Respondent 4, Men’s Survey p16).

Being treated with respect and kindness, and being listened to, was reported as central to victims’ wellbeing and satisfaction with the process. Overall, however, the research found limited evidence of victims and witnesses in the studies experiencing healing or empowerment through the criminal justice process. Even where engaging with the CJS had led to improved safety, the women’s survey reported that many respondents did not experience their engagement with the system as healing. In some cases, the process triggered or facilitated further abuse. This suggests that there were few examples of ‘therapeutic justice’ provided in the evidence (defined as a process that supports long term recovery and empowerment (SCCJR, 2019).

Victim safety and continued abuse

The research found that victims involved in the studies reported abuse in order to protect themselves and their families. However, a common theme across all three reports was that safety was not consistently ensured for victims and witnesses (and their families) as their case progressed through the justice system.

Methodological limitations make it difficult to draw conclusions about the effectiveness of system responses at different stages (e.g. after a report has been made to the police, after charges are brought etc). However, across the three reports concerns about safety were evident at all stages of the process. For example, the women’s survey report states that the police response had a limited impact on women’s safety, with the most common response to the question ‘Did any of the

³⁰ To note that the report states that the numbers must be interpreted with caution as each of the points of action did not apply to every individual and given the sample size it is not feasible to run statistical tests against these findings (p23).

police responses make you more or less safe?’ being that it had ‘made no difference’ (n=38), followed by ‘feeling more safe’ (n=24) and ‘feeling less safe’ (n=14) (Figure 8³¹, p24). As the quote below shows, feelings of safety can be nuanced and interlinked with other themes such as control.

“I felt slightly safer knowing that the police had the backstory should the situation has escalated. However, I did not feel safe with the police or safe in general. I felt less safe when there was a possibility that they were going to try to force me to disclose more details about the abuse”. (Survey Respondent, Women’s survey p24)

The qualitative research report reported that the period after reporting domestic abuse to the police was a time of particular vulnerability for victims and witnesses, with some participants having felt that the onus was on them to keep themselves safe during this time.

The period before a court date appeared to be the time that the greatest proportion of female survey respondents reported feeling safe³². In contrast, the qualitative research report states that during the pre-trial period, many participants reported continued abuse or harassment. Changes to custody arrangements and bail conditions were reported to have further impacted on safety, particularly when such changes were not communicated to victims in a timely or effective manner.

The views of research participants on the impact of sentencing on victims’ safety were mixed, with some reports of enhanced safety but other reports that court disposals had little impact on the accused’s behaviour. A common view across the women’s survey report and qualitative research report was that imprisonment was the only court disposal which participants felt provided safety for them.

Post sentencing, there were reports by some research participants of perpetrators continuing to harass victims. Both the women’s survey report and the qualitative research report highlighted concerns about perpetrators continuing the abuse and exploiting the system even when NHOs were in place, either by ignoring the order or finding loopholes. Examples were provided of perpetrators sending unsolicited mail and encouraging family members to engage in harassment, thereby complying with the conditions of NHOs but still harassing the victim. Concerns about being monitored via social media were also raised.

Finally, a consistent finding was that perpetrators were reported to ‘use’ or ‘exploit’ the system to exert control and instil fear. The men’s survey, for example, describes how, some survey respondents reported that their involvement with the CJS was because of a false allegation (against them) made by the perpetrator as a means of furthering abuse.

³¹ Response rate is higher than the number of survey respondents (n=29) as this finding is based on responses to more than one question.

³² 9 out of 12 respondents whose cases were referred to court said they felt safe at this stage. Equivalent data for court and post-court stages were not reported on.

“It was highly stressful knowing I should never have been there and was only there as the perpetrator was using the system as an extension of her abuse.”
(Men’s Survey Report, Respondent 9 p20)

Safety concerns about children and other third parties are covered below.

Minimisation of abuse and dissatisfaction with justice outcomes

A common finding across the research was victim dissatisfaction with the case or court outcome. Many research participants were reported to have felt that sentences were too lenient and did not reflect the severity of the abuse. This was interpreted by some as the system not valuing them and minimising their experiences of abuse. Participants reported feeling confused and let down by system responses and decisions. For example, there were reports of bail conditions not being enforced and breaches not being effectively dealt with. Victims were reported to feel that there were insufficient consequences for perpetrators, with decisions being made before cases reached court such as a decision to accept a plea of guilty to lesser or amended charges.

The women’s survey reported participants feeling disappointed by some pre-court decisions, whilst the men’s survey stated that respondents voiced frustration about the lack of repercussions for those who they said had made false reports against them. The minimisation of abuse was felt very keenly by male survey respondents as a gendered issue. This theme is explored more in the next section.

Even where cases resulted in a guilty plea (18 of 22 cases in the qualitative research report), concerns that the prosecution and sentencing did not reflect the severity of abuse was reported as a common theme. Where the accused was found not guilty, participants were especially negative about the justice system. These victims were reported to have been left feeling very vulnerable, with bail conditions and other protective measures ending abruptly.

These research findings suggest that there was limited evidence of ‘distributive justice’ (where outcomes are perceived as fair). However, as noted above, the importance of the process and how victims and witnesses are treated (‘procedural justice’) was, in some cases, as important for research participants as the outcome.

Support and recovery

As noted, participants in this research were reported to have found the process difficult and for some, re-traumatising. Measures put in place to support victims, such as special measures, interdicts and NHOs were welcomed but were reported to provide temporary respite rather than permanent safety.

The women’s survey report states that long delays, often without information, were compounded by a lack of support. The qualitative (interview-based) research found that specialist support and advocacy services, where available, were highly valued by victims and witnesses in the study e.g. support from a named worker during the pre-court period to help victims/witnesses prepare, manage expectations and explain special measures to them. Advocacy and support services were reported as the

most significant mechanisms for minimising trauma and enhancing victims'/witnesses' feelings of safety. However, as noted, gaps in provision were identified, particularly earlier in the process and post court.

The women and men's surveys asked respondents about their experiences of statutory support services including social work, the Children's Reporter, child contact centres and the Children's Panel. However, very few responses were received. The women's survey reported that experiences were mixed, with both positive and negative experiences recorded, but no specific findings on this were reported. The men's survey found that respondents generally reported negative experiences of the criminal (and civil) justice support agencies they had contact with. Responses were underpinned by a common view from respondents that the system was prejudiced against them because of their gender, particularly in relation to their parenting rights.

Finally, as noted previously, kind and empathetic treatment was reported to make a significant difference to victims' and witnesses' experience of the justice system. The women's survey suggests that 'therapeutic justice' could be achieved by introducing more trauma-informed practice and support such as empathic listening and validation (e.g. being taken seriously and believed).

Experiences of Different Victim and Witness groups

This section covers findings specific to the experiences of different groups of victims/witnesses namely: children and young complainers, male victims, female victims, and, a limited discussion on some protected characteristics (ethnicity and disability). It is important to note that victims and witnesses are not a homogenous group. The research found that even within these groups, victims and witnesses had different perspectives and needs.

Considerations relating to children and young complainers (and other third parties)

The qualitative research included in-depth interviews with five court-cited child witnesses (age 12-17) and four young victim complainers (age 17-22 but who were under 18 when first subject to domestic abuse)³³. Information about five other child cited witnesses was also included in the study through their mother's perspectives when interviewed. Key themes relating to the experiences of children and young people, young complainers and parents are summarised below, alongside any relevant findings from the men's and women's survey reports (from the perspective of parents).

A common theme was that victims felt perpetrators were not always held accountable for the impact that domestic abuse had on children. All child and parent

³³ This included 3 boys, 2 girls and 4 female young complainers.

interviewees detailed children being subjected to, witnessing and being adversely affected by domestic abuse.

As noted in [Chapter 6](#), NHOs were identified as a particular aspect of the new law that some parents felt could have been used more effectively. Several adult participants were critical that the NHOs did not extend to any or all of their children, with child contact arrangements being perceived to have influenced court decisions³⁴.

Other issues raised in relation to child contact arrangements included limited effectiveness of bail conditions, continued abuse to the (adult) victim via child contact, and cumulative negative impacts on children and families involved in both criminal and civil justice (family court) proceedings. Forthcoming research funded by the Scottish Government explores the interactions between civil and criminal proceedings in the context of domestic abuse and child contact in Scotland³⁵.

Like adults, giving evidence was reported to be a stressful experience for those children involved. Only 2 of the 5 children interviewed gave evidence in proceedings, which they did remotely. The children interviewed felt that going to court was especially intimidating for them and that this was not always recognised or fully understood by those working in courts. Although the protection offered by giving evidence remotely was welcomed by children (and parents), as noted, the experience and impact of cross-examination was recounted by some parents as distressing for children, as were court rules related to contamination of evidence.

The lack of regular communication and involvement and/or explanation of decision-making was raised as a concern. Some of the child cited witnesses reported not being party to or understanding decision-making and felt that justice professionals did not understand the impact of decisions on them.

“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, Qualitative Research Report p47)

Many of these themes were captured in The Everyday Heroes Report on Justice (Houghton & MacDonald, 2018) which reported on children and young people’s priorities for action in relation to gender-based violence and inequality in Scotland. Of note are priorities relating to involvement in decisions affecting them including contact with the accused, access to support throughout the process, improved communication and information provision and a focus on reducing re-traumatisation.

The reader is also directed to the ‘[Justice, Safety & Support](#)’ booklet which was co-created by children and young people with lived experience of domestic abuse and highlights the research findings they felt were most important. These included themes around safety, trust, understanding the impact of domestic abuse on

³⁴ 3 NHOs were applied to children in the study sample.

³⁵ See [Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings](#) for more information.

children, clear information and involvement in decision making, and support (for as long as they need it).

“I think it would have been better if it was not four or five different court dates.” – 13 year old

“I think I should have got longer with [my advocacy worker] than what I did. But in the short time that I had, it was really beneficial” – 14 year old

(Justice, Safety & Support Report)

Finally, the research reported that many of the victims in the study felt that abuse of a third party, including wider family and friends, was not taken account of adequately throughout the process. A key message was that domestic abuse affects all family members. The qualitative research report states some victims felt that the relational aspect of abuse was inadequately recognised in decision-making, particularly in the way that family members’ safety was interconnected. For example, some participants reported that adult children and other individuals were often subject to abuse and harassment from the accused and victims were concerned that they were not included in protective measures such as NHOs³⁶.

Experiences of male victims of domestic abuse

There were 18 responses to the men’s survey and two men interviewed in the qualitative research. The small number of men interviewed meant that any meaningful analysis relating to gender was not possible and findings specific to men were therefore not reported in the qualitative research report.

A striking finding in the men’s survey report was the number of male respondents, all of whom had identified as victims of domestic abuse, reporting that the perpetrator had made a malicious or false report against them (11 out of 18)³⁷. Indeed this was the reason that some respondents had come into contact with the justice system in the first place. Furthermore, the report states that in the majority of cases, no further action was taken against the alleged perpetrator (13 out of 18)³⁸, with only 3 such cases referred to the criminal courts. The decision to take no further action against the perpetrator was associated with feelings of being disbelieved and unsupported by a system which was perceived to not take domestic abuse against male victims seriously.

“They were not able to help me, mainly because I am a man and my abuser is a woman, not the other way.” (Respondent 6, Men’s Survey p21)

³⁶ The Act provides the court with a power to make a NHO to protect the victim and any children under the age of 18 either living with the victim or perpetrator or in respect of whom the child aggravation has been proven. However the court does not have a power to make provision in an NHO to protect other persons.

³⁷ Data tables for this question were not included in the Women’s Survey Report. However, the report states on p26 that two women (out of 29) had false allegations made against them by the perpetrator.

³⁸ 13 out of 18 respondents said that no further action was taken against the perpetrator after reporting to the police / after the Prosecutor Fiscal assessed the case.

Although direct comparisons between the men's and women's surveys are problematic³⁹, it is interesting to note that the women's survey found that where women report having had false allegations made against them by the perpetrator the experience was not wholly negative. One of the two women who had experienced this felt that the situation was 'dealt with respectfully,' the police officers 'made her feel safer', 'like they listened', 'like they cared' (p26). Due to the very small sample size, no conclusions can be drawn from this, but it does contrast sharply with the men's survey findings. The women's survey reported that an arrest or charges were made against the perpetrator in approximately half of cases (as reported by survey respondents).

The men's survey report found that the majority of survey respondents reported feeling that there was a system-wide gender bias against them – as men. Whilst wider evidence on male victim experiences of the criminal justice system appears to be limited, some UK (not Scottish) studies have reported similar findings. Again based on very small sample sizes, research has reported male victims feeling unfairly treated and fearful of not being believed, not taken seriously and being judged (e.g. McCarrick et al., 2016; Hogan, 2016 & Bates, 2020).

A final main finding in the men's survey was that most respondents who had children reported a perceived gender-bias against them in relation to parenting rights. Respondents raised issues of gendered assumptions and preferences that they felt were given to women in relation to the care and custody of children. Survey respondents reported feeling that the accused could use their interactions with agencies as a means to continue to abuse them and/or their children because the agencies were unwilling to listen to them (the male victims) or take their experiences seriously.

Longstanding issues for female victims of domestic abuse

The women's survey included responses from 29 women whilst the qualitative research included interviews with 11 women and four young female complainers. The findings reported in Chapters 3-5 largely reflect the views of women and their experiences of the justice system. As with men, female adult participants reported concerns about the extent to which they felt the investigation, prosecution and sentencing for domestic abuse offences adequately reflected the severity of abuse. Going to court was reported as difficult and distressing for most female participants. Both surveys reported mixed results on whether or not those who completed the survey would have chosen to become involved in the justice process had they known what it would be like, with responses overall painting a mostly negative picture. The women's survey found, however, that the most common response that female respondents gave to a question about the advice they would give to a friend who was considering reporting domestic abuse was 'it's the right decision'. Many of the themes covered in the previous section echo wider pre-pandemic evidence which focuses largely on the experiences of female 'survivors'⁴⁰; as

³⁹ Data comparisons are difficult due to different questions being covered in the reports and missing data and small sample sizes.

⁴⁰ Women with lived experience of domestic abuse and sexual assaults.

described in [Chapter 3](#). These themes are all referenced to some extent in the women's survey and/or qualitative research report. This suggests that despite significant progress in legislation and policy in Scotland, female victims of domestic abuse (and related crimes) continue to convey negative experiences of the justice system in research. Issues such as longer waiting times which were already reported as lengthy and re-traumatising for female victims (Forbes, 2021), were exacerbated by the COVID-19 pandemic.

Although there were not many instances of female participants describing their experiences themselves through a gendered lens, domestic abuse is widely accepted to be a gendered form of violence. The exception to this was one respondent in the women's survey report who felt that her word 'as a woman' was worth less than that of the accused (who was male).

Child contact was another part of the system which some female research participants felt valued the role of men as fathers more highly than other factors including their safety (for example the issue with NHOs excluding some/all children being perceived to be influenced by child contact arrangements). Issues associated with a 'pro-contact' culture in family courts, such as safety risks to victims and children, has been evidenced elsewhere (e.g. Morrison, 2015; Hester & Radford, 1996; Brooks-Hay et al., 2019).

Absence of perspectives of victims and witnesses from ethnic minority backgrounds and other protected characteristics

Despite efforts to recruit participants from 'seldom heard from' groups, the small number of minority ethnic participants meant that no meaningful analysis on this basis could be undertaken. One out of 22 participants identified as 'Black Minority Ethnic' in the qualitative study; the other 21 identified as White Scottish or White British. In the women's survey, one respondent identified as 'Asian or Asian British - Pakistani'; the other 28 identified as White Scottish or other White category. In the men's survey, one respondent identified as 'Black or Black British – African' and one identified as 'Mixed – Any other mixed background'; the remaining 16 identified as White Scottish or other White category (15) or 'prefer not to answer' (1).

Wider research suggests that the experience of ethnic minority victims of domestic abuse may not be well understood, with other factors, in addition to gender, influencing victim experiences of abuse such as kinship patterns (e.g. preference for sons, status/role of the mother-in-law), immigration status, race and ethnicity (Anitha and Gill, 2021; Gangoli et al., 2011). Forthcoming Scottish Government funded research [Diversifying Justice: Revealing viable pathways for South Asian women](#) will explore South Asian female victims' perceptions of justice and the justice system (amongst other factors).

Due to data constraints it was also not possible to undertake any analysis related to victims or witnesses with disabilities. Data on disabilities was only available in the men's survey report which stated that seven (out of 18) respondents reported that they had a disability (of which six said it was not visible to other people)⁴¹. Ethical

⁴¹Disability data was not provided in the women's survey report or the qualitative research.

considerations meant that disability data (and other protected characteristics) were not gathered in the qualitative research.

Similarly, data on research participants' sexuality was not reported, with the exception of the men's survey⁴². Due to sample size it was not possible to undertake any analysis of data in respect of this.

⁴² The majority of respondents in the men's survey reported that they were heterosexual (n=15), with three indicating that that they were homosexual (n=2) or bi-sexual (n=1).

8. Areas for Improvement – Key Messages from Victims and Witnesses

Main Findings

- **Improved training, understanding and a more trauma-informed approach** - All three reports called for a better understanding of domestic abuse and its impact on victims and their families by justice professionals. Suggestions for improvement included improved communication, more training on domestic abuse and trauma-informed practice, and greater use of remote, earlier, pre-recorded evidence.
- **Improved knowledge, communication and information sharing** – The research called for increased public and professional awareness of the Act and what constitutes criminal behaviour. The need for accessible, timely and ongoing communication to keep victims and witnesses informed about the progress of a case was emphasised.
- **Choice, empowerment and taking a person-centred approach** - All three reports highlighted the desire of victims and witnesses to be heard and to have agency and choice, and, the crucial role of advocacy in facilitating this. Suggestions for improvement included removing vulnerable witnesses from adversarial court settings and giving evidence earlier.
- **Expanding support for victims and witnesses** - The need for increased support and advocacy, beginning earlier and lasting for as long as needed, was highlighted as important for victims' and witness' wellbeing and recovery.
- **Quicker, more efficient processes** - A common theme was the need for quicker and more efficient processes, particularly in relation to hearing cases in court.
- **Ensuring safety for victims and witnesses and their families** - The research suggests that many research participants felt that more could be done to protect them and their families from further harm at all stages of the process. The scope and application of NHOs was highlighted as an area for further review, especially in relation to children and other 'third parties'.

Suggestions from the victims and witnesses who participated in the research point to a number of areas for improvement. Across the reports there was a consistent call for better communication, a more trauma-informed, person centred approach and faster, more efficient processes which better protect victims and witnesses and their

families from harm. The value and importance of working with people with lived experience to improve the system was also emphasised.

It is worthwhile noting that many of the suggestions align with strategies, policies and initiatives already underway or planned. These include the [Equally Safe Strategy](#), the [Victims Code for Scotland](#)⁴³ and [The Vision for Justice in Scotland](#) as well as specific developments including the [virtual summary criminal trials pilot](#) for specialist online domestic courts, the Scottish Child Interview Model (SCIM) for joint investigative interviews and the [Bairns' Hoose \(Barnahus\) model](#) for child victims and witnesses. There is also the work commissioned by the Victims Taskforce this year to ensure all staff working with witnesses are trauma-informed⁴⁴, and the work being progressed to deliver on the [Programme for Government](#) Commitments, including plans to introduce a Criminal Justice Reform Bill.

Improved training, understanding and a more trauma-informed approach

All three reports called for a better understanding of domestic abuse and its impact on victims and their families by justice professionals. The women's survey report states that 'relatively small changes in improved communication, empathetic treatment and more training on domestic abuse and trauma-informed practice for professionals would make a significant difference to women's experiences of justice'. (p42).

"I think that people within the system need to be better trained and made to understand the state of the person that they are dealing with. The nature of abuse means that an abuse victim is a terrible witness... They will often (especially in the case of coercive control) not have had any clear cut moments of saying no (e.g. to sex) or will have agreed to things that they didn't want to happen - because that's how it works... Those taking statements and creating the cases need to work with the victims with this in mind. So many crimes are being dismissed, passed over, because the victims (survivors) are not given a real chance to get their story across." (Women's Survey Report p42)

The qualitative research goes further and suggests the need to remove vulnerable adult and child victims/witnesses from court settings, arguing that remote, earlier, pre-recorded evidence would reduce trauma and promote recovery.

In the men's survey, respondents also called for better understanding and training on domestic abuse by professionals, in particular the prevalence and impact of abuse on male victims. Respondents emphasised the need to listen to and believe male victims of domestic abuse, and for more recognition of the role men play in parenting and children's lives.

⁴³ Using the principles of the Victims and Witnesses (Scotland) Act 2014 (S1 and 1A) outlined in Chapter 1 of the Victim's Code for Scotland.

⁴⁴ [Trauma Informed Justice: A Knowledge and Skills Framework for Working with Victims and Witnesses](#)

Improved knowledge, communication and information sharing

The research called for increased public and professional awareness of the Act and what constitutes criminal behaviour. Some participants in the qualitative research indicated a desire for clear national messaging about this. The qualitative research report also calls for wider use of DASA provisions, particularly in relation to the prosecution of psychological abuse and recognition of harm to children. Given the small sample size, further investigation would be needed to explore how widespread the issues raised are, particularly as the Act beds in and the justice system recovers from the COVID-19 pandemic.

It appears that many research participants found the progress of a case confusing. Lack of understanding of the process, the possible outcomes, the rationale for decisions, the roles and responsibilities of the various agencies and the language and terminology used in the justice system was noted. The need for accessible, timely and ongoing communication to keep victims and witnesses informed of what is happening (even if that is to let them know there has been no progress and why) was identified as critical for victim satisfaction.

“Improve communication - felt I always had to contact them to find out what was happening.” (Women’s Survey Report, p42)

The qualitative research report called for better collaboration between the police, procurator fiscal and the victim/witness to build a case together.

Choice, empowerment and taking a person-centred approach

Closely linked to the need for better communication was the theme of embedding a victim-centred approach which fosters a sense of control, enables choice and recognises individual needs. All three reports highlighted the desire of victims and witnesses to be heard and have agency and choice; for example, choice in how/where they (or their children) give evidence and which, if any, special measures they use; involvement/understanding of what and how evidence is used; and, a say in the use of protective measures e.g. NHOs. The crucial role of advocacy was highlighted in enabling many of these factors.

The qualitative research report described a range of suggestions from participants to make the system more victim-centred. These 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.’ (p73)

Expanding support for victims and witnesses

The need for increased support and advocacy, beginning earlier and lasting for as long as needed, was highlighted as important for victims’ and witness’ wellbeing and recovery. The qualitative research report noted that access to support at an earlier stage in the legal process (for adults and all associated children, not just the cited witnesses) would have made a positive difference to victim/witness wellbeing, as

would one named justice contact connected to the court case. The research also suggested a need for support to recognise the unique circumstances and vulnerabilities that different victims and witnesses may present with, for example children and young people, and male victims of domestic abuse.

Quicker, more efficient processes

Not surprisingly, given the unprecedented upheaval to the justice system over the period affected by the COVID-19 pandemic, a common theme was the need for quicker and more efficient processes, particularly in relation to hearing cases in court. Both the women's survey and the qualitative research report highlighted the stress and emotional cost that long delays, sometimes years, and multiple adjournments placed on victims and witnesses. The need for quicker processes was therefore highlighted as a priority.

Ensuring safety for victims and witnesses and their families

Lastly, but most importantly, the research suggests that many research participants felt that more could be done to protect victims and witnesses and their families from further abuse and intimidation before, during and after a domestic abuse court case. The women's survey report suggests that more protection should be put in place whilst a case is progressing as some participants reported feeling unsafe and vulnerable. Similarly, the qualitative research report presses for further efforts to maximise victims' and witnesses' safety at all stages of the process, including immediately after reporting and post court. The scope and application of NHOs was highlighted as an area for further review, especially in relation to children and other 'third parties'. Whilst evidence on victim safety was limited in the men's survey report there were clear signs of continuing abuse at different stages. Participants in the qualitative research were reported to have stressed how the safety and needs of the whole family needed consideration in decision-making, and this was also reflected in the priorities identified by children and young people in the accessible report '[Justice, Safety and Support](#)'.

9. Court Business

This section provides the information gathered to meet **Section 14(4)** of the Act:

(4) For the purpose of the report, the Scottish Ministers must seek information from the Lord President of the Court of Session on how court business is arranged, including in different areas or types of court, so as to ensure the efficient disposal of cases involving those sorts of offences.

The Chief Executive of the Scottish Courts and Tribunals Service (SCTS) wrote to the Scottish Ministers in response to a letter sent by the Cabinet Secretary for Justice and Veterans to the Lord President seeking information about how court business is arranged to ensure the efficient disposal of cases involving domestic abuse between 1 April 2019 and 31 March 2022.

That letter noted that the COVID-19 pandemic had a significant impact on the work of Scotland's courts throughout a large proportion of the reporting period, though SCTS sought to ensure that cases involving domestic abuse remained a priority at all times.

It noted that cases involving domestic abuse make up a significant proportion of all the business currently processed by Scotland's criminal justice system. 95% of domestic abuse court cases are heard in the sheriff summary court. In 2021-22, domestic abuse cases accounted for 25% of all sheriff summary case registrations, 33% of sheriff summary trials called and 42% of sheriff summary trials in which evidence was led. They noted that with such high volumes, it can be challenging to afford priority to these cases.

Tables 4 and 5 below presents relevant data on:

- The average length of time (in weeks) between a plea being made (generally the first court appearance) and a trial diet being available (at which the case could be disposed of if it proceeded to trial); and,
- The average length of time (in weeks) between the pleading diet and a trial actually taking place. This figure is higher than the "first available trial diet" as, for the trial to take place, all parties to the case must be ready for it and all witnesses present.

Data for each of the three years covered by the reporting period is provided, indicating the average period for (i) all summary cases, (ii) cases involving a domestic abuse aggravator and (iii) cases not involving a domestic abuse aggravator. The figures demonstrate that the judiciary and courts have continued to prioritise domestic abuse cases, though the pandemic has led to increases in waiting periods generally, which are now being addressed through the recovery programme.

Table 4. Period (in weeks) until first available trial diet when plea made

	2019-20	2020-21	2021-22
All summary cases	13	20	19
Summary cases with a domestic aggravator	10	15	13
Summary cases with no domestic aggravator	14	21	21
Difference in period between DA and non DA cases	4	6	8

Table 5. Average length of time in weeks between Pleading Diet and Evidence-led trial

	2019-20	2020-21	2021-22
All summary cases	22	27	45
Summary cases with a domestic aggravator	17	23	36
Summary cases with no domestic aggravator	25	30	52
Difference in period between DA and non DA cases	8	7	16

Extensive data relating to the volumes of domestic abuse cases registered, called and concluded from 2014-15 to date can be found in the Quarterly Criminal Court Statistics, which are available at the [Official Statistics](#) section of the SCTS website.

In addition to maintaining priority in the “traditional” management of domestic abuse cases, the judiciary and the SCTS have also explored the potential for domestic abuse cases to be managed differently, enhancing efficiency whilst developing a more trauma-informed approach.

Building on pilots of new approaches to managing summary criminal cases conducted as part of the [Evidence and Procedure Review](#) the SCTS have now launched the [Summary Case Management pilot](#) in Dundee, Hamilton and Paisley sheriff courts. The pilot seeks to reduce the number of unnecessary hearings through facilitating early disclosure of evidence and early judicial case management. Key evidence will be available to be released to the defence prior to or at the first calling in all domestic abuse cases. In all other cases, specified disclosure material can be requested where it is considered that such early disclosure may make a material difference to a plea or the early resolution of issues. The differentiation of domestic abuse cases has been maintained in recognition of their particular impact and the desire for them to be prioritised.

The automatic provision of key evidence in domestic abuse cases should put the defence in a significantly different position from the early stage of the case. It will allow the defence to engage more meaningfully with the Crown (COPFS) on both plea and resolution, failing which, on the agreement of evidence. This should lead to efficiencies for defence agents and for the Crown.

For those directly involved in a case, there is the opportunity for matters to be resolved at the earliest possible stage, achieving earlier certainty and minimising potential trauma in the process. The pilot will run for 18 months and will be evaluated at six-monthly intervals, with a final evaluation and report by the end of March 2024.

Regular interim evaluations will allow consideration to be given to whether the pilot can be rolled out to other courts before a final evaluation. Two of the performance indicators that will be measured throughout the pilot are:

- The percentage of domestic abuse cases requiring to call at intermediate diet⁴⁵
- The percentage of domestic abuse trials in which evidence is led at trial diet.

It is hoped that the former will reduce and the latter increase as a consequence of the pilot.

Virtual summary trials were initially investigated as a response to the restrictions placed on the court estate as a consequence of the pandemic. An initial [report](#) produced by Sheriff Principal Derek Pyle in July 2020 recommended their further exploration and development. This led to the establishment of the Virtual Trials National Project Board which issued its [report](#) on the piloting of virtual summary trials in January this year. The report recommends that specialist online courts be set up to tackle domestic abuse cases. These would offer key advantages in:

- Increasing protection and reducing trauma for complainers;
- Making it easier for witnesses to give their evidence;
- Offering efficiencies in reducing the need for individuals to travel to court;
- Capturing best evidence and introducing trauma-informed practices as recommended in the Lord Justice Clerk's review of sexual offending.

SCTS note that, building on their experience to date, they are now working to establish a dedicated specialist virtual domestic abuse court that will operate across the sheriffdom of Grampian, Highland and Islands. The aspiration is to roll this approach out across all sheriffdoms in due course, subject to successful implementation and the resources being available to do so.

⁴⁵ An 'intermediate diet' is a hearing to ascertain, insofar as possible, whether both Crown and defence are ready to proceed to the trial. It is designed to avoid trials having to be adjourned at the last minute because of issues that could reasonably have been dealt with in court prior to the trial.

10. Methodology, Scope and Limitations

To meet the Reporting Requirement (Section 14) the Scottish Government produced/gathered both statistical and qualitative data. These are:

1. **Criminal justice statistics** - to meet the requirement as set out in Section 14:2 (a),(b),(c),(d),(e); and Section 14:3 (a),(b) (in part)
2. **Evidence on victim and witness experiences of domestic abuse court cases** - to meet the requirement as set out in Section 14 2(f)

Some of the statistical data is not yet currently available and will be reported on separately in a final report in 2023. The schedule for data reporting is set out in [Annex 3](#).

To meet Section 14(4), the Scottish Government also sought information from the Lord President of the Court of Session on **how court business is arranged**, including in different areas or types of court, so as to ensure the efficient disposal of cases involving those sorts of offences. This is detailed in [Chapter 9](#).

It was not within the scope of the Reporting Requirement to undertake a systematic review of the academic literature or to include evidence and/or data published by other organisations. However, wider research is referenced where deemed appropriate.

Criminal Justice Statistics

The data required to meet the statistical elements of the Reporting Requirement comes from three sources:

- [Criminal Proceedings in Scotland National Statistics](#) Scottish Government bulletin
- Scottish Courts and Tribunals Service (SCTS) Disposals dataset
- SCTS Journey Times dataset

Whilst part of the data needed to meet the Reporting Requirement is available to be published here, the remainder of the data is not yet available and will follow in a final, second report which will be laid in Parliament in 2023. [Annex 3](#) provides further detail on the timetable for publishing the statistical data.

Evidence on Victim and Witness Experiences of Domestic Abuse Court Cases

A combination of surveys and interviews were used to meet Section 14 2(f) of the reporting requirement. The research was conducted in accordance with Scottish Government social research ethical standards. The survey research aimed to capture a broad range of views from adult victims and witnesses, whilst the interview research sought to explore experiences in more depth and included children and

young people. The research ran from 2021-22 and comprised of three research projects which are briefly described below.

1. An online survey for female victims of domestic abuse (and stalking) – the survey was completed by 29 women (whose initial contact with the criminal justice system was made after 1st April 2019), of which 12 cases were referred to court and five cases had gone to trial at the time of writing. The survey was open from May to September 2021 and was undertaken by the Scottish Centre for Crime and Justice Research (SCCJR). The report was published in August this year.

[Domestic Abuse \(Scotland\) Act 2018 and the Criminal Justice System: Women's experiences two years in the emerging findings](#) (Lombard et al., 2022)

2. An online survey for male victims of domestic abuse – The survey was completed by 18 men whose initial contact with the criminal justice system was made after 1st April 2019, of which 3 cases (against their partner/ex-partner) and 4 cases (against them) were referred to court. The survey was open from July to September 2021. It was adapted from the SCCJR women's survey and undertaken by Scottish Government researchers. The report is published on the same day as this reporting requirement.

[The Domestic Abuse \(Scotland\) Act 2018: emerging findings of male victims' experiences of the Criminal Justice System](#) (Scottish Government, 2022c)

3. In-depth qualitative research with adult and child victim/witnesses – The research involved 22 in-depth qualitative interviews with victims and witnesses of domestic abuse, including five children and young people, two men, 11 women and four young adult complainers, of which all cases were referred to court. Twelve participants were involved in Domestic Abuse (Scotland) Act 2018 cases and 14 were involved in cases with a domestic abuse aggravator. The fieldwork ran from November 2021 to April 2022 and was undertaken by the Universities of Edinburgh and Stirling. The report is published on the same day as this reporting requirement.

[Domestic Abuse Court Experiences Research: The perspectives of victims and witnesses in Scotland](#) (Houghton et al., 2022)

The research findings were reviewed by children and young people with lived experience of domestic abuse. They helped design a user-friendly booklet and summarise the research findings they felt were most important. This is also being published on the same day as the reporting requirement.

[Justice, Safety and Support: what children and adults told researchers about the new law on domestic abuse](#). (Scottish Government, 2022d)

Full descriptions of the research questions and methodologies employed for each research study are provided in the individual research reports (accessed via the above hyperlinks).

Scope and Limitations

Scope

There are a number of considerations in relation to the scope of the evidence gathered for this report. These are summarised below:

- Most of the statistical data presented in this report covers the first two years of the reporting period: 2019-20 and 2020-21. The remaining data will be published separately in a final report next year.
- Although the emphasis was on court experiences in order to meet the reporting requirement, the research on victim and witness experiences also covered other stages relevant to experiences of domestic abuse court cases including reporting abuse, preparing for court and views on sentencing. This approach was in line with best practice on measuring victims' experiences of justice⁴⁶, and enabled a victim-centred approach⁴⁷.
- As per the reporting requirement, the research and data covers both DASA Section 1 offences and domestic abuse aggravator charges. The research covers experiences of victims that made a report of domestic abuse to the Police after 1 April 2019.
- As directed by the reporting requirement, the focus of the research was on victim and witness experiences only and does not therefore cover the views of other actors in the justice system e.g. justice professionals and support organisations.
- Case details in the research, particularly the surveys, are mostly drawn from victims' recollections and understandings of the system rather than from official court records which means that no assumptions are made as to the accuracy of case details⁴⁸.

Limitations

There are a number of limitations which are important to consider when reviewing the **statistics** prepared for this reporting requirement. These are set out below:

- Whilst the statistical data presented here will form an important part of the broader evidence base used to understand the effectiveness of the Act, neither of the years which the data covers (2019-20 and 2020-21) are considered to be fully representative of its use. Statistics from future years will be required to provide an understanding of how the Act has impacted on how domestic abuses cases are prosecuted in court.

⁴⁶ The SCCJR's [Measuring Justice Briefing](#) suggests that it is important to consider how victims experience different stages of the justice system and to consider measuring procedural, effective, distributive and therapeutic justice – all factors associated with victim satisfaction.

⁴⁷ E.g. by allowing victims in the research to focus on the aspect of the justice system they felt was most important and that they were comfortable with discussing.

- Although the Act came into effect at the start of 2019-20, the full course of conduct for charges under the domestic abuse offence needed to have taken place on or after 1 April 2019 for the charge to apply. Therefore there will have been a time lag before such crimes could be reported to the police and subsequently prosecuted in court, so 2019-20 does not effectively cover a full year under the Act.
- A key limitation is the impact of the COVID-19 pandemic on the justice system. Whilst it is not yet possible to isolate the impact of the pandemic on the data, it is reasonable to conclude that the 2020-21 data is predominantly a reflection of this, and should not be interpreted as indicative of longer-term trends.

There are also a number of limitations specific to the **research on victim and witness experiences**:

- As per above, it is not possible to determine the extent to which the pandemic and its impact on the justice system affected the experiences of victims. The pandemic may also have affected the availability and willingness of victims and support services to engage with and/or participate in the research which may have further limited the number and/or diversity of research participants.
- In total, 69 individuals (men, women and children and young people) participated in the research on victim and witness experiences. This represents a very small number of victims that report domestic abuse to the police⁴⁹. The research reports suggest that small sample sizes were due to a combination of factors including the research design and methodology, eligibility criteria, ethical considerations and procedural delays. As noted in [Chapter 3](#), small sample sizes are fairly typical of this type of research – due largely because of the sensitivities involved when conducting research with victims and witnesses of domestic abuse.
- Whilst the research provides strong qualitative evidence about the lived experience of victims and witnesses, it is not drawn from a representative sample of victims in Scotland, particularly in relation to male victim experiences of court, ethnic minorities and the experience of children impacted by domestic abuse court cases. This means that the findings cannot be generalised, particularly to those groups.
- Due to small sample sizes, the research findings are limited in some areas, in particular, victim experiences of the new DASA Section 1 offence⁵⁰, experiences of specialist courts⁵¹, and, for the survey research, experiences

⁴⁹ In 2021-22 just under 65,000 incidents of domestic abuse were recorded. The latest [Recorded Crime National Statistics](#) show that there were 1,760 crimes recorded under the **Domestic Abuse (Scotland) Act 2018** in 2021-22. This was a 7% increase compared to 2020-21 (from 1,641 to 1,760) and a 5% increase compared to 2019-20 (from 1,681 to 1,760).

⁵⁰ It was not possible in the research to identify which cases related to DASA Section 1 offences, with the exception of the qualitative research which included 12 cases. The research found that in many cases, research participants did not know what the specific charge was and/or had limited understanding of the new legislation.

⁵¹ Victims and witness might not know whether a court is a specialist court; for ethical (data protection) reasons it was not felt appropriate to ask survey respondents which court their case took place in. The sample size was too low to do any meaningful analysis by local authority area.

of court and analysis of associations in the data e.g. by court type, victim characteristics etc.

- As is often the case with sensitive research of this nature, research participants were self-selecting and accessed via support organisations. This was done to ensure participants' safety and wellbeing and to maximise response rate. However, this can also introduce 'bias' into the research⁵². The methodology aimed to address this via the distribution of the online surveys by COPFS. However, it is possible that some bias remains.

Despite these limitations the research findings highlight some pertinent issues regarding victim and witness experiences of court and the criminal justice system more generally since the implementation of the Act. These are described in Chapters 5-8.

⁵² For example, it may be mean that participants with an 'extreme' experience (very good or very bad) may be more likely to take part in research. It also means that victims who are not engaged with a support service are less likely to take part.

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Annex 1. Acronyms

CJS – Criminal Justice System

CPS – Crown Prosecution Service (England and Wales)

COPFS – Crown Office and Procurator Service

DASA – Domestic Abuse (Scotland) Act 2018 ('The Act')

GBV – Gender Based Violence

JAS – Justice Analytical Services

NHO – Non Harassment Order

SCCJR – The Scottish Centre for Crime and Justice Research

SG – Scottish Government

SCTS – Scottish Courts and Tribunals Service

SWA – Scottish Women's Aid

Annex 2. The Domestic Abuse (Scotland) Act 2018 Reporting Requirement

14 Reporting requirement

(1) The Scottish Ministers must prepare a report on the use of, during the reporting period—

(a) an offence under section 1(1),

(b) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

(2) The report must set out, in relation to those sorts of offences—

(a) the number of cases for which criminal proceedings are undertaken,

(b) the number of cases where it has been—

(i) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child as described in section 5(1)(a),

(ii) proved that the offence is so aggravated,

(c) the number of convictions in criminal proceedings,

(d) the number of cases in which a non-harassment order has been made under section 234AZA of the Criminal Procedure (Scotland) Act 1995 (non-harassment orders: domestic abuse cases) in favour of—

(i) a victim,

(ii) a child by virtue of subsection (3) of that section,

(e) the average length of time—

(i) from service of the complaint or indictment,

(ii) to finding or verdict as to guilt (including plea of guilty),

(f) information about the experience of witnesses (including witnesses who are children) at court,

(g) such additional information as the Scottish Ministers think fit.

(3) The report must, in relation to those sorts of offences—

(a) include distinct statistics for each of them,

(b) provide details with respect to particular—

(i) areas,

(ii) types of court.

(4) For the purpose of the report, the Scottish Ministers must seek information from the Lord President of the Court of Session on how court business is arranged, including in different areas or types of court, so as to ensure the efficient disposal of cases involving those sorts of offences.

(5) The report must be laid before the Scottish Parliament as soon as practicable after the end of the reporting period.

(6) The reporting period is the period of 3 years beginning with the day on which section 1(1) comes into force.

A full description of the Act is available online: [Domestic Abuse \(Scotland\) Act 2018](#)

Annex 3. Schedule of Data for the Interim and Final Reports.

Type of Data & Data Source	Interim Report (2022)	Final Report (2023)
<p>Criminal Justice Statistics⁵³</p> <p>Data source: Criminal Proceedings in Scotland: Section (1)(a) (b) 2(a), 2(b)(i) and (ii), 2(c)</p> <p>SCTS Disposals data: Section 2(d) (i) and (ii)</p> <p>SCTS Journey Times data: Section 2(e) (i) and (ii)</p>	<p>2(a) the number of cases for which criminal proceedings are undertaken, (b) the number of cases where it has been - (i) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child as described in section (ii) proved that the offence is so aggravated, (c) the number of convictions in criminal proceedings, (in part – 2019-20 & 2020-21 data)</p>	<p>2 (a), (b) and (c) 2021-22 data 2(d) the number of cases in which a non-harassment order has been made under section 234AZA of the Criminal Procedure (Scotland) Act 1995 (non-harassment orders: domestic abuse cases) in favour of— (i) a victim, (ii) a child by virtue of subsection (3) of that section, (e) the average length of time— (i) from service of the complaint or indictment, (ii) to finding or verdict as to guilt (including plea of guilty),</p>
<p>Qualitative data⁵⁴: victim research findings</p> <p>Data source: Three Research Reports (see Methodology section)</p>	<p>(f)information about the experience of witnesses (including witnesses who are children) at court, (g)such additional information as the Scottish Ministers think fit.</p>	
<p>Criminal justice statistics</p> <p>Data source: Criminal Proceedings in Scotland SCTS Disposals data SCTS Journey Times data</p>		<p>(3)The report must, in relation to those sorts of offences— (a)include distinct statistics for each of them, (b)provide details with respect to particular— (i)areas, (ii)types of court.</p>
<p>Information from the Lord President</p> <p>Data source: Letter from the Lord President of the Court of Session</p>	<p>(4)For the purpose of the report, the Scottish Ministers must seek information from the Lord President of the Court of Session on how court business is arranged, including in different areas or types of court, so as to ensure the efficient disposal of cases involving those sorts of offences.</p>	

⁵³ Data for years 2019-2020 and 2020-2021 is provided in this report. Data for 2021-22, the third year of the reporting requirement, is not currently available and will be published in 2023.

⁵⁴ Whilst most of the data presented is qualitative, the research also includes some simple (descriptive) quantitative data from the two surveys.

Annex 4. Technical information on criteria for the offence

The offence is committed when three conditions are met. If any of the three conditions are not met, the offence is not committed.

- Condition one - Person A (the alleged perpetrator) engages in a course of behaviour which is abusive of A's partner or ex-partner ("B" – the complainant).
- Condition two - A reasonable person would consider that the course of behaviour would be likely to cause B to suffer physical or psychological harm.
- Condition three - Person A either intends by the course of behaviour to cause B to suffer physical or psychological harm, or is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

Behaviour which is abusive of B includes:

- behaviour directed at B that is violent (either sexual violence or physical violence),
- behaviour directed at B that is threatening or intimidating,
- behaviour directed at B or any other person that has as its purpose (or one of its purposes) or that a reasonable person would consider would be likely to have one or more of the following effects:
 - making B dependent on, or subordinate to, A
 - making B isolated from friends, relatives or other sources of support,
 - controlling, regulating or monitoring the day-to-day activities of B,
 - making B feel frightened, humiliated or degraded, or
 - punishing B.

The list of abusive behaviour is a non-exhaustive list and other behaviour can be considered abusive by the court even though it may not be on this list. This would be a matter for the court to determine in any given case.

The list of effects on B that the behaviour would give rise to is exhaustive; however, it has been carefully framed to encompass the many specific examples that have been provided to us of the effects which coercive control may have on B.

The behaviour can be of any kind including:

- saying or otherwise communicating something as well as doing something,
- failing to say or otherwise communicate, or do, something where that failure is intentional.

A course of behaviour involves behaviour that has taken place on at least two occasions.

It is irrelevant whether in fact B did suffer physical or psychological harm from the course of behaviour. This is an objective test where the court must be satisfied that a reasonable person would consider the course of behaviour would be likely to cause the harm described to person B. Psychological harm includes, but is not limited to, fear, alarm and distress.

The new offence only applies to conduct that took place on or after 1 April 2019.



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Any enquiries regarding this publication should be sent to us at

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