



**Report on how Female Victims of Domestic Abuse Experience the Criminal
Justice Process
Some key findings and recommendations**

Abstract

Despite the progressive development of policies and law to tackle domestic abuse as a form of gendered violence, women continue to report myriad barriers to reporting, engaging criminal justice agencies and attending court. Based on doctoral research, this report highlights the implications of a chasm between the public perception of progress and women's reality of challenges and trauma.

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Executive Summary

“The only reason we speak up is because we’ve been give hope that if something went wrong, that was your partner didn’t do right, you can speak up and you will be given justice, but no.”

Ayesha, victim-survivor and research participant

Introduction

The recommendations set out below are the result of research into Scotland’s investigation and prosecution of domestic abuse through the lens of tackling domestic abuse as a gendered offence. The study was conducted as doctoral research at the University of Glasgow. The resulting thesis tells two stories: Scotland’s policy and legislative response to this issue; and the experience of female victims who report domestic abuse to the police. The apparent sweep of progress on the public stage is juxtaposed with the private struggle of individuals who continue to face barriers to justice. Drawing on in-depth interviews with women who have experienced domestic abuse and those who support them, the data identifies a number of enduring challenges and unmet promises. The data from these interviews is contextualised within a 40-year perspective of Scotland’s policy, legal, social and academic responses to victims of gender violence in general, and domestic abuse in particular. This report identifies a number of small practical changes and marginal policy shifts that have the potential to make a real difference to the experiences of victims reporting domestic abuse. It also highlights areas for further research and identifies longer-term goals.

Scotland has been heralded as the “gold standard” in the investigation and prosecution of domestic abuse. Our laws and policies are world-leading. There is a humbling level of commitment and resilience from third-sector and state-funded organisations working within the field. The research upon which this report is based sought to understand why such a commitment does not always translate into positive court experiences for victims. The progress in Scotland to address violence against women in general, and domestic abuse in

particular, must not invoke complacency. The risk attached to the relatively rapid pace of change since devolution, in 1999, is that an infrastructure is not in place to support basic practical and safety needs. Not only does this compromise the legislative and policy intent, it also has the potential to jeopardise women's safety. The Domestic Abuse (Scotland) Act 2018 ('the 2018 Act') commits to privileging women's accounts and to recognising the ways in which domestic abuse is perpetrated so that women may finally be able to tell their story. Yet the reality today is that women routinely do not even feel safe travelling to or from court or within court buildings. Moreover, the inherent gender-inequality in the adversarial approach of the criminal justice system means that a concerted drive by agencies to improve the justice response is unlikely to eradicate the barriers faced by women. I hope that this report provides some insight into the challenges ahead for practitioners and offers some simple solutions.

I am grateful to the Scottish Government Justice Analytical Services and the Scottish Centre for Crime and Justice Research ('SCCJR') for funding and supporting this report through a Scottish Justice Fellowship. In particular, I am indebted to Professor Margaret Malloch and Professor Sarah Armstrong. The report is based on doctoral research which was funded by the University of Glasgow College of Social and Political Sciences and supervised by Professor Michele Burman and Dr Oona Brooks-Hay, whose counsel I always gratefully rely upon.

Emma E. Forbes, PhD

October, 2019

Contents

Chapter 1 : Overview of the Research.....	page 05
Chapter 2 : Summary of Recommendations.....	page 11
Chapter 3 : Advocacy Workers and the Use of Risk Assessments.....	page 15
Chapter 4 : Before Court.....	page 21
Chapter 5 : At Court.....	page 25
Chapter 6 : Training.....	page 31
Chapter 7 : Areas for Further Research.....	page 35
Chapter 8 : Conclusion.....	page 39
Annex A.....	page 40
Annex B.....	page 41

Chapter 1: Overview of the Research

1.1 Background

Between September 2015 and September 2018, the College of Social and Political Sciences at the University of Glasgow funded full-time doctoral research on how domestic abuse victims experience the criminal justice process. The research was undertaken by Emma Forbes (herein 'the researcher'), supervised by Professor Michele Burman and Dr Oona Brooks-Hay and was carried out within the [Scottish Centre for Crime and Justice Research](#) ('SCCJR').

Emma Forbes is a Principal Procurator Fiscal Depute with almost twenty years of prosecution experience. She was supported by COPFS in the doctoral study, through a reduced-hours flexible contract. A biography is attached at **Annex A**. Professor Michele Burman FRSE was founding co-director of SCCJR and is Head of School of Social and Political Sciences at the University of Glasgow. Dr Oona Brooks-Hay is a Senior Lecturer in Criminology. Both Professor Burman FRSE and Dr Brooks-Hay have published widely in the field of violence against women, particularly qualitative research on sexual violence and domestic abuse.

The study developed from a recognised need to better understand how victims experience reporting to the police, going to court and giving evidence. It was also recognised that these individual biographies needed to be situated within the legislative and policy framework, to establish the efficacy of proposed legislative change within the context of the current policy.

In 2015, the Scottish Government consulted on a specific offence of domestic abuse, which became law on 1st April 2019 as the Domestic Abuse (Scotland) Act 2018 ('DASA 2018'). It will be applied within the context of [Equally Safe](#), the Scottish Government policy on violence against women and girls, which posits domestic abuse as a gendered offence. The legal definition of domestic abuse is set out in the [updated COPFS/Police Scotland joint protocol](#) on domestic abuse, which includes physical, emotional and psychological abuse between

(ex)partners whether male or female. Thus, whilst the law of domestic abuse is universally applicable, social and policy understanding of domestic abuse is gendered.

The advent of a specific offence of domestic abuse into law in Scotland provides a fresh impetus to examine the broader criminal justice approach to investigation and prosecution and to consider the treatment of victims who report domestic abuse. The researcher identified that there is a strong, coherent third-sector voice that represents victims' interests. However, individual victims continue to find the justice process re-traumatising. At a time when criminal justice agencies are re-invigorating their internal policies and training to account for DASA 2018, in-depth interviews with victims of domestic abuse about their experiences was judged timely.

1.2 Remit:

The research explored how victims of domestic abuse experience the criminal justice process. Specifically, it examined:

- the relationship between the victims' rights campaign and the statutory and policy response;
- whether new laws and policies help victims going to court to give evidence;
- the effect of the criminal justice response on women's safety; and
- appropriate ways to give victims a voice in the adversarial process.

1.3 Method:

The research project adopted a mixed-method approach that triangulated:

- a grounded, feminist, qualitative approach;
- a socio-legal narrative of government, policy and social responses; and

- auto-ethnographic¹ practitioner experience.

The data derives from in-depth, qualitative interviews (n.34) with women who have experienced domestic abuse (n.15) and their support/advocacy workers (n.19) about their experiences of reporting to the police and the ensuing criminal justice response. By interviewing both the victims of abuse and their support-workers, the aim was to ensure a safe ethical position, where participants had access to therapeutic support. In fact, it unravelled a complex mesh of identities, as the importance of informal and formal support networks became clear. Women's Aid's ethos of 'Women-Helping-Women-Helping-Women' (Scottish Women's Aid, 2017) remains strong across the voluntary sector in this area, and many of the support and advocacy workers disclosed experiences of abuse. The interviews were carried out with support from Scottish Women's Aid and some local Women's Aid groups, ASSIST advocacy service and a small community support project.

A socio-legal narrative of the wider societal response to domestic abuse was presented as a timeline of legal, social, policy, academic and international responses to domestic abuse over a 40 year period. It illustrated the pace and direction of progress and provides an analytical framework for discussion of the data findings. Triangulating these knowledge sources, the researcher ensured practical application to theoretical findings, by drawing on professional knowledge experience as a prosecutor.

1.4 Terms of Reference: Victims within the Criminal Justice Process

Feminist literature on domestic abuse is divided on appropriate terms of reference and many authors prefer 'victim-survivor' (for a discussion, see Burton, 2008: 124). Most will refer to abusive (ex)partners as the 'perpetrator.' These are social terms and within the context of policy-drafting, academic commentary and therapeutic input they are appropriate. However,

¹ This refers to the influence of my practitioner knowledge as a criminal justice 'insider' and its impact on my research. Ethnography is understood as participant observation to add depth of knowledge in a research field. The backdrop of knowledge for the current research came from more than 15 years as a prosecutor, involved in the investigation, preparation and court presentation of criminal prosecutions. Thus, it is described as auto-ethnography because it is knowledge built up over years of observation from personal experience in that field (Fitz-Gibbon, 2014; Taylor, 2011).

these are not the terms used within our legal system, where reference is made to complainers and accused. The Victims and Witnesses (Scotland) 2014 Act provides the first legislative reference to victims and reflects a shift in terminology. It broadly relates to legislation providing service rights within the process and has not affected court vocabulary. For the purposes of this report, I will refer to victims.

1.5 Literature Review:

There is a significant body of academic literature on domestic abuse, from a broad range of perspectives. This includes what it means to be a victim of gendered offending (Walklate, 1995; 2007); empirical data on experiences of the justice process (Dobash and Dobash, 1979; Hoyle and Sanders, 2000; Burton, 2008); debates on women's agency within the court process and critiqued mandatory arrest and no drop policies (Edwards, 1989; Mills, 1998; Epstein, 1999; Hoyle and Sanders, 2000; Buzawa and Buzawa, 2013; 2017; Brooks and Kyle, 2015). Legal studies have explored the lack of coherence within the justice response between the civil and criminal courts (Burton, 2008) and include a review into victim care in Scotland (Thomson, 2017).

For most empirical studies of victims' experiences of the court process, the focus has been predominantly on the initial call to the police and subsequent trial. This is misleading, as a significant number of cases do not proceed to trial and large parts of the process remain unexamined. The gap between policy progress and ongoing individual struggles can be explained by three gaps in the current literature. First, a temporal analysis of women's experiences of reporting domestic abuse, which takes account of the *whole* criminal justice process, beyond the punctuation marks of a phone call to the police and giving evidence in court. Second, an application of procedural justice that is specific to the domestic abuse victim's experience; and third, a gendered framing of the public/private relationship. The recommendations contained in this report derive from research that addressed these key points. Whilst there is recent research on the 'justice journeys' of victims of sexual violence (Brooks-Hay et al., 2019) this is the only recent empirical data on domestic abuse victims'

experiences of the court process in Scotland and the distinct legal system and policy landscape is worthy of closer examination.

A detailed literature review and policy overview of Scotland's response to domestic abuse can be found [here](#). A bibliography is attached at **Annex B**.

1.6 Scope of the Current Report

This report makes some assumptions. First, it is situated within the COPFS/Police Scotland definition of domestic abuse and *Equally Safe's* policy position of domestic abuse as gender-based violence (see para 1.1 above). The data contained in this report is based on a study of female victims' experiences. This does not negate the impact on male victims, but the current data is based on research that treats domestic abuse as gendered offending, recognising that the majority of coercively controlling abuse, where there is an imbalance of power, is perpetrated by men on women.² Second, it is predicated on the understanding that Police Scotland, SCTS, COPFS and the Law Society of Scotland are committed to the criminal prosecution of domestic abuse and improving procedural justice for victims of crime in general, and victims of domestic abuse in particular, alongside the ongoing work of third-sector agencies and activist academics in the field of gender-based violence.

It assumes a background knowledge of key legislative and policy developments in this area, including: [Equally Safe](#); [the joint protocol on domestic abuse between COPFS and Police Scotland](#); the [Domestic Abuse \(Scotland\) Act 2018](#); the [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Bill 2018](#); [National scoping exercise for advocacy services for victims of violence against women and girls](#); [Lord Carloway's Review of Evidence and Procedure](#);

It aims to provide context and explanation for the shortcomings as experienced by victims despite such a concerted effort to eradicate barriers for victims and witnesses reporting

² Hester et al. (2017) found, in a study of male victims of domestic abuse, that less than 5% had experienced coercively controlling behaviour.

crime and attending court. In particular, it highlights policy initiatives which are misguided or ill-timed and areas where small shifts could make a significant difference.

The recommendations of this report are based on doctoral research. The original research study contains interview data from victims of domestic abuse who reported to the police and those who act as support workers. The size of the research sample, the in-depth nature of the interviews and the way the interview data was analysed within the wider literature and situated within a policy analysis of Scotland's specific response allows for some generalisability of the findings. Some of the recommendations within this report are specific to Scotland, others have wider, international reach. ASSIST's participation in the research necessarily means that some recommendations are limited to their practice and processes. The report does not comment on other existing advocacy services within Scotland unless they have been subject to separate published evaluation (e.g. The Support to Report initiative led by Rape Crisis and evaluated by Brooks and Burman, 2015).

Finally, the quotations in each chapter reflect the words of the women who took part in the research. All of the names have been changed to preserve anonymity and their permission has been sought. The women were wonderfully honest, articulate and inspiring. If you would like to know more about their stories, you can read the full thesis [here](#) or you can see how their stories are being brought to life through a collaborative community art project, at www.glasswallsart.wordpress.com

Chapter Two: Summary of Recommendations

“That’s the way it leaves you feeling, like your story’s untold. And at no point at the start of it, did I feel the need to tell my story. But by the time court came, I had psyched myself up that that’s what was gonnae happen and then we would all be ok after that. We’ll go to court, we’ll tell the truth, he’ll get a proper jail sentence and we’ll all feel like justice has been done.”

Christine, victims-survivor and research participant

2.1 The research took a holistic approach to the victim experience and drew two key conclusions, from which all subsequent findings emanate. First, it found that there is a tendency to focus on key events in the formal criminal justice process, which may be understood as “punctuation marks” in the process: a call to the police; a first appearance in court; a procedural hearing; and a trial. Each agency, including support services, organise themselves around these key dates. For victims, the greatest impact comes from the long, unpunctuated pauses in between: long and uncertain waits. This waiting is largely unrecognised and unexamined. **The trauma attached to such tense and protracted periods of waiting leads to tertiary victimisation**, which goes beyond the secondary victimisation of reporting already recognised. When women are asked by the police to answer questions or provide a version of events in the small hours of the morning, in their own home, in the immediate aftermath of a crisis, with no real idea of what will happen next, it is unsurprising that they find the situation stressful. Distracted by the emotional ramifications of what they are experiencing, they do not appreciate that this may be their only opportunity to provide a statement and that there may be no further opportunity to talk about what has happened to them until or unless there is a trial.

Second, it concluded that there is an ongoing misconstruction of the public/private nexus and **a presumption that reporting domestic abuse, as a crime, makes it public and makes it stop**. Criminalisation, public prosecution and robust policies are symbolic of domestic abuse being a social problem that is increasingly tackled in a public forum. There is a sense that it is no

longer behind closed doors. However, recognition of a continuum of abuse fails to identify continuing offending alongside and throughout the court process. The research participants provided numerous examples of sinister, coercively controlling behaviour *throughout* the court process: during child contact; with the bar reporter; at the police station; in the child welfare hearing; in the corridors of the court; and during the trial. A public criminal justice response to domestic abuse means that the dynamics of abusive behaviour and gendered inequality are duly recognised. Yet it also means that victims, largely female, face the challenge of talking publicly, and in fairly prescribed ways, about intimate aspects of their lives and there is an expectation about the way in which they should present themselves (Stark, 2007). Often, coercively controlling behaviour continues throughout the court process and is not recognised by practitioners. Within the context of feeling unheard, these are potent barriers to justice. Women's perceptions of the invisibility of the crime (Davies, 2014) and the inaudibility of their voice lead to feelings of dis-engagement and compromise their ability to support the prosecution. The data from this research suggests that **women who have experienced domestic abuse are living in a situation that can be described as behind glass walls: the abuse is both publicly recognised and privately ongoing and imperceptible.**

Below is a summary of the main recommendations included in this report. Individual chapters should be consulted for further discussion.

Advocacy Workers and the use of Risk Assessments (Chapter 3)

- Advocacy support should be available to *all* victims of domestic abuse in *all courts* in Scotland (noting that the National Scoping Exercise focuses on victims of violence against women and girls, and does not include male victims of domestic abuse).
- *National Scoping Exercise of Advocacy Services for Victims of Violence Against Women and Girls* (ongoing) should ensure that minimum standards include clear definitions of *individual* and *institutional* advocacy and should provide both.
- *National Scoping Exercise of Advocacy Services for Victims of Violence Against Women and Girls* (ongoing) should explore the feasibility of offering advocacy support at an earlier stage in the process in cases reported by the Domestic Abuse Task Force,

mirroring the Support to Report initiative for reporting sexual offences (Brooks and Burman, 2017).

- Independent research should be commissioned to examine the timing, use and sharing of risk assessments in domestic abuse cases in Scotland.

Before Court (Chapter 4)

- Victim Information and Advice (VIA) should be subject to external evaluation to identify: victim and witness understanding of their role; accuracy and timing of information provision; and sensitivity to victims and witnesses.
- The principles of the High Court Victim Strategy should apply to all domestic abuse cases, specifically exploring preferred timing and means of communication.
- Explanations to vulnerable victims and witnesses about special measures should be clearer and more explicit.

At Court (Chapter 5)

- There should be a separate entrance, available to vulnerable victims and witnesses, in every court building without exception.
- Rules on expenses should be revised to ensure fairness to part-time and shift workers.
- Consideration should be given to widening the scope of standby arrangements to reduce the number of witnesses waiting at court.
- Facilities ought to be improved for those waiting at court, including private consultation areas.
- There ought to be a general special measure of “reasonable adjustment” to take account of individual needs.
- Specialist courts/ clustering should be available in all courts in Scotland.

Training (Chapter 6)

- Police Officers conducting a domestic abuse questionnaire (DAQ) should receive face-to-face training on the impact of domestic abuse.
- Prosecutors and judges should receive more detailed training on risk assessments. This should include use of questions, scoring, subjectivity and professional judgement.
- Key training across *all* subjects for solicitors, judges, police and prosecutors should be revised to ensure that it refers appropriately to current law and policy on domestic abuse.
- LLB courses in universities should address the impact of domestic abuse and raise awareness of relevant key legislation and policies across the curriculum of core subjects.
- Law Society training should offer “ticketing” to solicitors as a form of domestic abuse accreditation, similar to the accreditation currently available to prosecutors.

Areas for Further Research (Chapter 7)

- Use of risk assessments: when they are conducted; how they are shared; how scores are reached and to what extent they are relied upon.
- The role and profile of Victim Information and Advice.
- The civil-criminal court interface and ways of achieving a more holistic justice response.

Chapter Three: Advocacy Workers and the use of Risk Assessments

- Advocacy support should be available to *all* victims of domestic abuse in *all courts* in Scotland (noting that the National scoping exercise focuses on victims of violence against women and girls, and does not include male victims of domestic abuse)
- *National Scoping Exercise of Advocacy Services for Victims of Violence Against Women and Girls* (ongoing) should ensure that minimum standards include clear definitions of *individual* and *institutional* advocacy and should provide both;
- *National Scoping Exercise of Advocacy Services for Victims of Violence Against Women and Girls* (ongoing) should explore the feasibility of offering advocacy support at an earlier stage in the process in cases reported by the Domestic Abuse Task Force, mirroring the Support to Report initiative for reporting sexual offences (Brooks and Burman, 2017).
- Independent research should be commissioned to examine the timing, use and sharing of risk assessments in domestic abuse cases in Scotland.

3.1 Introduction

The Scottish Government understand advocacy as:

“a crisis intervention, focused on the risk assessment and safety planning for victims of gender-based violence with the goal of improving safety and reducing risk of further abuse. Advocacy is seeking to enable victims to access, navigate and have a voice through the criminal justice process.” (Scottish Government, 2017)

The role of the advocate is crucial to dissipate some of the fear, confusion and anxiety attached to reporting domestic abuse and navigating the justice process. Many of the barriers to justice can be mitigated by the support of an advocate.

3.2 Provision of Advocacy Support

“I was overwhelmed with the support I got. If I didn’t have ASSIST and Women’s Aid, I wouldn’t have had a clue what to do, how to deal with anything. I would have been a lot worse off.”

Joyce, victim-survivor and research participant.

Women’s Aid groups and smaller, grassroots support projects have been the longest, formal³ constant factor in helping women flee from abuse, safety plan within and beyond such relationships and recover. Their support tends to be person-centred, responsive, practical and therapeutic (Arnott, 1990). The shift in public policy which led to an increase in the investigation and prosecution of domestic abuse prompted a new approach for some of these agencies, which were adapting to provide court support for women who report. However, the research found that whilst many organisations provided support by telephone, budget cuts had constrained attendance at court. **It is recommended that advocacy provision be available across Scotland and that a national model should include support at court.**

3.3 Clear Definitions of Individual and Institutional Advocacy

The discussion around scoping of a national advocacy model has caused some disquiet and divergence of opinion on the key components of an advocacy service. The victim advocate was introduced to **translate** the opaque language of criminal justice organisations; **explain** the process; safely provide courts with the **victim’s views**; **support** court-attendance; and minimise the impact of secondary victimisation (Burman, 2009; Kelly et al., 2005) and other negative impacts on mental health from involvement in the criminal justice process (Elliot et al., 2014: 589). Advocates are motivated by a will to ensure that women’s voices are heard in the court process.

³ For a discussion of informal support networks see: Hyden, 2015.

The role of the victim advocate in Scotland, similarly to England and Wales, has evolved from its introduction to support the specialist domestic abuse court (Robinson, 2006a). It pre-dates formalised risk assessment tools, the IDAA qualification ([SafeLives](#)) and protection of those deemed high risk through the MARAC process. The current data supports research findings that these varied roles sometimes conflict (Taylor-Dunn, 2016). For example, ASSIST will prioritise cases proceeding to trial and victims who are assessed as high risk.

The distinction between victim advocates and grassroots support workers can broadly be understood by the focus of their support, noting that an individual may fulfil both roles. Both are proponents of a person-centred ethos, where individual needs inform a nuanced approach. However, whilst grassroots workers support women with a range of practical and emotional needs, the advocacy model in Scotland focuses on support through the criminal justice process and has been piloted to support victims of domestic abuse (Hester and Westmarland, 2005) and sexual assault (Brooks and Burman, 2017). Advocacy denotes different meaning across jurisdictions (Brooks and Burman, 2017: 4).

Whilst there may be no precise definition of ‘advocacy’ (Scottish Government, 2017), it borrows language and meaning from the courtroom and individual advocacy can usually be understood to contain key components: **independence; pro-active outreach; safety planning; information provision; speaking with and for victims; risk assessment; crisis intervention; and a coordinated community response**. Where there are further emotional and practical needs, victim advocates signpost to other agencies providing wider support, unless – like some Women’s Aid groups and community projects – they offer a hybrid system offering both services. In those cases, they may provide all of the support themselves or they may refer to a colleague. Tailor-made victim advocacy services such as ASSIST are only available in certain areas of Scotland.⁴

⁴*Equally Safe* funding has increased year on year, but services are only guaranteed funding until 2020. IDDA roles are being funded within existing organisations, but SG funding of the Professional Development Award in domestic abuse advocacy was only available from 2011-2016 (Scottish Government, 2017). For services on other funding streams, certainty of backing may be only six months ahead (Scottish Government, 2017). <https://beta.gov.scot/publications/vawg-fund-2017-2020/> shows significant budget increase per annum compared to <https://beta.gov.scot/publications/equality-funding-2016-17-violence-women-and-girls-fund/> Accessed 20/05/18. ASSIST is available in: Glasgow; Ayr; Kilmarnock; Paisley; Dumbarton; Lanark; and

Research consistently shows the benefits of advocacy support to victims attending court. The current research data overwhelmingly illustrates the strengths of advocacy provision.

Working on the presumption that advocacy support to victims of domestic and sexual abuse is a good thing, the question arises of what a national advocacy service should look like.

There is overlap in the needs of those reporting domestic and sexual abuse, often because victims report both: the sexual abuse is part of domestic abuse. Nevertheless, the needs of all victims are not the same and each third-sector agency has articulated a different view on the fundamental aspects of advocacy provision.

In Scotland, understanding of the merits of individual advocacy is well-developed and generally invites common ground. Institutional advocacy is a thornier issue because it is intertwined in attitudes to mandatory policies and whether or not the agency providing advocacy support ascribes to the public benefits of the criminal justice response. For some, institutional advocacy means campaigning for better rights for those affected by gender abuse. For state-funded organisations like ASSIST, set up specifically to support those going through the pilot domestic abuse court, institutional advocacy still entails representing the views of those affected by domestic abuse at a policy level, but it also means advocating the benefits of the criminal justice response and working to encourage those affected to engage. It presupposes a benefit to engaging with the criminal justice response to their experience. This is controversial as it is often translated as support for pro-arrest and no-drop policies. A discussion of the efficacy of this logic is beyond the remit of this paper, but provided such policies always carry some discretion, as they currently do in Scotland, there is a safeguard. **A proper definition of institutional advocacy is that it has two key features: to advocate the individual needs to the formal agencies of the justice response; and to advocate the benefits of the justice response to individuals in order to secure best evidence.** This would be easier to promote within a human rights framework, where rights carry corresponding responsibilities.

3.4 Support to Report

Hamilton Sheriff Courts. EDDACs is available in Edinburgh Sheriff Court, DASAT in Livingstone and DAAS in Selkirk and Jedburgh.

'Support to Report' ('S2R') was a pilot study within a rape crisis centre. It entailed the provision of advocacy support to women who were considering reporting a rape or sexual assault to the police, with a view to engaging the woman with support services and enabling her to report to the police. The advocate attends the police station and is able to explain procedure and help women to navigate what can feel like a disjointed and confusing process. The feedback from the pilot was overwhelmingly positive and funding has been extended. Similar support is not available to those reporting domestic abuse. Advocacy provision is offered *after* a report is made to the police. When the initial report is a 999 call in a moment of panic, fear or danger, this is understandable. However, an increasing number of women and men are reporting historic domestic abuse. Media awareness-raising campaigns of coercive control and emotional abuse and pro-active policing by the Domestic Abuse Task Force have contributed to public confidence to report. Those reporting historical abuse ought to be afforded support through the reporting process. Historic reporting is seldom (if ever) one incident.

Narratives of abuse are long and complex and may span whole relationships. As a result, the 'offences' identified tend to reflect a significant course of conduct and a more serious tariff of offending. Unpicking the criminality that can be corroborated from lived narratives of abuse is difficult and the evidence of the victim remains crucial. There is a strong public interest argument to ensure that victims are supported to give their clearest account. Moreover, evidence from the current research highlights the traumatising effects of re-living abuse through providing statements. Not only is it difficult to recount their experiences, but it is also unsettling and confusing when they are asked probative questions by police officers, which does not meet their expectation of being able to tell their story. All of this stress and confusion could be mitigated by advocacy support and **it is recommended that earlier support be extended to those reporting long-term domestic abuse.**

3.5 Risk Assessments

In relation to domestic abuse, research is available on the utility of the risk assessment or 'RIC' (Robinson and Howarth, 2012) and the multi-agency risk assessment conference

(‘MARAC’) (Robinson, 2004; Robinson and Payton, 2016). However, most research focuses on the accuracy of the risk assessment tool in predicting risk (Ariza et al., 2016: 343) and a need for greater empirical scrutiny of the MARAC has been identified (Robinson and Payton, 2016; Cordis Bright Consulting, 2011). A quantitative approach is unsurprising given the actuarial associations with risk. In contrast, qualitative understandings of the impact of risk on individual narratives are less common and tend to focus on the offender (McNeill et al., 2009).

An assessment of risk invokes an impression of the specific, the actuarial and the expert and invites public confidence in a time of relative insecurity (Sparks, 2000). It implies a knowledge base and reliable results. The allure of the quantifiable is understandable for statutory organisations such as the police, seeking to meet targets and key performance indicators. Equally, the feminist movement has broadly welcomed formal measures that add credence to domestic abuse as a criminal offence (Hester, 2013a). For the relatively new victim advocates, qualified as Independent Domestic Abuse Advocates (IDAAs), the risk assessment garners legitimacy in their expertise or “empowerment through knowledge” (Coy and Kelly, 2011: 37). The risk assessment tool was the outcome of documenting 47 domestic homicides and cataloguing the key risk variables (Robinson, 2006b) to develop the CAADA - DASH risk model.⁵ Whilst gender-neutral in its framing, the knowledge garnered from it represents formal recognition of the previously ignored gendered nature of risk (Hannah-Moffat and O’Malley, 2007: 5).

The IDAA qualification may be nationally recognised, but it has been translated, adapted and accommodated by each agency that took part in this research in a different way according to their ethos and governance. This, in turn, impacts how they interpret the risk assessment tool and how they support women through the court process. Moreover, each organisation has a nuanced approach to information sharing and a different interpretation of data protection considerations, which affects when, how and what information is shared. **It is recommended that the national advocacy model provide clarity around the sharing of risk information.**

⁵ Domestic Abuse Stalking and Harassment risk assessment tool, developed by CAADA, now SafeLives.

Chapter Four: Before Court

“You presume you’ve got a prosecutor for me, you know, you’ve got this person and they’re gonnae be going and fighting, what to you is everything...naebody gave me the chance to say they kind of things, even just to that one person who was supposed to be doing this job for me.”

Hannah, victim-survivor and research participant.

- Correspondence to Victims: The principles of the High Court Victim Strategy should apply to all domestic abuse cases and victims’ preferred timing and means of communication should be explored by all agencies
- Victim Information and Advice should be subject to external evaluation, including victim and witness understanding of their role and the accuracy and timing of information provision
- Explanations to vulnerable victims and witnesses about special measures should be clearer and more explicit

4.1 Introduction

Examining a case-study from the point of view of the formal criminal justice response highlights a clear reflection of policy progress. A timeline of the work of the police and prosecution from a first report of domestic abuse to eventual disposal of the case would show a coordinated response by specially-trained staff and a commitment to bring the case to trial and secure a conviction, where there is sufficient evidence and it is in the public interest to do so.

In sharp contrast, a timeline of a victim’s lived experience of the criminal justice process between reporting a case and ultimate conclusion looks different. Between the first calling of the case and the trial, there may be VIA updates on bail conditions and the continuing of the case to trial after intermediate diet or preliminary hearing, but there is likely to be a long wait of several weeks or months where nothing appears to be happening and there is confusion about reasonable expectations. It is this wait for court and, ultimately, at court which re-

traumatises victims of domestic abuse and invokes triggering emotions of being controlled and devoid of power over their own destiny. Apart from the distress this causes, it impacts on the ability of victims to provide their best witness testimony in any trial. The build-up of emotion and tension in the wait for trial can be devastating.

There has been some recognition of this pressure for victims of rape and sexual assault, with an injection of funds to COPFS to reduce victim journey times in sexual offences prosecutions. This needs to be extended to all victims of domestic abuse, not just those reporting sexual violence. Moreover, a greater appreciation of the impact of waiting is needed: the impact on individual victims and the compromise to best evidence (ultimately affecting the likelihood of conviction).

The following section highlights some practical ways in which the effects of waiting might be mitigated, even if the length of the wait cannot be reduced.

4.2 Victim Strategy and Correspondence to Victims

COPFS

The Victim Strategy was introduced in May 2014 for all High Court sexual offences. It recognises that victims are not homogenous and that individual needs vary. Accordingly, it encourages Police Scotland and COPFS staff (including VIA) to explore with victims how and when they would like communication. Whilst the application and consistency with which the Victim Strategy is applied is beyond the scope of this report, the principle is endorsed by the research findings and **it is recommended that the Victim Strategy be implemented for all reports of sexual offences and domestic abuse, regardless of forum.**

ASSIST/Advocacy Services

Within the areas covered by ASSIST the protocol states that police officers will offer the advocacy service at the point of reporting. ASSIST will then contact those who agree to a referral. This pre-supposes that all victims are able to make a decision about their support needs at the high intensity point of reporting to the police. It imposes a timeline on victims

to respond. In principle, it is open to victims to seek ASSIST support at any stage during the case, but this research identified some barriers.

The research highlighted that confusion may arise when victims awaiting court receive letters from the City Council. One research participant thought that she was being evicted from her tenancy because of noise complaints as a result of the abuse and was too scared to look at the letter. In fact, it was a letter from ASSIST. Correspondence needs to be clearer. Many ASSIST workers voiced frustration that they were asked for contact details at court or that they had been asked by police officers and victims about the service they offer. They voiced frustration that they did not have an information leaflet or business card to provide to those expressing an interest. **It is recommended that ASSIST considers a logo, separate to Glasgow City Council, and that they provide leaflet and/or online information about the service they provide. This recommendation should be carried forward to any national service.**

4.3 VIA Evaluation

“I didn’t get any phone calls from them [VIA]. I don’t think I heard from them at all.”

Kirsty, victim-survivor and research participant.

VIA contact every victim of domestic abuse with case specific information. Kirsty referred to contact from Victim Support and, from the context, it was clear that she had confused these two organisations. The research suggests such misunderstandings of the VIA role are common.

There has been little evaluation of VIA since it was introduced to provide case specific information to victims, as a pilot in 2002 and as a national provision in 2004. The Inspectorate of Prosecution in Scotland⁶ conducted two joint thematic reports with HM Inspectorate of Constabulary for Scotland (2010; 2011) and assessed treatment of victims in summary cases against the core objectives in the Scottish Strategy (Scottish Executive, 2001). Ten years on, they found a good level of service provision. Unsurprisingly, they found that

⁶ Created on an administrative basis in December 2003 and is part of the Scottish Government but independent from COPFS. It is headed by HM Chief Inspector who reports directly to the Lord Advocate. Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Part 5 (sections 78 and 79) made the role statutory.

whilst the first two objectives had been met, more work was needed to enable victims' greater participation in the criminal justice system. They made specific recommendations in relation to police response to repeat victimisation and found some evidence of under-referral to VIA by prosecutors. The first report also highlighted that many victims gave a positive opinion of VIA but stated that they had received no communication from COPFS. The current report found similar levels of misunderstanding of the relationship between VIA and COPFS and, in some cases, a misapprehension that VIA was Victim Support. Many of those interviewed stated that they had received no communication from the prosecution prior to trial but that they had received court updates from Victim Support.

The remit of the Joint Reports by the Inspectorates was to report on how police and prosecutors deal with victims of crime. This was wider than an evaluation of VIA and the inspections were carried out a decade ago. In light of consistent findings in the current research , **it is recommended that an evaluation of public understanding of VIA is appropriate.** The current research also highlights that where a victim is involved in numerous cases (for example where recent reporting leads to historic disclosures or where there are breaches of bail) it is confusing to receive a number of similarly worded letters.

4.4 Explaining Special Measures

For a discussion of special measures, including improvements to legislative provision and communication of existing protection, see para. 5.2 below.

Chapter 5: At Court

“It was probably closest to one of the worst experiences I’ve ever had in my life.”

Eilidh, victim-survivor and research participant

“Glasgow Sheriff Court was very very frightening. I still felt unsafe, even though I was in a safe room.”

Joyce, victim-survivor and research participant

- There should be a separate entrance, available to vulnerable victims and witnesses, in every court building without exception – this should be enshrined in statute as a special measure
- Rules on expenses should be revised to ensure fairness to part-time and shift workers
- Consideration should be given to widening the scope of standby arrangements to reduce the number of witnesses waiting at court
- Facilities ought to be improved for those waiting at court, including private consultation areas
- Vulnerable witnesses giving lengthy testimony ought to be invited to sit to give their evidence, if they are more comfortable doing this, or any other reasonable adjustment

5.1 Introduction

The previous chapter dealt with the traumatic impact on victims of waiting for cases to come to court. It underscored the tension which builds as the result of a seemingly inordinate wait. For victims of domestic abuse, waiting is not an inconvenience. It is not an acceptable *quid pro quo* for justice in an over-burdened system. It is a trigger to the abuse, perpetuates feelings of a lack of control and causes re-victimisation. The damage caused by waiting for court is significant for individual victims and the mounting pressure impacts on their ability to give evidence in a clear and credible way. By the time they reach the date of trial, the

process is likely to have invoked feelings of anger, despair, confusion, loss, fear and panic. These emotions cumulate in a pressure pot of emotion on the day they are cited for court and every minute feels like an impossible wait. By the time the victim enters the court as a witness, it is unsurprising that there is mounting tension and a pressure point of emotion by the time the case calls. They are worried, as Jenn explained, that they won't be believed:

"I was terrified of how I was actually going to be portrayed, of how the evidence was going to be, why would anyone have taken my word for it, I was genuinely, he's so smart, he's so manipulative."

It is unsurprising and almost expected that victims and witnesses will get upset giving evidence in court, but cognisance is not taken of the full range of emotions women might experience. The court is not, for example, prepared for anger. Eilidh was told by a defence agent in cross-examination: *"as if anyone would dare to domestically abuse you, no man would dare to take you on."* Christine found that court dates triggered traumatic recall of her abuse. She suffered so severely that she trained herself to dissociate. As a result, she presented at court as cold and distant: *"you would look at me and I would be standing doing the exact same this, completely frozen, but inside I'm heaving."* When it is incumbent on the court to make assessments of credibility and reliability, the way witnesses present in court is crucial and there are norms and expectations of how a 'victim' might behave. When dealing with raw, intimate abuse, greater care needs to be taken to recognise and account for a greater range of emotional responses in victims. It is also important to manage expectations, provide clear navigation of the process and support victims emotionally and practically, to dissipate fear and tension around court.

The provision of special measures has mitigated some barriers. However, there are three key limitations: first, some basic protections are not included in standard special measures; second, there is evidence that special measures are not always fully understood by victims; and third, the protections are often compromised by a lack of corresponding safety provision in the wider court building and the civil courts.

5.2 Revision of Special Measures:

The 2014 Act is the first legal recognition of ‘victims’ (rather than complainers or witnesses) in Scotland. It purports to engage greater participator rights to victims, including the automatic grant of special measures;⁷ the right to determine the gender of a medical practitioner in cases of serious sexual assault;⁸ and the right to an interpreter.⁹ It creates categories of ‘deemed vulnerable’ witnesses who are automatically entitled to special measures within the courtroom. This legislation has seen an increase in the use of special measures (Carloway, 2015). As ‘deemed vulnerable’ witnesses, standard special measures are available to victims of domestic abuse without an application to the court. Standard special measures include screens, a support person and the ability to give evidence from a remote site by video link. There remains an option to apply to the court for additional special measures, for example, a closed court. The application is made by the Procurator Fiscal but identification of which special measures are appropriate falls to the victim. *Prima facie*, this is an autonomous decision about services within the court process. However, evidence from the research suggests that court visits do not always prepare victims for the reality of a trial and seemingly small but crucial points are not always clearly articulated. For example, victims do not always appreciate that a closed court does not exclude the court reporter and the case may still be reported in the media.

Small, apparently inconsequential, barriers to giving evidence were raised by the research participants: for example, it was difficult to stand for the duration of evidence. Whilst it is open to the judge, at common law, to make an order (s)he sees fit to facilitate a witness giving evidence, this is rarely, if ever, invoked. Attention focuses on the statutory measures and often, narrow options. **A general special measure of “reasonable adjustment” would allow latitude for individual victim needs.**

Almost every research report on the criminal justice process cites the fact that victims do not feel safe coming to court. They feel unsafe coming into the court building and meeting the accused and/or his/her family. **A policy shift is needed to treat deemed vulnerability with the same priority as disability and provide adequate safe, physical access to court.** It is

⁷ 2014 Act, s12.

⁸ 2014 Act, s9.

⁹ 2014 Act, s3F.

recognised that this is more difficult in smaller courts, where there is only one entrance. In such circumstances, escorts or staggered timings could be considered.

5.3 Revision of Expenses Rules

The research showed some discrepancies in the rules relating to payment of witness expenses for court attendance. Numerous evaluations of court experiences and research into the criminal justice process has illustrated the difficulty encountered by women with small children, as there are no creche facilities within the court building and many parents have cogent reasons for not leaving their child with a child minder or nursery. This frustration was endorsed by the current research. Moreover, participants who worked shifts explained that they were only entitled to expenses for loss of earnings for hours that they would have worked whilst at court. For many, this meant working all night, going straight to court and then returning to work. Aside from the obvious inequity of this, it must be considered within the context of an already fraught build-up to court proceedings and an inherent fear of attending. Sleep deprivation is a common aspect of coercively controlling abuse and this aspect of re-traumatising women ought to be avoidable. **It is recommended that the rules relating to expenses for court attendance are reviewed.**

5.4 Standby Arrangements

Where a victim is engaged in the process and it is her advocate's opinion that she will attend court, if required, to give evidence, there should be scope for a standby arrangement. If advocacy services were resourced to provide a safe and therapeutic waiting area, **victims and their children could be on standby.**

Facilitating more police standby arrangements to reduce the burden on the waiting area would, in the short-term, remove a physical barrier, as it would reduce current overcrowding. However, this does not benefit women attending civil court hearings. **Long term, significant revision of court time-tabling is needed to reduce time waiting for trial and waiting time at court.**

5.5 Improving Waiting Areas

“My sister hadn’t given evidence yet and she was in the waiting room, an’ his lawyer came into the witness room on his phone and said, yeh, just had her on the stand and I’ve just ripped her to pieces. And it was me he was talking about.”

Liz, victim-survivor and research participant

Court waiting areas are woefully inadequate spaces for victims and witnesses to prepare themselves to give evidence effectively. The chairs are uncomfortable and insufficient in number, the noise level is intense and unrelenting, the pace of coming and going is frenetic and there is no privacy. It is common for solicitors, prosecutors and police officers to ask victims and witnesses sensitive questions. Whilst some effort is made to ensure hushed tones, sensitive personal data is routinely overheard. Reducing the number of people in the waiting area by increasing the number of standbys would ease some pressure, but an overhaul of waiting areas is urgently required. The value of information-provision at other stages in the process: of engaging victims; providing special measures and safety planning are all compromised in the melting pot of the court waiting room. It renders a campaign of effort, goodwill and hard work meaningless. It is difficult to wait. It is particularly difficult to wait in such a stressful environment, where promises are made of “five minutes” and no update is received for several hours. **It is the site of greatest weakness in the criminal justice response: court waiting areas require urgent renovation.**

5.6 Specialist Courts

The key priorities of a specialist domestic abuse court have been identified in Scotland as: victim and child safety; keeping the victim informed; information sharing and informed decision-making; institutional coordination of procedures and protocols; training and education; judicial leadership; effective use of the justice system; and evaluation of protocols/procedures (Connelly, 2008).

The current research did not specifically explore the merits or otherwise of a specialist domestic abuse court. Conscious of potential researcher-bias,¹⁰ there were no direct questions about the merits of a specialist approach. Nevertheless, the research participants referred to the specialist court. Many ASSIST workers had comparative experiences of working within the specialist court and in other areas without specialist provision and highlighted barriers to effectively supporting victims through courts without the specialist infrastructure. They were concerned about information provision, ensuring that their court report was received to each court on time, and the attitudes of court personnel where the domestic abuse prosecution was part of a larger court roll, including a variety of offences. There was a consistent view amongst research participants that it was easier to provide support to victims at court in a specialist environment and that the court tended to be more responsive and the outcome more appropriate: it was beneficial to procedural justice through the process and outcome.

The positive aspects of a specialist court response have been highlighted in previous research (Cook et al., 2004; Forbes, 2006; Reid Howie, 2007; Connelly, 2008). The Centre for Justice innovation provides a compelling evidence-base for problem-solving courts (2016; 2017) which go beyond the original specialist court model to incorporate a holistic approach to sentencing, whereby the court reviews compliance with community disposals and structured deferred sentences. A Scottish example is the Drug Court in Glasgow. With the support of the [Caledonian System](#), there is scope for domestic abuse problem-solving courts to provide a specialist approach to prosecution, but also greater accountability and resilience in sentencing.

¹⁰ The researcher was the first full-time prosecutor in the pilot domestic abuse court in Glasgow, 2004-2005.

Chapter 6: Training

- Police Officers conducting a domestic abuse questionnaire (DAQ) should receive face-to-face training on the impact of domestic abuse
- Prosecutors and judges should receive training on risk assessments, including questioning, scoring, subjectivity and professional judgement
- Trauma-awareness training should be available to all police officers, prosecutors and judges
- Key training across *all* subjects for solicitors, judges, police and prosecutors should be revised to ensure that it refers appropriately to current law and policy on domestic abuse
- LLB courses in universities should address the impact of domestic abuse and raise awareness of relevant key legislation and policies, across the curriculum of core subjects
- Law Society training should offer “ticketing” to solicitors as a form of domestic abuse accreditation, similar to the accreditation currently available to prosecutors

6.1 Introduction

The introduction of DASA 2018 has created new training opportunities. COPFS and Police Scotland have committed to providing training for all staff on the implications of the new legislation. Training for Police Scotland is being conducted by Safe Lives and, similarly to prosecutor training, covers the nature and dynamic of different typologies of domestic abuse, highlighting the impact of emotional, psychological and financial abuse. Training is an area of fast-paced development because of DASA 2018, which is welcome. However, there are still some gaps and there is an opportunity to augment existing training provision.

6.2 Training on the DAQ

At the time of conducting the research, police officers were offered the opportunity to conduct an e-learning package on the DAQ. The training being carried out by SafeLives in relation to DASA 2018 is welcome, but there ought to be specific training for officers carrying

out the DAQ rather than relying on e-learning. It is not an evidence-gathering tool nor is it a tick-box exercise; it is an assessment of risk that asks probing, sensitive and highly personal questions. Many victims do not recognise some of the abuse they have experienced until asked specific questions which may prompt a trigger. To minimise re-traumatisation, risk assessments must be conducted sensitively and this research echoes previous findings (Robinson and Howarth, 2012) of concern about the suitability of every front-line police officer to conduct such an assessment. **It is recommended in the short-term, that officers receive face-to-face training on the DAQ.** However, attention is drawn to chapter 7, where it is recommended that further research is needed on the efficacy of officers carrying out this assessment.

6.3 Risk Assessment Training – judges and prosecutors

The RIC and the DAQ are largely similar, based on the CAADA-DASH risk model.¹¹ Based on the outcome of documenting 47 domestic homicides and cataloguing the key risk variables (Robinson, 2006b), the basis is empirically sound. These risk tools are rightly used by police and victim advocates to assess risk, prioritise caseloads and safety plan. However, the results of the assessment are increasingly used in reports, conversations with criminal justice partners and even in court, as a short-hand reference, without full sense of a shared understanding of how that numerical score was reached. Prosecutors undertaking accredited domestic abuse training will receive familiarisation training on the risk assessment, but there is no detailed training to be able to understand how risk assessments are carried out. **It is recommended that judges and prosecutors receive training on risk assessments. This could be a written guide or online resource for repeat reference.**

6.4 Trauma-awareness training for police officers, prosecutors and judges

“You cannae just phone up the judge and be like: what’s the script, why did you do that? And I think that is a powerless thing and to have that on the back of this kind of case is quite hard.”

¹¹ Domestic Abuse Stalking and Harassment risk assessment tool, developed by CAADA, now SafeLives.

Hannah, victim-survivor and research participant

Specialist training for police officers, prosecutors and judges on *what* the dynamic of domestic abuse looks like, falls short of *how* those experiences of domestic abuse impact upon women coming to court and *why* they might behave in certain ways. Thus, an understanding of the impact of waiting *for* and *at* court and the emotional impact of the whole justice process is key. The secondary victimisation of recalling traumatic events by giving a statement to the police or giving evidence in court is recognised (Burman, 2009; Kelly et al., 2005). However, the traumatic effect of *waiting*, for victims of an abuse which intrinsically relies on manipulation of power and subordination, is unrecognised. The data from this research overwhelmingly points to these periods of 'traumatic' waiting as a form of re-victimisation. The victimisation of waiting is distinct in its juxtaposition of banal normality and unrecognised trauma: whilst court personnel assume waiting is an inconvenience and a boring aspect of attending court as a victim, they fail to notice the anxiety experienced by many in waiting. Waiting falls between the recognised punctuation marks of the process in the way in which it is normalised and as a result its' damaging effects can be ignored.

Training should include awareness-raising of the manifestations of trauma, including the impact of waiting and how that affects evidence at trial.

6.5 Mainstreaming of Domestic Abuse and Gender-Based Violence Training in professional training

Specialist training is welcome and informs an appropriate response from criminal justice practitioners. However, beyond tailored-training, it is equally important that an understanding of domestic abuse infuses other training to ensure a holistic response. It is key that police officers recognise domestic abuse and respond appropriately, even when a completely separate crime – or no crime at all - is being reported. **It is recommended that all police, prosecutorial, judicial and legal training is reviewed to ensure that, where appropriate, consideration is given to the relevance of domestic abuse policy.**

6.6 Mainstreaming of Domestic Abuse and Gender-Based Violence Awareness in the LLB

When research data suggests, as in the current instance, that legal professionals still often “don’t get it,” practitioner training feels like too little, too late. **There is a body of evidence to support mainstreaming of domestic abuse and gender-based violence awareness in most aspects of legal training within universities** (Equally Safe; Schneider, 2000). In Scotland, gendered abuse potentially has implications for many core subjects, from jurisprudence to family law. This is important not only for future practice within court, but also to help improve student safety (www.emilytest.co.uk).

6.7 ‘Ticketing’ of Solicitors to deal with Domestic Abuse cases

Whilst our adversarial trial, relying on direct testimony and the recounting of traumatic events, makes some secondary victimisation inevitable, the research data goes some way beyond that and points to unfettered questioning and bully-tactics within the courtroom. Scottish Women’s Rights Centre offer awareness training on domestic abuse to solicitors, which is welcome. However, it is voluntary and attendance is likely to be those who already recognise domestic abuse as a societal problem.

For practising solicitors there is scope, as mooted by Lord Carloway (2015) to invite greater specialism and ‘ticket’ solicitors who are trained in domestic abuse and gender violence. This creates potential for a more holistic approach in which solicitors specialise in domestic abuse and gendered violence, rather than in civil or criminal law. Civil family law specialists ought to understand the dynamics of domestic abuse and work more closely with the prosecutor to appreciate the implications on their case of concurrent criminal proceedings. This is perhaps something that the Scottish Law Commission will consider in their review of civil family law and abuse (Scottish Law Commission, 2018). Moreover, the prosecutor should be aware when there is an ongoing civil case and should ensure that motions made in the criminal case do not directly contradict the intent of the civil court. For example, a motion for special conditions of bail ought to take cognisance of child contact arrangements, and vice versa.

Chapter 7: Areas for Further Research

- Use of risk assessments: when they are conducted; how they are shared; how scores are reached and to what extent they are relied upon
- The role and profile of VIA
- The civil-criminal court interface and ways of achieving a more holistic justice response

7.1 Introduction

This chapter suggests areas for further research. It highlights gaps in knowledge and areas to focus future attention. There is a role for independent academic research and for updated scrutiny by the Inspectorate of Prosecutions and Inspectorate of Constabulary, particularly in relation to the role of VIA. Hopefully, the Scottish Law Commission, with significant input from the Law Society of Scotland, will consider the relationship with the criminal court in their examination of family law in the civil courts. Empirical research has been carried out on the risk assessment in England and Wales, particularly informing its utility in the MARAC, its relevance for IDAAs and police understanding of the nuances of safety. However, there has been no analysis of prosecutorial and judicial understanding of the risk assessment and how the risk assessment score informs criminal proceedings.

7.2 Risk Assessments

The risk assessment has the potential to be an aide-memoire or helpful structure in exploring issues with a victim in a nuanced, collaborative and sensitive way to intuitively judge primary safety concerns. It also has the potential for inexpert and insensitive application.

Translations of numerical scores are unreliable, as different practitioners filter and prioritise different factors (Robinson and Howarth, 2016). Differences in training between independent domestic abuse advocates (IDAAs) and police officers have been highlighted above. Beyond training discrepancies, there are concerns about the sharing of information and reliance on the score.

There has been no empirical examination of the weight attached to this information by the prosecutor marking the case, the PF depute in court or the sheriff presiding over the case. It is also unclear if the information is available consistently. This potentially jeopardises longer-term trust in the tool and highlights the need to clarify its purpose and research on its scientific basis (Ariza et al., 2016). Furthermore, the link between the risk assessment and victim advocacy (Robinson and Payton, 2016) means that the way in which advocates have tentatively built trust within the existing court structure is also precarious. There are effectively three professional filters at play: the IDAA or police officer conducting the assessment; the prosecutor marking and presenting the case; and the sheriff adjudicating. **The impact of the risk assessment as a tool for court is thus unclear and unpredictable and research into its use ought to be a priority.**

7.3 Role and Profile of VIA

The current research suggests that there is confusion about VIA's remit by victims. Many participants indicated that they had received no contact from the Procurator Fiscal's office or thought that they had been contacted by Victim Support when it was clear from the context that they had, in fact, been contacted by VIA. Without greater scrutiny and appraisal of customer understanding of their role, the additional funds for COPFS staff (including VIA) will struggle to improve communication or victim's perceptions of a good service. **It is recommended that consideration is given to the public profile of VIA's role and that there is some evaluation of the service, both in terms of public understanding of their role and in relation to referral rates by COPFS to VIA.**

Joining dots between early thematic reports on victims, recent research and the current findings shows a consistent picture of under-referral to VIA and a lack of public clarity around their role. The report by Lesley Thomson, QC, former Solicitor General, into victim care provides a useful critique of VIA and suggests, like earlier joint thematic reports by the Inspectorates,¹² that VIA could be better used. It reports that an internal review of VIA was conducted, but it is not clear if that will be published. VIA provide an invaluable service in

¹² Joint thematic reports by the Inspectorate of Prosecution and HM Inspectorate of Constabulary for Scotland (2010; 2011).

terms of timely information provision and removing much of the mystique of the criminal justice process.

Where waiting is inevitable, it needs to be clearly explained and a shift is needed to move away from orienting all communication around key decision points.

7.4 Civil-Criminal Interface

The distinction between civil and criminal justice is not recognised by the women who attend court following a phone call to the police and simultaneously seek to secure a safe child contact arrangement. Whilst legislative and policy progress is welcome, it cannot reach its potential until women feel safe attending court and able to engage in the process.

Research participants understood that there were two separate processes running in tandem and could, in most cases, distinguish between them. However, the practical effect for them was attendance at court. Thus, they broadly spoke about their whole court experience. In some cases, the civil case was more prominent because of the impact it had on their children's safety. Cook et al. (2004) in their evaluation of the specialist domestic violence courts in England and Wales highlighted the need for greater links between the criminal and civil courts, citing improved information-sharing between the two as a baseline and calling for more research in this area.

There is no funded court advocacy programme, such as ASSIST, for the civil court. Confusion and lack of understanding by victims of the process in which they are involved is clear. During civil procedure they share a waiting room with their ex-partner and his family, sit opposite him across a small table in the courtroom, and are approached by him on the way in and out of the court building. Not only is this distressing for women and undermines the value of the support available in the criminal court, it can contradict an order imposed by the criminal court.

A significant proportion of victims of domestic abuse will experience both procedures and are unlikely to be able to distinguish between them. Connelly (2008) was right that closer

integration would require significant legislative reform, not least in relation to the burden of proof. However, there are ways in which they might accommodate one another. There is also scope for the infrastructure of advocacy provision to formally provide support through both processes, to provide parity of rights and protection in both courts.

Civil family law specialists ought to understand the dynamics of domestic abuse and work more closely with the prosecutor to appreciate the implications on their case of concurrent criminal proceedings. This is perhaps something that the Scottish Law Commission will consider in their review of civil family law and abuse (Scottish Law Commission, 2018). Moreover, the prosecutor should be aware when there is an ongoing civil case and should ensure that motions made in the criminal case do not directly contradict the intent of the civil court. **It is recommended that further research is undertaken on the inter-play between the civil and criminal court and potential for a closer relationship is explored.**

Chapter 8: Conclusion

“That’s the way it leaves you feeling, like your story’s untold. And at no point at the start of it, did I feel the need to tell my story. But by the time court came, I had psyched myself up that that’s what was gonnae happen and then we would all be ok after that. We’ll go to court, we’ll tell the truth, he’ll get a proper jail sentence and we’ll all feel like justice has been done.”

Christine, victim-survivor and research participant

In cases of intimate partner abuse and sexual violence, to meet the promise to victims of public recognition of the criminality they have experienced, there is a strong argument for the procedural rights of the victim. This is reflected in Scottish Government policy, Police Scotland’s approach, COPFS guidance and the multi-agency approach. Nevertheless, this research has highlighted that barriers endure for victims of domestic abuse. These can be attributed to training gaps, mis-timed interventions and structural inequalities. Taking a holistic view of the process, it is unsurprising that much of the policy and legislative initiative and multi-agency commitment has not yet improved experiences of the justice process for all victims. The criminal, adversarial trial is a traditionally hierarchical and patriarchal structure which will necessarily adapt more slowly than a Government policy affirming a need for gender equality. The creation of a specific offence of domestic abuse, legislation to improve protective measures for victims and the ongoing conversation is all key to progress. The next step is to recognise the coercively controlling behaviour that goes on throughout the court process and introduce rules of evidence to prevent it. Awareness-raising is key; ticketing of solicitors would mitigate inappropriate cross-examination and trauma-informed training on the emotional impact of intimate abuse is fundamental. Eradicating institutionalised gender-inequality within the courtroom is not an insurmountable barrier.

Annex A

The researcher is employed by Crown Office and Procurator Fiscal Service as a Principal Procurator Fiscal Depute within the National High Court sexual offences team. She studied law at the University of Glasgow and trained to become a solicitor with COPFS. Over an eighteen year period, she has held varied roles, including cross-border policy and prosecution of gendered violence by human trafficking and sexual exploitation as a specialist prosecutor at Eurojust in The Hague; and as a policy depute within Crown Office, briefing on: child sexual exploitation in the wake of Rotherham; victim strategies; intimate image abuse (so-called 'revenge pornography'); and domestic abuse. Her decision to pursue academic study in the field of gendered abuse was influenced by time spent in the specialist domestic abuse court in Glasgow, where she was the first full-time prosecutor (2004-5). Concurrently, she studied part-time for the MSc in criminal justice, which led to a PhD scholarship and the current research.

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