

Beyond Glass Walls: How Domestic Abuse Victims Experience the Criminal Justice Process in Scotland, A Briefing Paper

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Introduction

This briefing paper is a synopsis of doctoral research which explored how victims of domestic abuse experience the criminal justice process. It highlights 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.

The study explored the ways in which victims of domestic abuse experienced the criminal justice process and identified the extent to which there is a gap between the public perception of progress and the reality of their individual and collective experiences. Policy, practice and research tend to focus on the key events or "punctuation marks" in the process: a report to the police, providing a statement, trial and sentence.

The policy and legal shift in response to domestic abuse over forty years has nudged a traditionally 'private' dispute into the public domain. However, the extent to which these private crimes become public when reported to the police demands further scrutiny. New laws have boosted public confidence and encouraged reporting: the Criminal Justice and Licensing (Scotland) Act 2010 criminalised stalking; the Victims and Witnesses (Scotland) Act 2014 introduced greater protective measures for victims giving evidence; the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 criminalised intimate image abuse or so-called "revenge pornography"; and the Domestic Abuse (Scotland) Act 2018 introduced a specific offence of domestic abuse which placed Scotland on the global map with a gold standard in tackling intimate, gendered abuse. However, public condemnation does not necessarily bring lived experiences of domestic abuse into the open. Whilst victims' increased confidence in the justice system is a welcome development, subsequent experiences of the ensuing justice process remain, for many, stressful, unsafe and disappointing. Often, abuse continues throughout the process.

Defining Domestic Abuse in Scotland

Scotland has historically taken a distinct approach to defining and understanding domestic abuse, which encompasses more than violence. Whilst England and Wales have only recently shifted from 'domestic violence' to 'domestic violence and abuse' (Home Office, 2013).

The Scottish Government recognises domestic abuse as a gendered problem (Equally Safe, 2014; 2016). The current **Joint Protocol** (2017) between Police Scotland and Crown Office and Procurator Fiscal Service ("COPFS") contains a definition of domestic abuse that includes physical, verbal, sexual, psychological and financial abuse. It applies to (ex)partners, men and women. It does not distinguish between same-sex and heterosexual relationships, but it is limited to intimate partner relationships. Thus, in Scotland there is a gender-neutral definition of domestic abuse within a gendered policy understanding of abuse (Equally Safe, 2014; 2016). The Scottish definition of domestic abuse achieves the aim of making recourse to the criminal law open to all, whilst

recognising that some typologies of domestic abuse (Johnson, 2008) are predominantly perpetrated by men on women (Hoyle, 2012; Williamson et al., 2018), namely ‘intimate terrorism’ (Johnson, 2008) or ‘coercive control’ (Stark, 2007). Hester et al. (2017) found, in a study of male victims of domestic abuse, that less than 5% had experienced coercively controlling behaviour. Thus, an appropriate legal response needs a gendered policy understanding.

The Scale of the Problem

The nature and impact of domestic abuse are increasingly understood and it is recognised as a “serious societal problem” (Schneider, 2000). The overall ‘cost’ of domestic abuse in the UK is an estimated £15.7 billion/year (HMIC, 2014). Whilst the extent of the problem and its gendered nature have been contested, governments recognise domestic abuse as an endemic problem. Nevertheless, understanding the scale of the problem is difficult because of its hidden and suppressed nature.

Police Scotland responds to a domestic abuse call, on average, every nine minutes. In 2017/18, police officers responded to a total of 59,541 domestic incidents, an increase of 1% on 2016/17 (Scottish Government, 2018). Approximately 44% of incidents are recorded as crimes and reported to the prosecution (herein “COPFS”). In 2017/18, five domestic homicides were reported to COPFS; arguably all preventable. Furthermore, the number of recorded ‘attempted murder and serious assault’ charges – 461 – is concerning (COPFS, 2018). Nevertheless, the majority of domestic abuse cases reported to the Procurator Fiscal relate to breach of the peace charges, which shows that the most frequently reported charges do not constitute physical violence. This under-scores the appropriateness of both the Scottish definition of domestic *abuse* and the framing of the Domestic Abuse (Scotland) Act 2018 to include psychological and emotional abuse.

Method and Funding

The findings in this report are based on doctoral research carried out at the University of Glasgow within the Scottish Centre for Crime and Justice Research (‘SCCJR’). The original research was funded by a College of Social Sciences scholarship. The present report is produced as part of a Scottish Justice Fellowship, funded by SCCJR and the Scottish Government. The original research adopted a mixed-method approach that triangulated: a grounded, feminist, qualitative approach; a socio-legal narrative of government, policy and social responses; and auto-ethnographic practitioner experience.

The data derives from in-depth, qualitative interviews with 34 women who had experienced domestic abuse and their support/advocacy workers about their experiences of reporting to the police and the ensuing criminal justice response. A socio-legal narrative of the wider societal response to domestic abuse, presented as a timeline, shows legal, social, policy, academic and international responses to domestic abuse over a 40 year period. It illustrates the pace and direction of progress and provides an analytical framework for discussion of the data findings. Triangulating these knowledge sources, the author drew on professional experience as a prosecutor. The author is a senior prosecutor with specialist experience in the investigation and prosecution of domestic abuse, human trafficking and sexual offences. This practical knowledge and ‘insider’ experience of the criminal justice process added depth of understanding to the research data.

The aim of the timeline – beyond an analytical tool and educational framework – was to contextualise the qualitative interview data (Bowen, 2009). The voices of individuals can be powerful, but when they are situated within the perspective of their social and political landscape (Mason, 1996) they have heightened relevance.

Overview of Timeline Analysis

The timeline can be accessed [here](#).

Significant changes have taken place in the way that domestic abuse has been recognised and responded to in Scotland. A great deal has happened since devolution in 1999, but this was grounded in efforts since the 1970s. The individual women who started the grassroots campaigns in the 1970s have become prominent figures in policy development, working closely with Government and law enforcement, as critical friends with an established ‘seat at the table.’ Legislation and policies have shown consistent intent to deal with violence against women, specifically domestic abuse, and to support vulnerable victims. In combination, these commitments have framed the criminal justice response to violence against women.

The multi-agency approach in Glasgow was initially distinct, but harnessed by the introduction of a specialist court and a police database of vulnerability, it was adopted as a blueprint across Scotland. This was not as a result of the ‘success’ of the court, but largely due to the creation of a single police force creating a national overview of improved practice. The managerial approach to the single police force, within the context of austerity (Rose, 2013) contributed to the prominence of a risk-based model, which allowed scope for prioritisation. As a result, the multi-agency ethos became conflated with a risk-model through the multi-agency risk assessment conferences (‘MARACs’) which provided a worthwhile, if not always timely, intervention to manage the safety of those deemed most at risk. The limitations of this approach illustrate the need for further scrutiny of the risk model.

Public awareness and consciousness-raising about the issue of domestic abuse have become mainstream, and a coherent government approach to ending violence against women and girls continues to mature and develop through *Equally Safe*.

This topic has cut through party political boundaries in Holyrood and the multi-agency response strengthened the efforts of voluntary and statutory organisations. A concerted national campaign by Scottish Women’s Aid, an increasingly effective working relationship between police and prosecutors and the bridging role of advocacy services, such as ASSIST, have also contributed to Scotland’s progressive response to gendered abuse.

Nevertheless, policy-makers, together with academics, have focused on the police and court response, rather than the process before, during and after these official ‘punctuation marks.’ The research found that communication is misaligned with victims’ needs. Whilst the trial is daunting and stressful for victims and witnesses and support for court is essential, the reality is a long, stuttering process where only a minority of cases result in a trial (Green, 2007; Ferguson and McDiarmid, 2014).

Key Findings

- Policy and practice in Scotland sets the benchmark for a multi-agency, pro-active, engaged and gendered response to domestic abuse
- Progressive law and policy is not reflected in individual women's experiences of reporting domestic abuse
- Policies and laws tend to focus on the 'punctuation marks' in the process
- The multi-agency response has been conflated with a risk model and the parameters of the risk model are unclear
- Risk assessment tools have been adopted unilaterally with little understanding of their impact and the unintended consequences of agencies applying tools differently
- There is not a shared definition of advocacy support (distinction between individual and institutional advocacy)
- Advocacy provision is *ad hoc* and not available to all victims
- Most support for victims is focused on preparation for attendance at court but a minority of cases proceed to trial
- Victims of domestic abuse still do not feel safe going to court
- Victims of domestic abuse still do not feel listened to in the justice process
- Waiting *for* and *at* court is a traumatic experience that causes tertiary victimisation
- The trauma of waiting and feeling out of control creates a pressure pot of emotion, which in turn induces further anxiety about court attendance which in turn impacts upon their ability to be heard
- Court officials tend to feel uncomfortable with emotion in the court room and an empathic response is not common
- Reducing the waiting times and improving communication could provide a more supportive response
- Public condemnation and criminalisation of domestic abuse does not mean that all lived experience of domestic abuse is recognised and understood: many women experience ongoing abuse throughout the court process

Advocacy and Risk

The research examined the role of support workers in helping women navigate the criminal justice process. In particular, it considered their role as 'victim advocates'; their interaction with other agencies within the multi-agency forum; and the increased use of risk assessments to manage women and children's safety.

The current research data emanates from three different organisational models: Women's Aid; a community support project; and ASSIST. They share the goal of supporting victims of domestic abuse, but there are differences in their governance, approach and ethos. The research highlighted limitations to the provision of advocacy support in Scotland. Formal advocacy services exist in pockets and whilst there are trained Independent Domestic Abuse Advocates ('IDAAs') within many grassroots organisations,¹ including Women's Aid groups, each organisation translates the role slightly differently in its service provision and information-sharing. Women's experiences are diverse from the outset.

¹ For a map of advocacy provision in Scotland, see Blake Stevenson (2017), available at: <http://www.gov.scot/Resource/0052/00523297.pdf> Accessed: 01/07/18.

“My case was heard in Paisley and all the professionals have indicated, oh, it would have been different had it been heard in Glasgow, the more I think about that: have I been discriminated against? Depending on your postcode, again, depends on your outcome.”

This research participant had a particularly gruelling and distressing experience of court, which she felt had been compounded by the lack of a specialist court response and, at that time, no advocacy provision.

Specialist advocacy training has enhanced support workers professional standing within the justice community and their authority within the court process, which aids the multi-agency response and helps to promote women’s voices within the process. A key part of the advocacy model has been the introduction of risk assessments (‘RIC’) to assess and manage the safety of women and children. Based on sound research, it is a well-intentioned and potentially valuable introduction to this field in Scotland, as a means of prioritisation. It is a product of a multi-agency approach; the introduction of MARACs; and a commitment by victim advocates and support organisations to facilitate more robust safety planning. The research showed that advocates in Scotland use the RIC carefully and intuitively. They do not consider it an actuarial tool, but rather a means of initiating discussion with women. The score takes account of a woman’s perception of her own risk, filtered by the advocate’s judgement.

However, three findings from the research suggest disparity in the application of risk assessments and a lack of consensus on their purpose. First, there was evidence of RIC scores being used as a managerial tool to show a reduction in risk, reflecting the climate and financial pressures within which many organisations operate and contradicting the person-centred ethos of advocacy (Coy and Kelly, 2011; Howarth et al., 2009; Robinson et al., 2009). Second, information-sharing and use of risk assessment information are not consistent between agencies, which reflects the findings of the national scoping exercise (Blake Stevenson, 2017) and includes an increase in police officers duplicating the same risk assessment, but with little training. Third, there was incongruous use of the risk assessment information in court, with no clear understanding of the weight attached by the court to risk information.

The risk assessment is designed to improve women’s safety by assisting victim advocates and providing a referral mechanism to the MARAC. These benefits are compromised when there is uneven service provision of both advocacy and MARACs. In court, the perceived legitimacy, and importance, of the RIC outcome, where it is available, is unclear. There is a need for specific Scottish research on the use and timing of risk instruments in relation to domestic abuse and how they are understood by the prosecution and judiciary.

Emotion and Waiting

Overwhelmingly, women are expected to wait. They wait for a safe opportunity to report, or worse, until crisis point. While waiting for court resolution, women are waiting for bruises to heal; decisions on housing; referrals for emotional support; reports from schools and bar reporters; contact from the perpetrator’s family; civil court resolutions; and (marked) time to pass.

“We had to wait such a long time. You sort of bundle up all your courage, you do your best to protect yourself and it was just awful. I would be in there first and sit right away at the back, so that nobody could pass in front of me and stuff like that, I just built up my own strategies. But the first place I always went was the bathroom because I always had chronic diarrhoea

and I realised it's this fight or flight, I'd feel as though I'd swallowed a washing machine, really agitated, and that was stress and then when I went home, I knew, it took me a week to recover."

Yet, in the same way that domestic abuse is not all about hitting, justice is not all about the trial. Justice, like the lived experiences of the women interviewed, is a process: it is a flawed narrative, punctuated by stutters and hic-ups. It is sometimes predictable, often dramatic and always emotional for victims of personal abuse and those professionals seeking to support them (Bosworth and Kellezi, 2017).

The criminal justice process is not yet equipped to deal with the depth and range of emotional responses to abuse. Emotions within the justice process conjure up images of weeping women in the witness box, yet such an over-simplification fails to recognise what women are dealing with at every stage.

"They couldn't connect to this hysterical woman, they're like he's a great guy. Be quiet. When I calmed down, I was able to be heard. It should be the other way round. You should be heard as a distressed victim but you're not."

In between the 'punctuation marks' they face long, uncertain waits. This waiting is largely unrecognised and unexamined. Waiting at court is inevitable and court practitioners relate their own common experiences of waiting as a mere inconvenience. However, for women who have been waiting a tortuous length of time for their case to come to court, waiting at court is a further trauma. There is a challenging power/control dynamic affecting women's ability to wait without exposure to re-traumatisation. This goes beyond the known effects of secondary victimisation from giving evidence. The research found that this complex, additional layer of trauma was a form of tertiary victimisation, which impacts on victim's ability to give evidence in the prescribed form and predicates much of their emotional response. Quite simply, it creates a pressure pot of emotion where the witness box becomes the only outlet. Not only is this distressing for individual victims, it affects their ability to act as 'witnesses' and diminishes the strength of the Crown case.

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 respond in unpredictable and emotional ways. Thus, an understanding of the impact of waiting would contribute greatly to a more emotionally intuitive empathy *and* efficiency.

Agency and Control

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

Linked to the challenge of waiting, the impact of being powerless within a state-imposed structure, like the court process, after the experience of being coercively controlled in an intimate relationship, compounds the experience of trauma (Elliot et al., 2014).

The research participants painted an anxious and alienating experience of court. They described a lack of consistency between the civil and criminal courts, particularly in relation to special measures, and could not understand why there was not a more joined-up justice response. Court waiting rooms are described as over-crowded; sensitive case information is discussed loudly; chairs are uncomfortable; child-care provision is lacking; information-provision is slow; waiting is tortuous; rules relating to expenses are inequitable for those who work night-shift; and the public areas around the court can leave victims feeling vulnerable. Once in the courtroom, the witness box is cramped; there is a requirement to stand for a long time; questions are potentially re-traumatising; the presence of a court-reporter causes distress; and there is little objection to cross-examination which goes beyond testing the evidence to an outright attack on character.

"I was painted so badly. His last line: no-one dares abuse you, you're very strong, you're a highly intelligent woman, you've come here today, you've answered everything, you've batted it back to me, as if anyone would dare to domestically abuse you, no man would dare to take you on. That's what he said, then he sat down."

Having fulfilled a responsibility as a Crown witness, concepts of the 'ideal' victim are re-enforced as she is potentially judged to be not sufficiently 'vulnerable' (despite her 'deemed vulnerable' status).

The study recorded women's sense that they had not been heard, that *his truth was stronger than mine* and the perception that, no matter what happened, *I was not going to be believed*. 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 women 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), perpetuating unattainable expectations. Moreover, the private abuse reported continues while in front of court practitioners and the extent and nature of domestic abuse is still not fully understood. Within the context of feeling unheard, these are potent barriers to justice. Women's perceptions of the invisibility of the crime and the inaudibility of their voice lead to feelings of dis-engagement and compromise their ability to support the prosecution. The gendered and unrecognised nature of this barrier is not dissimilar to the glass ceiling which second-wave feminism highlighted 40 years ago as a seemingly invisible barrier to women progressing equally in the workplace.

Conclusion: Beyond Glass Walls

The corner-stone of Scotland's progressive approach lies in its gendered understanding of domestic abuse, reflected in its definition, policy, strategy and agency responses. However, continuing gender inequality within criminal justice structures, mean that women are institutionally disbelieved. Uneven support-service provision impedes Scotland's potential to be a leading light in dealing effectively with domestic abuse.

Scotland's outlook on tackling domestic abuse is cautiously optimistic. The work of the *Equally Safe* implementation group promises to challenge structural inequality. The 2018 Act provides a potential opportunity for women to relate the narrative of their experience (Forbes, 2018). This should not invoke complacency. The risk attached to the relatively rapid pace of change since devolution 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.

This report has highlighted some priorities to improve procedural justice for victims of domestic abuse, including: consistent advocacy services; scrutiny of risk assessments; and timing of victim communication throughout the entire process. The most important challenge is to mitigate the trauma of waiting through improved communication prior to court and physical alterations of the court waiting area. Tertiary victimisation is a way of understanding the impact of waiting and challenges criminal justice agencies to shift their focus and recognise the potential trauma in waiting.

It is only when criminal justice practitioners are trained to fully understand the traumatic effects and full range of emotional responses to domestic abuse that ongoing abuse throughout the court process can be prevented.

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