

Social Justice and Social Security Committee

Domestic Violence Against Women and Girls – meeting with the Lord Advocate and National Procurator Fiscal

Thursday 2 March 2022 10-11am

Attendees:

- Elena Whitham MSP
- Jeremy Balfour MSP
- Miles Briggs MSP
- Foyso Choudhury MSP
- Pam Duncan-Glancy MSP
- Emma Roddick MSP (remotely)
- The Lord Advocate, Rt Honorable Dorothy Bain QC,
- National Procurator Fiscal for Domestic Abuse, Moira Price,
- Giles Hendry, Deputy Private Secretary to the Lord Advocate
- Anne Jepson
- Claire Menzies
- Lynn Robertson
- Claire Murrie

Background

Members of the Social Justice and Social Security met informally with the Lord Advocate and National Procurator Fiscal for Domestic Abuse on 2 March. Members wished to meet with the Lord Advocate to hear about reforms and challenges in the criminal justice system. This session will inform the roundtable session on 3 March, where the Committee will hear from stakeholders and organisations that support women and girls who have experienced violence.

Note of discussion

The following was discussed during the informal meeting:

- The Crown Office and Procurator Fiscal Service has a vigorous approach and is committed to prosecuting sexual and domestic violence cases efficiently and effectively.
- The Lord Advocate recognised the devastating impact of these crimes and use is made of all tools available to courts through the Domestic Abuse (Scotland) Act 2018. Legislation has allowed courts to consider the totality of the victim's experiences.
- There is a real commitment to improving the prosecution of gender-based violence, domestic abuse and violence against women and girls.
- If women and children are protected from sexual violence this will have a positive impact on society in general.
- The National Procurator Fiscal confirmed that a rigorous approach is taken towards perpetrators being held to account. There is a presumption in favour of criminal proceedings, and against discontinuing proceedings where there is sufficient evidence.
- It was highlighted that following a review chaired by Lord Justice Clerk, Lady Dorrian, a report was published on [Improving the Management of Sexual Offence Cases, March 2021](#). The group made a number of recommendations including specialisation of judges at Sheriff and High Courts. The Lord Advocate noted that there is now a governance group which is overseeing the review of recommendations. Some aspects of the review would require legislative change, but others can be taken forward without legislative change, such as recommendations around communication and support mechanisms.
- The Lord Advocate is fully supportive of the review.
- The backlog of cases has put strain on the system, victims and those organisations providing support to them. Evidence provided to the Criminal Justice explained that this backlog has increased anxiety among survivors.
- There is a genuine commitment by the Crown Office and Procurator Fiscal Service to support vulnerable witnesses. This is a big challenge when there are more cases in the system than there have ever been. This will have a profound impact on witnesses as it is very difficult when cases take a long time.
- 70% of work in high court is sexual offence cases.
- There are 18 specialist Advocate Deputes. The sheer number of sexual offence cases means that having a small group of Advocate Deputes dealing with all of these cases is not tenable.

- These are the most difficult type of cases to prepare for, prosecute and secure convictions in.
- There is specialised training before anyone can prosecute in the High Court.
- There is a wide range of professional experience among the members of the Advocate Depute cohort, including five Queen's Counsel.
- The Crown and Procurator Fiscal Office cannot offer legal advice or representation. There would need to be legislative change to permit independent legal representation of victims of sexual violence in court.
- There is non-means tested legal aid available to complainers opposing recovery of sensitive records. Sexual offence victims can apply to Scottish Ministers for legal aid in exceptional circumstances.
- The backlog of cases which has been caused by Covid is not going to clear quickly.
- The Court service has introduced mandatory meetings to see if any evidence can be agreed or if there is a chance of a guilty plea without trial – pre intermediate diet meetings. Resolving earlier would mean witnesses do not need to attend court.
- Members discussed the experience of disabled women who are victims of sexual violence. Often people do not report these crimes because they fear they will not be believed and there are problems around the accessibility of venues used for investigation. Members were interested to know how reporting could be improved.
- The Lord Advocate indicated that the early stages of crime reporting relate to Police process. It is a sobering statistic that 90% of learning disabled people have been abused under the age of 18
- It is the most vulnerable members of society who are at most risk. It is important to understand this power dynamic and opportunity of power play. Everything starts by understanding vulnerability within society and the moral, legal and prosecutorial responsibility to protect these people. We need to understand risk.
- The Lord Advocate indicated that when she was a high court prosecutor, in cases where there is a vulnerable person with a disability, the Advocate Depute would be made aware at an early stage. She would meet with the individual victim to talk about their concerns and seek to support them through the judicial process. The Lord Advocate felt it was important to have this early engagement with vulnerable people and to take evidence with care and understanding.

- It is also critical to have specialised training for Advocate Deputes. Securing expert evidence on needs before even taking victim's evidence. There is a pre-trial process to explain the vulnerability of witness and allow witnesses to give evidence in best way. This could involve different formats like video evidence.
- These principles would also apply in Summary courts. The Victims, Information and Advice unit (VIA) treats each witness as an individual. There are a range of specialist measures which the court can apply. Many of these special measures are considered to be standard, like giving evidence by remote CCTV link, dividing screens and court supporters are available to all victims. Going beyond that, there is the opportunity to apply for permission to give evidence on commission.
- Members were interested in the family violence trauma informed court model in Australia. The Lord Advocate confirmed that there are also specialised domestic abuse courts in Scotland. These were developed in 2007/08.
- The Lord Advocate believes that looking at specialisation is the way forward. This can also be seen in Lady Dorrian's report recommendations. Violence against women and girls and prosecution of sexual crime is such a big problem that specialisation is needed in this field. Looking to other jurisdictions and models of specialisation is a sensible thing to do. The New Zealand Law Commission found that jury courts are not the best model for processing these types of crimes.
- The definition of domestic abuse is different in Scotland than in England and Wales where it includes abuse against children. Scotland must be partners or ex-partners. Scotland still takes account of the impact on family but in a slightly different way from in England. Courts must take into account impact on children for example, a non-harassment order might be issued.
- Extending the definition of domestic abuse in Scotland would require legislative change.
- Introducing independent legal representation of victims would also require legislative change.
- It is important to label this type of conduct as criminal and reprehensible and to take account of aggravating factors. Aggravations of this nature have an important impact on sentencing.
- Domestic abuse and sexual violence are problems that cross all parts of society from the most vulnerable to the wealthiest.
- There is a difference in the timescales for criminal and civil justice proceedings. This can mean that decisions are being made about children's

custody and contact with the abuser in the Sheriff Court *before* a criminal prosecution has been made in the High Court.

- Members were interested in how third sector organisations and women's organisations fit into the process.
- Dr Lesley Thomson, QC's [Review of Victim Care in the Justice Sector in Scotland](#) was highlighted as was the work of the [Scottish Government's Victims Taskforce](#)
- We must be cognisant of the impact of growing up in a household where there is domestic violence. An additional aggravation can be applied if it is proved that children have been adversely impacted by growing up in a household with domestic violence. If this aggravator can be applied, then this has more influence as a non-harassment order can be applied. Hopefully the actions on the criminal side can influence separate court in a civil setting. (However, see above, the civil case might go ahead before the criminal case, especially when there is a back log in the High Court)
- It was noted that aggravating factors cannot influence decision-making when there is a disconnect between civil and criminal process. If the aggravation is recorded, then the Sheriff would need to consider this in their decision-making. The backlog has created further detriment in this regard.
- Further information could be supplied about the impact that changes, to include coercive control, have made on conviction rates.
- Members were interested on what more could be done to support BME women to report domestic abuse and sexual violence. The Lord Advocate assured members that it is possible to apply special anonymity measures where necessary and where the dynamic in the particular community would make reporting crime very difficult for the women concerned.
- The current backlog of sexual offence cases has a disproportionate impact on women and children. We should look at considering sexual offences differently, including considering prosecuting without jury. Lady Dorrian's report is looking at a pilot of a system without jury.
- Living with delays is extremely difficult and a way must be found to clear the backlog. We have a moral responsibility to see how we can increase the throughput of cases. People need justice.