Criminal Justice Committee

1st Meeting, 2024 (Session 6), Wednesday, 10 January 2024

Victims, Witnesses, and Justice Reform (Scotland) Bill: analysis of the call for views (parts 5 and 6)

Introduction

The Criminal Justice Committee launched its call for views on the Victims, Witnesses, and Justice Reform (Scotland) Bill on 19 June 2023. It closed on 8 September.

The call for views covered all six parts of the Bill. **Due to the Committee's decision to take a phased approach to the consideration of the Bill this paper only discusses the responses to Parts 5 and 6 of the Bill.** Papers discussing the responses to Parts 1 to 3 of the Bill, and Part 4 of the Bill, have already been shared with the Committee.

The intention of this paper is not to be exhaustive, rather it is to provide an overview of the main issues raised in the submissions. The submissions are published online.

Responses

The Committee received over 250 submissions to the call for views. Of these submissions, around a quarter were from organisations, with the rest from individuals.

Broadly speaking, responders to the call for views had more to say regarding Parts 4 to 6 of the Bill than they did about the initial three Parts. The questions relating to Parts 5 and 6 of the Bill generated a significant number of comments.

Part 5: Sexual offences court

The call for views asked respondents for their views on the establishment of a sexual offences court. Responses to the question from organisations showed a divide in their views. Organisations representing victims were generally strongly in favour of Part 5 of the Bill. Responses from the legal professions however raised various concerns with the legislation as drafted.

The responses from individuals were broadly negative towards the idea of establishing a sexual offences court. It should be noted, however, that many of the individual responses connected Part 5 of the Bill to the pilot of single judge rape trials provided for in Part 6.

Specialisation

There was a general consensus across the responses that sexual offences did require a degree of specialisation in order to be handled appropriately by the criminal justice system. Moray VAWG Partnership noted that:

> "We strongly support this measure - sexual offences are complex, traumatic and subject to significant misinformation. A specially trained staff (from judges & counsel to court reporters) is essential to ensure they are dealt with justly and a dedicated court system would seem to be an effective way to ensure this."

This need for specialisation was also recognised by the Crown Office and Procurator Fiscal Service (COPFS) who said:

> "It is also recognised that the effective prosecution of sexual crimes requires specialisation, and the needs of complainers require the most careful consideration and provision of effective support."

Some respondents expressed the opinion that establishing a sexual offences court would not only ensure specialisation but may also ensure that the court process would experience less delays. Police Scotland reflected this viewpoint, commenting that:

> "We are aware of the distress on victims and witnesses due to delays in the court system. The implementation of a dedicated Sexual Offences Court would prevent further delays, minimise re-traumatisation of victims and in turn be an opportunity to prevent victims from dis-engaging due to the length of time their journey through the Criminal Justice system takes… It will increase professionalism and support for victims and witnesses and increase capacity in other courts for other business."

Other respondents were less certain that a separate sexual offences court would lead to individuals experiencing a faster process:

> "there may be implications for areas where the number of cases being heard does not warrant a regular Court being available. Thus, victims and defendants may have to wait longer, or travel further, which for victims

> potentially increases further the traumatic impact of seeking justice, and delays an outcome, resulting in defendants being on bail, or indeed remanded in custody, for longer." (Dumfries and Galloway Council)

A separate court or a specialist division?

Many of the organisation respondents that did not support Part 5 of the Bill expressed an opinion that the establishment of a separate court was not required. Instead, these submissions generally supported the idea of establishing a specialist sexual offences division of the existing courts. For example, the Law Society of Scotland stated:

> "With reference to paragraph 275 of the Policy Memorandum accompanying the bill, which states that consideration was given to establishing specialist divisions of existing courts, namely the High Court and the sheriff court, we are still unclear as to how this arrangement would deliver less flexibility in the use of existing courts and judicial resources to deliver improvements in the efficiency and effectiveness of how sexual offences cases are managed. We already have such specialist courts as divisions of existing courts such as the Domestic Abuse Court in Edinburgh and Glasgow Sheriff Courts and the Court of Session Commercial Court… The specialist court model has the potential to reduce delays, increase consistency of experience for all participants, encourage early resolution where appropriate, and ensure the focus remains on issues properly in dispute."

The Faculty of Advocates also supported the idea of creating a specialised division:

> "Faculty considers that there is no single feature of the proposed court which could not be delivered rapidly by introducing specialism to the existing High Court and Sheriff Court structures"

There were also respondents who expressed concerns about the practical ramifications of establishing a new court. Children 1st noted that in a time of limited resources:

> "We are concerned about whether the creation of a new court, and the time and resources that this will need to involve, will distract from efforts to make the clear practical changes that victims and witnesses consistently tell us would make things better"

Other respondents, however, saw the creation of a separate sexual offences court as an opportunity to improve the system:

> "Creation of a national court in the form recommended by the Review provides Scotland with a unique opportunity to improve the experience of complainers, the accused and court participants…The SCTS is committed to working with Scottish Government, justice partners and key stakeholders to facilitate the implementation of what would be a transformational court." (Scottish Courts and Tribunals Service)

Appointment of judges

Another aspect of Part 5 that led to a high number of comments was the process for appointing judges to the new court.

The response from the Sheriffs & Summary Sheriffs' Association reflected many of the concerns raised by other organisations:

> "The question of the length of time of appointment and the interaction with 'mainstream' judicial work is worthy of comment. We consider that there are a number of issues which arise in relation to the appointment of sheriffs to serve in the proposed new court which are distinct from the position of High Court judges."

In summary, the issues they raised included:

- that the process for appointing sheriffs to the new court is not set out in the Bill
- the risk of vicarious trauma from dealing with large numbers of sexual offence cases and a need to 'take a breather' from that workload
- that there should be a term of office set out which also states if service is for a continuous period or as required
- the potential impact on the workload on the sheriff court if there are less sheriffs available due to appointment to the sexual offences court
- how sheriff members of the sexual offences court would be paid for undertaking work that overlaps with the current responsibility of the High Court.

There were also responses that raised concerns regarding the lack of detail in the Bill on the process for removing judges where required:

> "given the criticisms made of clauses 40 and 41 of the Bill and the status of the proposed court, the Scottish Government may wish to consider whether it would be preferable for Sexual Offence Court judge appointment to involve some level of tenure and for removal to require more formality, in order to reduce the prospect of litigation." (Supreme Courts of Scotland - Senators of the College of Justice)

Training

The training of professionals working in the sexual offences court was a topic discussed within the submissions. There was a general consensus that there was a lack of clarity regarding the specifics of the training to be undertaken. The Law Society of Scotland said that:

> "We consider it is important for there to be greater clarity on what any training- whether for the defence or the Crown- would entail, and in particular whether it will be entirely evidence-based; whether there will be a transparent process whereby providers are identified and selected; and who will be expected to bear the cost."

NHS Education for Scotland noted:

> "that whilst the Bill enacts a requirement for training, there is no requirement for the intended impact of training on changes in practice to be subsequently demonstrated or evidenced, or any required standards to be met. There is also no requirement to demonstrate or evidence that the training actually delivers any changes that improve the experiences of witnesses, and reduces their exposure to re-traumatisation…trauma training may risk becoming a tick box exercise with little positive impact in practice."

In the opinion of Rape Crisis Scotland, what was missing from the legislation was the ability to ensure that those who had undertaken the required training to work in the sexual offences court could be removed again should it be required. Their submission noted that:

> "a system of ticketing is only meaningful where there is a process to remove that 'ticket' where serious concerns arise about someone's suitability to be involved in the sexual offences court."

While some responses were looking for greater detail to be specified about the level of training required, the Scottish Criminal Cases Review Commission suggested that:

> "it would be too narrow to specify one particular approach for the 'approved' courses of trauma-informed training. It would be preferable to embrace a plurality of foci and methods."

Rights of Audience

The Bill would generally allow solicitors, solicitor advocates and advocates to represent an accused in the Sexual Offences Court. However, where a case includes a charge of rape or murder (always prosecuted in the High Court under current arrangements) only solicitor advocates and advocates would be able to do so.

Rape Crisis Scotland were concerned that the provisions relating cases where only solicitor advocates and advocates can represent the defence and prosecution do not go far enough to protect all complainers in serious sexual offences cases:

> "The rights of audience that are provided for in the Bill mean that only cases of rape and murder will have the restriction that an advocate or solicitor advocate can defend an accused person and only an Advocate Depute can prosecute. We do not feel this restriction on the rights of audience goes far enough to provide protection… All cases that would have been tried in the High Court under the current model should continue to have the protection afforded by the appropriate level legal representatives appearing."

Pre-recording of complainer evidence

Concerns were also raised about the proposed presumption in favour of vulnerable complainers being able to provide their evidence in advance of the trial. COPFS stated in their submission:

> "The provisions…have been taken from the existing provisions relating to requirements for children in certain High Court prosecutions to have their evidence pre-recorded. Prosecutors are aware of examples in which the Court appeared to misunderstand the legislative framework and took the view that the Crown no longer has any discretion in how evidence is led and is bound to lead the pre-recorded evidence of witnesses, notwithstanding that this may not be the most appropriate method of presenting their evidence having regard to the circumstances of the individual case and the public interest…the provisions require amendment to make clear that the independence of the Lord Advocate and prosecutors acting under her authority is protected by ensuring that there is an exception to the requirement for evidence to be pre-recorded where the Crown determines that that another special measure is more appropriate,"

Cost of phased implementation

The Scottish Courts and Tribunals Service was concerned about paragraph 127 of the Financial Memorandum for the Bill, on the cost of using a phased approach to implement the new court. While the Financial Memorandum stated that "a phased approach to implementing the Court will mitigate a substantial proportion of the cost pressures emerging in the early years", the SCTS submission stated:

> "Phased implementation…would be more resource intensive. It would also result in an inconsistent 'two tiered' approach to sexual offences cases potentially occurring, a structure which the Lord Justice Clerk's Review's recommendations sought to prevent."

Part 6: Sexual offences further reform

The call for views asked respondents three questions regarding part 6 of the Bill. The questions covered anonymity of victims, independent legal representation for complainers and single judge rape trials with no jury. The third of these, on the pilot for single judge rape trials, received significantly more comments than the first two questions.

Anonymity of victims

The majority of submissions from organisations that answered this question were strongly in favour of the proposal, with few suggestions for amendments. The responses from individuals were also generally in favour but many also expressed the opinion that anonymity should also apply to the accused until a guilty verdict is reached by the court.

Posthumous anonymity

Many responses suggested that the proposed anonymity for complainers should continue to apply posthumously. For example, one submission stated:

> "We further propose that… anonymity continues to apply for victims posthumously. We support this view as we believe that it is most aligned with trauma-informed practice. Trauma is not only personal - it is also interpersonal and intergenerational. As a result, we believe that, if anonymity ceased to apply following a victim's death, this could potentially have unforeseen consequences for significant people in their close environments who might outlive them." (Beira's Place)

The Law Society also suggested that:

> "anonymity should continue in perpetuity, rather than end at death, if the principle behind anonymity is to preserve the complainer's dignity. While we note that Section 106C (3) (b) stops the restriction on the complainer's death, we believe that, should another person wish to name a complainer of a sexual offence after the complainer's death, then application could be made to the court outlining the justification for setting aside the right to perpetual anonymity and seeking the court's approval to do so."

Clarification

Some responses felt that clarification was needed on the right of anonymity for complainers if a trial results in an acquittal. COPFS noted:

> "The Bill is not clear if the application of the prohibition on identification would apply to the complainer in a sexual offence where there has been an acquittal after trial. Where there has been an acquittal following a trial, it is arguable that the individual would not be 'a person against or in respect of whom an offence has been, or is suspected to have been, committed', as in these circumstances there has been a formal determination following court

> proceedings that the accused did not commit the offence. It is submitted that the provisions should be amended to ensure that the protection available to individuals is not conditional on the outcome of court proceedings."

Many of the responses from individuals took opposite view. These submissions stated that the right of anonymity for complainers should cease if the accused is not found guilty.

In their submission, the Scottish Courts and Tribunals Service felt that clarity was required regarding how the Bill would interact with other legislation relating to the anonymity of children. They said:

> "presently there appears to some extent a cross-over and the potential for inconsistency between the current provisions (regarding the waiver of anonymity for children) and those within the Children (Care and Justice) (Scotland) Bill which deal with powers given to the court to dispense with reporting restrictions; and particularly the methods and court procedure to be followed. The latter is envisaged to take place in the criminal jurisdiction. Without clarity there is a potential for uncertainty and consequentially the potential for duplication of applications, work and costs if approaches are made in each forum. While a matter for SG policy, clarity would undoubtedly be welcomed by all."

Extent

Other responses to the question on anonymity for complainers raised questions about the extent of the Bill as currently set out. Rape Crisis Scotland was among the responders that said that the list of offences for which anonymity would be granted was not wide enough:

> "We support that the right to anonymity should exist in all the offences covered within the Bill but submit that there should be a 'catch all' provision. This should include a right to anonymity where the offence has a significant sexual element, even if that offence is not specifically named on the list…We see the Bill in its current form may not protect the anonymity of some survivors of sexual violence and we think this would ensure absolute protection."

Police Scotland also raised the question of "why only certain sexual offences are within the scope of the proposed legislation". They also wanted to know "how any breach of restrictions would be enforced and who would have responsibility for this".

Concerns were also raised by some submissions regarding to what extent a complainer's anonymity would apply to necessary legal or investigative work. The Parole Board for Scotland noted they are:

> "obliged to include victims' names in licence conditions. Licence conditions covering the victim are routinely shared with the relevant victim. These licence conditions must be shared with the prisoner, the community based social worker, the prison and such others with whom the Board may, from time to time, share information.

> The Board considers that the inclusion of victims' names in licence conditions is not a publication. Should it be considered that this is a publication then it would be necessary to include a specific exemption in respect of licence conditions."

Police Scotland also raised the concern that:

> "It is conceivable that a restriction on publications relating to victims of certain offences may limit the ability of the Chief Constable to properly investigate in situations where, for example, public appeals for information could be made."

Independent legal representation for complainers

The Bill would give a complainer the right to independent legal representation (ILR) where there is an application to lead evidence about their sexual history or character in a trial.

Submissions from both organisations and individuals were generally supportive of these provisions. There were fewer responses on this than the other questions in this paper.

Extent of the provisions

Many of the responses were strongly in favour of introducing independent legal representation for complainers. Moray VAWG Partnership, for example, stated that:

> "This is probably one of the most essential elements of the entire Bill. Extant legal protections against the introduction of sexual history evidence are chronically under-employed by COPFS. The best way to fix this, and to support complainers throughout the process, is the introduction of independent legal representation."

Other organisations, while supportive of the provisions, argued that this part of the Bill was too narrow in its outlook. Rape Crisis Scotland said that:

> "The provisions for ILR in the bill do not go far enough to protect the rights of complainers. There should be a right to independent legal advice throughout proceedings within the criminal justice system. We understand that there has been a commitment made to address this in the future, but survivors have been waiting long enough and this Bill could be bolder in this regard."

Practical concerns

Several submissions, particularly from legal organisations, were concerned about how this section of the Bill would operate in practice, especially given limited resources. The Scottish Criminal Cases Review Commission noted that they:

> "would agree with the observation at paragraph 212 of the Financial Memorandum that the legal sector is 'under considerable pressure' and that the provisions in question are 'likely to add to that'."

The Law Society of Scotland expressed a series of concerns, including:

> "Is it intended that representation will be provided by criminal defence solicitors on a legal aid basis? Will such representation only be provided where a Section 275 application has been made in advance of the trial? We are aware of situations where the judge or sheriff may determine that Section 275 issues arise during the course of the trial - is it envisaged that independent representation will be available at every trial to accommodate this possibility? On this approach, we would have concerns regarding any extension or delays to the trial, and the impact on resources."

JUSTICE Scotland noted in their submission that:

> "The Bill lacks details as to who will provide representation, how it will be resourced, what training is required and how it will be funded…ILR is only a valuable right if it is easily accessible."

Resource implications were also highlighted by the Supreme Courts of Scotland - Senators of the College of Justice, who said that these provisions:

> "will create a considerable amount of extra work for the judiciary and support staff, and no doubt for prosecutors and defence lawyers, which will be time-consuming and resource intensive. There is considerable potential for delay and churn of pre-trial hearings unless there are sufficient additional personnel and resources to support this new procedure. Such resource is difficult to envisage given the volume of business and the extent of the recovery programme."

Disclosure process

Some of the responses were specifically concerned about the potential impacts of the proposed disclosure process on cases. The Scottish Courts and Tribunals Service noted in their submission that:

> "There is currently no comparative court process. New procedural steps, forms and additional judicial preparation and judicial, staff and court time would be required to support it, if approved by Parliament, with commensurate cost. In particular it is envisaged that notable judicial time may be required to review, in advance of any hearing, the documentation that COPFS propose to disclose… It is not possible to anticipate the volume or level of papers that COPFS will propose to disclose in each case, however it could be potentially substantial, requiring the diversion of finite judicial resource to this process" (Scottish Courts and Tribunals Service)

Time limits

Another topic that was commented upon, which also links to the concerns voiced regarding the proposed disclosure process, was that of the time limits included in the legislation. For example, Rape Crisis Scotland stated that:

> "we suggest the time frame should be wider to allow more time for the survivor to engage with a solicitor. The Bill's suggested timeframe is 21 days, but within that time the Crown will need to inform the complainer and thereafter they will have to obtain and instruct a lawyer and obtain legal aid. We suggest a minimum period of 28 days is a fair time period for this to be completed in... We suggest that a timescale is imposed on the Crown to send the required information to the complainer (within 2 days) to ensure they receive the information straight away."

The COPFS also commented on the timescales included in the Bill, suggesting that:

> "Because of the very short timescales involved, in practical terms, COPFS staff may have to start to consider what evidence is relevant and disclosable as soon as a section 275 application is lodged with the court and before it is confirmed that the complainer has instructed an ILR. This would be time and resource intensive and would give rise to unnecessary work but may be required in order to ensure that the complainer's rights are fulfilled if they are not able to find or instruct an ILR until a late stage in the 21-day period."

The Faculty of Advocates suggested an amendment to the Scottish Government on this issue:

> "if it wishes to amend Section 275 of the 1995 Act, doing so to leave the time limits in place but provide for an administrative adjournment of the next diet should a complainer wish to obtain independent legal representation."

Single judge rape trials with no jury

This section of Part 6 received a high number of responses. The question asked for views on running a pilot where trials for rape would be conducted with a single judge without a jury.

Responses from organisations were mainly against the proposed pilot, although some submissions from organisations representing victims were supportive.

Among the individuals who responded, opinions were nearly all against the proposed pilot.

Supportive comments

The organisations who supported running the proposed pilot focused on the opinion that significant change is required to the system as it currently operates. The Scottish Women's Convention stated that:

> "change is clearly needed with regards to rape and sexual assault trials. Currently, stigma and engrained assumptions contribute to low conviction rates amongst juries, and instead a single-judge rape trial may create an improved experience for victims… We support a pilot programme, as this can facilitate change, while also assessing potential risks and disadvantages to this new approach."

Victim Support Scotland agreed with the need for change, noting that they:

> "strongly support the pilot of single judge rape trials. Our organisation does not believe that the current system of trial by jury is suitable for the prosecution of serious sexual offence…The pilot of single judge rape trials has the potential to transform the experiences of survivors in the criminal justice system. We would strongly urge the Scottish Government to stand by this commitment and listen to the voices of campaigners and survivors in Scotland calling for change."

Both the COPFS and Scottish Courts and Tribunals Service also expressed at least some support for a pilot, with the former stating that it agreed with:

> "the conclusions in Lady Dorrian's review that action should be taken to improve the experience of victims of sexual offending and that there is merit in consideration of a time limited pilot of single judge rape trials".

Fair trial and appeals

One of the main concerns of those opposed to the pilot was that it has the potential to remove the chances of a fair trial for the accused. The Faculty of Advocates Criminal Bar Association stated:

> "The pilot relies on forcing citizens accused of serious crimes to take part in a life altering experiment whether they like it or not, and that brings to mind some very unhappy historical resonances."

The Faculty of Advocates had similar concerns, noting in their submission that:

> "Faculty considers that the pilot scheme will be an experiment. The only person who can be adversely affected by the experiment in the trial process is the accused…the irresistible conclusion is that the sole purpose of the pilot scheme must be to determine whether a single judge will increase conviction rates in sexual offences… (this) is fundamentally at odds with our system of justice."

In the response from the Scottish Criminal Cases Review Commission, they highlighted the potential for a significant number of appeals to be generated from convictions resulting from a pilot process:

> "Section 65(5) requires the trial judge to provide written reasons for their decision. This would be an almost entirely novel development in solemn criminal procedure. Juries are not required to produce such reasoning…the SCCRC would expect a new body of case law to emerge concerning the operation of the appellate provisions in juryless cases. The SCCRC notes that the body of appellate law applicable to the existing judge-only trials in Scotland, those conducted using summary procedure, is significantly different from solemn appeal procedure. It would be preferable, in the SCCRC's view, for the legislature to provide the court with an indication of how it is to approach such appeals."

In their response, however, the Supreme Courts of Scotland - Senators of the College of Justice, provided opinions from their members that were both supportive and against the proposed pilot. They commented that:

> "It is not necessary under article 6 of the Convention for there to be a jury in order for a court to be independent and impartial or for a trial to be fair. The majority of criminal prosecutions in Scotland are tried by an independent and impartial tribunal in the form of a sheriff sitting alone."

Potential bias of judges

Another issue raised by the responses was that of the potential bias of judges. Many submissions argued that judges were no less likely than jurors to be swayed by bias. A submission from researchers at the Open University in Scotland said:

> "expert decision makers are no less biased than laypeople. A plethora of research has shown that expert decision makers are influenced by cognitive bias when making their decisions… experts (including judges) can be influenced by cognitive biases and rape myths. Judge only trials are unlikely to attenuate the role that bias and rape myths play in rape trials and may even exaggerate it."

JUSTICE provided a similar opinion, stating that:

> "the judiciary in Scotland has problems with diversity and removing a jury may lead to other unintended consequences with bias."

More research

Some responses argued that it was premature to be legislating for a pilot before further research is carried out. The Faculty of Advocates, for example, said:

> "It is Faculty's position that if a pilot scheme is to be introduced, it is premature to do so without conducting further research and giving time for the recommendations for improvements to be implemented."

The Sheriffs & Summary Sheriffs' Association agreed with this, stating:

> "we are aware of discussion about a number of academic studies. We consider it is essential there is further research in this area."

Other organisations expressed the opinion that other proposed reforms of the justice system needed time to be established before a pilot of single judge trials should be considered. Equally Safe Edinburgh Committee noted that while:

> "our current system is not trauma-informed at all and does not, broadly, offer justice to women affected by VAWG crimes, we do not believe that a single-just rape trial pilot would be the appropriate step forward. Although we know that a number of aspects of our justice system do not adequately respond to the needs of victims and witnesses, we would propose that changing our current approaches systemically, particularly through education and training of

> members of the Justiciary and of the jury would provide a much better avenue to justice."

The response from Edinburgh Rape Crisis Centre focused on the range of other processes they felt should be considered:

> "We would like to see further consideration given to pilots of other jury alternatives – for example, multiple judge panels, or a decision making panel made up of both legal experts and laypeople."

Judicial independence and scrutiny

Some responses from legal organisations raised the concern that legislating for single judge rape trials potentially undermined the independence of the judiciary. A submission from Sheriff Douglas Cusine, Sheriff TAK Drummond, Alistair Bonnington, and Douglas Mill argued that:

> "Even, and perhaps especially, at first sight this provision offends the instincts of every lawyer who has ever practiced. Government Ministers are going to 'review the operation of trials'? How could any Scottish Parliament of any hue confer on Ministers the power to 'review trials' and issue a report on their conduct?
>
> But is this review going to look also at the 'track record' of those judges who participate? … The whole concept offends against the independence of the judiciary that Government takes upon itself power to review judicial disposals, whether or not that review is of a class of cases as opposed to particular decisions."

The Supreme Courts of Scotland - Senators of the College of Justice, noted a similar concern held by some:

> "Whilst as Senators we would not express a concluded view on the validity or otherwise of these points, we are aware of arguments to the following effect. The pilot scheme amounts to a court set up by the government with a limited life span, and subject to examination and review by the government. That may not be an independent tribunal. It may not comply with the requirements of ECHR article 6. It may not be within the legislative competence of the Scottish Parliament under section 29(2) of The Scotland Act 1998."

The Law Society of Scotland also concluded:

> "The independence of our judicial system is a critical element of the rule of law. The proposed change would put that at great risk."

The Sheriffs & Summary Sheriffs' Association also expressed the concern that judges may also feel the weight of public scrutiny under the proposed pilot scheme:

> "we have significant concerns about judicial welfare in the context of such a pilot. There is, rightly, public interest in the modalities of prosecution of sexual offences. However, as has been evident since the publication of the Bill, the

> form and content of the debate is noisy and frequently personalised. There is a very real risk that judges will in effect be on trial: if the political yardstick for success is an increased conviction rate, it is inevitable that individual judicial decisions will be the subject of significantly greater public comment."

Evaluation

A number of organisations also expressed concerns regarding how such a pilot process could be evaluated. The Sheriffs & Summary Sheriffs' Association stated:

> "we consider that the criteria by which such a pilot is to proceed and by which success, or not, is to be measured, should be clearly articulated in advance and publicly... The implicit premise of judge-only rape trials is that juries are failing to convict in cases where they 'ought' to do so, and that judges will get such cases 'right'. In other words the yardstick for success is an increased conviction rate."

The Criminal Justice Voluntary Sector Forum noted that they would:

> "welcome clarity around how this will be evaluated and who will evaluate it. Members were concerned about the challenge of evaluating this properly as it may be difficult to assess what 'success' looks like. It was felt that victims' experiences should be central to the evaluation."

It was also stated by the Sheriffs Principal that:

> "we do express concerns about how the pilot will operate in practice given that the trials will be real, rather than mock ones, and how it will be made possible to assess the success or failure of the pilot."

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