

1. Victims and Witnesses Commissioner for Scotland

1 What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?

Please provide your response in the box provided.:

This reply is compiled from SCSN's organisational knowledge – through an experienced staff team – and from the views expressed at 2 bespoke events, hosted by SCSN for its network of local authorities and partners. Views expressed below reflect a synthesis of this.

SCSN is supportive of a Victims and Witnesses Commissioner. We are especially pleased that the role will promote best practice and a trauma-informed approaches. Trauma-informed thinking should be applied throughout the justice process, and we are pleased there is now strategic oversight for this. We also note the support from the public consultation for such a role. There are some reservations about the Commissioner role, specifically with regards to working alongside groups such as Victim Support Scotland, or other supportive groups for victims of sexual assaults. We would like further information on the scrutiny process for the Commissioner role. Whilst it is a role separate from Scottish Government, it will be accountable to the Scottish Parliament. The role should hold the Scottish Government to account.

2. Trauma-informed practice in criminal and civil courts

2 What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

Please provide your response in the box provided.:

SCSN are supportive of trauma-informed practice in civil and criminal courts. We are pleased there is an acceptance that delays in reporting crimes does not equate to a lack of credibility, but that this can often be the view of the victim. We are encouraged to see that all agencies will publish a 'Standards of Service' (the Standards) for victims and witnesses, and there appears to be an accountable process linked to the new Commissioner role, to provide scrutiny of their commitments to the Standards. SCSN would like to see continuous training for all agencies involved in the legal process and note that the ongoing training costs are relatively low as reported in the Financial Memorandum. We would also like to see a Strategic Board appointed, to lead the delivery of training, inputting from people with lived experience of trauma, to help ensure that the training delivered is appropriate and organic, in order to meet the changing needs of the public.

3. Special Measures in Civil Cases

3 What are your views on Part 3 of the Bill which deals with special measures in civil cases?

Please provide your response in the box provided.:

SCSN are fully supportive of the Special Measures proposed within the Bill. This will provide a consistency of approach, whether the judicial process is via criminal or civil courts.

4. Removal of not proven verdict

4 What are your views on the proposal in Part 4 of the Bill to abolish the not proven verdict and move to either a guilty or not guilty verdict?

Please provide your response in the box provided. :

SCSN are not supportive of abolishing the not proven verdict. We accept the findings of the Independent Jury Trials. However, the Not Proven verdict has been enshrined within the Scottish Legal System for generations. We are not supportive of this for several reasons, but our primary contention is that it will likely lead to an increase in convictions, some of which will be unsafe. Research highlights how difficult it is for offenders to reintegrate into communities on release. This would be further compounded if citizens are convicted when, in fact they are innocent.

The Independent Jury Research is of particular interest and speaks to group dynamics. But a missing point within this research is recognition of the trauma a juror is likely to suffer when finding others guilty of crimes, deprived of their liberty, only later to have their conviction quashed. For these reasons, we do not support the removal of the Not Proven verdict. We believe more work should be done, to better define the Not Proven verdict, and help educate the wider public.

5. Criminal juries: size and majority

5 What are your views on the changes in Part 4 of the Bill to the size of criminal juries and the majority required for conviction?

Please provide your response in the box provided. :

SCSN are supportive of the reduction in jurors from 15 to 12. We note that most countries operate with juries of 12 citizens. Our reasoning for this is based on several observations: Some cases that are heard in front of a Jury can expose jurors to trauma due to the nature of the crimes involved.

Therefore, it would limit the number of people exposed to these types of cases. Additionally, we believe the justice system needs to be just but swifter and more agile. Fewer jurors required will assist the efficiency of trials. We also support the approach for the finding of "guilt" to be based on an 8-4 verdict, from the Jury rather than a majority vote. However, we also note the findings of the Independent Research on Jury behaviour, and how impactful a strong personality can have on the Jury.

6. Sexual Offences Court

6 What are your views on Part 5 of the Bill which establishes a Sexual Offences Court? Please provide your response in the box provided. :

SCSN are supportive of a Sexual Offences Court. We believe that a specialised Court will provide support for both victims and offenders. We accept the findings of Lady Dorrian's Report, with nearly 70% of High Court cases being sexual offences, therefore justifying the need for a specialised Court. We anticipate this will provide more services and training for those attached to the legal system. We also

acknowledge this type of Court is used in other jurisdictions to good effect. We would like to see a trial of the Sexual Offences Court, with suitable scrutiny focussing on trauma-informed practices, to ensure this approach is not lost with the new court.

7. Anonymity for victims

7 What are your views on the proposals in Part 6 of the Bill relating to the anonymity of victims?

Please provide your response in the box provided. :

SCSN are supportive of the anonymity of victims. We recognise the impact that sexual crimes have on victims and the potential of being “outed” online and through social media, especially if the victim has not informed friends and family of their sexuality. We also believe that anonymity may lead to more victims coming forward. We are also pleased to note that the victim may waive their right to anonymity if they wish and provides empowerment for victims in these cases.

8. Independent legal representation for complainers

8 What are your views on the proposals in Part 6 of the Bill relating to the right to independent legal representation for complainers?

Please provide your response in the box provided. :

SCSN are supportive of the ILR for victims of sexual crimes. A move to trauma-informed practices is the right, to help ensure victims are supported when an application is made to disclose sexual history. The current process needs to be altered, to better support the victim. We also support the position of independent legal representation and not the Crown Office as proposed by Lady Dorrian. This would ensure that the victim is supported appropriately through the Section 275 process.

9. Pilot of single judge rape trials with no jury

9 What are your views on the proposals in Part 6 of the Bill relating to a pilot of single judge rape trials with no jury?

Please provide your response in the box provided.:

SCSN is not supportive of the single judge trials with no jury. We have reservations over the reasons for this proposal and note no best practice evidence of successes for a single judge presiding over rape cases has been presented. We also note there is contrary evidence against the belief that “rape myths” exist. We also support the concerns raised with regards to the appointment of judges to the rape trials, and strongly believe that the Executive and Judiciary remain separate and independent of one another, with no undue influence over the other. We also believe that if the reason to introduce the trials is because of low conviction rates, this is likely to lead to unsafe convictions. For this reason we are not supportive of the single judge rape trials.

10. Suggestions for additional provisions

10 Are there provisions which are not in the Bill which you think should be?

Please provide your response in the box provided.:

We would like to see greater support provided to jurors on conclusion of a trial. Jurors can be required to view traumatising evidence and should therefore receive equivalent levels of trauma support. This is particularly necessary at the conclusion of a trial, or

after a conviction has been overturned on appeal. More support is needed for jurors, and this should be provided within this Bill.

11. Further comments

11 Do you have any additional comments on the Bill?

Please provide your response in the box provided:

We are encouraged by the move towards all agencies using trauma-informed approaches, and best practice promoted by the new Commissioner role. We are hopeful this will better serve victims throughout their journey through the criminal justice system.