

No. 4/2019

## **Justice Journeys**

Informing policy and practice through  
lived experience of victim-survivors of  
rape and serious sexual assault

**FINAL REPORT**

Oona Brooks-Hay, Michele Burman & Lisa Bradley  
**August 2019**

## **Copyright Notice**

The Authors assert their right under the Copyright, Design and Patents Act, 1988 to be identified as the author of this work. Permission is granted to reproduce any part or all of this report for personal and educational use only. Commercial copying, hiring or lending is prohibited.

Copyright © Authors 2019

## **Acknowledgements**

We are extremely grateful to the seventeen victim-survivors of rape and sexual assault who shared their experiences of the criminal justice process. This project would not have been possible without their participation.

This report was funded by Scottish Government Justice Analytical Services.

## **Restriction on Circulation**

This report is in pre-publication draft format and subject to change. Please do not circulate or cite without authors' permission.

## Table of Contents

Key Findings .....	i
1. Introduction .....	1
1.1 Research Aims and Objectives .....	1
1.2 Overview of report .....	2
2. Methodology .....	2
2.1 A qualitative approach .....	2
2.2 The case studies .....	2
3. Victim-survivors' experiences of the criminal justice process .....	4
3.1 Deciding to report .....	4
3.2 Reporting .....	5
3.2.1 Making the statement .....	2
3.2.2 Initial evidence gathering and forensics .....	6
3.3 Police investigation .....	7
3.3.1 After reporting .....	7
3.3.2 Further evidence gathering and investigation .....	8
3.4 Prosecution .....	10
3.4.1 Communication and administration .....	10
3.4.2 Lack of case progression .....	12
3.4.3 Uncertainty and delays .....	14
3.4.4 Preparation for the trial .....	15
3.5 At court .....	17
3.5.1 The use and effectiveness of special measures .....	17
3.5.2 Preparing to give evidence .....	19
3.5.3 Giving Evidence .....	20
3.5.4 Conduct in court .....	23
3.6 Achieving 'justice'? .....	24
4. Recommendations .....	30
References .....	33
Appendices .....	34

## Key Findings

This report documents the ‘justice journeys’ of 17 victim-survivors of rape and serious sexual assault as they navigated the Scottish criminal justice system. It considers their experiences at each stage of the criminal justice process and highlights a range of issues, which were experienced as cumulative and individually manifesting across their respective justice journeys.

While positive experiences were identified, victim-survivors continue to face challenges at each stage of the criminal justice process. Some difficulties occur at identifiable points as detailed below, though others are far more generalised and occur throughout the process. In particular: disparities between victim-survivor expectations and experiences; inadequate communication from officials; the lengthy duration of the process; the uncomfortable physical environments of police stations and courts; concerns about personal safety; feeling marginal to the process; perceptions of the system being weighted in favour of the accused; and belief that the current system does not adequately represent their interests.

These concerns raise significant questions about how victim-survivors can be best *prepared, informed, supported* and *represented* in the criminal justice process. Recommendations for future policy and practice are provided in the spirit of supporting meaningful change to victim-survivor experiences of the criminal justice process.

### Reporting to the police

- ❖ The decision to report is not one made solely by the victim-survivor. Third parties play a significant role in the form of both encouragement and pressure to report.
- ❖ First encounters with the police are vital. In the majority of cases victim-survivors relayed a good first experience with police, describing their sensitive response, encouraging manner, and ability to manage expectations as helpful. Others, however, spoke of first encounters with the police that were more uncomfortable. Some commented on a lack of specialist officers and police resources, delays and confusion about the appropriate processes.

- ❖ The police statement taking process was described as extremely challenging and lengthy, requiring victim-survivors to tell of events in specific modes of times, dates and locations, which were often at odds with their own narrative of their experiences.
- ❖ Factors which added to difficulties in giving a statement included: the need to ‘re-tell’ their story to different officers; uncomfortable spaces and conditions in which they gave their statement; a lack of appreciation for their basic food, drink and toilet needs; the gender of officers available at the point of reporting; and the business-like manner of the police.
- ❖ Factors that facilitated giving a statement included: the sympathetic, patient, supportive and sensitive manner of the SOLOs who took statements; feeling that they had been believed; and having the support of a friend or family member during the statement.
- ❖ The vast majority of victim-survivors gave their statement alone, but most have since considered that having someone else present to support them would have been hugely beneficial.
- ❖ Having their statement read back to them was very difficult. Some considered that having their statement audio or video recorded would have helped immensely, in ensuring that the statement remained in their own words and preventing the need to hear it back at the end of such a demanding process.

### Police investigation & evidence gathering

- ❖ Communication between victim-survivors and police is highly significant to victim-survivors’ overall wellbeing in this period, though experiences of this varied dramatically. Some described a dearth of communication after a period of intense activity. For others, proactive contact and investigative action by the police was highly valued.
- ❖ None of the victim-survivors received their personal possessions (e.g. mobile phone, laptop,

clothing) back after they had been taken as evidence and they did not know what happened to their items, where they were, for how long they would be without them.

- ❖ Some felt that crucial evidence had been overlooked, taken incorrectly, or in some cases not taken at all. While it is not possible to know the value of this evidence in these specific cases, victim-survivors' perceptions of insufficient evidence gathering contributed to their belief that their case was not being investigated properly.
- ❖ Views about a male doctor conducting the forensic examination were mixed. For some this was very traumatic, for others the respectful and dignified approach of the doctor mitigated the initial shock of not having a female doctor.
- ❖ Victim-survivors became aware of the need for corroboration as their case progressed and felt that this requirement acted against their interests in terms of achieving prosecution and conviction.
- ❖ The lengthy duration of the investigation process and uncertainty about case progress compounded the negative impacts on the everyday lives of victim-survivors.

## Prosecution

- ❖ Confirmation that 'their' case will be prepared for court is a significant milestone in victim-survivors justice journeys, and for some, it represents the possibility of closure. The period when a case is being prepared for court, however, is one that is often protracted and characterised by a great deal of anxiety.
- ❖ Key concerns of victim-survivors at this time relate to personal safety, uncertainty about the process, delays in court dates, lack of communication about case progress, making decisions about special measures, limited understanding of the process, worry about facing the accused in court and a sense of being ill-prepared to give evidence.
- ❖ Participants expressed concern about administrative errors; this impacted upon their views about whether their case was being dealt with appropriately and added to their stress.

- ❖ Delays in scheduling court cases, over a period of several months, were cited as a common occurrence and as an especially frustrating and anxiety-producing aspect of the process.
- ❖ Re-reading the police statement is an important part of the preparation for going to court though this was emotionally difficult and stressful, especially where errors in the statement were picked-up close to trial. Not all were aware that they could re-read their statement prior to trial.
- ❖ Visiting the court prior to the trial was identified as one of the most useful preparations in the lead up to a case being heard in court.
- ❖ Rape Crisis Advocacy Workers were a useful channel for providing information about individual cases and about the wider operation, terminology and requirements of the criminal justice process.

## At court

- ❖ Victim-survivors were particularly anxious about the prospect of seeing their abuser in court. Access to a supporter in court, and other special measures such as screens between the victim and the accused in the courtroom and the provision of a separate entrance to the court building for the victim were welcomed. However, the effectiveness of these special measures was curtailed by accidental meetings with the accused in and around the court building, and victim-survivors' continuing awareness of the accused in the courtroom despite the use of screens.
- ❖ The option of a live television link, removing the need to be in court, was warmly welcomed by some though others felt that being in the courtroom was an important part of their journey. In some instances, the link was declined based on a limited understanding of how it would operate.
- ❖ Having a known supporter in court (e.g. a Rape Crisis Advocacy Worker) was especially valuable in terms of being able to provide consistent support prior to, during, and after the trial.
- ❖ There is a marked disparity between victim-survivor expectations of the prosecutor's role, who they felt should be 'on their side' and how they

experienced their engagement with them due to the prosecutor's duty to act in the public interest. This contributed to victim-survivors feeling very let down by prosecutors and a sense that the legal system is on the side of the accused.

## Giving evidence

- ❖ Meeting with the Advocate Depute prosecuting the case in advance of the trial, and in a constructive manner, was vital to how able and prepared victim-survivors felt for giving their evidence.
- ❖ The opportunity to 'tell their story' and have this heard in court was important, even if doing so was challenging or did not result in the desired outcome. Inability to 'tell their story', however, was a recurring theme. Victim-survivors were frustrated that their narrative was not being elicited in a clear and linear way; rather it was typically disjointed and frequently interrupted by questions.
- ❖ There was also concern that questioning by the prosecution seemed irrelevant or tangential, meanwhile what they considered important facts of the case, or evidence relating to the behaviour of the accused, were not addressed.
- ❖ Questioning by both the prosecution and the defence was clearly challenging, though the content and manner of questioning by the defence was particularly difficult, not least because it has the potential to compound the impacts of experiencing sexual violence.
- ❖ The relevance of particular lines of questioning was difficult for victim-survivors to comprehend. This contributed to concerns that they were made to 'look bad' or that the defence were looking for ways to discredit them while the prosecutor did little to intervene.
- ❖ A persistent theme in participants' reflections on the process of going to court and giving evidence was that their interests were marginal to a process that was simply routine to those working within the system.
- ❖ In amongst these concerns, the conduct and care of court staff conveyed through seemingly small gestures was meaningful to victim-survivors.

## Achieving justice?

- ❖ None of the victim-survivors, including those whose cases resulted in a guilty verdict, believed that 'justice' had been achieved in their case. Rather, achieving justice was limited and overshadowed by the cumulative impact of the offences and the lengthy criminal justice process.
- ❖ In the two cases where a guilty verdict was returned on sexual offences, there was a sense of having received some justice since the verdict signals belief or that the 'justice process worked'.
- ❖ In the three cases where a not proven verdict was returned on the sexual offences, while these were clearly disappointing verdicts, there was some sense that it had still been worthwhile in that the assault had been publicly recorded.
- ❖ Cases where the accused was found guilty of lesser offences predictably resulted in relatively low penalties compared to the sentencing options available for serious sexual offences. Nonetheless, it was difficult for victim-survivors to accept the disparity between the gravity of the offences that they had reported and the penalties incurred.
- ❖ Cases that did not proceed to trial on sexual charges and cases where the trial was discontinued, due to the decision that there was no case to answer, were especially distressing and difficult for victim-survivors to comprehend.
- ❖ Ongoing concerns following case conclusion highlight the need for support and safety planning after the criminal justice process had ended, particularly where there has been an acquittal or no proceedings.
- ❖ Being believed contributed significantly to perceptions of justice irrespective of case outcome.
- ❖ Support from agencies such as Rape Crisis (via Advocacy Workers) and Archway were considered invaluable.
- ❖ Following a sense that the criminal justice system has not worked for them, some commented that they took part in this research as a way of allowing their 'story' to be heard and hoped that it would help others in future.

## 1. Introduction

There has been a marked increase in the number of rapes reported to the police in Scotland. During 2017-18, 2,255 rapes and attempted rapes were reported to the police (Scottish Government, 2018). This represents a 126 per cent increase on the 997 rapes recorded in 2010/11<sup>1</sup>. While the vast majority of rapes still do not come to the attention of the criminal justice system, these figures suggest that victim-survivors are increasingly confident about coming forward and reporting to the police. Yet, it remains the case that reports of rape in Scotland, and in other jurisdictions, rarely translate into convictions (Kelly et al., 2005; Daly and Bouhours, 2010; Hohl and Stanko, 2015) and the gulf between the two has been described as the 'justice gap' (Temkin and Krahe, 2008). Other key concerns relate to the additional trauma that may be encountered in engaging with criminal justice systems, recognised as 'secondary victimisation' (Adler, 1987; Kelly et al., 2005) and compounded by a lack of coordinated service provision to victim-survivors (Feist et al., 2007; Robinson, 2009). These concerns reveal a challenging landscape for the pursuit of safe and effective routes to justice for victim-survivors of rape and sexual assault.

A large body of international research has examined barriers to reporting rape and serious sexual assault (Kelly, et al., 2005; Brown, 2011; Weiss, 2011), the various factors affecting police recording and prosecutorial decision making (Le Doux and Hazlewood, 1985; Stewart et al., 1996; Temkin, 1997; Jordan, 2004; McMillan and Thomas, 2009; Tasca et al., 2012), and case attrition (Lovett and Kelly, 2009; Daly and Bohours, 2010; Hohl and Stanko, 2015). However, there has been much less research directly with victim-survivors to understand their encounters with the criminal justice process as a whole, and within the context of their broader lived experiences, nor how this comes to shape their engagement with the criminal justice process.

This research study set out to address this gap by eliciting the views of victim-survivors of rape and serious sexual assault on their experiences of criminal justice in Scotland, from the point of deciding to make an initial report to the police, through to outcome, paying particular attention to factors that affect their engagement and experience of the criminal justice process. It comprises in-depth interviews with 17 participants who provided a detailed account of the journey that they embarked upon when they reported rape and/or serious sexual assault to the police. The report that follows seeks to contribute to informing policy and practice developments that will improve victim-survivor experiences of the criminal justice process.

### 1.1 Research Aims and Objectives

In relation to victim-survivors of rape and sexual assault, the research aims to gain fuller understanding of:

- their expectations and 'end to end' experiences of the Scottish criminal justice process;
- the range of factors affecting their decisions to engage/discontinue in the criminal justice process; and
- the factors that support their engagement and giving of 'best' evidence.

---

<sup>1</sup> Drawing comparisons prior to 2010/11 is problematic due to the changes in the definition of rape introduced by the Sexual Offences (Scotland) Act 2009, which came into effect at the start of December 2010. The changes introduced by the 2009 Act included broadening the legal definition of rape to include oral and anal, as well as vaginal, penetration by a penis without consent or reasonable belief in consent. In effect, this also meant that male rape could also be recorded as rape rather than as another form of sexual offence <http://www.legislation.gov.uk/asp/2009/9/contents>

## 1.2 Overview of report

This report documents the journeys of the victim-survivors interviewed as they navigated the Scottish criminal justice system. It begins with the decision to report to the police and continues through to reporting, investigation, prosecution, trial and court verdict. The research did not intend to consider sentencing, though views on this are included where they are available. Finally, consideration is given to the question of what 'achieving justice' looks like for victim-survivors of rape and sexual assault and recommendations for future policy and practice are made.

## 2. Methodology

### 2.1 A qualitative approach

During previous evaluations of advocacy services in Scotland for those who have experienced rape and sexual assault (Brooks et al. 2015; Brooks-Hay et al., 2018; Brooks and Burman, 2017), victim-survivors indicated that they valued the opportunity to share their broader experiences of engaging with the criminal justice system and contribute to knowledge about user experiences of the criminal justice process. Whilst these evaluations focused on advocacy service provision, the interviews uncovered rich and difficult to attain data about interviewee's experiences of the wider criminal justice process. Building on this, the current research adopted a qualitative approach, utilising in-depth interviews with victim-survivors who reported rape and/or serious sexual assault in Scotland in order to produce a series of narrative accounts, which describe their experiences of criminal justice in more detail. The particular value of these accounts lies in the depth of insight that they provide. It is acknowledged that they are not necessarily representative of all victim-survivor experiences of the criminal justice process.

Recruitment to the current study took two forms. First, the research team re-contacted interviewees who had participated in the evaluation of the Rape Crisis Scotland (RCS) National Advocacy Service (Brooks-Hay et al., 2018) to seek their informed consent to utilise relevant material from their interviews for this new purpose, and to seek additional interviews with them to pursue the research questions more directly. Second, victim-survivors who did not participate in the evaluation were recruited via local Advocacy Workers, RCS and self-referrals following publicity to accompany the launch of the research. This two-stage approach offered an inclusive way to bring in new participants and updated experiences, whilst also recognising the valuable and time-consuming contribution of those who have previously shared their accounts of criminal justice with the research team.

The research proposal underwent formal ethical review at the University of Glasgow. All participants were interviewed within two years of their case 'concluding' although not all progressed through to trial outcome. Interviews were audio-recorded, transcribed, and analysed using NVivo.

### 2.2 The interviews

Using data from the interviews, 17 in-depth accounts of individual victim-survivor experiences in relation to their varied engagement with the criminal justice process were produced (see *Appendix 1 and 2* for an overview of each case and the demographic profile of participants). Sixteen victim-survivors were female and one male, with an age range of 16 - 65 years old. The majority (14) knew their assailant, who was either a current partner, ex-partner, family friend or neighbour. Of these, three cases occurred within the context of domestic abuse.

Whilst interviews took place within two years of cases concluding, five were historic cases, where the rape and/or sexual assault took place 10 years, 28 years, 35 years and 40 years earlier, respectively. The following table highlights the time between the assault and reporting to the police.

Table 1.1 Time between assault and report to police

Within 24 hours	Within one week	Within 2-4 weeks	Within 6- 8 months	1-2 years	More than 10 years
5	2	2	1	2	5

Fifteen of the 17 victim-survivors were in receipt of advocacy support at some point in their 'journey' through the justice system, with most accessing this after reporting at the police investigative stage. The following table depicts case outcomes for each of the cases and the point at which the criminal justice process formally ended.

Table 1.2 Case Outcomes

Stage reached in CJ process	Outcome / verdict	Number of participants
Police (n=17)	Did not proceed	2
Prosecution (n=15)	No proceedings, insufficient evidence	3
Court (n=12)	Guilty plea	1
	No case to answer	3
	Guilty Verdict	2
	Not proven	2
	Sexual offences not proven, guilty to non-sexual offences	1
	Sexual offences dropped, guilty to non-sexual offences	2
	Sexual offences dropped, non-sexual offences not proven	1

Table 1.2 shows that two cases did not proceed beyond the police stage, and a further three cases were not prosecuted due to insufficient evidence. Twelve of the cases proceeded beyond the investigative and prosecution stages and went on to be heard in court. Of these twelve cases, six were heard by a Sheriff Court, the other six went to the High Court. One accused pled guilty on the day of the trial and three cases resulted in 'no case to answer' whereby it was decided by the court that there was insufficient evidence to support the charge and the accused was dismissed. Two cases resulted in a guilty verdict and a further two cases received a verdict of not proven. One case received a not proven verdict on the sexual offences and a guilty verdict on the non-sexual charges; in the three remaining cases, the sexual offences were dropped from the indictment, with a guilty verdict returned on non-sexual offences in two cases and a not proven verdict returned on non-sexual charges in one case.

### 3. Victim-survivors' experiences of the criminal justice process

Considered together, the accounts of those interviewed for this study attest to the fact that no two justice journeys are the same. A variety of factors make for a more positive or less favourable experience. Some of these are directly linked to the criminal justice system and its accompanying processes. Others emerge from a far more personal set of contexts and capacities, including family, work, everyday life, and prior experience. That said, there are commonalities in the experiences of the 17 victim-survivors interviewed, starting from the lead up to reporting and ending with the varied conclusions to their respective case (see Table 1.2). Across all cases, there is a disjuncture between how victim-survivors process and understand their experiences of rape and sexual assault and how the criminal justice system responds to these experiences.

The criminal justice process is punctuated by key decision points - charge, prosecution decision, plea, verdict - which impact, positively or negatively, upon victim-survivors' experiences. However, this research also reveals that the impacts of criminal justice engagement do not emerge solely at specifiable points of the process but are experienced cumulatively and progressively across a 'journey'. Furthermore, in parallel to the criminal justice process, victim-survivors are also trying to get on with their everyday lives. During interviews with victim-survivors, it became clear that dealing with family, children, relationships, work, education and domestic life, at the same time as navigating an often lengthy and protracted criminal justice process, colours the experience of seeking justice in many different ways.

#### 3.1 Deciding to report

The decision to report a crime of rape or sexual assault is not always made solely by the victim-survivor. The initial report to the police was made by a third party in six of the 17 cases. In two of these cases, the victim-survivor was aware of the decision though not directly involved in the making of it, whilst in the other four, a report was made without the victim-survivor's prior knowledge. In the remaining 11 cases, the victim-survivor was active in making a report to the police, although the factors that stimulated and facilitated this decision were many and varied.

In the majority of these 11 cases, reporting occurred after discussion with a third party – rape crisis staff, other victim-survivors (where the case involved multiple complainers) family, friends or colleagues. These discussions generated a supportive and encouraging basis from which to report. In some, however, initially reluctant victim-survivors were persuaded to report. This was especially true of initial enquiries made to the police, with some victim-survivors identifying police encouragement as a decisive factor. There were also some instances whereby the third party acted as devil's advocate, alternatively cautioning or motivating them to report. A more general increase in media output and raised public awareness over the past few years (including the #metoo movement and rises in the reports and prosecution of high-profile public figures in historic cases) appeared another notable factor in motivations to report.

Changes in personal circumstances (such as family stability, recovery from addiction, or progress in counselling) and increased knowledge (including awareness of other actual or potential victims) appeared important for allowing a victim-survivor to feel able and/or ready to report. Several spoke of their internal debates, struggles, reflections and resolve – such as *working to build up to it* (Fran); *it getting too much not to do something about it* (Lottie, Maureen, Nat); *a need for closure* (Fran); *owing it to a younger self* (Jilly). Similarly, others described their rationale for reporting as a moral obligation to look out for others. As one reported: *"I sat and I looked out the window for what seemed like forever, and I turned to [the police officer] and I said, I don't want this happening to anybody else [...] let's go and do what we need to do"* (Pippa). Of

note, however, were also instances whereby concerns for future victims were used by others, including the police, as a means to persuade and even pressurise victim-survivors into reporting. This suggests that the rationale to report is never a clear cut or single factor but rather a complex interplay between external and internal motivating factors. See, for example, the accounts from the same victim-survivor (Rebecca) who confided in a colleague (ex-police officer) immediately following her assault:

*...but part of it is, you know, he [colleague] is an ex-cop and he was really, you need to report this, what if he does this to somebody else, blah, blah, blah...*

*...I guess I had mixed feelings about contacting them, but it was my, sort of, sense of, well what if this happens to someone else, that was really the driver to me making that call. In fact it was my work colleague that actually phoned up...*

In the case of Jilly, a survivor of historic child sexual abuse, the decision to report was prompted both by encouragement from her husband and the interplay of memory, personal trauma and triggers which can, through time, inform a rationale from which to act:

*Jilly: ...The first time I was raped by my mother's cousin was on Christmas Eve, and so every Christmas Eve is very difficult. [...] my husband had [...] helped me [...] done as much as anyone can help you when [...] you're in that bad place. And so [our] third Christmas Eve [together] he picked me up off the kitchen floor and said, why don't you do something about [...] it?*

In the case of Lottie, however, the far more forceful and personal momentum that drove her decision to report:

*Lottie: ...as I started to kind of accept it a bit more, I thought, I just...I knew there was something I needed to do to [...] it was just, actually, it was a very quick decision, I was sitting in college one day and I just couldn't concentrate on anything, and I just stood up and left, and thought I need to do it, that's what I need to do. [...] in that moment I just knew that it is what I need to do and then just went and did it before I changed my mind...*

### 3.2 Reporting

Whether the process of reporting was delayed or not, victim-survivors described feeling 'scared', 'frightened', 'terrified' and 'in shock' at the prospect of engaging with criminal justice. Fran noted that, "I drove to the police station about three times before I finally went in". At this stage, victim-survivors were concerned they may not clearly remember the events in question. Some, particularly those who were raped in the context of domestic abuse, were conflicted about their relationship to the perpetrator, and described feeling circumscribed by the wielding of power, control and the need to 'protect him'. Others questioned their own memory of events amidst a confusing backdrop of experiences:

*Gavin: ...I was like, oh, what if I've said about the wrong person, what if like I'm getting someone in trouble and they didn't mean to or something like that, because, he'd been so nice to me for the full day, and I felt like I didn't really know if I was doing the right thing or not.*

First encounters with the police are vitally important. Both in practical terms of police being able to clearly inform victim-survivors of the evidence and forensics that should be preserved, and in their preparing victim-survivors for what will happen at reporting; as well as in setting the tone of the relationship to come.

In the majority of cases victim-survivors reported a good first experience with police, describing their sensitive response, encouraging manner, and ability to manage expectations as helpful features of the interaction.

Others, however, spoke of first encounters with the police that were more uncomfortable. Some felt the need to act quickly once they had decided to report, but experienced delays in being able to report due to scarce police resources (Maureen, Olive), or what was variously described as ‘confusion’ (Helen, Pippa), ‘ill-preparedness’ (Jilly, Olive, Rebecca) on the part of police as to the correct procedure for reporting, as well as the ‘distracted’ (Beth, Rebecca) nature of the response. The anguish of waiting for a call back and/or appointment after having decided to report was described as ‘considerable’ (Fran, Pippa). For Olive, access to a specialist service was a key concern.

*Olive: the receptionist at the police station was lovely, she kept saying to me, do you want a wee cup of tea; I said, no, I don't want a cup of tea, it's fine, I'm fine; 'well, they'll not be long, they'll not be long, they're dealing with an incident.' And I think they're under pressure as well; but it was just it was just a normal police woman that came, no experience in sexual assault, didn't really know what questions to ask me. And I'm saying to her, I think it's both, I think it's anal, I think it's vaginal ... I don't know, I think now there has to be...when someone comes into a police station I think there has to be a contact number that they can contact and say, I've got someone here ...who needs to see someone from a specialist service.*

As with the decision to report, first encounters with the police are similarly filtered through prior experiences of abuse. Nat, who went on to have a very good experience with the police, nonetheless had an extremely distressing first meeting:

*...I was really frightened, I was backing off in the room, it was a tiny room [...] I can remember him [police officer], eyeing me up, I literally was scuttling back, I was just terrified in this little room”.*

Similarly, Beth highlights just how much is at stake within this first contact and the need to for all professionals to be attentive to a victim-survivor’s prior contexts:

*...I was turned away. I was told I was hysterical. [The perpetrator] had tried to strangle me. In fact, he was found guilty for attacking me that night. I had gone to the police that night on crutches, could barely walk, his handprint round my neck and asked if I report will [...] they keep me safe? [...] they threatened to arrest me if I didn't give my details. I said, I'm away to the hospital, bye, and that was me. [...] I was made to feel that I was hysterical [...] when you've been in a domestic abuse situation and these types of men, they tell you you're hysterical or you've got mental health issues or you're nuts or you're crazy or you're a fruitcake. That's the language they use. So [...] when the authorities use it, what does it do? It puts up a brick wall.*

### 3.2.1 Making the statement

As with the factors motivating reporting, experiences of reporting were diverse. Most common, however, was the difficult nature of the statement-taking process. This was described by victim-survivors as ‘sprawling’, ‘stressful’, ‘horrendous’, ‘uncomfortable’, ‘exhausting’, ‘tough’ and ‘brutal’. This part of the process

took hours, and for some took several days. In the case of Chloe, a victim-survivor of domestic abuse including rape:

*...it took me 36 hours, just over 36 hours to report and that was on various days. I think it was over a couple of weeks but I was 36 hours on reporting.*

For many this experience was both re-traumatising and newly traumatic in and of itself. Some victim-survivors reported feeling the need to defend themselves and to justify their actions; others felt that they simply were not believed, or they were not doing 'a good enough job' conveying what had happened:

*Rebecca: ...it's difficult for me to identify the impact of the police separate from the impact of the incident [...] and I've seen the police officer that interviewed me, you know, two or three times since just in passing. Once when I was walking my dog and she walked past with her colleague and I literally had to stop and cry because I feel so angry and hurt about it [...] when I see the police, I feel, yeah, why didn't they believe me?*

Telling the story of what happened for the purpose of the police statement is extremely challenging. For victim-survivors living with the effects of sexual violence or the daily threat of domestic abuse, the development of coping mechanisms and strategies for physical and mental self-protection can make it very difficult to recall in full the entirety of events:

*Chloe: ...I remember the police officer saying to me, this doesn't add up. There's more to it, and I was...I started to give a wee bit more. You're almost drip-feeding them because you're not wanting to delve in too deep.*

For those reporting historic child rape or sexual abuse there is an added level of difficulty to this part of the process insofar as they were not so much remembering, but rather re-encountering the abuse of years ago: "I've gone through hell actually because I'm on medication now for the flashbacks because of having to unearth everything" (Eleanor). Revealing the cyclical nature of trauma that entered and then emerged from the experience of giving a police statement of historic events, the same victim-survivor commented:

*...They [the police] have no concept of the mess that they leave behind [...] I don't think it should just be up to counsellors because some people might not go to Rape Crisis to understand that it's a very common thing for people not to remember massively traumatic events. The more you're asked and the more you say 'I don't know', 'I can't remember', you start to imagine, maybe I did it myself, maybe I'm partially complicit [...] so you start to judge yourself again.*

Regardless of the recency of the assault, the need to remember *accurately* was difficult for many victim-survivors. Victim-survivors' memories of assault(s) took a range of forms, including image-based, non-verbal, non-linear and polymodal. Sometimes specific details could not be recalled, and some victim-survivors found it difficult to put their experiences into words:

*Pippa: ...I only told them what I remember. At this point [...] I'd been thinking about what had happened and things were coming back to me, about like sort of feelings and like hearing things [...] I remember feeling him in my right ear, like breathing, and I could smell him. This is all coming back to me when I'm sitting speaking to the police. I didn't know any of this like hours before, if that makes any sense*

The process of giving a statement compels victim-survivors to remember in very specific mode of times, dates, and locations. Yet often this information does not exist in this way within the minds' of victim-survivors. Whilst providing a consistent and factual account of incidents is integral to the criminal justice process, the distressing effect on victim-survivors of having to describe particular events and in very particular ways should be noted.

Likewise, there were other far more practical issues that emerged which were just as challenging for victim-survivors at this point in proceedings. Some spoke of having to give their account to different officers, without really understanding why. Others described deeply uncomfortable spaces and conditions in which they gave their statement, and a marked lack of appreciation for basic food, drink and toilet needs.

*Pippa: ...they never fed me. Like, that's been something that I read recently that you're with them all day, like essentially all day, they never fed me. I'd asked for some food, like, when we got to the police station, I told them I was starving. And they said, oh, we'll see if we can get you one of the prisoner meals. And then the other woman shook her head and said, no, she's not getting one of them, like they're disgusting. So essentially, I had like this daft wee breakfast bar...like decided I hadn't... And then they were like, oh, we'll just...you should have said when were out and we'd have got you something. How am I supposed to know? You should ask me, do you know what I mean, that should be a process, that should just be a norm that you ask me things, because I don't know.*

*Izzy: ...it was absolutely exhausting and nobody offered me one thing to eat that whole day.*

In addition to these practical dimensions, some also commented on the 'cold', 'factual' and 'business-like' manner of the police staff. Rebecca noted that, 'I really didn't feel that they were that bothered about my welfare. You know, they were distracted with bags and labels and sampling kits'. In addition, most would have preferred a female police officer to take their statement. Speaking of the compounding nature of these difficulties, Maureen said:

*Maureen: ...the statements took so long. [The police] weren't, like, they weren't understanding. It was just a cold process – 'and then what happened, and then what happened, and then what did he do, what did you say back?'. It was so embarrassing for me, because he did such horrendous things, and there were some things on his phone, the people are seizing guns and knives out his house, phones, everything. And [the police] literally ripped my life to shreds, like he did. And like, went through everything.*

A particularly difficult part of the process is the point when the statement is read back to victim-survivors for them to sign their approval. Helen highlighted the difficulties of being able to do this after hours of a 'highly traumatic' statement-giving process and notes that, 'I had to give complete trust to this police officer who was recording this information'. The following experiences reveal both the practical difficulties encountered at this point and the manner by which 'hearing it back' forces a victim-survivor to bear witness to their assault:

### The difficulty of having the police statement read back

*Eleanor: ...The statement in total was 55 pages and then having to hear it being read back to you [...] it was brutal [...] afterwards I was a complete wreck. I was really quite unwell, sort of shaking and just feeling sick. The first time I'd been speaking to [the SOLO] I realised at the end of the day that I was over, like this, my body had just very slowly caved in.*

*Izzy: ...what I found frustrating is that it was never going to be in my words. The [SOLO] was handwriting it and then it would obviously have to get typed up later and it just seemed to be a very roundabout way of doing it. [...] She was very nice. It's just that I felt she didn't make a very good job of writing a statement [she then read it back to confirm] but eventually after six, seven hours you begin to lose the will to live.*

*Lottie: ...Numb, for quite a while after I still felt quite numb. When she read it back to me it was quite difficult because it was just different knowing...because I can visualise it and remember it, but to hear it back, black and white, and from somebody who doesn't have the emotion there, hearing it back was very real and difficult.*

When asked what else might have improved their experience some believed that having their statement audio or video recorded would have helped the process immensely, both in ensuring that the statement remained in their own words and in preventing the need to hear it back at the end of such a physically and emotionally demanding process.

Despite the considerable difficulties in reporting and providing a statement, it is important to note that there were also parts of the process that were experienced positively. Some, for example, praised the 'sympathetic', 'patient', 'supportive', 'sensitive' manner of the specialised Sexual Offences Liaison Officer (SOLO) who took their statements, noting how important and affirming to them it was that they had felt believed:

*Debbie: ...The special police officers couldn't have been more sympathetic, understanding. The whole team were absolutely fantastic at getting the story out and getting the reports done and talking to everybody. They had a lot of patience, they were kind, you know, that was really the best part of it. And we felt supported and I felt like they believed me, they listened to me, you know...*

It must also be noted that those who were supported by a friend or family member at the time of giving their statement reflected on how important that this had been for them. The majority of victim-survivors interviewed, however, gave their statement alone and many conveyed that having someone else present, be it a friend, family member, counsellor or advocacy worker, would have been hugely beneficial.

*Abigail: Yeah, actually have a counsellor there instead of two officers it would be really good ... because the police are very professional. The CID can't exactly hold your hand or give you a cuddle when you're crying in tears.*

### 3.2.2 Initial evidence gathering and forensics

The task of gathering evidence involves items such as clothing, jewellery, mobile phones, and laptops being retained by the police. For recent assaults, there are also arrangements for the victim-survivor to undergo forensic examinations. Out of the 17 victim-survivors interviewed, six underwent forensic examination at, or close to, the point of reporting. Some commented on the ways in which this had the effect of protracting the proceedings even more; how it left them waiting around for extended periods, unable to eat, drink or wash, unable to return home in some cases, which all added considerably to the trauma:

*Rebecca: ...They weren't sure they had the right kit, so they thought they had a urine sample kit when they should have had a saliva kit and they had to keep phoning back to base to check they had the right stuff. I know they muddled up some of my clothes, like which top was which, things like that. But it was just, it was just a bit chaotic and didn't make me feel safe, I didn't feel safe. [...] the police were going in and out. The male officers stood right in the lobby. And the female officer, you know, was like, passing my clothes. And that whole thing just really...in my head, in my heart, that was part of the trauma.*

The extent of the examination varied, from taking swaps and fingernail scrapings, to full body and internal examinations. For those who underwent internal examination, reflections of the experience were mixed. One victim-survivor who had previously considered it important to have a female clinician conduct the exam, reflected:

*Olive: ...they were fine, absolutely, yeah, treated me with respect and dignity; it was a young male doctor – which was a bit of a shock to start with, because I thought it would have been a female doctor. But he was lovely. So yeah, just had to do it, and that was it.*

For those who did undergo a forensic examination, being treated with respect and dignity often equated to being talked through procedures and given explanations of what was going on. Such things were stated as highly important, merging with principles of consent and the need for medical staff to remain attentive to the altered and variable states of victim-survivors at the time of examinations. In one case where there appeared to be a heightened pressure to preserve evidence, however, led to a distressing experience for Maureen:

*...going through the rape suite, and the examination, that was, it was probably one of the worst times of my life. [...] you've just been brutally raped and beaten, and then it's such a gruelling examination. And you don't want anyone going down to where you've just been hurt badly. And it's so in-depth, and so painful, and so, they're taking photographs, they're swabbing you, under nails, hair, mouth [...] to the point where I thought, someone just kill me. I wished, in the end, I wished he would kill me, because my body and mind had been through so much. I was just praying to go. It had been through too much, and too much trauma, and heartache, and hurt. So I just thought, I wish he had just finished me. [At] the examination, they were saying, there was only a male doctor to come. And no woman wants a male doctor to examine her, when you've just gone through something like that. [...] I just can't get the logic of [...] I could do a better job, in the police, in the forensics, I could be telling them, no, this isn't appropriate. No woman wants a male to be examining them after just being raped. [...] I got told that, what they were really concerned about was, they're losing evidence, every hour that goes by. And*

*they said, we can't get a female until the next day, or something, and we really need it now. Because, then, that will be solid evidence. And they're really, very pushy, the police, very pushy.*

In addition to the difficult experience of gathering forensic evidence, some victim-survivors felt that crucial evidence had been overlooked, taken incorrectly, or in some cases not taken at all:

*Olive: ...While I was up there [forensic examination room] I noticed I had bruises on the inside of my legs; and they said that didn't matter; so they never actually took any photographs of that, so I felt that they lost that evidence, because that was like finger prints on the side of my legs.*

*Pippa: ...one of the big things to start off with, is stuff was missed right at the very beginning. Because I was intoxicated, where was the toxicology report, do you know what I mean? They actually said later on [...] I should have went for a toxicology report straightaway and like the blood work or whatever, because [...] that's a piece of evidence that could help in the prosecution in the case [...] as a sort of indicator that [I was] not able to consent.*

Similar instances could be found with regards to other items of evidence. One victim-survivor, for example, could not understand why the police didn't want to analyse her mattress which had blood stains on it (Abigail); another considered it an oversight that the police didn't seek out a recording of a telephone call she made to the Samaritans immediately following her attack (Beth). While it is not possible to know the value of this evidence in these specific cases, victim-survivors' perceptions of insufficient evidence gathering contributed to their belief that their case was not being investigated properly.

### 3.3 Police investigation

#### 3.3.1 After reporting

Following the initial reporting period, victim-survivors enter a pivotal moment in their justice journey, though it is one that is largely overlooked. Transitioning between reporting to investigation is a defining part of the overall experience. Some felt that the process 'snowballed' after the point of deciding to report (Eleanor, Gavin, Helen, Lottie, Nat), and described feeling 'out of control' when the police investigation commenced (Lottie, Helen). Following reporting, some were unable to continue with their prior life and work commitments for at least some time; others propelled themselves back in to their normal routines only to find themselves having to take sick leave from work in the months that followed. Communication from the police appeared to be highly significant to victim-survivors' overall wellbeing in this period and yet experiences of this varied dramatically. Proactive contact from the police was described as transformational in Nat's experience:

*Nat: ...[the police officer] did a really nice thing, that was quite transformative [...] every single day for ten days she phoned [...] there wasn't actually anything going on, but she just kept phoning, every day, for two minutes, she was like, just to see how you are, are you alright, and it was very strengthening*

For the majority of others, however, the time immediately following reporting was marked by a dearth of contact. This was made starker given the period of intense scrutiny that it follows:

*Izzy: ...[the policer officer] told me that he was going to be my point of contact. Any time I wanted to speak to him I was to phone up and this and that and the other. Of course, I've never spoke to this guy since. The SOLO officer who had been very kind, she gave me her email address. I did email her the next day and I never heard from her again either.*

At the same time, however, intense scrutiny endures in other parts of a victim-survivor's experience at this point, in particular, having to reveal the assault to family and friends. The burden of both informing and then attending to the needs of significant others was described as 'difficult' and 'traumatic', especially in cases where the full extent of a victim-survivors' experience was unknown to the family member(s):

*Helen: ...it's the worst news to hear, as a mother, I thought, it's best to come from me [...] and then [mother] sort of forced me to tell my partner. And then I told my brother, and then eventually, my dad. So that was really, really traumatic.*

*Rebecca: ...then I had to sort of phone my husband and tell him what had happened. Oh boy, that was horrible*

### **3.3.2 Further evidence gathering and investigation**

Relationships between victim-survivors and their family/friends can be further tested as further evidence is gathered. The requirement for family or friends to provide witness statements and speak about the pre- or antecedents of events that they now understand to have constituted a sexual assault can be demanding and distressing:

*Jilly: ...my brother and I did have a relationship, probably the only positive one I had with any family member, and so going through this process has effectively ended that [...] he gave a statement. He found it dreadfully upsetting. He was on the phone crying afterwards. He said to me, 'they used the rape word'. And he was crying on the phone and I'm thinking, you were upset that somebody used that word and you have not given a moment's thought to the fact that it happened, that actually happened to me.*

The removal of personal possessions (e.g. clothing, handbags, mobile telephones, laptop computers) as part of the investigation was experienced as both punitive and demeaning. Across all of those interviewed, none had received their personal possessions back despite all cases having concluded by the point of interview. Most viewed this as outrageous, with only one commenting that she *would not have wanted her stuff back* (Abigail). For others the effect was highly detrimental, resulting in the loss of contacts (with significant impacts on personal and business relations) and tangible memory artefacts in the form of photographs, messages and notes (where mobile phones and laptops were taken). The effect of non-return of possessions is to position victim-survivors' needs as marginal to those of the criminal justice process. None of those interviewed knew what had happened to their items, where they were, nor for how long they would be without them. This had the effect of exacerbating the feelings of lacking any control over what was happening to them:

*Gavin: ...all my photos and everything weren't on the iCloud or anything, so it's not like I can just drag them off [...] I don't even know what's happened with my phone. I don't know if his lawyers had it or anything like that, because they never really told me.*

Others cited concerns about whether their full medical records would be accessed as part of the evidence gathering process and subsequently used by the defence as ‘cannon fodder’ (Helen), and as a means of discrediting them during the trial (e.g. through the suggestion that visiting the doctor about many ailments indicated mental instability).

Many victim-survivors tried to take an active role in gathering evidence to try to assist the investigation. For some this meant seeking out and gathering dates, addresses, records, social media posts and contacts – which were then passed along to assist the police investigation. The motivation for such activities was varied but included both the desire to take back some control within the process, as well as in response to their frustrations and concerns that the police may have been missing something. This led some victim-survivors to believe that it was their own evidence-gathering that carried the investigation:

*Helen: It was six months into it. So, they [the police] were still trying to gather evidence [...] I sent screenshots of the Facebook conversations, which highlighted his conduct, you know, which was obscene, and creepy [...] ...it was very much up to me to think of any of this, you know, like there was no, ‘is there this, is there that, is there the next things?’. There wasn’t any of that.*

Some victim-survivors spoke of frustrations over items that they felt should have counted evidentially but didn’t, such as phone calls made to other agencies, social work records, and certain objects and items of clothing. One victim-survivor, who learned that her perpetrator had abused his daughter as a child, found a Children’s Panel document showing that he had lost custody of his daughter. Being told that these events and documents were irrelevant deeply added to the distress that she experienced:

*Beth: ...I had told the police, and I’d gave them, and they said, this is irrelevant, they kept saying it was irrelevant. And I was saying, this guy is a paedophile – irrelevant [...] So that was probably, apart from being sexually assaulted, that was the most distressing part of the case for me.*

Some victim-survivors, as their case progressed, grew more aware of the particular requirements for corroboration in Scots Law, which they viewed negatively.

*Jilly: ...I knew people had known about what had happened to me. I knew that, you know, my medical records detailed, you know, the counselling I’d had and the, well several bouts of counselling, you know, specifically for that. It’s all, you know, enough there. But because it didn’t tick that, you know, specifically under Scots Law that very specific requirement for corroboration. I wish I had understood that better [...] I knew nothing about the requirement for corroboration when I started, and nobody explained it to me.*

The process and requirements of evidence gathering was viewed by almost all victim-survivors as being at odds with their perceptions and expectations of justice; the realisation of which can be devastating when it comes at a considerable way in the proceedings. Despite the active roles some victim-survivors played in the investigation period, the overriding sense during this time was one of being in limbo; being stuck; being unable to move forward with life. It is clear, however, that investigative action on the part of the police and support from other agencies during this time made a tremendous difference:

*Nat: ... [the police officer is] a hero [...] To have someone listen to you, after all of that time, and take the little bits that you're giving them, and not to dismiss them, but to actually then go off and do something about it.*

*Pippa: ... I went to Archway and I've received counselling from Archway, they've been amazing. I swear, if I didn't have Archway counselling and support worker, I wouldn't be here. Just with the emotional turmoil that you go through, like all the horrible thoughts that go through your head, like you're worthless, like this person's just used you, and like you're nothing type thing.*

*Helen: ... [the Advocacy Worker] was like a sort of, a voice of clarity, just in amongst absolute chaos [...] that was really helpful [...] and it was just really nice for somebody to just go, this is really crap, you know. Like she didn't sugar-coat, and I really appreciated that.*

In two cases (Eleanor and Rebecca), where the decision not to proceed was taken by police, support from Advocacy Workers was deemed particularly valuable in the face of this very disappointing and challenging outcome. As Rebecca reflects back to what helped her navigate this point in the process:

*...I guess, the, kind of, base point for all of that was [local] Rape Crisis believed me. They never questioned me. They never challenged it. They've never said, well I don't know, when the police seem to think different. They've always believed me and they have gone from that perspective, and so I knew I could trust them. And that trust has, you know, built and remained ... they worked at putting, sort of, coping mechanisms in place for when I couldn't manage.*

### 3.4 Prosecution

Of the 17 victim-survivors interviewed, 12 cases were marked for court proceedings. Confirmation that 'their' case is being prepared for court marks a significant milestone in a victim-survivor's justice journey. For some, this represents an acknowledgement of their experiences and the possibility of closure. The period of time when a case is being prepared for court, however, is one that is often protracted and characterised by a great deal of anxiety. Key concerns at this time relate to personal safety, uncertainty about the process, delays in court dates, lack of communication about case progress, making decisions about special measures, limited understanding of the requirements of the process, worry about facing the accused in court and a sense of being ill-prepared to give evidence in court. Collectively, these concerns contributed to victim-survivors' sense that they had little control over the criminal justice process and that they were marginal to it.

#### 3.4.1 Communication and administration

Following the significant step of reporting a sexual assault, the Crown Office and Procurator Fiscal Service (COPFS) are responsible for providing information to victim-survivors about whether or not the case will proceed. This a crucial time for maintaining victim-survivor engagement and confidence in the process, but one in which there can be long periods of silence. Lack of communication was identified by victim-survivors as a major issue during this period. Some described feelings of 'being kept in the dark' in terms of whether the case was going ahead and uncertainty about what was happening 'behind the scenes' (Kaye). Inade-

quate communication contributed to a sense, for several victim-survivors, that their needs were not a priority within the process. It also impacted upon with their ability to endure the criminal justice process and cope with their day-to-day lives and responsibilities.

*Lottie: ... it was kind of just torture in my head, it was, yes, and every day was just waiting for that phone to ring or do you get a letter and kind of just again, there wasn't a life in those two months.*

With regard to how communication could be improved, Kaye suggested that contact from COPFS, even when there is little or nothing to report, would be of great value since 'It felt like they'd completely forgot all about me'. For others, such as Izzy, provision of information at the outset would help manage her expectations in relation to different modes of communication, timescales and trial locations.

*Izzy: the first time I ever got told there would be a hearing I was told I would get a letter. I never got a letter. I went in to see the procurator fiscal depute and she said I'll go and chase that up just now and she came back, 'oh they thought the phone call was enough'. But they'd told me I was getting a letter... and also, I was told to expect that everything would be over by the end of June, and then of course the trial wasn't until the August, and also the trial was in Glasgow. And I think if they managed expectations from the start and told you the trial could be anywhere that would've been less of a thing.*

Many victim-survivors reported feeling very confused as to what was happening and were unable to differentiate between different stages of the process. The need to provide a pre-petition statement, for example, was always not explained fully nor what the statement was for. Not all victim-survivors were aware of Victim Information and Advice (VIA) and for one victim-survivor who did reach out to VIA, her experience further cemented her feelings of not mattering within the process:

*Kaye: ...I still felt like there was things that they weren't telling me. And I'd been, I'd asked questions and I wouldn't get any information back. It would just be, 'oh you need to phone next week' or at one point I remember phoning and I think it was the, the Victim Information Advice. Because I'd got a number for a woman who I'd met at the start back in 2015, and I'd just asked her what was going on. And she sounded all panicky and she just said, 'we're really, really busy in here today. You're going to have to phone back at the start of next week'. And basically hung up, hung up the phone. Yeah. So at that point I was left hanging again and no idea what was going on.*

With regards to problematic practices in communication, in one case where there were multiple family members who were victim-survivors in the same case<sup>2</sup>, a strong preference was expressed by the victim-survivor interviewed for communication to each family member to come directly from the VIA officer. Expectations that one family member would pass case information on to other family members contributed to stress and confusion about the status and process of the case.

*Fran: ... it was really stressful because I would be getting told...one sister would be phoning me telling me one thing and then the other sister would be phoning telling a totally different thing and then my mum would be on the phone telling me a totally different*

---

<sup>2</sup> Only one of the victim-survivors from this family group was a participant in this research.

*thing. It was just...my head was...my head was everywhere and that's when I said, I would rather just find out from either [named COPFS worker] or phone [my Advocacy worker] and ask her to find out and try and I'd try and get my family to stop phoning me and things. Yes, I think it's important that they [COPFS] do the phoning and they don't ask us to pass on messages.*

Advocacy Workers were identified as an invaluable channel for finding out information about cases and providing information about the operation, terminology and requirements of the criminal justice process.

*Kaye: And that's when I started speaking to [Advocacy Worker]. So, she was able to help me with a lot of the court side of stuff, but then after that [Advocacy Worker] was like my sort of port of call for...everything. But she was great. When I wasn't getting through to the Procurator Fiscal I'd just phone [Advocacy Worker] and she'd phone them up and get through straight away*

Support from an Advocacy Worker alleviated the stress of waiting for information, although in some instances the Advocacy Worker also had difficulty in finding out information about cases: '*she never got the return phone calls either*' (Olive). Interviewees also expressed concern about what they perceived to be administrative errors in their cases. One victim-survivor (Beth) described '*a catalogue of errors*' throughout the process from the point of reporting, including the loss of her police statement. Others highlighted letters from COPFS being sent with the wrong names, wrong court dates or to the wrong address.

*Debbie: The administration from the criminal justice or whoever deals with it, the Crown Office, was shocking... A lot of our letters were to the wrong names, to the wrong addresses, just the mail correspondence thing was shocking. Some of the letters were sent to a couple of streets away. It was a grumpy old man and he put really nasty things on the envelope because he obviously thought we were criminals. Yeah, wrong name spellings, wrong names on them. Some of my witnesses' letters came to us and our letters went to them, you know, about court times and dates. It was ridiculous.*

In practice, these errors impacted on victim-survivors concerns about their case being dealt with appropriately and added to their stress: *They made mistakes with letters quite often ... it took me about four phone calls and several emails before I got a corrected letter* (Izzy).

### **3.4.2 Lack of case progression**

In three cases, a decision was taken not to proceed beyond the prosecution stage due to lack of evidence. In a further two cases, the sexual offences were not prosecuted though the non-sexual offences reported went to trial. This was a devastating outcome for the victim-survivors concerned, and news of the decision was met with anger, frustration and disbelief. For Jilly, a victim-survivor of a historic case involving child sexual abuse, she was informed by telephone that there was a lack of corroborating evidence:

*...it was what it was. But I was devastated. Can you phone us? I just howled, I mean I virtually howled. And then I put my trainers on and I ran, it's a great feel good mechanism. I put my trainers on, I went for a run, and I absolutely knocked myself out. Oh, I was just full of rage and disappointment and disbelief and... You know, you go through all of that.*

At the time, Jilly did not know what corroboration was:

*... she explained to me that it was [...] because of the corroboration. And I just didn't really understand what corroboration was. And also I wasn't, in that moment, in the right frame of mind to accept... a detailed explanation of it. I had a conversation after the fact with the Procurator Fiscal's Office who, you know, kind of talked me through it.*

*If somebody else came forward, somebody changed their mind who was abused by the same person and came forward, that would be like my number one... brilliant outcome... I never doubted for a moment that I would be believed. I never doubted that I would be able to do that, I would be equipped to do that. I wouldn't have started it if I wasn't equipped to do it. And I never got there. I was never allowed to do that.*

*... I still feel that it was a positive thing to do. It was investigated and ultimately the police, or the Procurator Fiscal rather, decided that they couldn't press charges because it didn't meet the requirements for corroboration [...] I got told by the police and I got told by the Procurator Fiscal's Office that if it had happened in England he would have been charged. There was, because there was corroborative evidence, just not the right sort of, in Scotland, which just... that still is the thing that I cannot, I find that really hard to accept.*

For Lottie, whose case involved rape by a stranger, the decision not to proceed due to evidential concerns came two months after case preparations had commenced:

*...we were all prepared and then a couple of months later they called me to say that it had fallen through, just out the blue, they were waiting for a date, and then they called, I didn't understand. So, well what now? That can't be it. So, they sent a SOLO out to my house to explain it further. So, we sat down and she said that they wouldn't put me through it if they weren't sure that it was going to be 100 per cent a guilty verdict, and that it was for my benefit that they wouldn't go ahead with it.*

*I still don't understand that, so I asked for any sort of restraining order, because I live in [area] and he lives in [area], there's only about 15 miles between us, so I asked for a restraining order and she, and I will never forget these words, she said, 'we can't do that until it happens again'. I just burst into tears and was like, 'are you serious? What?' That was it. That was it, the end of it.*

Victim-survivors in these cases were clear that whilst they were devastated at the news that their case was not proceeding, this should not be interpreted as simply being about the importance of their case going to court. Far more, it is about being listened to, about being believed, and about being seen as credible. It is about those concessions made in the lead up to this point being worth something, both in the eyes of the victim-survivor and officials. Indeed, it is very hard for victim-survivors to separate themselves from 'their' case, and it is in these terms that the enormity of case progression decisions, and the need for support when cases do not progress, must be understood.

### 3.4.3 Uncertainty and delays

For those whose case progressed to court, victim-survivors discussed the impact that the lengthy criminal justice process, coupled with waiting for news of court dates had on their ability to function at school, college, work, or as a parent. Others noted how their ability to move on from what happened and plan for the future was negatively impacted. For Olive, the time from reporting to trial date was almost two years and her concerns pointed to the difficulty of then being able to recall details at court. She said: *'the whole process is far too long ... how are you meant to go in court and remember every bit of detail [almost two years] later?'*

Delays in scheduling court cases, over a period of several months, were cited as a common occurrence and as an especially frustrating aspect of the process.

*Abigail: ... it was meant to be March, then May, then postponed to August. They went for one court date in May, then we got told to go home because one of the witnesses didn't turn up ... all the postponed dates were frustrating, because I saw the court as closure. I was all excited and anxious but wanting the closure. But that never happened...*

Similarly, Kaye described this process of preparing for court only to be told, 'no, it's not happening tomorrow and then prepare yourself the next day, it's not happening again' as 'being continuously let down'. Interviewees also described a knock-on impact of delays on family members who had taken time off work to attend the trial, either as a support person in court or as a witness in the case. Consequently, preparing to go to court was highlighted as stressful and emotionally draining for both victim-survivors and their friends or family. This was especially so when they had actually got as far as being in the court building, only to be sent home. Pippa articulates the emotional demands of preparing to go to court and give evidence about experiences of abuse:

*... So this is where the sort of thing gets really angry and emotional for me, right. So you mentally prepare yourself, right, you are literally in a zone to...like, you've put yourself in that place where you're vulnerable, your thoughts are back where they were then, you smell things that were there. It's the weirdest thing ever, it's like you placing yourself back there, because you are preparing to go in and tell these people exactly...I get goose-bumps, sorry. You're physically now in that time, it's so strange.*

Pippa went on to explain how she remained 'in a zone' in preparation for giving her evidence on the day of the trial, only to find that it would not be going ahead that day though no-one had informed her of this.

*... When we got back into court, after lunch, an hour had passed and then a woman had walked by the door and then she came back, because there was a wee glass bit in the door, so you could see out. And she came back and she went, 'oh, youse are still in here?' Er, yes, why wouldn't we be? 'Oh, what do you call it, the case isn't going ahead today, the defence have asked for access to medical records'.*

All victim-survivors spoke of the poor levels of communication concerning changes to the scheduling of trials. Hence, in addition to the mental and physical demands of repeatedly preparing for court, frustration over delays was accompanied by a sense that they had not been kept informed about delays, and that their interests were not being attended to. This culminated in a sense that a deeply personal and serious experience was being treated as a routine matter by the personnel involved.

*Beth: So with all the stuff about the court, and about it being cancelled, and us not being told, and appearing at court but nobody phoned us to say it's not going ahead today. She was, the QC had something on, and nobody told us, so we were all prepared, all ready, and then we were sent home, that was awful. That was really awful, because your body was prepared for a fight, and then, you're going home.*

*Gavin: ... it was really frustrating for us, because we were like...it was like it was just a parking ticket, like totally irrelevant to them. 'Oh, we'll just catch up in a month', it just felt to us ... it was really frustrating for me, because it felt really serious to me.*

#### 3.4.4 Preparation for the trial

Preparation for trial includes the opportunity to re-read the police statement again at the Procurator Fiscal's office, visit the court and decide upon any special measures to be used at trial. To re-read their police statement, victim-survivors need to be informed that they can have access to it. Not all were told that this was possible at an earlier stage in the process. Access to the police statement was considered important due to the often very considerable time lapse since it was taken. Nonetheless, this is an understandably difficult task for victim-survivors. Though most took up the opportunity to re-read their police statement, Fran didn't feel the need – *'because I know exactly what had happened'*. Gavin, on the other hand, was not aware that he would have the opportunity to re-read his statement. Had he known that he would be able to do so prior to trial, a great deal of unnecessary stress could have been avoided in this particular case.

For Helen, the experience of re-reading the statement was negatively impacted by the physical environment in which she did this, in particular her concern about a lack of privacy in the Procurator Fiscal's office, due to 'paper thin' walls and unfamiliar people walking by. Reading the statement provided an important opportunity for victim-survivors to correct any errors, though this was challenging and stressful, especially when the trial was imminent. Beth reported that she had been given *'a statement with all the wrong evidence in it'*, which then culminated in her having to read the revised statement on the morning of the trial. Similarly, Helen, picked up errors in her statement when she had the opportunity to read it two weeks prior to the trial:

*...I really, really do support the whole, like, recording, or videography thing. Because of the issues that I had ... when I went to go and read it, there was just so many grammatical errors, and like, pronouns wrong. So, where it said, she, it should have said, he, and like, you know, positives replaced with negatives. And I mean, that, those kind of things have severe consequences in that kind of document ... I was like, you're telling me this two weeks before I go in there, are you being serious ... so I mean literally in court, I had to explain myself about, why, what I'm saying in court is different from what's on the statement.*

Visiting the court prior to the trial was identified as one of the most useful and reassuring preparatory activities in the lead up to a case being heard in court. Doing so helped quell anxieties and address misconceptions about the court building and the set-up of the courtroom.

*Fran: ... I need to know what everything is like and the people at the court were...they were amazing. I have to say they were brilliant. They made me feel relaxed, well, as relaxed as I can be, and they answered questions that I had because there was a big TV and I thought I was going to be on the big TV and things.*

A video prepared by Rape Crisis Scotland detailing the process of going to court was deemed to be useful for similar reasons: 'it [RCS video] was scary, but at the same time it kind of took away the fear...it's not just like walking in and not knowing anything' (Lottie). Nonetheless, concern was still expressed by some about being unable to know where everyone on the court would be sitting, including the prosecution and the defence, contributing to a sense of 'going in blind' to the court room and adding to existing vulnerabilities.

*Pippa: ... they're not supposed to tell you like who sits where or whatever. But it's vital for us to know as well, because we need to know who's in our corner, like this is...you're just about to spill the beans to everybody, there's nothing, no stone left unturned, you are the most vulnerable person in that room. And as I said before, like everything's taken away from you again.*

Victim-survivors were, understandably, apprehensive about going to court and described a heightened sense of vulnerability at this time. The option to use special measures such as screens, the provision of a separate entrance to the court building, a live television link to give evidence, and a supporter in court were broadly welcomed and they provided much-needed assurance in the lead-up to the trial: '*he's quite an intimidating character ... I was very pleased at the screen, most definitely*' (Debbie). Views on the use of a television link to avoid having to be physically present in the courtroom, however, were more mixed. While some strongly favoured this option, others, such as Debbie, note, '*I think it was important to go into the actual courtroom ... its part of the journey*'. Further, a television link does not appear to have been offered in a consistent way. For example, Maureen received conflicting guidance about giving evidence via television link or from behind a screen in court:

*...I had met, I think it must have been from VIA, he was lovely, this guy in the High Court in Edinburgh. And he said, [Maureen], because you're vulnerable, what you've been through, it's a sexual ... you're gonna do it through video link, but you'll be in the High Court. And when, then when we spoke to the depute advocate, she said, no. The jury of 15, they can connect better with you if they see you, but what we'll do is put a screen up... So, I thought, I can do this, I can do it, and [Advocacy Worker] was by my side ... but obviously, it sounds silly, I didn't realise how serious the courts are, because I had never broken the law myself, so I didn't know what goes on. And it was just unbelievable, what I went through, on those five days.*

The reluctance to use a television link in this instance relates to its potential to lessen the impact of victim-survivor testimony upon the jury. This was a concern shared by Beth; though she was offered a television link she decided that, '*I didn't want to do it ... I wanted the judge, and the lawyer to see a person*'. Two other victim-survivors declined the offer of a television link, though this appeared to be based on limited understanding of how the link would operate.

*Abigail: I got offered that as well. You're in a separate room and a camera ... but I just wonder who do you see in the camera? Is it just the defence's face, do you still see the jury? I don't know how that would work ... I turned it down just for that reason. I don't know what I'm going to see.*

These examples highlight the need for special measures to be explained in full and for them to be offered consistently to those going to court.

## 3.5 At court

### 3.5.1 The use and effectiveness of special measures

Court buildings and the rooms within them were described as ‘scary’. Victim-survivors described security guards wearing G4S uniforms, and bewigged and gowned legal personnel as ‘intimidating’.

*Abigail: It’s quite scary, especially getting ready in the morning. You have to be all smartly dressed and clothed for standing on a stand. You’ve got solid oak wood all around you. They’re wearing their hats on them. It makes it scary. I would’ve loved to sit in a room like this on a sofa or just a comfortable chair in a nice environment, like a counselling kind of room.*

Most victim-survivors were particularly anxious about the prospect of seeing their abuser in court. This concern was not unfounded; several did bump into their assailant in and around the court building despite provisions being in place to help prevent this from happening.

*Abigail: The victim support made the mistake again. They’re meant to bring me through the back of the court, so I didn’t have to see my attacker. It’s very scary for a woman to see their attacker there. The kind of...just upset easily by their face, expression, whatever. We entered through the back and the woman made the mistake again of putting me in the wrong room and then we had to walk, get out that room, walk directly past him, so that wasn’t really good ...*

In practice, the effectiveness of screens during the trial was also undermined by heightened awareness of the accused behind the screen, for example, through hearing him repeatedly coughing or clearing his throat, clicking a pen, or elaborately shuffling papers.

*Chloe: ... with the screen on the first date and him...he kept coughing, I was then given video link the next twice which I think not enough women get the option of video link... That was definitely a positive because what that did was it took me out of the room. I’ve got the diagnosis of PTSD ... So I was very aware of him in the same room as me.*

Others described their assailant as using ‘intimidation tactics’ in court; ‘standing by the door so that I couldn’t leave for lunch, and I couldn’t eat, and stuff like that’ (Helen). The practical difficulties of trying to get food or drink, without bumping into the accused in and around the court building, were also highlighted:

*Abigail: ...the wee rooms you sit in, they’re not comfortable either...So, they’re just the same, the wooden chairs or whatever. You don’t really get offered teas or coffees. You have to go and pay for them as well. It’s not like a proper...the way they do counselling. You need to go and pay for them. Also, it’s risky going to the wee cafe bit because your attacker could be there getting a coffee.*

Accidentally seeing the accused impacted seriously upon victim-survivors. Pippa, for example, had a panic attack when she saw the accused during the lunch break. Following this experience, she offered the following practical suggestion for how such problematic scenarios could be avoided:

*...obviously you can't help who you bump into out and about or whatever, but maybe they should say, maybe we'll get you some lunch in, or you can sit here, maybe you can go to another room for a wee while, have some lunch ... I think people tend to forget that see when the perpetrator goes to court, that person's still free, they can still walk about the streets and you can bump into that person like going to Subway or something like that to get your lunch. Like all that sort of thing, I think that's a big thing as well, like people don't realise.*

Advocacy Workers played an important role in assisting victim-survivors to navigate the court building, and in some instances, in avoiding or recovering from accidentally meeting the accused or other defence witnesses. Breaks during the trial (e.g. for lunch) were described as times when victim-survivors potentially appeared at their most vulnerable, distressed or tearful since they had often 'held it together' up until this point. Advocacy Workers were able to provide support during these times. Some described the advantage of having Advocacy Workers with them in court and in the lead up to court since they knew what was likely to trigger an adverse reaction, and have knowledge of particular issues that are likely to be difficult without the need to explain everything again to someone new.

*Olive: I've said my story umpteen times ... I'm happy for [Advocacy Worker] to come into court with me as my supporter, and I don't need somebody strange coming in with me... That is really important; because you build up a relationship with people.*

Victim-survivors also described having support from an Advocacy Worker as hugely beneficial to their ability to give their 'best' evidence.

*Beth: ...the advocacy workers ... it made such a difference. To think that you would go through that with no one, oh my goodness. I don't know if I could have had the courage to say what I said without, because she [Advocacy Worker] gave me courage. Because I knew someone had my back.*

Moreover, being able to talk through the experience of going to court *after* the trial with an Advocacy Worker who had been there and was familiar with the case, meant not having to explain what it was really like to someone who was not there. However, there were some issues with status of Advocacy Workers being challenged and the limited role they, and other support persons, could play in court (e.g. making no eye contact with the victim-survivor). One victim-survivor felt that having an Advocacy Worker present in these terms was 'pointless' since the worker was instructed to 'look at the floor' and had to sit in a position within the court which meant that the victim-survivor could see her head (Pippa). For Pippa, this was part of a broader feeling of her and her Advocacy Worker being made to 'know your place'.

Representatives from other agencies, who were not known to the victim-survivor prior to the trial, were considered less helpful as a supporter in court.

*Helen: the people from Victim Support ... so that was two, a different person for each day. Which had I known, I just wouldn't have bothered, like, they...don't get me wrong, like, I think that they do a good job for some people. But for me, that was just, it was just another person to just witness, like the pain and trauma that was happening. And somebody that just kept trying to make small talk where it was like, like really, you know?*

In one case with a young victim-survivor, the Witness Service support person didn't turn up for him giving evidence. This was particularly distressing for him and his family since they had repeatedly asked that his mother should be a supporter in court. This request had initially been refused. By the time that the family were told that it would have been possible it was too late and would have meant the case being delayed.

### 3.5.2 Preparing to give evidence

It was apparent from participants' accounts that there was a stark disparity between their expectations of the prosecutor's role, and how they experienced their engagement with them. Some victim-survivors expressed their belief that the prosecution was supposed to 'win their case', be 'on their side', or at least provide them with some support in preparation for giving evidence. The requirement for COPFS prosecute in the public interest, rather than that of the victim, contributed to victim-survivors feeling very let down by prosecutors and unprepared for the evidence that they were about to give.

*Kaye: I just thought it would have been just helpful and they would have put my needs before anybody else's and they just didn't. I felt more of an offender than a victim, to be honest. Because they just didn't help at all.*

*Debbie: I imagined the procurator fiscal to be like a lawyer, somebody that I could've consulted or had a conversation with or talked to on the day of the court case. I thought just five minutes on the day of the court case just to say, 'right, what are you going to ask me' and things like this, but there's no preparation at all, none whatsoever.*

Meeting with the Advocate Depute prosecuting the case on the day of the trial, and in a constructive manner, was vital to how able and prepared victim-survivors felt for giving their evidence, as highlighted by the following illustration of contrasting experiences.

#### Meeting the Advocate Depute: contrasting experiences

*Pippa: And he [Advocate Depute] said, I'm [name], I'm going to be the one that's in your corner, I'm going to be asking you questions, never obviously said what questions. He made me feel so, so comfortable, he was so nice, like honestly, I can't fault the guy at all, he was just really, really good at like coming in and introducing and telling me, it's alright. Like reassuring me, like all that sort of stuff was really good.*

*Beth: And I knew the PF because she'd introduced herself ten minutes before. And that was really hard as well, because I was in tears ten minutes before ... So I met the woman that was representing me ten minutes before I stood on the stand, which was shocking ... she said, 'I've not got much time, I've not got much time'. And it was like, oh my god, what is she gonna say. And she said, 'don't mention the card, the card is not to come up'. And I thought, what? And she said, 'just don't mention the card', and I thought, oh god... So I'd got hit with that ten minutes before the stand, so I wasn't in a good frame of mind going in there, I was very stressed.*

### 3.5.3 Giving Evidence

The opportunity to 'tell their story' and have this heard in court was important to victim-survivors, even if doing so was challenging or it didn't result in the desired outcome.

*Kaye: Being accused of being a liar and all that sort of thing wasn't easy, but I managed to get through it and tell my story to them ... and I'm glad I did. Even if obviously it came to nothing, but I'm glad I managed to tell people.*

With regard to the evidence that victim-survivors were able to give in court, the inability to 'tell their story' was a recurring theme across their accounts. This was linked to having a lack of control over proceedings; a theme that runs through victim-survivor accounts from the point of reporting onwards but is felt acutely at court since the trial often represented the forum where they could finally stand up and 'say their piece'.

*Pippa: ...when I say you've been raped before, it feels the exact same way when you're sitting in that courtroom, you have nothing, like you literally are stripped bare of everything and you don't have any control over it. You have not had any say in this, all you have told them is like your story and they just go and they do what they want with it.*

The way in which the prosecutor elicited evidence at trial differed markedly from their expectations. Debbie, for example, felt let down by the prosecutor and described the way that she expected to start with open questions that would allow there to be 'some sort of picture built as to what was going on'.

*Debbie: I just didn't feel like I got a chance to say my piece. He [defence] would ask questions in a twisted way. I felt like the procurator fiscal wasn't supportive in court. I didn't feel like she asked me the right questions. I felt she asked me very bland meaningless questions that didn't lead to me telling any part of my story. I didn't feel like I got any chance to get any of that out at all, or to explain any situations or anything.*

Victim-survivors expected that their narrative would be drawn out in a linear way and were surprised that it was typically disjointed, and their accounts were frequently interrupted by questions. This was challenging for victim-survivors, particularly when they were required to recall traumatic events.

*Pippa: ... they don't ask you linear questions either. They go from, it's going to sound silly, but 1940 to like 2040, do you know what I mean, like within a second, so you're all over the place. Whereas me going into that, I'm thinking, right, they're going to start from the start and we're going to ask questions about linear and it's like doing this, it's not like that at all. So you don't know what's coming at you, so you have to physically go back in your head, go back there and go, right, okay, that happened. But see when they've asked another question, you're still trying to come back from... that part. Yeah, the previous question or whatever, like it's really, really difficult, I can't even put into words how difficult that is.*

There was also concern that the prosecutor's focus on questioning which seemed irrelevant or tangential meant that the important facts of the case, namely the behaviour of the accused, were not addressed. Similarly, victim-survivor perceptions that crucial evidence was omitted from the trial caused them great anxiety.

*Maureen: I got asked very direct questions, and when I started to try and go on a bit, they were saying, 'we're not asking you that, stop talking, answer just the question, it's a yes or a no'. So, I didn't feel, the jury didn't know that I was hospitalised for a month, they didn't know the hell he had put me and the kids through, that the kids had seen him rape me all the time, and beat me.*

*Helen: And then [...] waiting for my Facebook evidence to turn up [during the trial], and it never did, it was never passed on, from the police, to the prosecution, to the lawyers. And it was crucial evidence, that was like, almost the only hard evidence in the whole case.*

While it is not possible to know the value or relevance of different forms of evidence elicited at trial in these cases, victim-survivors perceptions that irrelevant questions were asked, while crucial evidence was overlooked, profoundly impacted on their sense of whether their case has been prosecuted effectively and fairly.

Questioning by both the prosecution and the defence was clearly challenging for victim-survivors, with questioning by the defence described as being particularly difficult. Both the nature of the questioning – particularly that which required victim-survivors to talk about intimate matters, and the interrogatory manner in which questions were asked - were experienced as very challenging.

*Beth: ...Seven hours of that was absolute torture ...she [defence] was a bully. She was nothing short of a bully, a horrible woman.*

Victim-survivors were also overwhelmed by attempts by the defence to challenge their credibility, and attacks on their character, designed to depict them as untruthful or dishonest:

*Helen: ...like the amount of times I was called a liar, to my face, and things were made up, you know, things were wrong. Like, downright wrong, from the defence.*

The relevance of particular lines of questioning was difficult for victim-survivors to comprehend. Questions designed to try to show consent, or to attack their credibility contributed to concerns that they were being made to 'look bad' or that the defence were looking for ways to undermine or discredit them.

*Pippa: ...they ask you what you're wearing, like that has any relevance, it shouldn't have relevance in this day and age, like all these campaigns. They ask you what you're wearing, they ask you like conversations, as I said, they take everything, they go online, they access all your accounts, emails, the whole lot, just for any little thing.*

*Maureen: They made me out to be a terrible mother, and some, like, scorned woman, because I found him with a woman, and that's why I accused him of rape. So, they took the utter...but it was so manipulative, the way she did it, it was almost like bullying.*

*Gavin: I wasn't drunk at all, and he took that to the very end, like saying I was drunk. The QC took that to the very end, and I wasn't drunk at all, I remember the whole thing, and at no point in the day was I drunk [...] At the end when they give their big spiel, right before the verdict the judge said, 'it's clear to me that he wasn't at all drunk'. He said something along the lines of, 'can you stop saying that, because it's clear he wasn't drunk'.*

*Helen: ... when I was in court, I didn't realise it, but obviously, like, my Facebook stuff came up and, you know, it was like, oh look, you know, again, how could this have happened, like, you know, you liked him, you were obsessed with him. You know, here's a like on Facebook, here's this, or that, or whatever. And I just sort of, you know, I was so flustered, I was so shocked [...] it was all this stuff from years ago when I was at a really bad time in my life, where I'd been retraumatised by something else.*

In a case where the sexual charges were dropped prior to trial, Debbie described how she had been notified that, 'they were wanting to ask questions about my previous sexual history ... stuff from 20 years ago and things. There were stories that maybe I'd told this girlfriend in confidence during our friendship, things that were completely irrelevant to anything'. Questioning around a victim-survivor's sexual history or character is restricted in sexual offence trials through provisions set out by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002. From the interviews undertaken with victim-survivors alone, it is not possible to ascertain whether any of the questioning they were subject to strayed beyond what was, or should have been, permitted by the court following an application by the prosecution or the defence to introduce such evidence or questioning. Nonetheless, it is apparent that victim-survivors were distressed by the way that they were portrayed in court (e.g. with regard to what they were wearing or their capabilities as a mother).

The nature and manner of questioning was distressing for victim-survivors, not least, because it intersects with - and compounds - the impacts of experiencing sexual violence. The adverse impact that such questioning can have on a victim-survivor, is articulated very clearly by Pippa in the extract below.

#### **The impact of defence questioning**

*... these lawyers don't understand when they're standing badgering you, like how much they are going to affect the rest of your life, essentially. They don't, that's just their job. Their job is to ask questions but it's how they ask the questions, it's quite demoralising and demeaning, so it is, the way they talk to you. And you feel quite – and I've heard it a lot, and you've probably heard it yourself – you are, and I hate saying the word, the victim in this. But that's not the way you're made to feel. You're made to feel as though you're the one that has done this.*

*And that is hard because you've already been through the whole guilt stage, like trying to...like this is all my fault, maybe I shouldn't have said that, maybe I shouldn't have done that. Should have, would I, could I. You've already been through all that stage and then when they take you and they speak to you the way they speak to you, you're back to square one again. And I was. When I came out of court, I was, I was so like...I was done, I couldn't sort of function, as it were. I had to go to the doctor's and he put me on medication and stuff like that, and that's the first time in the whole process where I had to be, and it was after court. It's not as though I had to when it happened because I was like okay. It wasn't until after court.*

For Debbie and Maureen, their distress was compounded by lack of objection from the judge and the Advocate Depute prosecuting the case, while the defence more proactively objected to lines of questioning.

*Debbie: I even said at one point you've asked me this question [why didn't you report?] repeatedly in many different ways and I'm going to give you the same answer again, you know, but he just kept firing it at me and I just didn't feel that was... I felt the procurator fiscal should've stopped him or the judge should've stopped him a long way back and said, you know, right, that's enough, move on to something different. But it felt like he was just going over and over and over the same point.*

*Maureen: So, it felt like, his defence kept standing up and saying, 'objection', or 'no'. Not once out the whole trial did she do it. And it almost felt like she just wanted it over with, in her heart, she wasn't feisty or fiery. And even my doctor said, she was terrible, she was utterly terrible. She didn't ask the right questions, and she said to me things that I had no clue what she was going on about.*

The perceived inability of the prosecution service to meet the needs, and represent the interests, of victim-survivors led Nat to suggest that independent legal representation is required in sexual offence cases.

*Nat: ...I think that the courts seem to be doing such a bad job of it, that legal representation for women is the only way forward. And I know, I suppose, you could argue that other criminals, in other cases, don't get that. But I think that anyone who is subject to a sexual crime is more vulnerable and has a different requirement for that. You know, had...I just think it could change, you know. Like, because in the medical case that was in the news, you know, about the medical records, you know...you're having to apply for legal aid, and by the time you've got it, they've looked at your medical notes, anyway. So, and you have your human rights violated initially, but you shouldn't have them violated again by the courts.*

While Nat was the only participant to refer directly to independent legal representation, her suggestion resonates with the concerns of numerous others who variously cited problems in terms of a lack of communication, preparation, and adequate representation in relation to going to court and giving evidence about their experiences.

*Helen: We didn't feel like we were represented very well, X, Y and Z. So, the Advocate Depute was like, right, okay, you know, we'll come down and meet you. They came down and met us, and I was like, 'what about this, what about that', and he was like, 'I have no idea about that'. He was like, 'that would have been good evidence, but it was never supplied to me, I've never heard about that' [...] but yeah, you know, like, the defence knows everything.*

It is clear from victim-survivors accounts' of going to court that they felt disadvantaged in comparison to the accused, who they perceived to be more adequately prepared and represented by their defence lawyer in an adversarial context.

### **3.5.4 Conduct in court**

A persistent theme in participants' reflections on the process of going to court and giving evidence is that their interests were marginal to a process that was mundane or habitual to those working within the system.

*Gavin ... what else I hated, which I think is so stupid, so we've got a trial that's...it's two sides of quite a serious thing, and then the lawyers are like, oh,' just let me speak to my friend for a minute', calling them their friends and that, and that just doesn't need to happen. So someone who's meant to be on my side helping me, because the QC is totally on his side like being nasty to me and everything. The procurator fiscal isn't really being that nasty to him, and he's meant to be totally on my side helping me and all that, and he's just like,' just let me speak to my friend for a second'.*

Gavin also stated that when he was in court, VIA referred to the case by the name of another victim (rather than by the name of the accused), while the PF later called the him by the name of the accused. Gavin noted that these might seem like trivial issues to some people, though they undermined his faith that the case was being dealt with appropriately. Others also highlighted issues with the conduct of those in court.

*Debbie: ...when I was giving evidence it was closed, but when everybody else in the group was giving evidence there was people, like friends of the perpetrator in the audience or whatever you call them and they were huffing and puffing and tutting and sniggering and all sorts of things and they weren't stopped. I found that ridiculous as well that it was even allowed to happen.*

In amongst these concerns, the conduct and care of personnel within court conveyed through seemingly small gestures was meaningful to victim-survivors.

*Abigail: When I came out I was surprised it was three hours. But there's a wee guy assistant beside your kind of dock and he gives you water, makes sure you're okay and supports you throughout. So, he got me water, calmed down my seizures. After the court he cheered me on afterwards. He went, 'you've done amazing by the way', so it was good getting that wee confidence boost after and the relief of leaving that courtroom after over a year.*

### 3.6 Achieving 'justice'?

None of the victim-survivors interviewed believed that 'justice' had been achieved in their case. Rather, achieving justice was overshadowed by the cumulative impact of the offences and the criminal justice process – particularly, but not exclusively, the experience of the trial. Interviewees' reflections on case outcomes, the impact of the criminal justice process and alternative representations of justice are detailed below.

The outcomes of the twelve cases that went to court (see Table 1.2), and their impacts on the victim-survivors concerned, were diverse. In the one case where the accused pled guilty at trial, the victim-survivor (Izzy) stated that this was a great relief. However, cases where the trial was discontinued due to the decision that there was no case to answer were especially distressing and difficult for victim-survivors to comprehend. For example, in Pippa's case, a meeting with the Advocate Depute following the trial to explain what had happened seemed to only compound her sense of being let down, and of her needs being marginal to the process:

*...But [Advocate Depute] turned round to that officer and he said, [Defence lawyer] won the lottery last week when he took on this case. And I says to him, 'excuse me', I said, 'this is my life. And he went, 'oh, I do apologise and then he sort of started talking about*

*other things'. And I think that then, to me, cemented that this is so wrong, youse have let me down royally, it is a day out for you and you have just essentially ruined my life by the decision you took... So, I just felt totally let down.*

In the three cases where a not proven verdict was returned on the sexual offences, while these were clearly disappointing verdicts, there was some sense that it had still been worthwhile in that the assault had been publicly recorded:

*Beth: ...I feel a wee bit different now, because I think, well at least it's down in record, you know. So, if he does, you know, break the law again, there are two not proven verdicts against him. So, there is some sort of paper trail there, I suppose, that may help with, god forbid, he has a next victim.*

Reflecting on her experience a year on from the trial, Beth also highlighted the value of the support that she had received throughout the process: *'Rape Crisis, they honestly, they were amazing. They kind of kept me going over the three years'*. However, as with other cases where the accused was acquitted on the sexual charges, victim-survivors' concerns returned to their personal safety following the loss of bail conditions.

*Abigail: ...I got insufficient evidence, so I didn't get justice. My neighbour, she got justice for two phone calls and everyone else...a woman got pinned against the wall, sexually assaulted, she didn't get any justice either. Just two phone calls... He's still out there. He's got a slap on the wrist kind of thing... and I lost my kind of bail protection, so he wasn't allowed to approach me at all, contact me in any way, so I lost that. I've had him getting in contact recently as well so that's been a bit scary.*

*If you've been a victim somebody should get the support after, not just the end of court. Because like I say things are actually worse after court, they are ... you've got your attacker that would be angry when you kind of open up about it and saying the truth.*

Ongoing concerns following the trial highlight the need for support and safety planning to continue post-trial, particularly where there has been an acquittal. In another four cases, the sexual charges were either dropped or not proven though in three of these cases the accused was found guilty of other non-sexual charges. A shared theme within these accounts was victim-survivor disappointment with the penalty received by the offender.

*Maureen: ...so, the 13 charges against [accused] were not proven, but he did get charged with perverting the course of justice and sending malicious and malice texts. So, he's got 300 hours' community service, and two years probationary, checking in, throughout, like, nearly 17 year of my life, that's all he gets. Like he had stolen a Mars Bar. He walked free.*

*Chloe: He was found guilty [of non-sexual charges]. I was telling the truth but unfortunately I was still failed by the system because I know he'll go out and do it [rape] to someone else. It's horrific and it's just all the failings and I do feel failed by the criminal justice system. He should have gone to jail.*

*Debbie: The guy got found not guilty for the offences...well, the sexual offences were dropped, there was no witnesses. But there was a stack of other offences ... he got community service, he got found guilty for the incident of assaulting my son at the house and then again, a year and a half later in a pub with the bar stool. And he got found guilty of vandalising the house and I think out of about seven or eight charges, I think he probably got done for three I think of them, three or four of them. The rest he all got off with and just did community service. There were no fines, nothing, nothing at all ... on the whole I came away feeling very cheated, like I just didn't get a chance to explain any part of it.*

Being found guilty of lesser offences predictably resulted in lower penalties compared to the sentencing options available for serious sexual offences. Nonetheless it was difficult for victim-survivors to accept the disparity between the gravity of the offences that they had reported and what they perceived as the relatively minor penalties that the offender ultimately incurred (e.g. community service, probation or fines). In one of the two cases where a guilty verdict was returned on the sexual charges, the victim-survivor was also dissatisfied with the sentence given in the context of the suffering for decades after being sexually abused as a child.

*Fran: The sentence that he got was laughable. The judge did say he should have got 18 years, I think, and he only got seven or eight because he was a hardworking pillar of society and he had never...it was only basically, well, [the family] that he did it to.*

*Interviewer: Does it feel like you got justice then?*

*Fran: I don't know because I know that, I mean, it's great that we were believed and I think that's a part of, we were believed, but in other ways not really because we lived with it...well, I lived with it for 40 years and so has he but he's only getting eight years, seven or eight years. I know he's an old man and things like that, but it doesn't matter.*

For Fran, while she is disappointed by the sentence that her abuser received, there is some sense of having received justice since the guilty verdict signals that she was believed. Similarly, in Helen's case where a guilty verdict was also returned, there was an appreciation that the 'justice process worked'.

*Helen: I'm rebuilding my life. And I have such a greater understanding, and a greater appreciation. And I honestly am so, so thankful that, like, that the justice process worked, if you know what I mean.*

While Helen considers the criminal justice process to have 'worked', with the accused no longer posing a threat to others, she remains uncertain that 'justice has been done' and states that ultimately, 'no-one wins'.

*Helen: So, I don't know, I don't know if justice has been done. I do, in a sense, I feel like there's some comfort in the fact that, like, a dangerous person, you know, and a remorseless person, isn't currently a threat to anybody... But because I don't know the mindset behind that person, like, I don't know when they come out, if they're gonna have a renewed vendetta, or you know what I mean, you know, like I'm fearful of, you know, consequences.*

In keeping with other accounts regarding the process and case outcomes, Helen returns to the question of her future safety. This heightened sense of vulnerability is a common and understandable concern following sexual assault and one shared by victim-survivors irrespective of their case outcome. Hence, views on whether justice had been achieved were influenced by both ongoing concerns about safety and the challenges experienced in going through the criminal justice system.

Reflecting on the process as a whole, for the 17 participants interviewed, difficulties emerged and were felt cumulatively across their 'justice journey'. Victim-survivors frequently described themselves as living in limbo, with no 'road map' for how to continue in the criminal justice process or in their life more generally. This is understandable considering the lengthy duration of the investigation and prosecution process – upwards of two years in some cases, and upwards of three years in one case – and especially in situations marred with a lack of communication over what is happening and why. For these victim-survivors the impact of living life on pause, dealing with the burden of hope, feeling out of control and at the mercy of the process, cumulated to have profound impacts on all aspects of their life and their evaluation of whether justice had been achieved in their individual case. The cumulative impacts of experiencing sexual violence and engaging with the criminal justice process included: strains on family and other commitments; difficulties in maintaining close relationships, let alone establishing new ones; developing mental and physical health issues, including anxiety, night terrors, confusion, suicidal thoughts, depression, and trauma.

#### The cumulative impacts of experiencing sexual violence and engaging with the criminal justice process

*Beth: ...It was **three years of re-traumatisation** [...] I felt stuck for so many years because everything kept going wrong [...] they promised that they would keep me informed every step of the way, I remember the words [...] and they didn't. Once you'd reported it, that was it. And that was for years.*

*Helen: ...It **totally destroyed everything**. [...] we were engaged to be married. [...] when I first met the police officer [...] I said, you know, you can't really [...] tell me how long this takes, but is there an estimation, just even something rough? And she said, between one and two years, and I thought, if it's one, it's fine, I get married at the end of it. But as that year passed, it was like, this isn't happening.*

*Olive: ...We were **left pretty much in limbo for a long time**. [...] we got to December the 1st last year was when I went **off sick**, and I was off sick until May; by that point I was a **nervous wreck**, I was **hyper-vigilant**, I **wasn't sleeping**, and I could see his face morning, noon and night; I felt suicidal, I felt life wasn't really worth living, I felt dirty. So I had all those emotions, I went off sick, and I never went back till the May; and I thought surely by the time I've got back to work...It'll be done. But it wasn't, it wasn't.*

*Lottie: ...I **didn't know how to live for 18 months**. I didn't know, you know, do I just forget about it, but then it has to be all dragged back up again, or **do I just live my life on pause?***

For three of the victim-survivors, rape and sexual assault took place within the context of domestic abuse. Of those three, two had children and their experiences of civil justice child contact procedures were similarly marred by a strong sense of a lack of justice in both processes and outcomes. Whilst the research did not focus specifically on these civil justice experiences, it is worth noting that negotiating parallel processes are experienced by victim-survivors as hugely demanding. Such engagements rarely present without considerable challenge and cost, and both systems are perceived to be weighted against victim-survivors:

*Chloe: It is about abuse. It's about control and these domestic abusers and rapists are using the child contact system to continue the abuse. They get legal aid. He wouldn't be doing this if he didn't get legal aid ... They don't give a damn, but that's why they're doing it and the Sheriffs don't understand it. They don't have enough training.*

Following unsatisfactory outcomes and challenges in criminal cases, for some victim-survivors, justice was achieved in other ways. Awards of criminal injuries compensation, for example, represented both a sense that they were believed and acted as a point of closure. Indeed, for Abigail, a sense that she was finally believed came through the Criminal Injuries Compensation Scheme rather than court proceedings, and along with it a sense of closure:

*I got a bit of closure recently, last Monday, I cried with happiness. I didn't get justice in court, but I applied for criminal injury and they believed me. They took my statement and stuff and they said we're awarding you [sum] for three years of non-consensual penetration, so it's not good but it's closure.*

*I: And how important was that?*

*Really important. Because I've been...I had to question myself since court. I was back to believing his words that I didn't count in the relationship, that wasn't rape, I was thinking all that in my head. And then I got that letter through and it was closure.*

The rapes that Abigail reported to the police were not prosecuted due to an insufficiency evidence, hence the award of compensation provided a welcome acknowledgment of the abuse that she had endured over a number of years. In a similar vein, Gavin highlighted the importance of being believed for his sense of justice following an acquittal:

*Gavin: He [the Judge] didn't say, 'I find him not guilty'. He said, 'I have no choice but to acquit you', and that's when the family started cheering, and I didn't know what acquit meant, but it was obvious to me... it was actually really hard to hear the judge saying that. I mean, if he hadn't said, 'I believed you', it would have been a lot worse. But I did feel really bad for [other victim], because he said it was inconceivable that this could have happened to him, which he didn't need to add in.*

In other experiences too, there appeared alternative, and sometimes creative, ways in which victim-survivors sought justice. Lottie, for example, describes justice for herself in terms of living her life and 'not letting him win' despite her rape case being marked no proceedings by the Procurator Fiscal.

*Lottie: I guess I just know I have to, just have to get on with things and every day I still have to get up and dress my son and put him to school, and I think, I've managed to get myself to a place that...I don't know how, I really don't, but I knew that if I wasn't going*

*to get justice from the police, the only kind of justice for myself I could get was to continue living my life and not let it hurt me anymore. The police, system put my life on hold for, I mean it was already on hold for two years, because I couldn't move past it, and then another year and a half waiting for all of this to be over, and just knew I needed to live my life and not...it was kind of like not letting him win.*

For Debbie, pride in having survived their experiences and gone through the system was meaningful to her despite the sexual charges in her case being dropped.

*Debbie: I just think having survived it makes us feel proud that we went through it, we've survived it, and we've come out the other end. We know we're right and we know we're good people*

Following a sense that the criminal (and civil) justice system has not worked for them, some also commented that they took part in this research as a way of allowing their 'story' to be heard and hoped that it would help others in future.

## 4. Recommendations

The recommendations outlined below are based on the victim-survivors' experiences of the criminal justice process. The difficulties victim-survivors face when seeking criminal justice occur at multiple stages throughout the process. Some take place at identifiable points, such as the re-traumatising experience of providing and hearing back a police statement or during questioning at trial about intimate sexual matters, including challenges about credibility and reliability, within an adversarial context. Other difficulties, however, are far more generalised and occur throughout the process: in particular, mis-matches between victim-survivor expectations and experiences; inadequate communication between officials and victim-survivors; the lengthy duration of the process; the physical environments of police stations and courts; victim-survivor concern about their safety; their feeling of being marginal to the process; perceptions of the system being weighted in favour of the accused; and belief that the current system does not adequately represent their interests. These significant concerns raise questions about how victim-survivors can be best *prepared, informed, supported and represented* in the criminal justice process.

Addressing these questions is undoubtedly challenging since victim-survivor encounters with the criminal justice system are varied, filtered through prior experiences of abuse, expectations of the process, and their diverse personal circumstances. Nonetheless, a consistent finding is that the impacts of sexual violence and seeking justice interact, are cumulative and compounding. While many of the issues raised by those interviewed in this study will resonate with victims of other non-sexual crimes, it is apparent that sexual offences have profound and distinctive impacts and, therefore, merit distinctive responses.

The recommendations detailed below are made based on the study findings, and cognisant of a criminal justice context characterised by a rising volume and complexity of sexual offence cases<sup>3</sup>, and ongoing work to improve criminal justice responses to sexual offences (e.g. via the Scottish Government's Victims Taskforce<sup>4</sup> and the judicially-led review on improving the management of sexual offence cases as they proceed through court<sup>5</sup>). Our recommendations are premised on principles of fairness and dignity, and they are made to in the spirit of supporting meaningful change to victim-survivor experiences of the criminal justice process and their ability to give best evidence. Some of these recommendations echo those made by the earlier *Review of Victim Care in the Justice Sector in Scotland (2017)* and the Inspectorate of Prosecution in Scotland *Thematic Review of the Investigation and Prosecution of Sexual Crimes (2017)*; namely the need for improved standards of communication with victims, better preparation of the victim for trial, and access to a single source of support and information across the various stages of the criminal justice process. Other recommendations, however, are also made. This reflects the specific focus of the research on sexual offences and its broader focus across the criminal justice process, rather than on a single part of it. Following general recommendations relevant to the criminal justice process as a whole, specific recommendations are made in relation to police, prosecution and court processes respectively.

---

<sup>3</sup> Sexual crimes account for 75% of COPFS High Court workload (Scottish Government, 2017). This compares to 50% in 2015.

<sup>4</sup> <https://www.gov.scot/groups/victims-taskforce/>

<sup>5</sup> <http://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2019/03/20/improving-the-management-of-sexual-offence-cases>

## General recommendations

- 1.1 Support from specialist agencies should be available and offered at the earliest opportunity including at, and *prior* to, reporting. This is essential to ensuring positive engagement with the ensuing process.
- 1.2 Public and agency awareness of specialist support services should be raised and updated. This should include making information about Rape Crisis Advocacy Workers available via local and national agency websites and their associated literature (e.g. RCS, Police Scotland, COPFS, Scottish Government).
- 1.3 Victim-survivor expectations about the criminal justice process should be better managed, especially in relation to the duration of the investigation, frequency and mode of communication from the police and COPFS, evidential requirements (including corroboration), the potential length of the overall criminal justice process, the role of the prosecution service, and the likelihood of delays and movement of trials to different courts.
- 1.4 Recognising that sensitively managing the expectations, information and support needs of individual victim-survivors is challenging, more use could be made of Rape Crisis Advocacy Workers to tailor this process to individuals and ease the flow of information across different parts of the system.
- 1.5 The daunting and sometimes uncomfortable environments that victim-survivors occupy when giving statements, undergoing forensic examination, re-reading their statements, and going to court should be acknowledged. Where possible, these environments should be made more comfortable, or alternative arrangements should be offered, such as the option to use, where appropriate, victim-survivors' homes, support agency premises, video or television links.
- 1.6 Emotional support and safety planning must be attended to following case conclusion, particularly in cases that are not prosecuted or that result in an acquittal since these are especially challenging outcomes and personal safety is a major concern.
- 1.7 Consideration should be given to how victim-survivors' sense of being marginal to the criminal justice process and their perception that the adversarial system is weighted in favour of the accused can be addressed. This could include the introduction of independent legal representation for complainers.

## Police

- 2.1 Wherever possible, reports of sexual assault should be made to specially trained officers, and to support this, the resourcing of specialist officers should be reviewed.
- 2.2 Specialised sexual assault training should be considered for all officers who may act as a first point of contact for victim-survivors, not just for those in specialist roles (e.g. SOLOs).
- 2.3 Greater attention should be given to victim-survivors' welfare and basic needs (e.g. provision of food) at the reporting stage, mindful of the lengthy and demanding processes required.
- 2.4 As a matter of routine police should inform victim-survivors of the option to have support (e.g. Rape Crisis Advocacy Worker, family, friend) during giving of a statement.
- 2.5 Particular consideration should be given to the care of those reporting historic cases of sexual assault and rape, and whether counselling/support should be offered *prior* to the making of a statement.
- 2.6 The need to have the police statement read and agreed immediately after giving it should be reviewed (e.g. with the option for victim-survivors to review and agree their statement within one week).
- 2.7 Video recording of police statements to ensure their accuracy, as well as their use in court, should be strongly considered.

- 2.8 Victim-survivors should always be made aware that they will have the opportunity to re-read their police statement prior to trial, to avoid unnecessary anxiety about having to remember the details of their police statement after a considerable period of time has lapsed.
- 2.9 Explanations should be given for the removal of personal items for evidence, as well as a clear indication of if, and when, victim-survivors can expect their return.

## Prosecution

- 3.1 Communication from the police and the Crown Office, even when there is little or nothing to report with regard to case progress, should be maintained regularly (e.g. at least monthly) and consistently.
- 3.2 The adequacy and resourcing of COPFS information and administration systems should be reviewed to ensure the errors in communication with victim-survivors are avoided.
- 3.3 Special measures should be offered and fully explained to victim-survivors so that they are able to make an informed choice about whether to take them up. With regard to live television links, explanation should include where and how this will be done, what style of video equipment will be used, who will be present, who will see the video, and whether the victim-survivors are able to see the court.
- 3.4 Consideration should be given as to how victim-survivors can be better prepared for the potentially distressing nature and format of questioning at trial, while maintaining fairness of process. This preparation could include highlighting the sequencing of the evidence-in-chief, cross-examination and re-examination, and the likelihood that questioning will be in a non-linear, non-chronological format.
- 3.5 The likelihood of questioning of an intimate and potentially distressing nature should be conveyed to victim-survivor so they are prepared.
- 3.6 Where there has been a successful s.274/275 application, the likelihood of questioning about sexual history and character should be clearly relayed to victim-survivors.
- 3.7 The introduction of independent legal representation should be considered as a means of allowing victim-survivors to be more adequately represented, and less marginal to, the criminal justice process.

## Court

- 4.1 Better protection should be given to victim-survivors in and around the court building to avoid accidental meetings with the accused or other defence witnesses. This could include options for the provision of lunch or coffee inside a waiting room within the building.
- 4.2 Advocate Deputes should ensure that they meet with the victim-survivor in the case at the earliest opportunity. Meetings on the day of, or shortly prior to, the trial commencing should reassure the victim-survivor and avoid causing further alarm or distress.
- 4.3 Consideration should be given to a review of the (adversarial) nature and manner of defence questioning and the role of the court and prosecutor in objecting to questioning that infringes on the complainers right to dignity and privacy.
- 4.4 Consideration should be given to a review of the use of sexual history and character evidence at trial.
- 4.5 Prosecution and court staff have a duty to consider their conduct in court and when meeting victim-survivors court, mindful of the deeply personal and sensitive nature of the case.

## References

- Adler, Z. (1987) *Rape on Trial*. London: Routledge and Kegan Paul.
- Brooks-Hay, O., Burman, M., Bradley, L. and Kyle, D. (2018) *Evaluation of the Rape Crisis Scotland National Advocacy Project* SCCJR Research Report. Glasgow: SCCJR.
- Brooks, O. and Burman, M. (2016) Reporting rape: victim perspectives on advocacy support in the criminal justice process. *Criminology and Criminal Justice* 17(2): 209-225.
- Brooks, O., Burman, M. and Kyle, D. (2015) *Evaluation of Support to Report Pilot Advocacy Service: Summary Report*; SCCJR Briefing Paper No.1/2015.
- Brown, J. (2011) We mind and we care but have things changed? Assessment of progress in reporting, investigating and prosecution of rape. *Journal of Sexual Aggression* 17(3): 263–272.
- Burman, M. (2009) Evidencing sexual assault: women in the witness box. *Probation Journal*, 56 (4): 379-398. ISSN 0264-5505.
- Daly K. and Bouhours B. (2010) Rape and attrition in the legal process: A comparative analysis of five countries. *Criminal Justice: A Review of Research*, 39: 565-650.
- Feist, A., Ashe, J., Lawrence, J., McPhee, D. and Wilson, A. (2007) Investigating and detecting recorded incidences of rape, Home Office Online Report 18/07 London: Home Office <http://eprints.uwe.ac.uk/23624/1/Feist%20et%20al.pdf>
- Hohl, K. and Stanko, E. (2015) Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales. *European Journal of Criminology* 12(3): 324–341.
- Kelly, L., Lovett, J. and Regan, L. (2005) *A Gap or Chasm? Attrition in Reported Rape Cases*. London: Home Office Research Study 293.
- Le Doux, J. C. and Hazelwood, R. R. (1985) Police Attitudes and Belief Toward Rape. *Journal of Police Science and Administration*, (13): 211-220.
- Lovett, J. and Kelly, L (2009) *Different systems, similar outcomes? Tracking attrition in rape cases across Europe* CWASU, London Metropolitan University.
- McMillan, L. and Thomas, M. (2009) 'Police interviews of rape victims: tensions and contradictions'. In M Horvath & J Brown (eds), *Rape: Challenging Contemporary Thinking*. : Cullompton: Willan Publishing.
- Robinson, A. (2009) *Independent Domestic Violence Advisers: a process evaluation*. London: Home Office.
- Stewart M. W., Dobbin, S., & Gatowski, S. (1996) 'Real Rapes' and 'Real Victims': the shared reliance on common cultural definitions of rape. *Feminist Legal Studies*. 4(15).
- Scottish Government (2017) Thematic Review of the Investigation and Prosecution of Sexual Crimes. Inspectorate of Prosecution in Scotland. <https://www.gov.scot/publications/thematic-review-investigation-prosecution-sexual-crimes/>
- Scottish Government (2018) Recorded crime in Scotland 2017-2018: A National Statistics publication for Scotland. Edinburgh: Scottish Government.
- Tasca, M. Rodriguez, N. and Spohn, C. (2012) Police Decision Making in Sexual Assault Cases Predictors of Suspect Identification and Arrest *Journal of Interpersonal violence* Vol 28(6).
- Temkin, J. (1997) Plus Ca Change: Reporting Rape in the 1990s. *British Journal of Criminology*, Vol. 37(4): 507-528.
- Temkin, J. and Krahe, B. (2008) *Sexual assault and the justice gap: A question of attitude*. Oxford: Hart Publishing.
- Thomson, L. (2017) Review of Victim Care in the Justice Sector in Scotland: Report and Recommendations. [https://www.copfs.gov.uk/images/Documents/Victims\\_and\\_Witnesses/Review%20of%20Victim%20Care%20in%20the%20Justice%20Sector%20in%20Scotland.pdf](https://www.copfs.gov.uk/images/Documents/Victims_and_Witnesses/Review%20of%20Victim%20Care%20in%20the%20Justice%20Sector%20in%20Scotland.pdf)
- Weiss, K. G. (2011) Neutralizing sexual victimisation: A typology of victims' non-reporting accounts. *Theoretical Criminology* 15(4): 445-467.

## Appendix 1: Overview of cases

	Incident(s) reported (as described by participants)	Time between most recent incident & reporting	Relationship to accused	Advocacy support	Sherriff/ High Court	Special measures used	Case outcome
Abigail	Rape and domestic abuse	Ongoing abuse	Partner	Yes / Self-referred to Rape Crisis and on to advocacy	Sheriff Court	Screen	Rapes not prosecuted, insufficient evidence. Non-sexual charges not proven. Guilty on sexual charges relating to another victim
Beth	Gross indecency, sexual assault and stalking	3 weeks	Family friend	Yes / Self-referred to Rape Crisis and on to advocacy	Sheriff Court	Screen	Not proven
Chloe	Rape and domestic abuse	1 year	Partner	Yes / Self-referred to Rape Crisis and on to advocacy	Sheriff Court	Screen	Rape not prosecuted, guilty on 3 of the 6 non-sexual charges
Debbie	Gross indecency, sexual assault	7-8 months	Family friend	Yes / Self-referred to Rape Crisis and on to advocacy	Sheriff Court	Screen	Sexual offences not prosecuted, insufficient evidence. Combination of guilty and not-guilty on non-sexual charges
Eleanor	Child sexual abuse and rape	40+ years	Known to survivor	Yes / Self-referred to Rape Crisis and on to advocacy	N/A	N/A	Police decision not to proceed
Fran	Child sexual abuse and rape	35+ years	Family member	Yes / Self-referred to Rape Crisis and on to advocacy	High Court	Screen	Guilty

Gavin	Sexual assault	Within hours	Acquaintance/family friend	No	Sheriff Court	Screen	Not proven
Helen	Child sexual abuse and rape	10 years	Family member	Yes / Self-referred to Rape Crisis and on to advocacy	High Court	Screen	Guilty
Izzy	Rape and assault	Within hours	Neighbour	Yes /	High Court	N/A	Guilty plea at trial
Jilly	Child sexual abuse and rape	30+years	Family member	No /	N/A	N/A	No proceedings, insufficient evidence
Kaye	Rape	Within 24 hours	Stranger	Yes / Referral route unknown	High Court	N/A	No case to answer (NCTA)
Lottie	Rape	2 years	Stranger	Yes /Self-referred to Rape Crisis and on to advocacy	N/A	Screen considered	No proceedings, insufficient evidence
Maureen	Rape and domestic abuse	Within 1 week	Partner	Yes / Referral route unknown	High Court	Screen	Rape not proven, guilty on non-sexual charges
Nat	Child sexual abuse and rape	28 years	Family member	Yes / Sign-posted by police.	N/A	N/A	No proceedings, insufficient evidence
Olive	Rape/sexual assault	4-5 days	Family friend	Yes / Referral route unknown	Sheriff Court	Video link	NCTA
Pippa	Rape and sexual assault	Within hours	Friend	No / Received support from Archway	High Court	Screen	NCTA
Rebecca	Rape	Within hours	Stranger	Yes /Self-referred to Rape Crisis and on to advocacy	N/A	N/A	Police decision not to proceed

## Appendix 2: Demographic profile of participants

Q1. ETHNICITY	WHITE-SCOTTISH	13
	WHITE-BRITISH	2
	WHITE-EUROPEAN	1
	WHITE-IRISH	1
Q2. PLEASE COULD YOU INDICATE YOUR AGE?	16 or 17	1
	18 – 25	3
	26 – 35	3
	36 – 45	4
	46 – 45	3
	56 – 65	3
Q3. DO YOU CONSIDER YOURSELF TO HAVE A DISABILITY?	YES	5
	NO	10
	PREFER NOT TO SAY	2
Q4. WHAT IS YOUR SEXUAL ORIENTATION?	BI	2
	HETEROSEXUAL/ STRAIGHT	15
Q5. HOW DO YOU DESCRIBE YOUR GENDER?	FEMALE	15
	MALE	1
	PREFER NOT TO SAY	1
Q6. IS YOUR GENDER IDENTITY THE SAME AS THE SEX YOU WERE ASSIGNED AT BIRTH?	YES	16
	PREFER NOT TO SAY	1