

May 2019

THE CRIMINAL JUSTICE EDITION

This edition brings together a range of issues regarding sexual assaults/rape and the criminal justice process. We look at statistics, support available including SARN, survivor's feedback, campaigns and the language used within the criminal justice system.

CONVICTION RATE FOR RAPE AND ATTEMPTED RAPE CONTINUES TO BE THE LOWEST FOR ANY CRIME TYPE

One of the main barriers for survivors reporting sexual violence to the Police is the appalling conviction rate we have in Scotland. The rape crisis movement would suggest that there are a number of reasons for this including individuals in Juries holding common harmful societal myths around sexual violence, the justice system which is not survivor centred, the need for corroboration and the 'not proven' verdict. Nearly **30%** of rape and attempted rape prosecution resulted in the acquittal verdict of 'not proven', compared with **17%** for all other crimes and offences. More information on this in pg3

The conviction rate for prosecuted rape and attempted rape is **43%**, for murder **80%** and all crimes and offences combined **94%**.

In England rape and attempted rape convictions are **57%**.

Sources: Rape Crisis Scotland – Ampersand Advocates

Harmful Societal Attitudes

A major new study by the **End Violence Against Women Coalition** in Dec 2018 has found that an alarming number of adults across the UK are unclear about what rape is. Of 4000 adults...

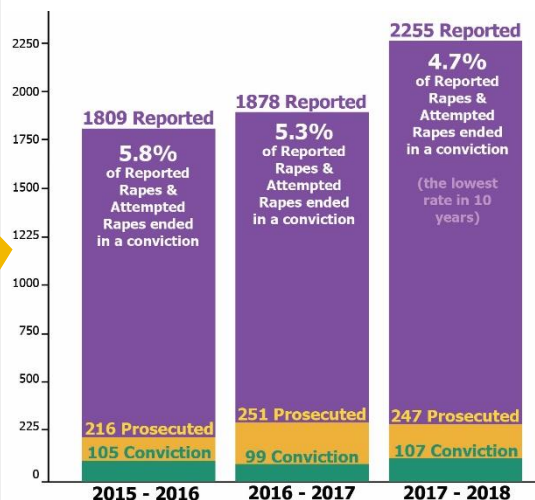
- A third (33%) of people in Britain think it isn't usually rape if a woman is pressured into having sex but there is no physical violence
- A third of men think if a woman has flirted on a date it generally wouldn't count as rape, even if she hasn't explicitly consented to sex (compared with 21% of women)
- A third of men also believe a woman can't change her mind after sex has started
- Almost a quarter (24%) think that sex without consent in long-term relationships is usually not rape

Feedback on our Justice Advocacy Service From Detective Inspector Keith Duncan

"As Detective Inspector in charge of Rape and Serious Sexual Crime (Tayside), I fully support the work and recognise the benefits from the Advocacy Project (at RASAC P&K). Survivors of sexual crimes are clearly at the centre of their priorities and provide friendly and professional advice along with support through any judicial process.

Operating on a victim centred basis, I find their work increasing survivor's confidence in police and police processes should they decide to report. My team benefit from advocacy workers acting as points of contact for survivors and investigations are dealt with more efficiently. We continue to look for ways to develop our partnerships and enhance overall victim experience."

Rape and attempted rape statistics in Scotland



Source: Rape Crisis Scotland

Reported sexual crime across Scotland is now at a record level with recorded levels of rape and attempted rape having **increased by 99% since 2010**. The increase in reporting is not directly linked with an increase in the number of sexual crimes being perpetrated but is indicative of survivors now being more confident in reporting due to media reporting of sexual abuse inquiries and the #MeToo movement.

SEXUAL VIOLENCE IN PERTH AND KINROSS

The Scottish Crime Survey and other research suggest only 15% of survivors report to police. With this in mind we can extrapolate that as the recorded sexual crimes for Perth and Kinross in 2017/18 was 295 that the estimated prevalence in this year for P&K is therefore 1967 sexual crimes.

In 2017/18 we worked with 238 survivors which equates to **14% of survivors of sexual crimes in P&K** that year.

Source: Crime and Justice Statistics

In 2017-2018 in P&K

1967

Estimated number of sexual crimes committed

295

Reported sexual crimes

ADDRESSING THE GAP IN SURVIVOR'S CRIMINAL JUSTICE EXPERIENCE

The poor conviction rates, harmful societal attitudes and a justice system which does not hold the survivors at the centre results in RASAC P&K working with survivors who are further traumatised and feel let down by the criminal justice system. To provide support to survivors we launched our Justice Advocacy Service in 2016 supporting survivors who are considering reporting or are already engaged with Police and/or justice systems/courts.

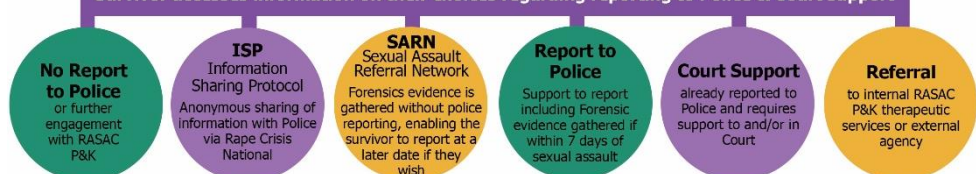
Survivors are referred or self-refer to RASAC if they are considering reporting or are already engaging with police and/or justice process...



In **2017/2018** we supported **51 survivors** in our Justice Advocacy Service
Of those survivors supported to and/or in court...

33% of cases found guilty
7% of cases found not guilty
20% of cases found not proven

Survivor accesses information on their choices regarding reporting to Police & Court support



SURVIVORS' EXPERIENCES OF THE CRIMINAL JUSTICE PROCESS

Part of our role is to ensure that the survivor's voice is at the centre of all our services and that their experiences are heard and acknowledged, influencing changes in policy and practice throughout Scotland. Over the last few months we have been involved in a number of Scotland wide consultations including;

- Clinical Pathways Consultation – a Scottish Government consultation seeking to improve the pathways available in the aftermath of rape and sexual assault.
- Healthcare and Forensic Medical Services Standards - draft indicators for health and forensic medical services for people who have experienced rape, sexual assault or child sexual abuse.
- Scottish Government's and NHS Education Scotland (NES) 'Transforming Psychological Trauma: A Knowledge and Skills Framework for The Scottish Workforce', a Trauma Training Plan
- NHS Redesign consultation - a comprehensive inquiry into the mental health provision across Tayside.

Below you will find some of our survivor's contributions to the consultations, providing us with powerful accounts of their experience of the criminal justice system. We want to thank all the survivors who contributed and we want to acknowledge their strength and bravery in sharing their stories.

Lizzy's Experience

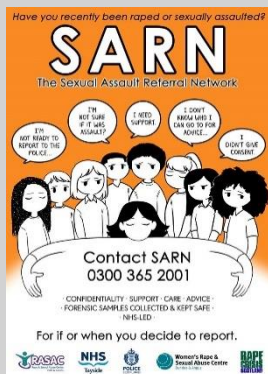
"I felt the forensic examination showed no understanding of (my emotional) trauma, (I felt they) forgot the impact of what happened on the person, I am a human being, not just 'evidence'."

IMPROVING FORENSIC PROCESSES AND FACILITIES IN TAYSIDE...

In March 2017 the Scottish Government published a report on the provision of services for forensic examinations across Scotland for victims of sexual crime. The report highlighted significant concerns about the response to the immediate needs of people in Scotland who have been raped or sexually assaulted. Key areas identified included: examination by a female doctor in a suitable environment (which is not in a Police Station), with appropriate follow up to address their health and support needs. An update on the progress of identified concerns was published in December 2018 highlighting that although progress has been made there was still a long way to go.

Tayside's response to the above report was to develop a short life working group in partnership with NHS Tayside, Women's Rape and Sexual Abuse Centre (WRASAC) Dundee & Angus, Rape and Sexual Abuse Centre Perth & Kinross, (RASAC) and Police Scotland. The group has now identified and set up a purpose designed Forensic Examination Facility in Dundee at an NHS site, serving the whole of Tayside. With the facilities providing a welcoming and safe environment and the government focusing on training female forensic examiners in Scotland, survivors will have more choices and feel more supported during what is, a difficult experience.

Another key development in Tayside is the extension of SARN (Sexual Assault Referral Network). SARN helps facilitate access to a forensic medical examination without having to report to the Police at the time of the examination. The examination can take place up to 7 days after an assault has taken place; the evidence that is gathered is then stored anonymously and can be accessed at a future date if the survivor feels that they are ready to report.



The days following a sexual assault can be extremely difficult and many survivors find themselves undecided about reporting to the Police. This service allows anyone in this position, age 16+, to still access facilities whereby forensics can be taken and stored. This collaborative approach is a further step forward in improving responses to those who are raped or sexually assaulted. We know the difference that this can make and are committed to raising awareness about this vital service so that more people recognise this as an option in the immediate days following an assault.

The language used by the Courts...

The 'Complainer'

The 'Witness'

The 'Victim'

Alice's Experience

"The Sexual Offences Liaison Officers were outstanding, (I was) amazed at how supportive they were. The report to Police was calm and easy, in my home, at my pace, I wasn't rushed. I felt believed."

However the court process didn't provide me with any protection for me or my son when we needed it. I felt very unsafe for 3 years of the trial. I felt that I didn't get any justice, I felt let down by the... courts, and the Procurator Fiscal (PF).

I felt the accused, the perpetrator, had complete control and as a victim, I was the one on trial. The PF and the Judge made me feel like I was the criminal, like I'd done something wrong.

I didn't have someone to protect me in court, the defendant has a solicitor but the PF is not there for me as the victim, they only care about getting on with it.

I needed to have a solicitor, to protect me, to provide me with advice. I felt vulnerable all the way. I thought I would have a solicitor like they have on the TV, be protected from 'him' and the processes, but that's not the case, the system isn't set out for victims.

The perpetrator he got that, he got everything he needed, all the special treatment, and he made my life hell, I was terrified all the time and no one helped."

The case for victims of sexual crimes to have access to independent legal representation...

Advocates, criminology professors and Rape Crisis Scotland have suggested that victims of sexual crimes having access to legal representation should be considered as part of a range of measures that would allow better access to justice.

Solicitor Di Rollo, who has acted on behalf of women in two landmark civil rape cases said: *“We have a very high attrition rate [the process by which the number of the cases initially reported to police do not proceed] – and the conviction rate for rape is significantly lower than it is in other countries. So there has to be a case for looking at a different way of doing things. Rape has a devastating impact on an individual. The Crown has a duty to prosecute in the public interest but it may take a neutral position on some issues. You have disclosure of medical records in rape trials, sexual history. There is a need for [rape complainers] to be independently represented.”*

The adversarial nature of rape trials is one of the reasons that survivors feel unable to report or continue with the process, with many survivors reporting that they found the court experience distressing and traumatic. Sadly a number of our survivors have expressed feeling more distressed by the trial than the initial sexual crime they experienced. Women withdrawing complaints due to the distress experienced during this process only add fuel to the societal myths around women lying about being raped.

Independent legal representation could support survivors to feel more in control of the process and reduce the possibility of secondary victimisation. However other support could be provided, such as, rape victims giving evidence in advance of trial in pre-recorded materials, which is supported by Lord Carloway, Scotland's most senior judge. In addition training could be provided to jury members to address harmful societal attitudes toward sexual violence.

THE IMPACT OF 'NOT PROVEN'

Scotland has some of the most progressive laws around sexual violence and violence against women and girls in the world. However uniquely, we have three verdicts – guilty, not guilty and not proven. Not guilty and not proven are both acquittals. Legally this means that there is no consequence for the accused. Generally society see the 'not guilty' verdict as the accused having not committed the crime, which can very often lead to society seeing the complainer as having lied. The 'not proven' verdict is more complex and can mean different things to different people such as; 'we know you did it but there is not enough proof'; 'there is evidence but we don't think there was intent/it was just a mistake'.

For survivor's their feelings around the 'not proven' verdict can be complex as well. We have worked with survivors who are thankful for the 'not proven' rather than the 'not guilty' verdict because it insinuates that they are believed, that although there is no consequence for their perpetrator they do not entirely feel betrayed by the criminal Justice System. For some survivors they feel a great deal of anger with the 'not proven' verdict as it insinuates that the jury knows it happened but they will let them off with it. This can feel like a great injustice and betrayal.

Miss M

"I am Miss M. I am the woman who was raped by Stephen Coxen in 2013 and who has finally received justice after a long, complicated and difficult journey through the criminal and civil justice system. But it is not justice that motivated me to start this campaign to end the not proven verdict in Scotland, it was injustice."

Scotland is the only European nation to have a third verdict in criminal cases, 'not proven'. The certainty we apply to guilty and not guilty does not apply to not proven. Clouded with ambiguity, some think not proven means that the sheriff or jury believe the accused is guilty, but don't have enough evidence, and others aren't so sure. It goes without saying that this uncertainty exists amongst juries as the general population, the very people who must make a decision and uphold the law. Nevertheless, the legal implications of not proven are the same as not guilty and the accused is acquitted and innocent in the eyes of the law. In amongst the uncertainty what we know for sure is that not proven is most commonly used in cases of rape and sexual violence."

I fear - as someone who received a not proven verdict and spent three long years fighting the Scottish legal system subsequently - is that the not proven verdict means that those who are raped are unfairly left without justice and those who rape face no consequence, no sanction for their actions. What message does this send to society?"

Reporting rape is never going to be easy, but I shouldn't have had to fight against the justice system in my pursuit for fairness. It didn't have to be this difficult. I am calling on the Scottish Government to give survivors a chance. There is no convincing argument to retain the outdated verdict, it's time to scrap not proven for good."

Source: Rape Crisis Scotland

HOPE FOR THE FUTURE

The experience our survivors have within the criminal justice system has significantly changed in the last 10 years; the Rape and Serious Sexual Crime Unit and their highly trained officers have transformed the experience of survivors when reporting; the judicial process has improved allowing victims to be screened and have the support they need; the Scottish Government provided the funds for the national Justice Advocacy Service which we are part of; and forensic evidence processes and facilities as well as SARN has been developed and improved in Tayside.

However we still have a long way to go if we are to improve the statistics such as, only 4.7% of reported rapes end with a conviction. We can all support this process by having compassion for survivors, campaigning for change, ensuring the professionals around us have the training and understanding of the harm that societal myths cause survivors and the criminal justice process, and finally all being trauma informed.

THE IMPACT OF CORROBORATION

Scottish 'corroboration' is a longstanding legal practice and unique to the Scottish criminal justice system. If you look up a definition of 'corroboration' you will find 'make strong' and 'confirm'. In Scot's law it means that every essential element of a charge must have at least 2 different forms of evidence, which is problematic when most rape happens in private. Many people feel that it is an outdated legal practice but equally many believe that it should remain as it has been part of our legal system for hundreds of years.

However the Rape Crisis Movement believe that it should go as it is one of the reasons that we have such low prosecution/conviction rates for sexual crimes in Scotland. Just because it has been part of our unique legal heritage does not mean it should not go, after all rape in marriage was legal in Scotland until 1982.

Denise Clair

Denise Clair was raped in 2011 after a night out where she could not remember anything after the 4th drink bought for her by the footballers David Goodwillie and David Robertson. She woke up hours later naked, injured, and in a flat she did not recognise. The Crown Office reviewed all the evidence (and corroboration) that they could present to a jury and considered that it was not sufficient to prove their case beyond reasonable doubt under a criminal court.

However in a civil case, there is no requirement for corroboration unlike in Scottish criminal courts. In civil courts it's a question of balance of probabilities and level of evidence required is therefore different. Her decision to pursue the defendants in civil court is a watershed moment for rape complainers in Scotland. The judge, Lord Armstrong, clearly stated that he felt that the defendants were not 'credible or reliable' and that Ms Clair was unable to give her consent due to being significantly incapacitated and hence was raped. It took six years but she finally found justice through the civil courts where the defendants were ordered to pay her £100,000. She welcomed the verdict but feels let down with the criminal justice system. Ultimately although the defendants were judged to be rapists, they will not face a prison sentence or be placed on the sex offenders register.

RAPE CRISIS SCOTLAND 'END NOT PROVEN' CAMPAIGN

A number of organisations support the RCS campaign to end the 'not proven' verdict; Scottish Women's Aid, Engender, Scottish Women's Rights Centre and Zero Tolerance.

If you feel the 'not proven' verdict should end write to your MSP and ask them to consider supporting the removal of the not proven verdict. Collectively, we can be the change we want to see in the world.



Information and training for professionals in P&K

RASAC P&K offer a range of information and training for frontline staff throughout P&K including;

- Effects of Sexual Violence
- Trauma informed Practice
- Harmful Sexual Violence Myths
- Childhood Sexual Abuse and Child Sexual Exploitation

In addition we have recently published a booklet for frontline staff in partnership with P&K Council on being trauma informed and working with survivors. Please call for more information or if you would like copies of the booklet.



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