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Edinburgh Law School

Victims, Witnesses and Justice Reform (Scotland) Bill

Policy Roundtable | Edinburgh Foundation for Women in Law



Victims, Witnesses and Justice Reform (Scotland) Bill: Summary and Key Issues

On 26th October 2023, the Edinburgh Foundation for Women in Law at Edinburgh Law School held a policy roundtable where legal practitioners, academics, and representatives of victim support groups in Scotland discussed the pilot of juryless rape trials introduced by the Victims, Witnesses and Justice Reform (Scotland) Bill. This policy report draws out key themes and issues raised by the various perspectives included in the roundtable discussion. This is not a consensus document, and the views expressed below do not necessarily reflect the views of EFWiL or its members.

In April 2023, the Scottish government introduced the Victims, Witnesses and Justice Reform (Scotland) Bill to the Scottish Parliament. One of the main policy proposals in the new legislation (contained in clauses 65 and 66) is to carry out a time-limited pilot of juryless rape trials, conducted by a single judge. The aims of the pilot are to evaluate how this process is perceived by those involved in the trial, to understand its influence on the effectiveness of rape trial management and to consider its effects on outcomes, including the low conviction rate for sexual offences in Scotland.

Key Issues

The juryless rape trial pilot scheme has been both welcomed and criticised by various stakeholders, for example, legal practitioners, academics and victim support groups across Scotland. The aim of the workshop was to draw out some of the key considerations from the perspective of various stakeholders surrounding the pilot scheme. In the following we highlight some of the considerations which came out of the roundtable discussion which centred around three core themes: 1) The Impact of Rape Myths on Conviction Rates For Sexual Offences, 2) The Integrity of Decision-Making in Trials, and 3) Survivors' Experiences of the Justice System.

1. The Impact of Rape Myths on Conviction Rates for Sexual Offences

Research in Scotland, using mock juries has shown that rape myths - stereotypes and false assumptions about rape, perpetrators, and victims - influences jurors'

decision-making.

Issues associated with the theme include:

- Societal biases shape juries' understanding of rape cases and ultimately influence their decisions in court. The more jurors believe in rape myths, the more likely they are to render a not-guilty verdict. On the other hand, some argue it is unclear whether removing juries and appointing a single judge would solve this issue, as judges themselves are also not immune to oversights and misconceptions about rape.
- Some have concerns surrounding jury members' lack of in-depth knowledge of the law and the judicial process and the impact of this on conviction rates. Jurors now receive written instructions at the beginning of trials, which remedies this to some extent, but it is thought that this issue remains.
- It has been suggested that there is a clear need for better communication between judges and jurors, more direction at the beginning of trials, and more training and courses for jurors to address the impact of rape myths.

2. The Integrity of Decision-Making During Trials

The removal of juries from rape trials has raised concerns regarding the integrity of the decision-making process and its impact on the right of a defendant to a fair trial by an independent and impartial tribunal (enshrined in Article 6 of the European Convention on Human Rights (ECHR)). Despite these concerns, it is important to note that juryless trials are compatible with Article 6 of the ECHR and are the norm in many European countries.

Issues associated with the theme include:

- Some argue that the presence of a jury helps to ensure the right to a fair trial by involving people from different backgrounds in the decision-making process, which in turn is said to reduce the risk of unconscious biases influencing the results of the trial. Without a jury, a single judge would oversee the decision-making process and be responsible for rendering the verdict. However, criminal trials conducted by a single person are already common practice in Scotland.
- The burden of proof remains intact with juryless trials, as the accused continues to be presumed innocent unless the contrary has been established beyond reasonable doubt. However, considering that the proposal to remove juries from rape trials has arisen from the concern that conviction rates for sexual offences in Scotland is low, some believe that judges would be pressured to hand down more convictions, thus threatening the presumption of innocence.
- The Bill introduces a new requirement that judges participating in the pilot scheme will be required to give written reasons for their verdict. It is thought that this provision will help ensure that the trial is a fair, equitable, and transparent process.

Victims, Witnesses and Justice Reform (Scotland) Bill: Key Issues and Conclusions

3. Survivors' Experiences of the Justice System

A core facet of our discussion surrounded the impact of this policy on survivors' experiences of the justice system, which evidence suggests are generally negative and often distressing.

Issues associated with the theme include:

- The pilot could potentially minimize the distress associated with the trial process for survivors, as they would no longer be asked to repeatedly share their story of sexual violence in a courtroom full of jury members should they consent to face a jury.

- The use of evidence relating to the sexual history or character of complainers is regulated by ss274-275 of the Criminal Procedure (Scotland) Act 1995 and case law which has developed from them.

Some argue that because of this, restrictions on the use of such evidence are now robustly enforced by the courts to reduce distress for complainers. On the other hand, while prohibited by the legislation, in certain exceptional situations sexual history or character evidence will be allowed at trial (or during the complainer's evidence taken in advance of trial) and could contribute to distress experienced by survivors in court. It might be less traumatising for a complainer to hear or speak about this sort of evidence in front of a single judge as opposed to before a whole 15-person jury.

- Where a trial or indictment takes part without a jury, judges will be required to submit written reasons for their verdict. This would not only make the judicial process more transparent but would also have an impact on the survivors. On one hand, helps all parties understand how and why a decision was made in their case. On the other hand, if the defendant were to be acquitted, having a written report of the reasons might add to survivors' distress. That said, the latter point does not take into account the agency and strength of survivors.

- Removing the jury and appointing a single judge would reduce delays and expenses and facilitate the judicial process, possibly increasing the number of cases brought to court. For survivors, this would mean a greater chance of seeing their perpetrator prosecuted.

Conclusions

Overall, while the pilot of judge-only trials has the potential to improve the experiences of victims and conviction rates in Scotland, it remains a contentious issue for the reasons outlined above. In sum, there are some significant considerations:

- It remains important to improve training on issues related to the justice process, rape myths and consent, as well as trauma-informed training.
- While this scheme is likely to improve the experiences of survivors during the trial, it is important not to overlook the experiences of survivors before and after the trial process.
- Considering the concerns outlined above, it is vital to ensure fairness for all parties involved, and therefore other models could also be considered in the future (for example, the appointment of more than one judge, or one judge accompanied by two specialist assessors).



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About the Edinburgh Foundation for Women in Law

The Edinburgh Foundation for Women in Law wants to help anyone who identifies as a woman working in law reach their full potential by breaking down barriers to progression. We aim to facilitate the vital conversations about equality and diversity necessary to achieve cultural and structural change.

For further information, contact us:

Edinburgh Foundation for Women in Law

Edinburgh Law School

leadershipfoundation.law@ed.ac.uk

www.law.ed.ac.uk/research/research-centres-and-networks/edinburgh-foundation-women-law