

Public perceptions of sentencing in Scotland

Qualitative research exploring sexual offences

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Authors: Hannah Biggs, Susan Reid, Kaushi Attygalle, Konstantina Vosnaki (ScotCen), Dr Rachel McPherson (University of Glasgow) and Professor Cyrus Tata (Strathclyde Centre for Law, Crime & Justice, Law, School, University of Strathclyde)

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www.scottishsentencingcouncil.org.uk

sentencingcouncil@scotcourts.gov.uk

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ScotCen Social Research
Scotiabank House
6 South Charlotte Street
Edinburgh, EH2 4AW
T 0131 240 0210
www.scotcen.org.uk

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Key findings

The aim of this research study was to explore in depth, public perceptions of sentencing of sexual offences in Scotland, including the perceptions of victims of sexual offences. Until now, no work has been dedicated to studying Scottish public attitudes towards sentencing of sexual offences. In total 26 people took part. Four focus groups with members of the general public, five interviews with survivors of sexual offences and one interview with a victim support worker were conducted. Twenty members of the public took part in four focus groups in Glasgow and Edinburgh. Participants were aged between 17 to 71 years, 11 were male and 9 were female. Interviews with survivors of sexual offences were conducted in two groups of two and three, as was preferred by the survivors. All survivors were women.

- Members of the public had varying levels of awareness and understanding of sexual offences contained within the Sexual Offences (Scotland) Act 2009. Child sexual offences and rape were familiar to members of the public as well as the central role of consent. However, overall members of the public did not have a clear understanding of how some sexual offences were defined. The study suggests that there would be benefit in engaging with the public on the range and scope of sexual offences, particularly new offences introduced by the 2009 Act.
- Participants agreed that all sexual offences had the potential to cause harm to victims. There were those who held the view that, because the impact of an offence could differ from one victim to another, all sexual offences could be equally harmful. However, others held the view that sexual offences that involved physical contact, such as rape and sexual assault, were more harmful than offences without physical contact, such as voyeurism and sexual exposure.
- There were members of the public and survivors who thought prison should be a sentencing option for all types of sexual offences while others thought that a prison sentence should only be given for the most serious offences. Most participants considered that some offences, such as rape, did require a prison sentence. There was consensus among participants that any kind of sexual offence against minors or offences committed by repeat offenders should always receive a prison sentence.
- Overall, members of the public and survivors perceived that sentencing for sexual offences was too lenient and did not reflect the harm caused, both to the victim and the family of the victim. For some, this was linked to media representations of the sentencing of sexual offences. However, when members of the public went through a scenario based on a real case, the

sentence they proposed was similar to that passed by the judge. When told this, participants expressed surprise.

- Sentencing was perceived as inconsistent and participants found it difficult to understand why sentences for similar cases could vary so greatly. Participants believed that greater transparency was required to help members of the public understand sentence decision-making. Participants thought sentencing guidelines could help achieve consistency in sentencing. However, the need for retaining judicial discretion and flexibility in sentencing was recognised to take into account the individual circumstances of the case.
- Members of the public and survivors of sexual offences thought that certain factors should carry more weight in sentencing, namely: the seriousness of the offence, the harm caused and the impact on the victim. For members of the public, the risk of reoffending and the protection of the public were important factors to consider during sentencing.
- A guilty plea was discussed as an important factor to be considered when introduced at the beginning of the criminal justice process: it was said to spare the victim the trauma of a trial. However, both members of the public and survivors viewed a last-minute guilty plea as a last resort for the accused and so not worthy of consideration. There was no consensus among participants as to whether the personal circumstances of the offender and remorse should be taken into account during sentencing.
- Participants in both the public focus groups and interviews with survivors agreed that both the impact on the victim and their family should be considered as part of the sentencing decision.
- Victim statements were mentioned as a way for the judge to become aware of the impact a crime had on a victim. Those who had produced a victim statement described the process as an emotionally challenging one but a worthwhile process as it gave them a chance to be heard. They also noted that the process of writing a victim statement lacked guidance, support and communication. There was also a view that the victim statement should be viewed as a 'living' document that needs to be updated at several stages to capture the full impact the offence has had.
- Survivors of sexual offences felt that further supporting evidence, such as statements from medical professionals or others affected by the case, should be taken into consideration.
- There was reluctance amongst members of the public and survivors to take the offenders' personal and family circumstances into account as mitigation for their actions. Members of the public thought the impact a sentence would have on the offender should only be taken into account when the offender

is deemed vulnerable, for example, in terms of their mental health or upbringing. However, when faced with a specific scenario members of the public became more interested in the personal circumstances of the offender so as to inform the sentence they would give.

- Among members of the public there was a view that sentencing should address offending behaviour and offenders should have access to support to aid rehabilitation. There were participants who did not think sentencing for sexual offences was sufficiently aimed at rehabilitating offenders. Treatment options were suggested as a route to deter reoffending and to tackling offending behaviour.
- Survivors requested greater support throughout the sentencing process in terms of: being provided with support to write victim statements and receiving adequate information regarding the sentencing process, the reasons behind decisions that were made and support available.

1 Introduction

1.1 Background

1.1.1 Attitudes to sentencing

Sentencing policy and practice is of central importance not only to the administration of justice, but also to public confidence in the administration of justice, and more broadly, trust in state institutions, not least in the judiciary. Responses to general public opinion surveys tend to suggest that people feel that sentencing is too lenient. However, research in other Western countries shows that when research studies explore public attitudes in-depth, a more complex picture emerges. First, the sense of leniency is, at least in part, linked to a lack of knowledge. People tend to think that sentencing is far more lenient than it actually is. Second, when people are given the responsibility of mock-sentencing an anonymised case, people's responses tend to be much closer to those of actual sentencing practices than they had expected and far more nuanced than opinion poll surveys would suggest. Third, people tend to greatly over-estimate the seriousness of crime. The gravest and least typical crimes tend to figure prominently when people are asked to say whether or not sentencing is too lenient or too punitive. While these (and other findings) are well established in other comparable countries, relatively little is known about Scottish penal attitudes¹.

1.1.2 Sexual offences policy

This research was funded by the Scottish Sentencing Council (SSC). The SSC was established in 2015, following the Criminal Justice and Licensing (Scotland) Act 2010². Its function is that of an independent advisory body and its main remit is to provide guidance on sentencing to the Scottish Courts. In their 2018-21 Business Plan³, the SSC expressed its intention to produce a series of offence-specific guidelines, including on sexual offences. The Council recognised the considerable public interest in sentencing sexual offences and listened carefully to views expressed by the public. Judiciary, victim support organisations and

¹ See for example, A. Freiberg and K. Gelb (2008) *Penal Populism, Sentencing Councils and Sentencing Policy* Federation Press; N.Hutton (2005) 'Beyond Populist Punitiveness?' *Punishment & Society* Vol7 (3) pp.1462-4745; N. Hutton and C. Tata (2010) 'A Sentencing Exception?' *Federal Sentencing Reporter* Vol.22 pp272-278; J. Roberts and M. Hough (eds) (2002) *Changing Attitudes to Punishment* Willan; Scottish Government (2017) *Scottish Crime and Justice Survey 2016/17*; C Tata and N. Hutton (2003) 'Beyond the Technology of Quick Fixes' *Federal Sentencing Reporter* vol.16 pp 67-75; C. Wilson (2012) *The Public and the Justice System: attitudes, drivers and behaviour* Scottish Government

² Sections 1-13.

³ Scottish Sentencing Council, 2018. Business Plan 2018-21. Available at:

<https://www.scottishsentencingcouncil.org.uk/media/1926/scottish-sentencing-council-business-plan-2018-21.pdf> [Accessed 23 May 2019]

others in considering how best to proceed. As a result the Council decided to develop multiple guidelines on sexual offences starting with rape, sexual assault and indecent images of children.

The Sentencing Council of England and Wales produced a definitive guideline on all sexual offences which has been effective since 2014. This followed a 2012 'Report on Attitudes to Sentencing Sexual Offences' produced by NatCen in association with the University of Bristol's Centre for Gender and Violence Research.⁴

1.1.3 Sexual offences

In December 2010, the Sexual Offences (Scotland) Act 2009 came into force. This followed from the Scottish Law Commission's 2004 Report on Rape and other Sexual Offences⁵ which included a draft Sexual Offences Bill, much of which went on to later become the content of the 2009 Act. The Act codified the law on sexual offences in a way which had been previously unseen in criminal law. The Act replaced, for the most part, the general offences which had previously been contained within the common law, providing a series of specific offences which clearly labelled the criminal behaviour in question and structuring these around different groups (adults, young children, and older children), mentally disordered persons and those who had been victim to an abuse of trust). Significantly, the Act extended the actus reus (i.e. the physical act of the crime) of rape, meaning for the first time in Scotland, it was recognised that a man could be the victim of a rape.⁶ Part of the codification which took place also pertained to sentencing.⁷ The Act also provided the maximum penalties which could be attached to each offence.⁸ In this way, the prosecution and sentencing of sexual offences were reformed in Scotland, both from the perspective of the substantive law and also in terms of the sentencing framework which accompanied those offences.

The relevant offences to be examined as part of this study are provided below, alongside the current maximum sentence available.

⁴ Sentencing Council, 2012. *Attitudes to Sentencing Sexual Offences* Available at: [≤https://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Sentencing_Sexual_Offences_web1.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Sentencing_Sexual_Offences_web1.pdf) ≥ [Accessed 23 May 2019]

⁵ Available at: [≤http://www.scotlawcom.gov.uk/files/4712/7989/6877/rep209.pdf](http://www.scotlawcom.gov.uk/files/4712/7989/6877/rep209.pdf) ≥ [Accessed 23 May 2019]

⁶ The offences contained within part one of the Sexual Offences (Scotland) Act 2009 refer to offences committed against adults, that is say those over the age of 16. These offences are largely replicated in part four of the Act, but with the role of consent no longer being central to the definition of the offence. Further distinction is made in part four between young children (those under the age of 13) and older children (those aged between 13 and 16).

⁷ Available at: [≤https://www.sentencingcouncil.org.uk/wp-content/uploads/Sexual-offences-definitive-guideline-Web.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Sexual-offences-definitive-guideline-Web.pdf) ≥ [Accessed 23 May 2019]

⁸ Sexual Offences (Scotland) Act 2009, schedule 2.

Table 1.1: Current maximum sentence in Scotland for sexual offences

Offence	Provided By	Maximum Sentence on Indictment	Maximum Sentence on Summary Conviction
Rape	Sexual Offences (Scotland) Act 2009, section 1	Life imprisonment and fine	N/A (rape can only be tried on indictment)
Sexual Assault	Sexual Offences (Scotland) Act 2009, section 3	Life imprisonment or a fine (or both)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)
Indecent images of children Causing a young child to look at a sexual image	Sexual Offences (Scotland) Act 2009, section 23	Imprisonment for a term not exceeding 10 years or a fine (or both)	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)
Indecent images of children Causing an older child to look at a sexual image	Sexual Offences (Scotland) Act 2009, section 33	Imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both)	Imprisonment for a term not exceeding 5 years or a fine (or both)
Indecent images of children Indecent photographs of children	Civic Government (Scotland) Act 1982, section 52	Imprisonment for a term not exceeding 10 years or a fine (or both)	Imprisonment for a term not exceeding 6 months or a fine not exceeding £1000 (or both)

1.2 Methodology

1.2.1 Research aims

The aim of this research study was to explore, in depth, public perceptions of sexual offences sentencing in Scotland, including the perceptions of victims of sexual offences.

1.2.2 Recruitment

To explore public perceptions of the sentencing of sexual offences four focus groups with members of the general public, five interviews with survivors of sexual offences and one interview with a victim support worker were conducted.

Focus groups with members of the public

Participants for focus groups were recruited by following up a sample of people who participated in the Scottish Social Attitudes Survey in 2017 and who gave their consent to be re-contacted about new research conducted by ScotGen. In consultation with the Scottish Sentencing Council, areas of Scotland were selected for the focus groups to take place and a sample was drawn from these areas. The sample was checked to ensure diversity in terms of gender, age and socio-economic activity.

The selected sample was contacted initially by email to invite them to take part in a focus group. Participants were given the opportunity to express interest for more information. A researcher followed up the sample by email and/or telephone to provide more information about the research. Those interested in participating in a focus group were asked to provide their availability to participate. Everyone who expressed an interest in participating was provided with an information sheet and privacy notice which outlined details of the research. The information sheet outlined the purpose of the research, who was conducting the research, who the funder was, what participating in the research would involve, how the information participants provided would be used and how participants' personal details would be kept confidential. The privacy notice provided outlined in more details how personal data is stored and used and participants rights concerning the data they provide.

Once there was sufficient interest in participating in one of the selected geographical areas, a date and location for a focus group was set and communicated to those interested in participating. If the required number of participants for a focus group (n=8) was not achieved by this method, two approaches were used: first, the research team went back to the sample to try and recruit additional participants; second, once the sample was exhausted, a recruitment agency (Taylor McKenzie) was commissioned to aid recruitment.

Before each focus group began, participants were given another copy of the information sheet and privacy notice and the facilitator talked through the main points covered in the information sheet and gave participants the opportunity to ask questions before deciding whether to take part. Those wishing to participate were asked to complete a consent form. Only those aged 17 and over were asked to participate.

Sexual offences - interviews with survivors of sexual offences and focus groups with victim support staff

Participants for interviews with survivors of sexual offences and with victim support staff were recruited in collaboration with partner organisations. The Council approached several national and local victim support organisations to gauge interest in participating in the research. The organisations were provided with an overview of the project and digital copies of information sheets and privacy notices to distribute to their members and staff. Those interested in participating in an interview were asked to either contact ScotCen directly using the contact details provided in the information sheet, or register their interest via the support organisation. In practice, support organisations liaised directly with survivors of sexual offences they supported to coordinate suitable times and locations for the interviews to take place. In recognition of the sensitive nature of the topic, those interested in finding out more about the research were offered the opportunity to meet the research team to ask questions and enable them to make an informed decision on whether to participate.

All interviews took place face-to-face. The interviews were conducted with either two or three survivors at one time and participants were given the choice to have someone else present at the interview for support. Before the interview began, each participant was given a hard copy of the information sheet and privacy notice and the interviewer talked through the main points covered in the information sheet. Participants were given the opportunity to ask questions before completing a consent form. Everyone was reminded that participation was voluntary, and they could withdraw at any time without giving a reason.

1.2.3 Conducting the research

Focus group and interview discussion guides were developed in consultation with the Scottish Sentencing Council. The majority of the content covered in both the focus groups with members of the public and in-depth interviews with survivors and support workers was the same. All discussion guides explored participant awareness of the circumstances covered by the offence, their knowledge and views of current sentencing of offences, their knowledge and views of what factors are taken into account when sentencing and their perceived purpose of sentencing.

In addition to the questions asked across all focus groups and interviews, focus groups with members of the public included an anonymised real-life scenario for participants to work through and propose their preferred sentence. The purpose of the scenario was to explore how, if at all, participants views would be affected when presented with further details. Interviews with survivors and the support worker did not include a scenario to discuss as there was concern that it could cause unnecessary distress, particularly if the scenario held any resemblances

to a survivor's own experience. Instead survivors were asked about any experience they have had with victim statements during the criminal and sentencing process.

The focus groups with members of the public took place in a quiet and private space in a central location within Glasgow and Edinburgh. Each focus group lasted an hour and a half. Interviews with survivors and the support worker took place at the organisation which they receive support from or worked at. All interviews were conducted by ScotCen's specialist fieldwork manager who is well trained and highly experienced in conducting qualitative interviews with a range of groups including victims of serious crimes. Interviews lasted approximately an hour and a half.

With the consent of participants, all focus groups and interviews were audio recorded using an encrypted digital recorder and transcribed for ease of analysis. All interviews and focus groups took place in March and April 2019. It is important to note that the extension of the presumption against short sentences (PASS)⁹ took place after the fieldwork period.

Ethical approval for both the qualitative research with members of the public, survivors of sexual offences and support workers was granted by NatCen Research Ethics Committee in December 2018.

1.2.4 Analysis

All transcripts were imported into and coded using NVivo 10, a software package for qualitative data analysis. This system of coding facilitates the organisation and analysis of qualitative transcripts and provides a tool to explore the range and diversity of views expressed by participants. Firstly, the key topics and issues which emerged from the research objectives and the data were identified through familiarisation with transcripts by members the project team. A draft analytical framework was drawn up by the project team and piloted. The analytical framework was then refined after discussions within the research team. Once the analytical framework was finalised, each transcript was coded so that all the data on a particular theme could be viewed together.

Through reviewing the coded data, the full range of views and attitudes described by participants were systematically mapped, and the accounts of different participants, or groups of participants, compared and contrasted.

⁹ In June MSPs voted for a presumption against the use of prison sentences of 12 months or less. It is believed that short custodial sentences disrupt factors such as family relationships, employment and housing that can help prevent reoffending. The presumption does not ban courts from imposing prison sentences of 12 months or less but aims to increase the use of methods such as Community Payback Orders (CPOs) in the hope of addressing offending and rehabilitation.

1.3 Participant demographics

In total 26 people took part in a focus group or interview to share their views on perceptions of sentencing for sexual offences.

20 people took part in a focus group to discuss sexual offences. Two focus groups took place with males only (n=11) and two focus groups with females only (n=9). Participants were aged between 17 and 70 years and came from two different geographical urban areas. Table 1.2 below shows the breakdown of participants by gender, age and area.

Table 1.2: Gender, age and location of focus group participants

Gender		Age range			
Male	Female	17-34	35-49	50-64	65+
11	9	4	6	8	2

Two group interviews were conducted with five female survivors of sexual offences. One interview was with two people, the second was with three people.

Finally, one interview with a support worker, who supports women who have survived a sexual offence, was conducted.

Terminology

This research explores the public perceptions of sentencing and as such, the terminology used by participants may not always be accurate or in line with current legal terms. For example, participants frequently referred to a “sex offender register” or “community service” as sentencing options which do not exist in Scotland. However a sexual offender notification scheme and community-based sentences such as community payback orders (which include unpaid work within the community and fines) do exist. It is not good practice to amend quotes from participants to make them technically correct however, to avoid misunderstanding, explanatory text or footnotes have been added throughout the report to clarify what sentencing options are available in Scotland.

Terminology used to describe someone who has had a sexual offence committed against them is contentious. “Victim” is the legal term used to describe someone who has had a sexual offence committed against them, but is dependent on the accused being found guilty. Due to the low conviction rates of sexual offences, groups supporting those who have had a sexual offence committed against them, and the individuals themselves, (regardless of whether the perpetrator was found guilty) have tended towards the use of the word “survivor” although this has no

basis in law. Throughout this report, the term “victim” is used to refer to a non-specific person who has experienced a sexual offence, and commonly used by members of the public in discussions. The term “survivor” is used in the report to identify specific individuals who participated in the research.

2 Awareness and understanding of what constitutes a sexual offence

Sexual offences are now mostly contained within one act (the Sexual Offences (Scotland) Act 2009)¹⁰. Part 1 of the Act sets out a range of offences:

1. Rape
2. Sexual assault
3. Sexual coercion offences
4. Communicating indecently offence
5. Sexual exposure
6. Voyeurism
7. Administering a substance for sexual purposes e.g. spiking someone's drink

This chapter explores participants' awareness of the range of different incidents covered under sexual offences, their understanding of these offences and their reaction to each of the different offences.

2.1.1 Understanding of sexual offences

All focus group and interview participants were asked what sort of offences they thought of when they heard the term 'sexual offence'. In all discussions participants said 'rape' and 'child sexual abuse' came to mind when they heard this term. Members of the public recalled seeing these sexual offences reported in the media or were aware of the offences because they had happened to people they knew or within their community. Participants also identified sexual assault as a sexual offence of which they had heard, but there was uncertainty amongst members of the public as to what the term "sexual assault" might cover. There were participants that thought sexual assault involved "inappropriate touching" (Focus group participant, female) or "groping" (Focus group participant, female) but not rape, while others thought sexual assault was a broad umbrella term under which rape would be included.

"I think of sexual assault as a banner headline, and rape would be one of the things within that." (Focus group participant, female)

Sexual harassment or assault in the workplace was specifically mentioned by female members of the public who described inappropriate behaviour that made people feel uncomfortable as "an abuse of power" (Focus group participant, female), particularly in formal settings such as the workplace.

¹⁰ Historical sexual offending, where offences were committed a long time ago, may be prosecuted under different laws.

“Sexual offences always kinda seem like an abuse of power at all levels, but quite often you associate that within a working environment.” (Focus group participant, female)

Members of the public and survivors identified a number of behaviours that did not involve physical contact which they believed constituted a sexual offence, including: indecent exposure, voyeurism, spiking someone’s drink, sexual offences that took place online, and offences of communicating indecently including “revenge porn” (Focus group participant, female).

“There are lots of other sexual offences, like people exposing themselves.” (Focus group participant, male)

“I think for me with two teenage daughters I’m getting more and more concerned about the date rape so...you know things like people just being in bars and you know having all sorts of things put in their drinks...I don’t know what category that would come in.” (Focus group participant, female)

Awareness of a range of behaviours that would constitute sexual offences did not always signify a clear understanding of how these offences were defined. Awareness of a range of behaviours and the names of offences were not always congruent, particularly amongst members of the public.

“What about attempted rape as well, if they’ve not actually raped you but they’ve attempted to rape you, what would that come under? Would that be sexual assault?” (Focus group participant, female)

Participants did however recognise that consent and the capacity to give consent was important in defining sexual offences.

“Yeah having sex with someone without consent.” (Focus group participant, female)

“And probably incapacitated – if one of the individuals [is] incapacitated due to alcohol.” (Focus group participant, male)

Male and female members of the public discussed a number of perceived assumptions held by society regarding sexual offences. An example of this was that sexual offences are perpetrated by men and are against women, an assumption some participants admitted they held. Participants recognised this was not always the case and that sexual offences can be committed by both men and women and both men and women can be victims.

“It could come from either sex. It doesn’t necessarily have to be a man / the woman. It could be between man and a man, and a woman.” (Focus group participant, male)

“There’s a lot more coming out about male rape as well, so that’s...I think we assume that it’s women that are victims of sexual assault but certainly you know male rape is a very common thing in prisons for example, so I believe.” (Focus group participant, female)

Another assumption which members of the public thought people might have, was that sexual offences are committed by strangers. There were participants who recognised that victims of sexual offences may often know the perpetrator, whether they are a friend, colleague or family member. This point was reiterated by survivors of sexual offences during interviews.

“You always think it's *strangers* doing it, but I think a lot o' the time it's within family.” (Focus group participant, female)

“We always think it's a stranger, but I'm guessing that usually the perpetrator has developed some sort of relationship with the victim.” (Focus group participant, female)

2.1.2 Views on the range of sexual offences

Once participants had shared their initial views on sexual offences, focus group and interview participants were read the list of offences that are covered by the Sexual Offences (Scotland) Act (2009). Participants felt that the list was “vast” and covered a wide range of offences (Focus group participant, male). While there were participants who had “heard of them all” (Survivor, female), other participants felt that they had an incomplete understanding of the types of behaviour which would constitute some offences on the list such as sexual assault, voyeurism, communicating indecently and sexual coercion. For others, seeing the full list of offences helped them to understand the broad range of offences that constitute a sexual offence.

“I think that makes it a lot clearer and you can see that these are all different. The one that jumps out to me is the sexual coercion offence because it’s just been a change of law this week has it not?” (Focus group participant, female)

After seeing the list of offences, there were additional offences participants recognised but had not thought of initially. Participants reported not thinking of these offences immediately because they were not often mentioned publicly or in the media. There was a sense that some offences are no longer in the public consciousness because over time public attitudes have changed and some behaviour is now seen as unacceptable and as a result participants thought some offences are being committed less frequently.

“I wouldn’t have thought of voyeurism at all. I know in the drink spiking... I’m not surprised it’s on the list but it’s not something that would come to

mind. The sexual coercion just because it's new, yes, and you forget committing indecency because sometimes when you were young you heard about someone getting done for flashing or something. You don't really think of that now, it's not as publicised is it?" (Survivor, female)

Participants were surprised by some of the offences listed. For example, there were participants that were surprised that spiking someone's drink (for sexual purposes) was a sexual offence. They thought it might have been classified as a drug offence and if there had been a sexual offence as a result, that would be charged separately. Participants were also surprised that historical sexual offences were prosecuted under different laws.

"Historical sexual offending, where offences were committed a long time [ago] and maybe could be prosecuted under different laws I don't know that." (Survivor, female)

Finally, there were participants who felt that the range of offences covered under sexual offences was confusing. There was a view from survivors that including a range of offences that are so different in severity under one term had the potential to devalue the more serious offences. They concluded that the public needed to be better educated on the range of offences that come under the term "sexual offence".

"I think they cause confusion and I think that the focus or inclusion of some, without more education to the public, means that they devalue the ones at the top o' the scale, so when they hear "sexual offences" that would be actual content that it was communicating indecently, was that as serious and important. I think they then bring every offence down to that level, rather than appreciating there's grades and varieties..." (Survivor, female)

3 Perceptions of current sentencing for sexual offences

This chapter explores participants' understanding of the type and length of sentences for sexual offences, their awareness of the range of sentencing options, and what they think sentencing ought to be. Details of the current sentencing for sexual offences in Scotland are contained in Section 1.1.4 above.

3.1 Perceived harm caused by range of sexual offences

Once focus group participants had been shown the list of seven sexual offences set out in Part 1 of the Sexual Offences (Scotland) Act 2009, they were asked whether they thought all sexual offences were equally harmful. A wide range of views were expressed, the most commonly held view was that some sexual offences were more harmful than others. Both male and female members of the public thought there was a marked difference between the harm caused by offences that involved physical contact, such as rape or sexual assault, compared with offences without physical contact like voyeurism or sexual exposure. Offences that resulted in a greater level of trauma were viewed as more harmful.

“I don't think they're equally harmful. There's no way somebody exposing themselves is as harmful as somebody actually physically assaulting you and violating your body.” (Focus group participant, female)

There was also a view among some participants that there could be a degree of self-blame associated with being the victim of a sexual offence that involved physical contact as opposed to offences where there was no physical contact.

“And that's the thing about the sexual exposure as well. I bet you that it's much easier to say, 'I saw some daft guy exposing themselves' other than 'I got myself in to a situation. I walked up a street last night, and somebody attacked and raped me'. You know? Even though you can say it's absolutely not your fault, it's still the fact something's been committed on you, whereas exposure seems a bit committed to you, but you can put more of the blame on that person – like they're crazy. But I think there's still an element of self-blame within some of the other sexual offences.” (Focus group participant, female)

Nevertheless, there were members of the public who thought all sexual offences could be equally harmful as the impact an offence has on one victim could be vastly different to how it impacts another, regardless of whether there was physical contact.

“It's hard to say one's worse than the other. From the subjective point of view of the victim, one person might be able to overcome it really quickly, and another person might not, so we can't really say for sure to be honest.”
(Focus group participant, female)

Participants who thought some offences were more harmful than others believed sentencing should reflect this. However, participants who thought the impact an offence had on a victim can vary from person to person regardless of the offence, felt this would make it difficult to determine a sentence for a sexual offence based on harm caused to a victim.

“I think that if you look at each of them in isolation, I think some should be sentenced in a more serious way than others. I think that, going from the top, I think that rape and sexual assault and coercion are definitely much... are very, very serious, whereas something like voyeurism would be lower down on that scale and should be sentenced accordingly...” (Focus group participant, male)

3.2 General views on sentencing for sexual offences

3.2.1 Perceptions of leniency in sentencing

Members of the public and survivors of sexual offences thought sentencing of sexual offences in Scotland was generally too lenient. This view was particularly pronounced among survivors of sexual offences, with one participant articulating that they felt property crimes were sentenced more harshly than sexual offences.

“...there was an appeal case...where a burglar who was convicted on circumstantial evidence got three years and six months for theft from a house – which is horrible, and people feel that they've been violated, but the property is insured. Nobody was at home...and you see cases of rapists getting less, or people that commit sexual assaults, or people that groom children, and there just seems to be this massive focus – and I think it's common in most legal systems – where property is valued greater than people, and they need to move away from that, and they need to ensure that people are protected better than properties that have insurance policies anyway!” (Survivor, female)

Both members of the public and survivors of sexual offences felt that victims were not given enough consideration in sentencing. Survivors felt that more consideration is given to the offender in sentencing under the Scottish system than the victim.

“Because I think there are sexual offences whereby the perpetrators have been literally... I'm not saying [they are] 'given a slap on the wrist', 'cause

I'm quite sure going to jail's not a slap on the wrist, but it doesn't seem to warrant the effect that it's had on the victim. Again, I come back to the victim should always be paramount, and I don't think it is. I think we spend too much time on the perpetrators." (Focus group participant, female)

There were members of the public who felt that sexual offending behaviour could escalate over time and that sentencing, for what they perceived to be less severe offences, should take into consideration the need to deter offenders from committing more severe crimes in the future.

"I think for all of these offences, you still have to take the long view, so if you're taking it somebody's doing voyeurism, that's fine. I mean it might not be quite as big, but you think, 'Well, what is he going to do next? What's gonna happen in five years' time?'..." (Focus group participant, male)

Members of the public who felt sentencing was too lenient, were unsure if they felt that way because of the types of sexual offences that are reported in the media. There was recognition that cases that appear in the media may be atypical.

"I think it's hard to say they're too lenient because what you see on the news is only certain cases. There's that many goes on. You only see certain ones on the news, and that's the ones you can base your judgment on, but there's so many goes on all the time, and you don't know what their sentences are..." (Focus group participant, female)

3.2.2 Perceptions of inconsistency in sentencing

Participants felt that sentencing of sexual offences was inconsistent. Both members of the public and survivors felt that sentences for similar cases varied greatly. They felt sentencing was too dependent on the individual judicial sentencer.

I keep getting back to 'It all depends on the judge'. I hear this quite often. People have been up at court and all that, and said, 'Oh, it's judge so-and-so. He's a dinosaur, and he wouldnae give the same sentence as another one.'..." (Focus group participant, male) "It's not fair. It's just wrong. It should be the same across the board." (Survivor, female)

Among the survivors interviewed, there was a view that offenders were able to use mitigating factors to gain a more lenient sentence. Survivors felt that the system was easily susceptible to manipulation by offenders who could project a 'good' image to get a lenient sentence.

“When the plea o’ mitigation has been utterly compelling, so whether they say he’s a first-time offender and he’d lose his job, and his girlfriend is gonna stick by him – those kinda mitigations.” (Survivor, female)

3.2.3 Whether a prison sentence is always appropriate

Participants were asked whether there were any circumstances or types of sexual offence where a prison sentence should always be given. There were members of the public and survivors who thought all sexual offences on the list should warrant a custodial sentence, however, this was not a commonly held view. A more widely expressed view, among both members of the public and survivors of sexual offences, was that certain sexual offences should always be given a prison sentence. For example, there were strongly held views that sentencing for any type of sexual offence against minors should always involve a custodial sentence.

“If any of it was involving a minor – I would say personally probably there’s a jail time as well.” (Focus group participant, male)

Both members of the public and survivors of sexual offences discussed whether rape should always warrant a custodial sentence. The difficulties in determining guilt made some participants in the public focus groups unsure if rape should always warrant a prison sentence. This view is discussed in more detail in section 3.4.2 below.

When asked if there were any offences where a prison sentence should never be given, there were participants in both the public focus groups and interviews with survivors who said none of the sexual offences should be excluded from a potential prison sentence, while others thought voyeurism should not lead to a prison sentence. A view from members of the public was that, depending on the degree of seriousness of the offence, sexual assault may not always warrant a custodial sentence.

“Sexual assault. Again – depends on the level.” (Focus group participant, male)

Participants were asked whether there were any offences where a sentence other than a prison sentence should be available. For offences such as voyeurism and sexual exposure which participants deemed as less serious, participants thought a non-custodial sentence should be available. Members of the public and survivors also thought that some cases of offences of communicating indecently should not lead to a custodial sentence. However, there was also a view that even for less serious offences, if the offender has previously been convicted for the same, or a similar offence, and given a non-custodial sentence, that if the offence is repeated, then a custodial sentence should be given.

“It depends on the repetition of the offence as well. If that’s the 10th / 20th time you’ve done it, then – yeah – you should be working... moving towards a custodial sentence and not the softer opportunities you’ve given before, which you’ve not taken and you keep doing it, so it’s got to get to a point where that’s not working, so...” (Focus group participant, female)

3.2.4 Perceptions on the purpose of sentencing

Participants’ thoughts on sentencing were influenced by whether they thought the purpose of the criminal justice system is to punish perpetrators or to prevent them from committing further offences. Participants who thought that the purpose of the criminal justice system is to rehabilitate offenders and prevent them from reoffending, questioned whether a prison sentence would achieve this. There was a view that time in prison could exacerbate offending behaviour rather than stop perpetrators from reoffending.

“I think it depends what you think the purpose of the criminal justice system is... And if rehabilitation is your primary focus, rather than punishment, then you might have a very different stance about the sentence than if punishment was your major objective. ...and you then have to say, ‘How is that aim most likely to be achieved?’, and if sending someone to prison, with all the consequences that imprisonment has for people’s lives and ability to function effectively, would potentially make the person *more* likely to commit offences again, rather than less, then I think you have to take that in to account when you’re deciding the sentence.” (Focus group participant, male)

There were participants who felt that providing treatment to an offender to address the causes of their offending behaviour was a more effective approach to rehabilitation than prison. Another view, particularly among members of the public, was that offenders should receive a prison sentence for sexual offences but should also be given support to prevent them from reoffending.

“If they’ve done something like this, it’s about kind of sitting down with a psychologist/psychiatrist and finding out the reason behind that, and bringing them back in to society so they don’t reoffend...” (Focus group participant, male)

However, there were participants in both the public focus groups and interviews with survivors that questioned whether all offenders were capable of rehabilitation. These participants thought that if the perpetrator wants to reoffend, they would still do so regardless of whether they had undergone rehabilitation.

“If someone has no empathy and has mental health problems to the extent and they commit crimes, maybe education is not the way to go. Maybe the

counselling will *help*, but, if someone really *wants* to commit crimes, they will – no matter what sort of course you put them through. So, it's really hard to say.” (Survivor, male)

Across the focus groups with members of the public there were discussions about the purpose of sentencing and choosing a sentencing approach that would best achieve this purpose. At the end of the focus group there were participants who felt that people should be punished for the harm caused to the victims and that the rest of society should be protected from this harm. To achieve this, participants discussed primarily custodial sentences. However, there were participants who felt strongly that sentences for sexual offences should address the offending behavior but did not think prison was an effective way to achieve.

“I think justice for the people that have been harmed has got to be .. That's no' been mentioned yet, but there's got to be a bit o' justice for them as well.” (Focus group participant, male)

“There should always be a prison sentence where that person – whoever the perpetrator is – has to be removed from society at that point in time because they're a danger to society at that point. I do believe .. I do want vengeance when things happen, but I really try to stop myself because I think, 'What sort o' society do we want to live in?' Putting somebody away for three month or a year or that has been proven it doesn't work. They've got to be educated and be able to go back in to society not as a danger to other people.” (Focus group participant, female)

“But it comes down to whether we help them to manage it and help them to become a functioning member of society, or we punish them and lock them away, and that's upsetting.” (Focus group participant, female)

It was suggested that Scotland should be looking to see what works in other countries to rehabilitate sexual offenders.

“Maybe we could look at other countries and their systems of assisting people that reoffend, sexual assault, you know?...We can look at other countries and see what they're doing, 'cause what *we're* doing isn't really working at the moment I think.” (Focus group participant, female)

3.3 Views on sentencing for offences of communicating indecently

All participants were asked what sentence they thought was usually given by a judge for each of the sexual offences. This section outlines the sentence participants thought judges typically give for offences of communicating

indecently and the sentence they thought should be given. Subsequent sections deal with other sexual offences.

3.3.1 Perceptions of typical sentencing practices

Members of the public and survivors of sexual offences thought offences of communicating indecently would typically receive a non-custodial sentence, such as a community payback order which can involve up to 300 hours of unpaid work within the community¹¹ or a fine. There was a view that these did not reflect the harm caused to a victim.

“Community service or a fine of some kind. A slap on the wrist, and not really reflective of the long-term effects it's gonna have on the victim, really.” (Focus group participant, female)

On the whole, members of the public and survivors of sexual offences thought it was unlikely that offences of communicating indecently would receive a custodial sentence in the current judicial system. However, there was a view that a prison sentence may be given in circumstances where the communication was persistent and over a prolonged period or if the communication involved a minor.

“If it's something like that between two adults, I don't think it'll be a custodial. I don't think it'll be custodial.” (Focus group participant, male)

“I don't really know to be honest. But if it's anything to do wi' children, then it's got to be a custodial one, 100%.” (Focus group participant, male)

“I think it depends on the age as well because if they're under age I think there will be a higher sentence...” (Focus group participant, female)

Similarly, there were members of the public who thought that the offender may also be placed on the “sex offenders' register” in addition to receiving a custodial sentence. It is important to note that in Scotland, there is no sexual offender's register. However, there is a sexual offender notification scheme whereby people convicted of certain sexual offences must notify the police of personal information, such as address, for a certain length of time.¹² Other sentences participants felt a judge typically gave for an offence of communicating indecently included restraining orders and a ban on using internet services.

¹¹ Participants commonly used the term “community service” though this is not a term used in Scottish Law. A community payback order can involve unpaid work within the community.

¹² The notification period for a person given an extended sentence will be calculated using both the custodial term and the extension period. See:

<https://www.scottishsentencingcouncil.org.uk/about-sentencing/orders/>

3.3.2 Views on what sentence should be given

Custodial sentence

There was no consensus amongst participants regarding the sentence which they thought should be given for an offence of communicating indecently. There was a perspective that an offence of communicating indecently should receive a custodial sentence, with participants feeling that this was required to ensure that the victim received adequate justice. There was no consensus, among those who thought a prison sentence should be given, on the length of the sentence, some did not specify the length of time, while other suggested custodial sentences which ranged from three months to three years.

“Personally, I think they should go to prison... Sometimes, I think we try and defer more to rehabilitating the criminal and we leave the poor victim hanging out to dry, you know? – because they need to have help as well. If you're gonna help one, you have to help the other with maybe some therapy o' some sort. But that can have a very lasting effect on certain people who maybe aren't that strong.” (Focus group participant, female)

When asked if an offence of communicating indecently should always receive a prison sentence, there were survivors of sexual offences that felt it should. Survivors felt having a custodial sentence could act as a deterrent to prevent offenders from committing more serious offences in the future and a deterrent for people committing this offence in the first place. Survivors also thought it was important that the sentence reflects that this behaviour was unacceptable to society. Survivors thought prison capacity may make it impractical to give a custodial sentence for an offence of communicating indecently, but participants did not think that was a good reason to not give a custodial sentence.

“You know there has to be a way to deter and I think there should be at least some form of custodial at least, for them to realise that no this is wrong. It's not fun, it's... it's not something that you can do and laugh it off and walk out and get away from because they'll only go and do it again because if they think 'oh I'm only going to get a slap on the wrist', they're going to go off and target some other girl. So there has to be some form of deterrent and if there's some form of custodial sentence connected to it hopefully it will then send a message out to future generations of young males, young females, that no this isn't... this isn't taken lightly. You cannot do these things and expect to get away with it. There has to be a message sent out.” (Survivor, female)

Finally, there were survivors of sexual offences who thought a custodial sentence for all forms of offences of communicating indecently was too severe a

punishment and that another kind of sentence would be more appropriate in certain circumstances.

“Me personally, I would say that was extreme, but then again, it's murky water when you start talking about this because there's such a broad spectrum of communicating with somebody in a sexual manner, but I just feel as though, these days, the wrong people are going to jail for the daftest stuff. And I know it's not daft obviously talking to somebody in a sexual manner, 'cause that's not on, but I would say that it was extreme to have a custodial sentence. As we were saying there, put them on the register. I think that could be a deterrent enough 'cause, 'OK. I'm no gonna do that again'.” (Survivor, female)

There was consensus, however, among participants, in both the public focus groups and the interviews with survivors, regarding sentencing for offences of communicating indecently if the victim was a minor. Participants felt that in such cases there should be a prison sentence irrespective of the degree or nature of the communication.

Sentences other than a custodial sentence

Other sentences participants thought should be given for an offence of communicating indecently included unpaid work within the community, some form of rehabilitative supervision and being placed on the sexual offender notification scheme¹³ anywhere from 12 months to five years. However, there was disagreement amongst participants as to whether these types of sentences were appropriate. There were participants who were sceptical of the type of rehabilitation and community sentences that would be offered to offenders. Survivors, for example, felt that a community sentence should not be used as it was not adequate to mark the seriousness of the offence and may do little to prevent offenders from committing future offences. They felt that if a community-based sentence or supervised rehabilitation were to be provided as alternatives to a custodial sentence, they should be connected to the offence committed and aimed at ensuring that offenders face up to how their actions have impacted the victim.

“I think just community service, on the whole, is the easy way out for sort o' saying, 'Oh, we don't really know what punishment to give you', as it were. 'Here. Go and do some community service.' – whether it be working in a shop, going cleaning some closes or whatever. I don't know. It's just, for me, I think it's a weird one 'cause it is such a broad spectrum of,

¹³ Participants refer to this as the “sex offender register” which does not exist in Scotland.

'There's community service. Go and do this. Pay back to your community.'"
(Survivor, female)

"Some sort of rehabilitation that includes some sort of moving forward, some sort of education / learning trying to rehabilitate the perpetrator, and not just a slap on the wrist and go and work in the community centre, but for them to actually understand their own behaviour and why it's wrong. But I doubt if that's part of it." (Focus group participant, female)

Participants stated that it was important for a sentence to take into account the circumstances of the offence. Members of the public and survivors felt that in some cases, offences of communicating indecently could be less harmful than others and that this should be reflected in sentencing. There were participants in the public focus groups who thought that being placed under the sexual offender notification scheme would be too harsh a punishment in some circumstances.

"I think you have to always take account of the circumstances of any individual offence and individual victim and individual offender. You can't / couldn't / shouldn't have blanket decisions about sentences without taking account of the circumstances of every individual case." (Focus group participant, male)

"It depends. Once again, it could be someone who's wasted – like alcohol is involved – and they've sent a picture of their genitals, you know? – as ridiculous as that sounds! – to someone in their workplace, and for them to be then put on a register because of that, being told that they're not allowed to go to schools, and if that involves for example if they've got young kids themselves, that has implications for them as well. That would be too much I think. A fine perhaps, or a banning order, restraining order, and maybe fired from their workplace. (Focus group participant, male)

Survivors of sexual offences were sceptical about using the sexual offender notification scheme¹⁴ as a sentencing option as they questioned what impact it would have as the information is not publicly available.

"Sometimes when I read [about offender being put on sex offenders' register] I think oh well they got nothing but they're on the register for three years but see unless you're in a job that you need to...that that's relevant, who actually knows you're on the register? It's not as if its published like a bankruptcy and I think that's my thing. If you're made bankrupt it's published and anybody can go onto the government website and say there's a bankrupt but if you commit a sexual offence it's not open to the public do you know what I mean? That's the thing if you commit financial

¹⁴ Referred to by participants as the "sex offender register".

fraud so you get 10 years in jail, if you leave someone half for dead you'll be lucky if you get four!" (Survivor, female)

3.4 Views on sentencing for sexual assault

This section outlines the sentences participants thought judges *typically* give for sexual assault offences *and also* the sentence participants thought *should* be given.

3.4.1 Perceptions of typical sentencing practices

Participants were mostly of the view that a sexual assault offence could receive a custodial sentence but did not think it would always lead to one. The length of prison sentence participants thought was usually given by a judge varied, ranging from three months to seven years. There were participants in both the public focus groups and interviews with survivors who thought offenders rarely serve the full prison term they are given in court.

"Between two and five years maybe depending on the circumstances."
(Focus group participant, female)

"They maybe get three years and out in 18 months." (Survivor, female)

Participants in the public focus groups felt that the sentence given by a judge would depend on the circumstances of the sexual assault offence such as whether the offender and the victim knew each other, and whether it involved a repeat offender.

"I'm not saying it's not, but it depends on the situation. If I have never met you before, and I start doing that to you, then that's... you know? – because I don't know you. But if we know each other as a friend, then you start to investigate furthermore." (Focus group participant, male)

There was also a view that the sentence would depend on the severity of the offence. For instance, participants in the public focus groups felt that where on the body a victim was touched would play a role in the sentence given. Focus group participants believed that touching certain parts of the victim's body would be seen as less severe than others and therefore would receive a more lenient sentence. Some male focus group participants questioned if less invasive forms of touching, such as when it is over clothes, would receive a custodial sentence at all.

3.4.2 Views on what sentence should be given

Custodial sentence

There was no consensus among participants on the sentence which *should* be given for sexual assault offences. Participants had wide ranging views on what constitutes a sexual assault so this lack of consensus is perhaps not surprising.

One view was that sexual assault offences should receive a custodial sentence. Participants felt that a custodial sentence would act as a deterrent to people committing an offence for the first time and possibly prevent reoffending. Participants said the length of prison sentence that should be given would depend on the severity of the offence but a minimum of 2-3 years in prison should be given.

“I think it should range in severity. I think it should go from anything from three years to 15, to life, I really do.” (Survivor, female)

“I think at the lowest end of a sexual assault it should be two years.” (Survivor, female)

When asked if sexual assault offences should always receive a prison sentence, there were participants who thought it should while others said it would depend on the circumstances of the offence.

“Always imprisonment for sexual assault. It’s got to be stamped out, it’s just not right.” (Survivor, female)

“I wouldn’t have said it always would be. There was another case recently... where someone was given an admonishment I think after a sexual assault, and there was a huge amount of negative publicity about the fact that he wasn’t sent to prison, but I think the sheriff in the case had very good reasons for taking the decision he did, and he had all the information available through the [police] force and the like which caused him to make that decision.” (Focus group participant, male)

Sentences other than custodial sentence

Members of the public and survivors felt that perpetrators of sexual assault should be given notification requirements, namely, be added to the sexual offender notification scheme¹⁵ as part of their sentence. The length of time participants thought offenders should be added to the scheme ranged from five years to life. Survivors of sexual offences, particularly, were of the view that offenders should be on the sexual offender notification scheme for life. One survivor suggested that offenders should be put on the sexual offender notification scheme for life

¹⁵ Referred to by participants as a “sex offender register”.

but given the option to apply to be taken off at a later point if they could prove they had rehabilitated.

“I think in all they ones, the minimum has to be going on the register because, like that boy *did* do it, but he didn't get put on it, so I think as a minimum that is a must...” (Focus group participant, male)

“You're on it for life, and it's up to you after your punishment part to make an application to persuade them to remove.” (Survivor, female)

There were also participants who thought perpetrators of sexual assault should be given support to rehabilitate in addition to a prison sentence.

“They should be in prison for a certain amount of time to be able to understand, come to terms with what they have done... it would depend on the person I think because there might be other ways of allowing...well changing their behaviour rather than just locking them up.” (Focus group participant, female)

Depends on severity and age of the victim

A view, particularly pronounced among focus group participants, was that the sentence should depend on the severity of the assault. Participants thought there was a wide range of offences that came under the term sexual assault and that a range of sentencing options were required to capture the varying severity of the offence.

Both members of the public and survivors of sexual offences thought the sentence given for a sexual assault offence should be more severe if the victim was a minor. Participants felt the age of consent (16 or above) should be the threshold for charging the perpetrator for sexual assault of a minor but there was also a view that victims over the age of 16 could still be deemed vulnerable.

“Yeah, I guess in terms of like an additional law they have broken which is pretty much screamed at you when you enter society as an adult, well obviously you do not sexually assault people. But additionally, you especially don't sexually assault [minors]...it is another step that person has taken.” (Focus group participant, female)

“I think if they're vulnerable as well because you get people that are like...in their 20's and vulnerable too.” (Focus group participant, female)

3.5 Views on sentencing for rape

All focus group and interview participants were asked what sentence they thought was usually given by a judge for rape, and the sentence participants thought should be given.

3.5.1 Perceptions of typical sentencing practices

Once again, there was no consensus among participants regarding the typical sentence given by a judge for rape. There were members of the public and survivors who thought the typical sentence for rape would include a custodial sentence. The typical length of custodial sentence those participants thought would be given ranged from four years in prison up to ten years or life imprisonment. In addition to a prison sentence, participants thought offenders would typically be placed under the sexual offender notification scheme.

“I don’t think there would be any case where you would not be given [a prison sentence] if you’re already proven guilty.” (Focus group participant, male)

However, among both members of the public and survivors of sexual offences there was also a view that rape does not normally attract a custodial sentence.

Survivors of sexual offences perceived that even when a perpetrator is given a prison sentence, they are released before the full sentence is served. They believed this was down to prison overcrowding or insufficient resources, rather than serving public safety through controlled and supported release in the community. Survivors felt let down and disappointed by the criminal justice system and believed not enough was being done to address offending behaviour.

“I think it's disappointing when you get over every hurdle, especially when we know what the conviction rates are, that you finally get that and then they get a paltry sentence – which will usually be [community] service or half or a proportion of it, or they’ll be out on licence. They’re out on licence before most people have recovered or finished their counselling journey, and I would like to see the end of them being released on licence, whatever their sentence may be, and whatever the stresses of the system are. I think we have to be conscious of them, and we have to be conscious of cost, but that is too often used as an excuse for releasing dangerous people out, because they don’t have, as I said, education, support or counselling things that are actually gonna modify behaviours or attitudes, so I think whatever they get, they should at least serve the whole of the term handed down.” (Survivor, female)

Perceived inconsistencies in sentencing for rape

Regardless of the sentence participants thought was typically given by a judge for rape, both members of the public and survivors of sexual offences believed the sentencing of rape cases was inconsistent. Participants drew on examples from the media and personal experience to illustrate a range of sentences passed for rape. There were members of the public who thought that the reasons for giving a particular sentence were often unclear to the public.

I read things in papers. I read things all the time, and there's never ever a ballpark 'This is the set amount that you will be given'. I've seen people being put away for two years for raping somebody, and then I've seen another person 11, 12, 13, whatever." (Survivor, female)

Members of the public and survivors of sexual offences also perceived sentencing for rape to be inconsistent and they did not always agree with the reasons given for a sentence. Participants did not think the personal circumstances or attitude of an offender, (even where the offender's mental capacity is impaired), should affect the sentence they are given because they believed it was unfair and unjust to the survivors of such traumatic experiences.

"There was actually the other case where it was a knifepoint rape and they ended up saying that the person who committed it did not have the mental capacity, which I'm like, you know? That was like...planned. He'd threatened someone wi' a knife, and he raped then, and they're saying, 'Oh, it's not his fault', you know? That really made me quite angry." (Focus group participant, male)

"I think there shouldn't be two different sentences for the same crime, whatever the circumstances, because it's true – it changes the victim's life forever. There's like 'before' and 'after', and it's hard enough to get the 'guilty' in the court, so, once you get that, once you actually win that fight, then there shouldn't be like optional two years, a year, four years, five years. Like what is this based on? – just because someone looks nice and pretends they are sorry?...So why should they get away with going home and being fine, like even straight after the court? And then you have to go to counselling, you have to explain to your workplace why you keep missing work for all those court days, why anything triggers you .. that they don't understand why such a tiny thing triggers you, and of course they wouldn't, because they never experience it, so if someone in their mind decides that they're gonna ruin your life, I think their life should be ruined as well." (Survivor, female)

3.5.2 Views on what sentence should be given

Members of the public and survivors of sexual offences believed the typical sentence for rape should be severe. Participants reflected that the sentence should clearly show that such behaviour is not acceptable. Survivors explained that being raped had impacted significantly on the rest of their life and they felt the sentence an offender should receive for committing rape should have a similar impact on their life.

"I think when rape's involved, it is an extremely serious offence in that, issues about deterrents or punishment, and what the norms of society are,

and what they would expect are more to the fore than they were on lesser offences, and it's much harder to justify sentences that would be seen by a lot of people as lenient.." (Focus group participant, male)

"We go through our lives and we have our own daily struggles, we have our own mental health, we have our own families. It affects every single fibre out o' our being after that happens to us, so that should be treated as seriously as murder. That's what I think – so we're talking life in prison if you rape somebody, because you're taking their life away fae them. I can't describe to you .. Like I just feel as though something just left. When that person decided that that's what he was doing to me, something just left, and I can never ever get that back. A part o' me died. That's the way I see it." (Survivor, female)

Members of the public and survivors of sexual offences thought that there should be a custodial sentence for offenders convicted of rape. The length of prison sentence suggested ranged from five years to life imprisonment, similar to the participants' views on what they thought a judge would give.

"Probably minimum 10 years for an adult for rape, and then anything after that. For a kid, I think up to 20 years. Definitely." (Focus group participant, male)

"Life! I know they'll no' serve life but I think they should get life." (Survivor, female)

There were participants who thought that, in addition to a prison sentence, the offender should be placed under the sexual offender notification scheme¹⁶; again, the same as participants thought a judge would do. A lifetime on the sexual offender notification scheme was thought appropriate by some participants, others thought it should depend on the circumstances of the case because a lifetime under the notification scheme could have serious implications for an individual's life. Again, there were participants, particularly survivors, who were sceptical as to whether the sexual offender notification scheme was an effective means of punishment if it cannot be accessed by the general public.

"They should also go on to the sexual offenders list, and I think that should be for life." (Focus group participant, female)

Views about the seriousness of the offence

It is important to note that participants' views on the sentence which should be given for rape were not wholly unanimous. Particularly within focus groups, there was debate on whether the circumstances of the offence should be taken into

¹⁶ Referred to by participants as the "sex offender register" that does not exist in Scotland.

account when deciding the sentence. There were participants that believed that the level of violence used and the intent to cause harm were important factors to be considered during sentencing.

“I think because there's a whole variety of what constitutes a rape. And I quite agree. If it's one o' those things...even a young girl who fancies a chap, and he doesnae think she's 15, but thinks she's seventeen – because that's what she said – and sex takes place, then that is a rape, and that's one o' those ambiguous type things.” (Focus group participant, female)

Other participants however, believed the harm caused by the act, whether intended or not, was important for sentencing..

“It's the act itself is the important thing, and, just based on the act itself of being raped, deserves a sentence. I think it doesn't matter where it was, or how it happened. It's the act.” (Focus group participant, female)

4 Perceptions of factors taken into account when sentencing

This chapter first explores participants' unprompted knowledge and understanding of the factors taken into consideration when sentencing someone convicted for a sexual offence. Participants' views on the actual factors taken into account by a judge when deciding on a sentence for a sexual offence are then explored.

4.1 Knowledge of factors taken into account in sentencing

All participants were asked what factors they thought *were* taken into account when sentencing sexual offences, and what factors they thought *should* be taken into account. A wide range of factors were discussed.

4.1.1 Circumstances of the offence

Members of the public and survivors of sexual offences thought that the circumstances of the offence were considered during sentencing. The type of circumstances mentioned by participants included: how the offence occurred; whether the victim knew the perpetrator and if they had a relationship history; the type of sexual offence; the seriousness of the offence; and the level of violence used.

“Well, I think they would have to determine how the assault came to be. How did they meet? What led up to it? They've got to take a lot o' things into consideration.” (Focus group participant, female)

“I'd imagine that they'll take in to account the severity of the offence – whether violence was involved.” (Focus group participant, male)

“They take into account statements from the victim, the witness, and also probably from the accused as well, their account.” (Focus group participant, female)

Whether or not the offence was premeditated was another factor participants thought would be taken into account. For example, the possibility that a victim was particularly targeted or that an offender had the intention to harm someone.

“And the intent, 'cause sometimes things can happen in the moment. It just happens. But there can also be intent – that you're a predator and you've went out with that intent of harming someone sexually.” (Focus group participant, female)

4.1.2 Background of the offender

Details of the offender and their past were discussed by both members of the public and survivors as factors they thought would be taken into account by a judge. Whether the offender had any previous convictions was a factor frequently mentioned. However, the absence of previous convictions was not considered sufficient evidence for some participants to convince them of someone's good character. It was remarked that someone can commit offences without being caught.

“When they do sentence, they look at the [criminal] record of the person they're gonna sentence. That comes into it too. A first offender will probably get less o' a sentence than a continual offender.” (Focus group participant, male)

“Have they had any previous convictions? Which I think can be laughable because they may have...the fact that they've just never been caught.” (Survivor, female)

Evidence of an offender's previous good character and their social status were additional factors members of the public and survivors perceived judges take into account when sentencing. Alongside this, participants thought the risk the offender posed to society and their risk of reoffending would be considered.

“The person's previous character. What kind of a life they've led, what standing did they have in the community, what have they done, and is this out of character? Is it an aberration?” (Focus group participant, female)

There were members of the public who thought that if the offender had experienced similar victimisation in the past or adverse experiences such as abuse, violence or addiction then that would be taken into account by a judge. Background reports were mentioned as a way the judge is informed about the offender's past.

“I suppose again whether the person has gone through sexual assault themselves as a victim. They should look into that too.” (Focus group participant, male)

“You know do they consume alcohol, do they take drugs, do they keep fit, all of that I think. Everything has...you have to really bore down into trying to get to the nature of the beast as it were.” (Focus group participant, female)

4.1.3 The victim

Personal characteristics of the victim, namely their age and subsequent vulnerability, were further factors participants thought a judge would consider

when sentencing. The young and the very old were perceived as being most vulnerable and therefore crimes against them more serious. The degree and nature of the impact on, and the harm caused to, the victim were further factors participants thought would be considered during the sentencing process. Members of the public referred to the victim statements as a way for the judge to become aware of the level of the impact.

“I think...this is just my thing I think it's seen as more heinous the younger the victim, or the older the victim because then they've got a vulnerability to them. So I think you know the younger and the older I think it does because the crime is seen, is more heinous.” (Survivor, female)

“In many of these cases, there would be what they call 'victim impact assessments' by where the person who's the victim writes, and the judge sees what they say is the effect on them of the offence against them, so I think that's a very important part of the system.” (Focus group participant, male)

Members of the public and survivors of sexual offences also believed that judges take into account the victim's past and present behaviour when considering a sentence. Factors such as a victim's mental health, how the victim was dressed and if the victim had consumed alcohol or drugs were all thought to be considered by a judge for sentencing. Survivors of sexual offences described feeling that they were put under a microscope when their case was heard in court. They mentioned a feeling of being 'stripped bare' in the court room with details of their past (e.g. medical conditions, mental health, previous sexual partners) becoming public. The support worker reinforced that survivors often worry about how they will be perceived and the impact their image might have on the sentence.

“We go back years into *our* past, our whole medical history, our whole being, every sexual partner we've ever had, every conversation we've ever had with *anybody*. That way, I just feel as though they take everything from you, and use it against you, and that person's [the perpetrator] sitting there cushy in their wee lives because they've never had that done to *them*.” (Survivor, female)

“When it's a sexual offence I know that survivors do worry that the court will be swayed by things in their life – if they've got mental health or addiction issues in their background...they worry that they'll be less *credible* I think, because of how they present or something like that.” (Support worker, female)

“Sometimes they'll say what the girl was wearing, and they'll say what led up to it: 'Oh, he was teased. She was this. She was that. She was the next thing.' I just think they always balance it more, and, unless it can be proven

within a reasonable doubt that it was entirely down to him.” (Focus group participant, female)

Participants did not think these factors about a victim should be taken into account.

“I don't think there can be any blame put on that person [the victim] though. That's just so much going back to the days where, 'She was wearing a mini skirt and she was really asking for it'... and the drunk girls as well...I actually feel that guys have to be taught and educated that, if she's not capable in any way, or says, 'No' at the very last minute, you don't go any further.” (Focus group participant, female)

4.2 Views on factors that are taken into account by a judge

Having discussed their spontaneous knowledge and perceptions on what factors a judge does, and should, take into account when sentencing, participants were then presented with a list of the factors a judge can consider when deciding on a sentence and asked their views on it. The factors presented to participants were:

- the seriousness of the offence
- the harm caused
- the impact on the victim/survivor and others affected by the case
- the offender's attitude to the offence:
 - Was it their first offence?
 - Did they show remorse?
 - Did they plead guilty? If so when?
 - Was it pre-planned?
- the personal circumstances of the offender:
 - Home background
 - Health
 - Current living situation
 - Money
 - Age

When asked to give their views on this list, participants expressed surprise at the variety of factors a judge can take into consideration. Participants generally understood why they were all considered in the sentencing process, however there were participants who did not see the relevance of some factors.

“I don't think you can look at any one in isolation. Should be collectively you have to look in to all that.” (Focus group participant, male)

Participants went on to discuss in more detail the factors the judge can take into account and whether they thought any factors were more important than others.

4.2.1 Factors considered to be more important than others

There was general consensus among participants that the seriousness of the offence, the harm caused by the offence and the impact the offence had on the victim and others affected by the case, were the most important factors to be considered during sentencing. However, there were participants who considered other factors to be equally important.

“Those are the three main things that a judge should be considering because it is a crime. It’s about the crime and the victim.” (Survivor, female)

“I think that pre-planned is a really important one...I would say on the same level. (Survivor, female)

There were participants who considered whether the offender had previous convictions, whether they pled guilty and the perceived risk of reoffending were of equal importance.

“I think that we kinda mentioned earlier about the chances of reoffending, harming to the public, I think that they are quite important factors.” (Focus group participant, male)

The reasons why participants thought these factors were the most important is discussed in more detail below.

Seriousness of the offence

Members of the public and survivors of sexual offences thought the seriousness of the offence was an important factor to be considered during sentencing. Sexual offences that were pre-planned, involved intimate physical contact, were violent or any sexual offence against a minor were considered especially serious. It was acknowledged by the support worker that premeditation, while important, can be hard to prove due to the corroboration requirement in the court.

“I think they [survivors] would expect the sheriff to take into account if it was premeditated, but sometimes I think they feel that they *knew* it was premeditated, but that wasn’t evidenced in the court, but again, ‘cause of the need for corroboration, then there’s not much a sheriff can do about that.” (Support worker, female)

Impact on the victim and others affected

There was consensus among members of the public and survivors of sexual offences that the impact on the survivor was an important factor to be taken into

consideration when sentencing. The severity of impact on a survivor's mental, emotional and physical health and how this affected their day-to-day life (e.g. work, relationships, quality of life) were thought to be relevant to sentencing.

“I think more it's about the victim and the level of harm that it's caused them. I think that should be the priority in sentencing. The recovery of the victim, if it's possible. The gravity of how it's affected their life – their mental, emotional, and physical health – and I think that should be every factor in determining the sentence.” (Focus group participant, female)

The impact the offence had on people close to the survivor was also considered an important factor to take into account during sentencing. Survivors and the support worker articulated that the family of victims can also suffer in several ways; from being exposed to details of the offence which can be traumatic, to disruption in their everyday lives. Participants recognised that a loved one experiencing a sexual offence can affect a wide range of things including relationships and feelings of safety.

“I mean my son had to hear in court what happened to me, do you know what I mean? There's the family as well you know so there are things like that, so they are the things that they have to hear.” (Survivor, female)

“If the offender's in the same area, the family might feel that they have to move or that they can no longer walk to school or pass a certain street, then might cause friction in the area if sometimes people take sides when neighbours an' all that get involved. They don't even know what's happening.” (Support worker, female)

Risk of re-offending and protecting the public

For members of the public, the offender's likelihood of reoffending and the risk to the public were important factors to consider during sentencing.

“It's really the security of the public. That's why they lock people away isn't it because they think well this person is a danger to society.” (Focus group participant, female)

While survivors considered these factors to be important they thought the impact on victims was more important and should take precedence. Some survivors however, were supportive of harsher custodial sentences as they would not only serve as a just punishment, but would also prevent offenders reoffending and would protect the public.

“First and foremost, it should be the impact that it had on us, not about the public interest. That should have nothing to do with it. At the beginning – yeah – when you've taken in to consideration how that's impacted that one

person, then obviously go that wee bit further and then look in to how that would impact public attitudes or whatever, how that goes or how that person might be a threat to society or whatever, but first and foremost it should be about us.” (Survivor, female)

Guilty plea

Whether someone pled guilty to an offence was deemed important by participants. However, members of the public and survivors thought a guilty plea should only be taken into account when introduced at the beginning of the criminal justice process as it spares the victim the pain of a trial. Participants thought a last-minute guilty plea however was seen as a last resort for the defendant and not worthy of consideration.

“Plead guilty. I don't know. In my case, he pled guilty just before 5 o'clock on the day of trial, so he may be entirely guilty, so why that should be any factor in deciding for sentence because if they plead guilty when they are caught by the police, or even if they have to go trial, then fair enough. He at least showed, ‘This is what I've done. I'm sorry.’, but to act like ‘I've done nothing’, and then when you are told by your defence lawyer, ‘There's no way out’, then you plead guilty, I think it's just a joke.” (Survivor, female)

Remorse

Whether remorse shown by the accused was a factor that should be taken into consideration during sentencing, triggered much discussion. There were participants who thought remorse should not be taken into account because a judge may not be able to identify whether remorse was genuine, or fabricated by an offender in order to get a reduced sentence. However, there were also participants who were sceptical whether a defence lawyer would instruct their client to express remorse to benefit from a more lenient sentence and believed remorse should be considered genuine. There were participants who thought even genuine remorse should not be taken into account. This was a commonly held view among both survivors and members of the public.

“I think there are genuine people who have committed acts which they're incredibly ashamed and regretful about afterwards, partly because of the consequences for them, but also ‘cause they're appalled at what they've done. Yeah. There's no measuring how to *prove* that, is there?” (Focus group participant, male)

“That's a hard one, ‘cause it can just be an act just to get that sympathy vote to get a lesser sentence, and, like you're saying, they can come out and go, ‘I got a lesser sentence’ and it's just because they've put on that act...” (Focus group participant, male)

There were participants who believed that remorse is an important consideration in sentencing. Participants thought that an offender needs to first understand their wrongdoing in order to be able to be ‘rehabilitated’, and therefore, there were participants who thought that someone who has not shown remorse should perhaps get a longer sentence. However, other participants agreed that remorse was important, but did not think remorse was enough to justify a shorter sentence in cases of sexual offences.

“...if they are not sorry for what they done then...maybe they should get a longer sentence because...like...because then maybe it will take them longer to like...rehabilitate and stuff. (Focus group participant, female)

The personal circumstances of the offender

There was no consensus as to whether the personal circumstances of the offender should be taken into account during sentencing. There were members of the public who saw merit in considering the circumstances of the offender. However, others thought that certain things about an offender’s background should not be taken into account because participants thought it could unfairly advantage, or disadvantage, an offender in sentencing. For example, there was a perception among members of the public and survivors that those with good social standing in the community and privileged backgrounds get preferential treatment in the criminal justice system while those from deprived areas or with disadvantaged backgrounds are treated less favourably. There were also participants who thought someone’s adverse background could be used to mitigate their actions to try and secure a reduced sentence.

“I don’t think that stuff like what area you come from, what kind of family you come from, if you move back with your parents, if you have finished a degree or not, I don’t think these things should matter ‘cause I do believe that many people get worse sentences because of their background, rather than someone who’s perceived as more higher class or something.”
(Survivor, female)

“Personal circumstances – it doesn’t matter...Once again, it comes back to this thing about privilege and whether you’re poor or rich. (Focus group participant, male)

Participants discussed several factors which fall under ‘personal circumstances’ including previous convictions, age, caring responsibilities, with some participants in favour and some against these factors being taken into account. On the whole, survivors did not think personal circumstances should lessen someone’s sentence.

“I don't know. I think 'age' when it comes to adults shouldn't really be an indicating factor because if someone's 23 they are adult, but you can just brush it under the carpet like 'They're young'. No. You're an adult. You turn 18, you're responsible for your own career, so I don't think that should be there. Also the living situation, as I mentioned before, what has that to do with the offence? Absolutely nothing.” (Survivor, female)

4.3 Views on whether the impact on the victim and the victim's family should be taken into account

Participants were asked whether the impact the offence had on the victim and the victim's family should be taken into account in the sentencing process. Participants were also asked about victim statements and their role in the sentencing process.

As previously discussed in section 4.2.1, participants agreed that both the impact on the victim and their family should be considered as part of the sentencing decision. Members of the public and survivors of sexual offences highlighted a number of ways that survivors and their family members could be affected by a sexual offence. The discussion revolved around emotional and financial impacts as well as impact on their sense of safety and their relationships with others.

“A situation where, say, someone's wife was raped, that husband might not cope wi' that fact that that happened, or that he thinks he *allowed* it to happen. That might have a big impact on *him*, so that could cause a marriage breakdown. That I think *should* be part of the kinda statements put forward as well, to be a whole overview.” (Focus group participant, male)

“They [the victim] might be too...traumatised to actually function, so they might rely on their families to help them through the process of...yeah not being scared or feeling traumatised anymore. So that...that could affect the family both economically and financially.” (Focus group participant, female)

“It can just have such a ripple effect on the whole family. Like maybe a young woman's assaulted at college, and then ends up her siblings have to leave that college because everybody's talking about it. D'you know what I mean? – like that sort of knock-on thing, so that people who haven't actually been the victim of the initial assault are severely disadvantaged or inconvenienced.” (Support worker, female)

However, there were participants who identified challenges with taking into account the impact the offence has had on the victim and their family. Participants thought it would be difficult to quantify or measure the impact an offence had on

a victim and their family but thought it was an important factor to be considered alongside other factors.

“It's up to the judge to make that decision, but he has to consider it at least. And judges disagree on various point, you know, but they have to know the other side of the coin. They've got to see both sides to balance out what they feel is a reasonable and appropriate response to that person's actions.” (Focus group participant, female)

“I mean how are you going to measure that though?” (Focus group participant, female)

4.3.1 Views on Victim Statements

All participants were asked about their awareness of and views on victim statements. A victim statement is a written statement from the victim, or the victim's family in cases of deceased victims, that allows them to express how they have been affected physically, emotionally and financially by the offence. Victim statements are not a means of providing evidence or expressing views on the offender or the sentence. Both members of the public and survivors were aware of the existence of the victim statement.

Victims' experience of producing a victim statement

There were survivors who had produced a victim statement and there were those who had not, either by choice or because they had not been offered the opportunity to complete a victim statement. The survivors who had produced a victim statement were asked about their experience. Those who had produced a victim statement described the process as an emotionally challenging one, but a worthwhile process as it gave them a chance to be heard; it was a way for survivors to tell their offenders how their actions had affected them. There was a perception among some survivors that having put themselves through the trauma of writing a victim statement, they believe their statement was not used in court which to them, felt like a betrayal.

“I was postponing writing it because I felt like I would relive the situation, but one night I just wrote it all in one go, and then I had the support from Rape Crisis, helping me to make it less emotional, more to the point, and just the general spelling mistakes and stuff like that, but it wasn't a nice experience. It was maybe a little bit helpful to actually acknowledge 'this is what happened, and this is how it impacted my life', but it wasn't something that I enjoyed writing or even *wanted* to write. I just felt it was so *important* to write it. For it not to be looked at, it's like [a] slap in the face.” (Survivor, female)

Survivors who had been involved in producing a victim statement, reflected on the process and some described it as lacking in guidance, support and communication. One survivor was provided with some questions to help structure their statement which they found helpful, but others received no guidance. Survivors thought more was required to ensure that all survivors are given adequate support and guidance to produce their statement.

“You get it in a brown envelope, after *hundreds* of brown envelopes that come from their system, with a very matter-of-fact ‘You can write it if you want, or don’t. You can put down what you feel, or don’t.’ There’s no guidance. There’s no signposting to other places. I know they *can’t* give you an example, but pointers / things you might consider.” (Survivor, female)

From the discussion it became evident that there was a lack of awareness regarding the victim statement and its place in the sentencing process (that it is only to be used after the trial is completed in cases of conviction). Survivors were not all clear what the purpose of the statement was, who has access to it and at which stage of the criminal justice process it was used.

“There has to be more in the letter to say what’s expected, what can be done, who’s gonna see it. .. Because there’s also this dubiety of, ‘Well, actually, are the defence gonna see it when it comes to sentencing?, and then, in their mitigation at sentencing, use what I’ve said against me?’, and I think there needs to just be, as with everything I said, more communication, more education, and more support.” (Survivor, female)

“They only read them out if they have a guilty verdict. That’s the only time they’ll use them.” (Survivor, female)

Survivors mentioned their wish to communicate the impact the offence has on them to more than just the judge for sentencing purposes. Specifically, they mentioned their wish for the offender to also hear the impact the offence had had on them. Survivors considered the victim statement one way for them to be heard by the offender.

“I think it would help more if these things [victim statements] are included in the reporting of sentences and of sexual offence cases so that people actually realise the effect this has on the victim. The perpetrator definitely needs to hear it. Yeah.” (Survivor, female)

4.3.2 Guidance to produce victim statements

Participants widely thought that victims should have some help writing the victim statements. There was a view that victims may have literacy issues, may not have English as their first language, or may not be confident writers so may struggle to

express their views clearly. Survivors said they struggled finding the right words to express themselves in their statement and would have appreciated support to do so. Survivors also wanted support to decide the level of emotion that would be appropriate to include.

“Some people will be used to writing reports all the time, for work or university or stuff like that, but some people won't, and they will *need* the help, especially if you're writing about something that is so close to the home, and so emotional. It can't get more emotional than that, so any sort of guidance I think would be helpful.” (Survivor, female)

There were members of the public that thought it would be better to have someone write the statement for the victim to standardise language for judges, whereas other participants thought that it should be the victim writing the statement with appropriate support to do so because it would be more powerful coming directly from the person affected by the offence.

“I think that some victims are put at a detriment there as well. I think that anybody that wishes to put in a statement shouldn't write it themselves. They should sit down with some court official and do it because .. You tell them what you want, how you feel, they'll put that down in black and white. And it's easier for the judge as well. He's always getting the same language etc.” (Focus group participant, female)

4.3.3 Views on whether victim statements should be taken into account

Both members of the public and survivors were asked about their views on victim statements. There were members of the public who were unclear what a victim statement included. There were participants who incorrectly believed it was a way of providing evidence about the facts of the case, and others correctly identifying it as a way for the victim to communicate to the judge the impact the offence had on them, “to hear the victim and how they feel.” (Focus group participant, female).

“I would have hoped it would have given the judge a deeper understanding of the impact that it's had on our lives and the damage.....how it's affected our whole lives right up until that day that he was found guilty...and how it was going to continue to affect us. This is a life sentence for us. It's not going to end the day that he gets locked up in jail...this is a life sentence. I can't escape this.” (Survivor, female)

Members of the public and survivors believed that a victim statement should have an impact on the sentence given. For survivors, the victim statement was the only opportunity they felt they had to express the extent to which the offence had impacted on them.

“I think definitely the impact statement *has* to be considered, and even if it's just so that it's acknowledged in the sentencing, that you make reference to what has happened...very little is acknowledged as to somebody's bravery of going forward to sticking in with it, and to compose themselves enough to give evidence, so I think it's important in sentencing that the statement is considered – where there is one made – and that it's acknowledged what the person's gone through to get through the trial.”
(Survivor, female)

There were members of the public and survivors who thought that statements from third parties about the impact the offence had on the victim should also be taken into account during sentencing. This could include statements from people close to the victim or people from the medical profession. These were seen as independent sources of information able to corroborate evidence or provide additional information not available to the victim.

“And maybe it [victim statement] could be supported by the other people that are involved with the victim – like counselling services, GPs, doctors, other agencies that are supporting the victim that can maybe be more vocal and maybe speak on *behalf* of the victim. That might help the judge.”
(Focus group participant, female)

“I think the medical reports of the victims should be taken into account... as well as an impact statement surely then a judge should read an independent psychologist appointed by the court.” (Survivor, female)

There were participants who felt there were potential challenges with taking the victim statement into account during sentencing. Concern was expressed about the potential for the impact on victims to be valued differently as a result of their circumstances. For example, if a victim had a family and the offence had a wider impact on the family, would their victim statement have a bigger impact on a sentence than a victim without any immediate family. Participants expressed concern that this could lead to inconsistent sentences for similar offences as a result of the victim's circumstances.

“I'm not against them as such, and I can see that they would have a big impact on the jury...You just wonder if you've got a woman and she's not got a family, she's not got young kids or something like that, is her statement gonna carry less weight than somebody who's gonna talk about the impact on her children, on her marriage or something like that, so I just wonder how you balance that up.” (Support worker, female)

In addition, participants reflected that the impact an offence has on a victim may change over time, so a victim statement may not be representative of how a victim feels all of the time or overall. Given the limitations discussed, participants

reconsidered the role of the victim statement in the sentencing process. They identified it as a supporting document which was good to have, but not as important as the rest of the factors.

“I think at the end of the day the letter’s a good thing for the judge to have, but he will base his judgment on the law.” (Focus group participant, female)

4.3.4 Views on whether the way victim statements are written makes a difference

Both members of the public and survivors were asked whether they thought that the way the victim statements are written makes, or should make, a difference.

Participants agreed that victim statements should have a clear impact on the sentence regardless of how the statements were written. Participants thought the judge should only focus on the victim and their accounts presented in the impact statement but there was a view that the style in which they are written could make a difference to the sentence. In particular, there was a view that emotionally charged statements could be viewed as less credible.

“No. I think over-emotional statements aren't viewed with the...credibility.....I'm kinda turned off by people go .. they're *too* emotional about it. I think, 'Oh. Maybe they're putting it on. They're maybe being a bit vindictive' – and that might not be the case, which is why I think victim statements should have an *even* tone, ...They'll be able to put it in a reasonable language to show the depth of the feeling, but without it getting overcharged, and I think it's more credible then for the judge.” (Focus group participant, female)

One suggestion from members of the public to improve the quality and credibility of victim statements was to have the victim completing the victim statement after a conviction is achieved to allow the emotional charge from the trial to calm down. There was a view that this could also address the frustration victims experienced spending time writing a victim statement which was then not read if there was an acquittal.

“Maybe that [victim statement] would be something that is put in before the final decision is made. At least it helps the victim maybe get over the emotion of the trial at that time...at least they've had a wee chance to settle down and think, 'Well, it's over. He's been trialed now. He's gonna be sentenced. How do I feel at *this* point in time?', so if you've got that kind of window.” (Focus group participant, female)

Participants also thought the impact an offence had on a survivor was ongoing and ever changing and therefore, they believed the impact statement should be

a 'living' document that is updated at several stages to capture the full impact the offence has had.

"We're talking 2½ years mines took to get to court. That's only a little snippet of how I felt at that time. If you come back to me *now* and ask me to do that statement, it would be completely different 'cause your life changes, and how that impacts you is completely different now." (Survivor, female)

4.3.5 Views on whether the views of families of victims should be taken into account in sentencing

While there was consensus that the impact on the victim should be considered during sentencing, there was no consensus among members of the public as to whether the *views* of the victim, or the victim's family, on the sentence should be taken into consideration during the sentencing process. There were members of the public who thought it was important that victims' views were heard but they did not think these views should be considered more than other evidence. Participants expressed concern that victims' views may be biased towards giving the offender the "harshest punishment", therefore their views should be balanced against other evidence. Other members of the public thought that because victims and families of victims have a vested interest in the sentence that is given, the victims should not have a say in sentencing at all.

"Well, that's a hard one because emotions can run really high, and I think everybody'll want the harshest punishment going I think that has to be taken in to consideration, but it shouldn't be a priority over all the other evidence that's put forward." (Focus group participant, male)

"They're always gonna want the maximum, aren't they? They're always gonna want to hang them. I don't think that should come into it. I think that's a judge's job – look at all the evidence and all the statements." (Focus group participant, female)

Finally, there were members of the public who thought that the victims ought to have their views heard during the sentencing process as they were the ones affected by the offence. However, it was unclear whether the perceived right of the victims to express their views refers to their views of the sentence or to have a chance to explain, in their own words, what happened.

"I mean they should listen to the view o' the victim before the sentence because the victim is maybe very isolated, mental health comes in to it scared to go out. The rest o' her life's ruined I would say. The life's ruined, so the views have to be taken in to account I would say." (Focus group participant, male)

4.4 Views on whether impact on offender and offender's family should be taken into account

All participants were asked whether the impact a sentence could have on the offender and their family should be taken into account in sentencing. Survivors of sexual offences did not think the impact on the offender and their family should be taken into account when sentencing, a view shared by some members of the public.

“I have never come across anybody [survivors] who thought that the impact on the offender's family should be taken into account. I mean I've occasionally had people saying things like, 'I feel sorry for his parents', but I think people would be outraged if that was taken in to account and in terms of reducing the sentence.” (Support worker, female)

There were, however, members of the public who thought the offender's family were an 'innocent party' affected by the offence and that the impact a sentence would have on them should be considered. The support worker gave an example that illustrates the practical difficulties the offender's family can often face. In cases of sexual offences for example, the offender's spouse might not be entitled to support with divorce or parental right disputes.

“He wanted child contact when he came out of prison, and his wife was devastated at that...she didn't feel that she wanted to tell her children that their father was a convicted sexual offender, but she couldn't have them see him without them knowing. So that was hanging over her head for the full 5 years. She had to try and take away his parental rights, and he opposed that, and it was just .. You know, she felt she served the same sentence as him because she didn't know what would happen.” (Support worker, female)

There was a view that the offender's family could benefit from support to deal with the consequences of the offence and this could be considered as part of the sentencing process.

“I think the family of the perpetrator should be supported because obviously it's a member of their family that's committed the crime, and they, by default, are gonna be affected...so they should be supported as well in their own way, through counselling, through whatever, help them to come to terms with it...” (Focus group participant, female)

There were also participants who thought the impact a sentence would have on the offender should be taken into account if the offender was deemed to be vulnerable, for example, in terms of their mental health or upbringing.

“Maybe if they [perpetrator] have done it and they’ve got mental health issues or they are... more vulnerable, taken into account that way, like...so maybe they wouldn’t be in prison but they’re somewhere like...like if they had learning difficulties or something they would be in a different prison. That’s only when I think it would be...important.” (Focus group participant, female)

5 Scenario

Focus group participants were given a sexual offence scenario of a real case to consider. Details of the offence were presented to participants in three phases and they were asked to consider and share their thoughts on the scenario at each stage.

5.1 Views on the preliminary details of the offence

Participants were first presented with some basic facts of the incident including: where and when the offence(s) took place; the actions of the accused; and the response of the victim(s) (see Figure 1). This section includes focus group participants' initial thoughts regarding the scenario, including what sentence they would give, whether they had enough information to give a sentence and what other information they required before deciding on a sentence.

Figure 1: Details of the sexual offence scenario (1)

While on public transport (buses) the accused would sit next to other passengers. These passengers were always sitting by the window often towards the rear of the bus (top and bottom deck).

The accused was reported to splay their legs so that they came into contact with the other passenger's thighs. In some cases the accused was reported to move their leg against the other passenger or touch the upper side of the passenger's body, near their breast, with their elbow or arm. This conduct continued until the passenger got off the bus.

The incidents took place in the morning between 7am and 10.30am while the victims were on their way to work.

There was no report of the victims engaging verbally or physically with the accused. They reported trying to avoid further physical contact and eye contact.

Based on the information presented, there was general agreement across focus groups that the charge in this case would be sexual assault. When asked what sentence they would give with the information they had, participants did not feel they had enough information to give a sentence. Participants in two of the focus groups did discuss the sentence they were leaning towards which differed depending on their views of the seriousness of the offence and the impact the offence had on the victims.

5.1.1 Key factors taken into consideration

Based on the information presented at the first stage of the scenario participants thought that the offence was a sexual assault however, participants disagreed how serious they perceived the offence to be. There were male and female participants who thought it was an aggressive, intentional and premeditated act while other men and women considered whether the contact could have been accidental in which case they believed it may not be an offence at all.

“It's the borderline of what you class as sexual assault... 'cause if you're going in the lift, and you bump in to someone, and it's you know, that thing someone touched somebody and went, ‘You sexually assaulted me’, and you'd be standing going, ‘What?! I never. I just brushed past you’. This is [a] fine line.” (Focus group participant, male)

“He's getting on the bus to do it on purpose obviously, and then he's sitting .. He's trapping the woman in, 'cause they're at the window. It's been kinda premeditated as well.” (Focus group participant, male)

The participants who thought the accused's actions were intentional, did so because there were a number of victims; it was not a one off incident. Furthermore, participants thought the offence was serious because the accused's actions could have a negative impact on the victims.

“It's serious in the fact that it's happened more than once. It might have a knock-on effect on people. These individuals might not want to travel on the bus by themselves. They might not want to get that hassle going in to work etc., and obviously that has a negative impact.” (Focus group participant, male)

5.1.2 Additional information participants felt they needed

There was broad consensus amongst participants that more information about the offence was needed to make a judgement on the sentence. Participants wanted more information about each incident, for example: was the bus crowded or were there free seats on the bus; and how long was the accused in contact with other passengers? Participants also wanted more information about the accused, despite some participants previously indicating that they thought the personal circumstances of an offender should not be taken into account: did they have any previous convictions for similar offences; did they have mental health problems; and what was the accused's personal background? Finally, participants wanted to know what evidence was available for these offences: was there CCTV footage, witness statements and did multiple victims report these offences? Ultimately, there were participants who wanted evidence to establish intent.

“I'm sure there must be CCTV on the bus anyway for a start...so obviously to find out that there was one person on the bus, and this individual sat beside that one person when there was so many empty seats.” (Focus group participant. male)

“Has he done it in the past, and has he been sentenced, or was this the first time he's been caught for these events?” (Focus group participant, male)

“...it says ‘until the bus stopped’, so we don't know how long it was going for. It could have been couple o' minutes, couple o' seconds.” (Focus group participant, male)

5.1.3 Sentence participants think should be given

In all focus groups participants said they would like more information to help inform the sentence they would give. Nevertheless, in two of the focus groups (one male, one female) participants discussed their views on sentencing based on what they had heard. The sentence participants were leaning towards depended on what impact they thought the offence had on the victims. There were male and female participants that held the view that the offence was not serious enough to warrant a custodial sentence. One person described the accused as “an annoyance” and their actions were “a shout for help” (Focus group participant, female). Others thought the offence was serious enough to warrant a custodial sentence. A participant who thought that the offence would have impacted on the victims said that with the current evidence they would consider a custodial sentence of 6 months.

“...I'm not sure myself on what the punishment should be because these things aren't really gonna .. they shouldn't really affect the victim for *life* you don't think. You would hope not.” (Focus group participant, male)

“The nature of the offence does not rise to a custodial sentence for me.” (Focus group participant, female)

“Because it's no' a one-off. He's done it a few times .. and I'm looking at it fae the victim's point of view that it could affect them very easy – make them stop going on buses or whatever. I would jail him. I would jail him for 6 month.” (Focus group participant, male)

Other participants were leaning towards a community penalty where the accused's movements would be monitored and with the condition that if the accused offended again they would go to jail. There were participants who thought the threat of prison would act as a deterrent to reoffending, though not everyone agreed. In addition to a non-custodial sentence participants thought the

accused should be fined, banned from using buses and placed on the sexual offender notification scheme for 2-3 years.

“I think I'd give him community service for maybe a good .. maybe a year or so...but if he does anything like that again, then he's getting jailed – guaranteed. That's what I would go with.” (Focus group participant, male)

“Yeah. I think a fine as well potentially, and maybe even a banning order...ban him from the buses.” (Focus group participant, male)

A community-based sentence, such as a community payback order was not an acceptable sentencing option for all, with participants perceiving it as a soft option that would not deter future offending.

“See, I just feel wi' community service, personal opinion is that's nothing. It's no' a deterrent I feel. They get doing cleaning up a garden or whatever.” (Focus group participant, male)

There were participants who thought that the accused's actions warranted mental health treatment and support and that any sentence should include this. Participants believed it was important that sentencing should try to prevent people from reoffending and that rehabilitation should be the focus of sentencing. There was some debate in focus groups as to whether current sentencing practices aim to or are effective at rehabilitation, particularly custodial sentences. Some participants questioned whether people who commit sexual offences can be rehabilitated.

“I think it's somebody that needs referred to a mental health professional because he obviously has a problem, but which, at this stage, probably could be helped without a custodial sentence.” (Focus group participant, female)

“I think this person needs some sort of mental health. But, you know, you find a lot of people that sexually offend, it's intrinsically as normal to them as our sexual desires are to us, so do we help people to manage that, or can we ever rehabilitate them really, or can we just find a way to help them to manage that part of themselves? And I think that's what we need to look at.” (Focus group participant, female)

“I think we have to question how productive our rehabilitation system is at the moment, and does it really help people to rehabilitate, or do we just put them somewhere and tick boxes when we know they've been through the system, they're gonna come out and do it again, or do worse?” (Focus group participant, female)

5.2 Views on the aggravating factors of the case

Participants were then presented with further details of the scenario and asked to share their thoughts and views (Figure 2).

Figure 2: Details of the sexual offence scenario (2)

- The accused is male and 50 years old.
- Six similar cases have been brought against the accused.
- The victims were all young females aged between 14 - 22 years old. One victim was 5 months pregnant.
- The length of time the accused was in contact with victims was up to 20 mins; until the passengers got off the bus.
- CCTV footage has shown that there were ample alternative double seats available elsewhere in the bus at the time of the incidents.
- Other passengers on the bus did not notice the accused behaviour.
- The victims reported feeling alarmed by the accused's behaviour and many expressed their disgust and said it made them feel dirty. In some cases, victims said they felt scared and stopped using public transport for some time afterwards. All victims were upset when giving evidence.

5.2.1 Key factors taken into consideration

Participants were interested in a number of factors highlighted by the additional information provided (i.e. aggravating factors). Confirmation that there were multiple victims, the age of the victims and the impact the offence had on victims all made the offence more serious in the eyes of participants that many first thought. The CCTV footage that showed plenty of free seats on the buses and that the contact lasted up to 20 minutes was taken as proof by some participants that the accused's behavior was intentional.

“And it's quite a sustained amount of time 20 minutes...the CCTV, the footage shows that...you don't sit beside somebody if there's a free seat. That's just weird. Somebody comes and sits beside you and you think there's actually a free seat, what's going on here?” (Focus group participant, female)

“Well, he's done it. It's an habitual habit. It's persistent. I mean I could understand a one-off, but this is a multitude of people now coming forward.

He's deliberately targeting people in the double seat, and in a *particular* seat....” (Focus group participant, male)

While discussing the offence and the impact it could have on the victims, one of the female focus groups discussed the behaviour of the victims themselves. There was a view expressed that the women could have moved away or defended themselves against the accused, which is what participants themselves felt they would have done. However, it was acknowledged by other participants in the group that not all women would feel able to take this action, particularly those who are young or vulnerable. There were participants that thought the accused was picking young victims for this reason.

“Well, I think if it happened to me, and, as you say, there were ample seats, I would just get up and move away.” (Focus group participant, female)

“...but he's not picking on females like *us*, because I would not let somebody do that to me, but I can absolutely imagine that a 14 or 15 year old girl, or a pregnant woman, could be quite intimidated by that.” (Focus group participant, female)

The female participants who said they would have behaved differently than the victims, did not accept that women may not feel able to defend themselves.

“I can understand young teenagers not speaking out, because they would be a wee bit alarmed ... but up to the age o' 22, and you don't turn and say, 'Excuse me. What are you all about?' Know what I mean?” (Focus group participant, female)

It is unclear whether participants were placing blame on the victims or simply felt that the offence was not serious enough to cause harm to the victims. The discussion took place in the context of other participants stating they thought the offence would have had a negative impact on the victims.

5.2.2 Additional information participants felt they needed

Before deciding a sentence for the offence, participants were interested in further details about the personal circumstances of the offender. Participants wanted to know whether the accused pled guilty to the offences, had any previous convictions or had mental health problems. Participants also wanted to know more about the experience of the victims to see if the accused did the same thing to each of them or whether the accused's behaviour was escalating with each offence. Understanding the motivation for the accused's behavior and the risk they posed to the public were important to participants' sentencing decisions.

“I would want to know what his mental health state was. Was he being treated for anything? Did he have some kinda psychosis of any kind?”

There's a whole lot o' things you would need to look at as to why a 50-year old was doing it." (Focus group participant, female)

"The history of his previous offences in order to judge...I would need to know the history because it might be escalating. He maybe was doing it once in a blue moon before. Now he might be doing it every day, and that just shows an escalation of that behaviour...The criminal system is there to protect the vulnerable, so I bet he's been told to 'Get lost' a few times, but he will continue till he finds people that's vulnerable, and that's what the legal system has to do. It has to protect the vulnerable people in society, so if he's not learning, he's still a menace, then the history is the most important .. one o' the most important things there." (Focus group participant, female)

5.2.3 Sentence proposed by participants

Despite wanting more information to help inform a final sentence, three of the focus groups discussed a possible sentence for the accused. More participants suggested a custodial sentence after hearing the additional information about the offence than those who did after the first round of information. Some of the participants who had suggested a community-based sentence after the first information about the offence, changed to a custodial sentence as a result of the additional information; namely the age of victims and the impact the offence had on victims. Participants also felt that the length of time the accused was in contact with victims, the fact that there were multiple victims and that there was evidence that other seats were available led participants to conclude that the acts were intentional.

"Definitely get a harsher sentence now...[Before gave the sentence of] Community service and a fine, but I'm thinking probably jail now...Probably just the ages. Well, the 14 [year old] and then obviously .. and the 5 months' pregnant added to it." (Focus group participant, male)

"And the impact on the victims though. They can't go on public transport any more. I mean that's a kind of detrimental impact that you can't really quantify. You can't really quantify it at all, so – yeah – a custodial sentence this time." (Focus group participant, female)

The suggested length of prison sentence varied from six months to three years. Participants said that if it was shown that the accused had committed similar crimes before, the sentence they would give would be harsher. Male and female participants also thought the accused should be placed on the sexual offender notification scheme with the suggested length ranging from two to three years; or 10 years to life. The participants who wanted the accused to be put on the sexual offender notification scheme for life were concerned that if the accused

reoffended in the future and was not on the notification scheme that they would get a more lenient sentence. There were participants who wanted the sentence to be a punishment for the accused's actions while others wanted the sentence to protect the public and rehabilitate the accused so they do not reoffend. Participants were concerned about reoffending.

“He has to be punished for what he's doing, 'cause it's not right. He has to be told, 'This is not right, what you're doing'. Definitely a custodial.” (Focus group participant, female)

“Lifetime on the register as well...just purely because of previous intent, similar cases...It's quite clear, his intent, given that it's an empty bus and he's .. It's almost like he's seeking these people out.” (Focus group participant, male)

There were female participants who continued to think that the sentence should be community-based with a condition of treatment. They did not think the offence warranted prison or that there was capacity in prisons to house people who commit similar offences. Participants also thought rehabilitating the accused would be a better outcome and could be achieved out of prison.

“I don't know...Yes – the guy's a pervert. That's obvious, but I don't think it warrants sending him to prison. I would put him on probation, and I would make it a long probation, and I would make him have to go for therapy sessions and to get treatment...I don't think it warrants sending him to prison.” (Focus group participant, female)

5.3 Views on the mitigating factors of the case

Participants then received the third set of scenario information (Figure 3).

Figure 3: Details of the sexual offence scenario (3)

- The accused has denied the charges and delivered a not guilty plea.
- The accused said he had no recollection of the incidents.
- The accused said he had a medical condition which causes him to shiver when the temperature changes. Therefore, the accused often chooses to sit at the rear of the bus near the engine to keep warm.
- The accused was assessed as a low risk offender.

- No previous convictions have been reported. However, it was noted that the accused had previously lived abroad; for which the court has no available information.

No information is provided on the accused's employment or family status and what impact a custodial status would have on his family or his own life.

5.3.1 Key factors taken into consideration

Guilty plea and medical condition

Participants were surprised by the additional scenario information provided. Participants were particularly surprised by the not guilty plea entered by the accused because of what participants perceived was the weight of evidence against them. Participants thought that the multiple victims combined with CCTV footage was enough to prove guilt.

“Six different cases, and it's also on CCTV...you've got a visual evidence of exactly what's happened, so doesn't matter what you say. You can see it.” (Focus group participant, female)

“I don't think six different victims can all be wrong, and all just accidentally assume this guy was touching them when actually he was just hot ... or cold or whatever.” (Focus group participant, female)

Participants were not convinced that the accused had a medical condition that made him shake or that he was choosing seats for warmth. Participants said there would need to be evidence that the accused had a medical condition for them to consider the not guilty plea was genuine.

“Well, I'd like to know whether there was some medical evidence that genuinely supported it or not, because it sounds to me like a complete fairy story.” (Focus group participant, male)

“Medical assessment to confirm his condition and possibly a psychological assessment as well just to...because there is a lot of information not provided so you need a bit more information I think.” (Focus group participant, female)

Participants thought that pleading not guilty when there is CCTV evidence, would result in the accused getting a heavier sentence “because he's denied the charges” (Focus group participant, male). Participants said it would affect the sentence they would give because of what the accused had put the victims through and because the accused had shown no remorse for their actions.

“If you plead not guilty when you're guilty, you're putting people through hell, and a lot longer, costs more money...so I think he should be more punished for it.” (Focus group participant, female)

“I think it's just looking at that sheet, just thinking there's no remorse, there's definitely premeditation, planning, it's not really a first offence, he doesn't plead guilty ..” (Focus group participant, male)

Low risk offender

Participants who viewed the scenario as a serious offence were also surprised by the information that the accused was assessed as a low risk offender. The accused had been reported by six different women which participants believed made him a risk to the public. Participants thought this should be reflected in the sentence.

“Well, I don't believe a ‘low-risk offender’ would have six previous cases against him. A ‘low-risk offender’ would have maybe *no* previous cases against him.” (Focus group participant, male)

“But he is an immediate harm to the public. I mean six cases, you know? If he's out and about, he's still doing it, so that's immediate harm to the public. I think you have to take that.” (Focus group participant, female)

Intent vs accident

After receiving information on the mitigating circumstances, there were participants that still did not feel they had enough information about the offence to give a sentence.

In one of the female focus groups, there were participants who remained unsure whether the incident was intentional. They were concerned that the accused's behaviour could be misinterpreted. What if the accused had a large stature and could not help touching the other passenger? What if they were absentmindedly moving their leg? What if sitting next to someone when other seats were available was a cultural misunderstanding? Participants felt this ambiguity made it difficult to decide on a sentence. Others however, came back to the evidence that there were other double seats available so there was no reason for the accused to sit next to the women and girls and in doing so it has had a negative impact on them.

“...in some cases the accused was reported to move their legs against the other passenger...I move my legs up and down sometimes if I'm like either stressed or...cold, if you're shivering.” (Focus group participant, female)

“The biggest thing for me was the kid at 14, ‘cause that’s scary for a kid. My daughter’s 13 this year, and we’ve had some issues, and it’s a lot for her to take in, and I think being alone in a bus, you know, if a guy in his 50s is coming on tae her, it can be quite scary for a child, and that has a bigger part of it – that his range is all young people.” (Focus group participant, male)

5.3.2 Additional information participants felt they needed

Participants were frustrated by the lack of information about the participant’s background and that no medical evidence was presented. As a result of these gaps participants found it difficult to assess the impact they would have on the offence and the sentence. Participants said they would like information on the accused’s medical and psychological health as well as more information about his background.

“I think you’d have to have more information though to...I would want to see CCTV of how the victims...like engaging him and how he’s engaging them on the bus.” (Focus group participant, female)

“Have a look in to his background, get a medical professional to find out more information in to his condition.” (Focus group participant, male)

5.4 Views on what sentence should be given

5.4.1 Sentence proposed by participants

After discussing the mitigating factors, focus group participants were asked to decide the sentence they would give the accused and why. The sentence that participants would give ranged from a 6-12 month prison sentence with 3 years to life on the sexual offender notification scheme, to a deferred¹⁷ sentence with conditions.

Prison and sexual offender notification scheme

Participants who said they would give a custodial sentence to the accused suggested a short sentence of 6-12 months in combination with being placed under the sexual offender notification scheme from three years to a lifetime. Participants thought that a prison sentence was appropriate punishment for the harm caused to victims and hoped a short prison sentence would act as a deterrent for reoffending. Participants thought the length of time under the sexual offender notification scheme should be longer if a crime is committed against a

¹⁷ Some participants referred to probationary sentences. The correct terminology is deferred sentence.

child. There was also a view that there should be opportunity to be taken off the notification scheme if an offender can prove their behaviour has changed.

“Maybe a short custodial sentence would be a short sharp shock, you know, obviously supported with all the other stuff... Yeah. Because some people, you know, it's a deterrent and it might frighten the person to think, ‘Oh my God. I'd better not do this again’.” (Focus group participant, female)

“I'm still same as before. 6 to 12 [months custodial sentence], lifetime on the register, and seize his laptop.¹⁸ Find out what else he's been up to.” (Focus group participant, male)

Deferred sentence and with conditions for treatment

There were participants that thought a deferred sentence with a condition to attend treatment for their mental health was a more appropriate sentence than a custodial sentence. Participants were interested in a sentence that would attempt to rehabilitate the accused. A combination of a deferred sentence and treatment was suggested to deter reoffending (with the risk of prison) while tackling offending behaviour.

“There's a deterrent there, because if he reoffends within a certain period o' time, he's straight inside, and that's a *deterrent*, and obviously then he can be offered rehabilitation. If it's a mental health issue, he can be offered counselling or that.” (Focus group participant, male)

Additional conditions to a deferred sentence suggested by participants were the offender being tagged so their location could be monitored and a ban on using buses. There were participants who did not think that banning the accused from using buses was appropriate as it could affect them being able to work.

“I'd also ban him from public transport. Ban him from the bus, because that's at least six people we are aware of. There could be other victims.” (Focus group participant, male)

“Well, not if he had employment and was going to work, and couldn't get to work if he didn't go on the bus.” (Focus group participant, male)

“I understand your point about his employment, but what if they six people that we know on the sick, the stress and the anxiety through his actions won't travel on public transport, so then they're .. stop going to their jobs.” (Focus group participant, male)

¹⁸ This would not be an option under current legislation in Scotland.

5.4.2 Characteristics and circumstances of the offender

Participants were asked whether the sentence would change if the accused had been a different age, gender or had different personal circumstances. In one of the focus groups with men, participants said that if the accused was under the age of 16 then there may need to be an education element to the sentence. Apart from this example, participants did not think the age or gender of the accused should change the sentence given. In this scenario, the fact that the youngest victim was 14 years old struck a chord with participants.

“No. No. Once again, gender shouldn't come in to it...If it's a small child – like an immature little boy for example – touching someone on a bus, there's an education element there, there's an immaturity element there, but when you're talking from the age of like 18 .. You know, I even don't like 18. I think when you're 16 you've got an understanding of what's right and what's wrong.” (Focus group participant, male)

Participants were not interested in the personal circumstances of the accused except for their mental health. As already mentioned, participants thought treatment for their mental health should be included in the sentence. Participants did not think the impact a sentence would have on the accused's life, or the life of the accused's family, affected the sentence they would give.

5.4.3 The sentence participants thought would be passed by the judge for this case

There were participants that thought the judge might impose a short custodial sentence of 6-12 months, similar to the sentences suggested by participants, while others thought a judge would give a community-based sentence with conditions. Participants thought a judge would also place the accused under the sexual offender notification scheme; between six months and to up to 5 years was suggested.

“I think six months to a year, custodial, I would think would be right there...Based on the frequency, the information about the victims, and also what the victims have said – how's it affected them – I think the judge gave a custodial sentence of some kind....A year. Round about. Thereabouts.” (Focus group participant, female)

“I would have said that, because it was a first offence, that he would have got a slightly more lenient sentence, so that's why I would have gone

towards the suspended¹⁹ rather than custodial.” (Focus group participant, male)

There were male participants who were concerned that the sentence the judge would give, would be; more lenient than what they would give.

“Aye. But I think in reality it was a bit more lenient than that I would think to be honest...I just envisage it being quite lenient ... rather than what our preconceptions are. Just like a slap on the wrist, fine.” (Focus group participant, male)

“The way the law goes *now*, I'm no' even sure he would get jailed.” (Focus group participant, male)

“I can already tell we're gonna be annoyed when you read out the sentence.” (Focus group participant, male)

5.5 Views on the sentence given by the judge

Finally, the sentence given for the offence outlined in the scenario was read out to participants and they were asked what they thought of the sentence given by the judge (Figure 4).

Figure 4: Details of the sexual offence scenario (4)

The Charge

The accused was found guilty of 6 contraventions of Section 3 of the Sexual Offences (Scotland) Act 2009 – **sexual assault**

The sentence

- 8 months' imprisonment
- 10 years mandatory registration under the sex offenders' scheme

Reasoning for the sentence:

- The accused's behaviour appeared deliberate and planned and followed a similar course. The behaviour went beyond coincidence as there was no need to sit beside any of the young women or remain seated beside them as the bus emptied of other passengers.

¹⁹ Suspended sentences do not exist in Scotland but a sentence may be deferred. This means that the granting of the sentence can be postponed, sometimes never taking effect. It is usually dependent on the offender being of good behaviour and staying out of further trouble.

- The victims were considered targeted based on their age; as *'due to their youth they would not know or have the confidence to boldly react to your actions and forced them into a corner'*.
- The accused does not accept guilt of these crimes; therefore, the judge was reluctant to consider a community-based sentence. The only option thought to be appropriate by the judge was a custodial sentence.
- The low risk assessment is limited by the little information available about the accused's past.

The accused's behaviour has had a significant and lasting effect on the victims.

Once the charge and details of the sentence were read out, participants were asked for their thoughts. There was consensus in the focus group with men that the sentence given by the judge was fair. Participants were surprised that the judge gave a custodial sentence because they thought the judge would be, in their words "lenient", and give a deferred sentence. On the whole, male participants thought that the custodial sentence length and the length of time placed under the sexual offender notification scheme was "surprisingly good" because they said they had heard of people getting, what they perceived to be, a more lenient sentence for a more serious offence. The sentence participants wanted to see was much closer than they had expected to what the judge actually gave. However, there were participants who would have liked a longer custodial sentence and a longer time placed under the sexual offender notification scheme but thought the sentence was fair overall.

"I'm a bit surprised by it to be honest. I thought it would be a suspended sentence, 'cause that would minimise cost potentially." (Focus group participant, male)

"That means he would be 60 when it ends [time placed under the sexual offender notification scheme]. I think that seems reasonable to me." (Focus group participant, male)

"It's not bad. I would have probably put him on the sex offenders scheme for life, but ... and maybe gave him a bit more imprisonment, but...It's not like one of those stories that you would read and you'd be *annoyed*, so you'd be relatively happy." (Focus group participant, male)

There were also women in both female focus groups who thought the sentence given by the judge was fair with one participant stating, "I think the judge was absolutely spot on in his judgment." (Focus group participant, female). Participants thought the sentence acknowledged the impact the offence had on

victims; something participants were not sure it would do, based on their preconceptions of sentencing. A sentence of 10 years placed under the sexual offender notification scheme meant that if they reoffended their previous conviction would be taken in to account (a view mentioned by the men as well)²⁰. Female participants thought it was right that the offender's not guilty plea was taken into account because they felt there was sufficient evidence against the offender to show guilt and it showed that the offender lacked remorse.

“If I was a victim I would be happy with that sentence. I think the 10 year registration as well is good because I feel like they have...if anything happened again and he tried to do something like that...they would probably get a bit longer sentence. It's like at least they know that this person is...has tried sexual assault in the past and maybe they would do it again. So I think it is good to be on the registration.” (Focus group participant, female)

“Well, by him pleading not guilty is him saying, ‘I didn't do any of this’, you know? – certain amount of arrogance that comes with the assault. So the judge can see that – that there's no redemption, there's no remorse.....so I think the judge has done a good job by giving him a custodial sentence.” (Focus group participant, female)

However, there were participants in both female focus groups who thought the sentence given by the judge was too harsh. For some, this was because they did not think the offence was serious enough to warrant prison. These participants did not understand how victims could be so badly affected by the actions of the accused. However, other female participants in the groups thought it did not matter what they personally would have felt as a victim, what was important was the impact it has had on the victims.

“I think it seems harsh...Maybe it's my age. I've no idea, but somebody touching my thigh, or even touching my boob, it doesn't make me feel as if my world would be changed.” (Focus group participant, female)

“Some people are expressing that they think it's too much...but we're all talking from our personal experience. This is based on what the *victims* have said, not .. You know? And so that's reflected in the judge's decision, that these people have been affected, and you can't quantify the harm.” (Focus group participant, female)

²⁰ Evidence of the accused's previous convictions cannot be led by the Crown prior to a charge being proved (CPSA 1995 ss. 101 & 166). Upon conviction, previous convictions will be provided to the judge who will use these to inform sentencing of the offence before the court.

Others thought the sentence was too harsh in comparison to sentences for other offences participants were aware of.

“I think the judge did a good job by absolutely pinning him to the mast, but I think the custodial sentence was quite harsh. I just witnessed an assault case where the man dragged the girl about the house by her hair, hit her with a baseball bat several time, threw a cup o' coffee over her, and he got 12 month community service.” (Focus group participant, female)

There were also participants who still felt there was not enough evidence to justify a custodial sentence. A custodial sentence was perceived to be too “severe” for the evidence presented. There were also participants who did not believe there was enough evidence to convict the accused.

“I would say there wasn't enough evidence to prove that he was guilty in my view because he didn't have evidence to support when he's been abroad and other things...[the sentence given was] more severe than I expected based on the evidence given yeah.” (Focus group participant, female)

While there was a general feeling across the focus groups that the sentence given by the judge was fair, participants did raise some concerns about the sentence. In the focus groups with men, there were participants that were concerned that the offender may not serve the full sentence, which would make an otherwise fair sentence seem unfair.

“I think the obvious thing for me is the sentencing is they give 8 months, but they're out in *four*. I think that's the thing I've never got round my head – this 'good behaviour'. They're in for a *reason*, so, if they're in for 8 months, they're in for 8 *months*. And you see it more now that they're not getting parole now for the more serious things, and 8 months should be 8 months on that consideration, not 4 months...If someone's getting punished, they get punished for that term.” (Focus group participant, male)

“I've always got this kind of idea in my head [that] they go for 8 months, and they get out in *four* ... That kind of thing. That's at the back of my mind.” (Focus group participant, male)

This concern was related to participants' perceptions of the purpose of sentencing. There were participants who wanted a sentence that served as a “just” punishment, while others wanted a sentence that would help reform participants to stop them reoffending. In this scenario a participant thought the offence was serious but did not think a custodial sentence would do anything to rehabilitate the offender.

“...anybody that's had any crime done to them, you want that person dealt with, so the victims...They want to see the person's been punished, but, on the flip side, the law want to see that there's a rehabilitation going on so they don't reoffend.” (Focus group participant, male)

“I believe everything there. I think that he was very deliberate. He targeted vulnerable people, and I think he's a danger, but I just don't see where an eight month custodial sentence is actually gonna do him any good, and potentially the public going forward.” (Focus group participant, female)

“For me, the issue still is that locking him up for four months or however long he's actually .. doesn't do anything to address the issues that caused this man to be behaving in the way he did...they're now counting on the fact that that sentence will deter him from committing further offences, and, the kind of person sounds like he might be, that might not be enough without attempting to address the issues that that man presented about his mental health or whatever, so I wouldn't agree with that sentence.” (Focus group participant, male)

Participants recognised that prison itself may be a particularly difficult experience for those identified as a sexual offender and also commented on what they considered to be larger problems pertaining to the justice system as a whole and the use of community-based disposals.

“The system as well so...we're assuming that if he had've accepted that he was guilty of these crimes he wouldn't have been sent to prison. He would have been given a community...would have considered a community based sentence and that seems...I don't know it says quite a bit about our legal system.” (Focus group participant, female)

5.6 Changes in views/attitudes to sentencing for sexual offences

5.6.1 Inconsistent sentencing and the need for guidelines

Overall, participants were satisfied with the sentence the judge gave in the scenario because of the factors that were taken into account. Participants expected the sentence to be more lenient than the sentence they would give but this was not the case. Despite thinking the sentence given by the judge in the scenario was fair, there were participants who still felt that overall sentencing was inconsistent which sometimes resulted in sentences they perceived as too lenient. Participants wanted steps to be taken to make sentencing more consistent.

“That’s one o’ the biggest complaints about the criminal justice system is that two people with similar offences get completely different sentences.”
(Focus group participant, male)

It was thought that sentencing guidelines could help achieve consistency in sentencing but participants had differing ideas regarding what the guidelines should contain. There were participants who wanted a minimum sentence established for crimes while others favoured instituting a sentencing starting point which could be used to add or subtract from depending on the circumstances of the case. A starting point is used for sentencing in England and Wales alongside a minimum and maximum sentence banding. These views were not clearly delineated by participant group.

“I do think there ought to be guidelines ... as happens down south. I think that that helps to prevent the sentences being apparently so different for similar kinds of offences if judges are required to take account of particular aspects.” (Focus group participant, male)

While desiring greater consistency in sentencing, members of the public wanted sentencing guidelines to be flexible enough to enable a judge to take individual factors into account. However, survivors thought a sentence should not be discounted based on personal circumstances.

“I think the judges should have quite a lot of flexibility. They should have guidelines, but they should take in to account the circumstances of the individual case, and that could involve lowering or reducing things depending on what they think that the likelihood of reoffending etc. etc. is, so I’m not sure about if there should be a statutory minimum sentence or not.” (Focus group participant, male)

“You know there should be one set of sentencing for each crime, it shouldn’t be different, it should be across the board. That way then the public would know and it wouldn’t be as confusing, there wouldn’t be so much anger and like...why, why...why are judges...what’s so different about that person? Why is he getting that, why is he getting that? You know its...it has to be consistent and across the board throughout Scotland and all judges should have a set standard and they shouldn’t waiver from it.” (Survivor, female)

Survivors wanted to see “tougher” sentences given for sexual offences, because they felt that “there’s no deterrent at the moment” with current sentencing, and sentences did not represent the harm caused. There was a suggestion that making the sexual offender notification scheme public would act as a deterrent.

“I think the sex offenders’ register should be made public...Because then if you’re on the sex offenders’ register and you know...if you commit a crime, a sex crime and you know you’re going to be put on the sex offenders’ register and its public that’s a way that...well then don’t do it because people are going to know who you are.” (Survivor, female)

Whatever form sentencing guidelines take, both members of the public and survivors would like to see more transparency in sentencing. Participants believed that greater transparency would instill greater confidence in sentencing decisions. Specifically, participants would like to see a summary of sentences, and the justification of a sentence, published to improve public understanding of how a sentence is reached and what is taken into account. Participants thought it was important that this was done whilst maintaining some confidentiality of the offender and victims.

“I think it would be important that we require judges to be much more transparent .. and clear about the reasons why they’ve taken the decisions. They had in that case of the dentist, the judge said, ‘I’ve considered it all, and this is my view’, but we don’t know what he considered, and we don’t know *why* ... but if he had to require to explain the details in open court what factors he’s taken in to account then people may have had more understanding of it – or *not* – but I think that should happen.” (Focus group participant, male)

5.7 Survivors’ views on what should change in the sentencing process

When asked if there were any changes they would like to see in the sentencing process, survivors made a number of suggestions.

5.7.1 Choosing who represents you

Although procurator fiscals represent the Crown, and not the victim, survivors wanted the opportunity to choose their procurator fiscal. There was a view that some procurator fiscals are better than others and survivors felt they were at a disadvantage in the sentencing process by not being able to choose their prosecutor. Furthermore, there was a view that those prosecuting sexual offences should specialise in sexual offence prosecution, which is already happening but there seemed to be a lack of awareness of this.

“Say you were a sex offender and you’ve got money you can...you could hire the best lawyer but if you’re a victim up against...and you’ve not got a very good Fiscal against the very best lawyer, you know who’s going to win that case straightaway...I think you should be able to have some say in the [Procurator] Fiscal.” (Survivor, female)

5.7.2 Supported to have their voices heard

There were survivors who felt their experience as a victim was not fully heard during the trial, either because they were not given the opportunity to write a victim statement or because they felt they were unable to express themselves while giving their testimony. Survivors would like to see changes made to the system to ensure that all survivors are given the opportunity to be heard and receive support to write a victim statement.

“They [survivors] just want I think more of a chance to explain. Sometimes they feel that the Procurator Fiscal hasn’t asked them the right questions...they feel they haven’t had a chance to put across something that they see as crucial, and the defence is not gonna give them that chance, so sometimes maybe that’s where the impact statement later on becomes helpful, but in the actual court case I think sometimes they feel that they’ve not actually had a chance to say from their point of view the way they would have wanted to. And then of course you get situations where things are ruled inadmissible for various reasons, and people don’t always understand why that’s the case, but generally I think they want to be heard a bit more clearly.” (Support worker, female)

5.7.3 Better communication and more support for victims/survivors

The support worker interviewed reiterated that they felt more could be done to support survivors throughout the trial, sentencing process and after the sentence has been given. Part of this support could come in the form of better communication with survivors. Other support could relate to ensuring survivors are supported to participate so that the harm caused in the process of doing so is minimised. An example, of this was finding a way to shield victims from seeing the accused during the trial.

“I mean Rape Crisis Scotland’s looking at various things. Sometimes it’s a matter of whether or not you want to be screened from the person or whether you even want to be in a different room, whether or not you could give a *recorded* interview in a different context so that people felt they had more chance to tell the story as it went. Having some more support for the victim of serious offences in the court...something like independent legal representation²¹ I feel is worth exploring in that because of the nature of it now. It’s pretty unique I think, rape cases, in the way that the victim’s treated.” (Support worker, female)

²¹ In the current system the procurator fiscal is appointed to represent the Crown, so there is no legal representative for the victim.

5.7.4 Public education on sexual offences

It was clear from discussions of the scenario that there were differing views on what constituted a sexual assault. There was a view that the general public do not have a good understanding of what constitutes different sexual offences or that the definition is so broad. Survivors thought that the general public assume that sexual offences are committed by strangers in public places, when it can often happen at home. Participants wanted to see steps taken to educate the general public on different sexual offences and on the sentencing process for such offences.

“I think sexual assault is so broad...obviously this is classed as sexual assault but it's not typically what you'd think of as sexual assault...like I know my mum and her...some of her friends wouldn't consider that as sexual assault but I would and my friends would...I think there should be more...maybe saying what would be classed as sexual assault because some people wouldn't realise like it is.” (Focus group participant, female)

5.7.5 Speed up sentencing process

Finally, the uncertainty of when the sentencing process will begin and end can cause stress and distress to survivors. The support worker thought that survivors would value any changes that could be made to fix the timescales of the legal proceedings for sentencing survivors.

“Any time delay is difficult, and sometimes they do take quite a long time for the courts. I mean if that could be maybe more fixed, if that was feasible. Maybe if the court's called for the reports, and then the reports don't come, and it's delayed again, I mean all these things just extend the amount o' time that the survivor's life may be feeling as if it's a bit on hold, or the stress is still there, and the anticipation of what's gonna happen. But you could apply that to the whole process of prosecuting sexual violence – delays an' that. I think the nature of it makes a bit more emotionally difficult than a lot of other things. So if timescales could be tightened up, that would be useful.” (Support worker, female)

6 Discussion and conclusions

Awareness of the law

Participants' awareness and understanding of sexual offences varied, particularly among members of the public. Rape and child sexual offences were in the forefront of the minds of many, because of representation in the media or personal relationships with victims of such offences. While a range of other sexual offences were identified by name, overall, members of the public did not have a clear understanding of how these offences were defined. This was particularly evident for sexual assault which covers a broad range of offences, and lesser known offences such as communicating indecently. Participants did however recognise that consent and the capacity to give consent was important in defining sexual offences. The results from the study suggest that there would be benefit in engaging with the public to increase awareness and understanding on the range and scope of sexual offences which exist, particularly the new offences introduced by the 2009 Act.

Perceptions of harm

Members of the public were largely of the view that some sexual offences are more harmful than others. This was particularly true of offences which involved a component of physical contact such as rape and sexual assault. Perhaps unsurprisingly, crimes against children were viewed more seriously. There were, however, participants who thought all sexual offences could be equally harmful as the impact of an offence can vary from person to person. While members of the public and survivors of sexual offences thought the harm caused to, and the impact an offence has on, a victim should be taken into account in sentencing, there was recognition that this could be challenging where victims' experiences differ. The research findings suggest that there would be value in exploring how to inform the public and victims of sexual offences about how the harm caused to victims and the impact it has caused is taken into account in sentencing.

Perceptions of current sentencing

Participants' perceptions of current sentencing practices varied. Generally, members of the public and survivors of sexual offences were of the view that current sentences for sexual offences are too lenient and that the full impact on survivors is not given sufficient consideration. Survivors of sexual offences also perceived that even when a perpetrator is given a prison sentence, they are released before the full sentence is served, due to prison overcrowding or insufficient resources, rather than as part of a controlled and supported release in the community which takes into account public safety. For some, who felt the sentences are too lenient, this view was linked to media representations of the

sentencing of sexual offences. However, when members of the public went through a scenario based on a real case, they were surprised to find that the sentence they suggested was broadly in line with the actual sentence passed, which they deemed 'fair'. Therefore, comparing what people think happens, and what they think ought to happen, with what does actually happen in specific scenarios, provides an opportunity to explore a more nuanced understanding of public perceptions of sentencing and also a potential method for increasing public understanding of sentencing practice.

There were survivors and members of the public who favoured prison as a sentencing option for all types of sexual offences, as prison was seen as a possible deterrent to future, and perhaps escalating, behaviour. Prison was also perceived as an appropriate sentence to reflect the harm caused to victims and a way to protect the public. However, there were also those who thought a custodial sentence should be reserved for the most serious of offences, such as rape and any sexual offence against minors. For these participants, offences such as voyeurism, sexual exposure and communicating indecently were considered less serious and perhaps more appropriate for non-custodial disposals. There was no consensus among participants on whether sexual assault should result in a custodial sentence, as the scope of the offence is so broad.

Among members of the public, there was a view that sentencing should address offending behaviour and offenders should have access to support to aid rehabilitation in addition to a custodial or non-custodial sentence. Despite participants' broad support for the use of custodial sentences, there were members of the public who questioned whether prison effectively rehabilitates prisoners and prevents reoffending. Some scepticism also existed over the types of rehabilitation and community disposals offered. Treatment options were suggested as a route to tackle offending behaviour in order to deter reoffending.

Notification requirements for sexual offenders were considered a particularly harsh form of punishment and members of the public thought their use was important but needed to be carefully considered. Participants thought being placed under the sexual offender notification scheme could have serious implications for someone's life and therefore some questioned its use for less serious crimes or where there was no risk to the public. Members of the public also expressed the view that offenders who had shown a change in behaviour should be afforded the opportunity to be removed from the scheme. Survivors of sexual offences questioned the effectiveness of the notification scheme given the lack of public access to information on offenders.

Perceptions of factors considered in sentencing

Sentencing was also perceived as inconsistent and participants thought greater transparency was required to understand which factors were considered during sentencing. The factors considered most important to members of the public and survivors were the seriousness of the offence, the harm caused and the impact on the victim, despite recognition that quantifying harm is challenging. There were also divergent views on the seriousness of offences among members of the public, especially where the intention of the accused is open to interpretation. For members of the public, the risk of reoffending and protecting the public were also important factors to consider; understanding the motivation and intent behind an offence was deemed important.

There was little consensus among participants as to whether the personal circumstances of the offender should be considered. Where the accused did have a record of offending, this influenced the severity of the sentence participants recommended, including the associated notification requirements that would accompany a custodial sentence. Participants had mixed views in relation to evidence of previous good character but there was a perception that someone who was perceived as having good social standing may be given preferential treatment in sentencing.

There was also initial reluctance amongst members of the public and survivors of sexual offences to take offenders' personal and family circumstances into account in sentencing as mitigation for their actions. Members of the public thought the impact a sentence would have on an offender should only be taken into account if an offender had experienced similar victimisation or was deemed vulnerable in terms of their upbringing or mental health. Even under these circumstances, survivors did not think these factors should be considered. However, when faced with a specific scenario, members of the public regarded personal circumstances, such as mental health, as very important in determining the sentence they would give. This is consistent with international evidence that highlights the difference in public perceptions of sentencing in the abstract compared with their views when considering specific cases.

Participants believed sentencing guidelines could be used to achieve greater consistency in sentencing. However, members of the public emphasised the need for retaining judicial discretion and flexibility in order to fully reflect any individual factors that might arise.

Survivors' experiences

Survivors emphasised that uncertainty can lead to distress and in order to overcome negative experiences with a justice system, which in their view currently favours the accused, continued support throughout the process is

required. Survivors requested greater support throughout the sentencing process, specifically that they would like to be given adequate information regarding the sentencing process and what to expect at each stage. Survivors also requested more support and guidance to write victim statements and information on how they will be used. It was also highlighted that it can be traumatic to write a victim statement if it is not later used. Finally, although procurator fiscals represent the Crown, and not the victim, there were survivors who wanted the opportunity to choose their procurator. They also wanted there to be procurator fiscals who specialise in sexual crimes, something which is already happening but which did not appear to be known by survivors.



Scottish Sentencing Council
Parliament House
Parliament Square
Edinburgh
EH1 1RQ

sentencingcouncil@scotcourts.gov.uk
www.scottishsentencingcouncil.org.uk

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