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

The Equally Safe Edinburgh Committee (ESEC) welcomes the proposal for the establishment of a Victims’ and Witnesses’ Commissioner for Scotland. We are pleased to see the inclusion of Trauma-Informed Practice in supporting and advocating for the rights of victims and witnesses and would like to see further applications of those across all aspects of the justice process (for example in supporting jurors in understanding the presentation of victims in court, something we discuss in more detail later in this consultation).

Although supportive of this proposal, the ESEC would also like to highlight that further clarity is needed in the ways in which the Commissioner would be expected to uphold victims’ rights if there is no possibility of looking into individual cases. Presuming that this would not involve a judicial review process, we found it unclear as to what investigations the Commissioner would be able to carry out and in what way, if exploring individual cases is prevented.

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

Given the ESEC’s focus on Violence Against Women and Girls (VAWG), we are very supportive of any move to further embed trauma-informed practice (TIP) across all areas of the justice process. Although we recognise that the accused have rights throughout the justice process and they are entitled to a fair and impartial trial, our response heavily focuses on the rights of victims and witnesses, particularly women, children and young people. We had concerns around how TIP might be possible in the justice process, and those concerns focused on the following points:

The justice system is in its nature a very adversarial system. This is particularly true when considering that cases concerning VAWG are overwhelmingly crimes of a personal or intimate nature which may have taken place over a lengthy period of time (such as rape, sexual abuse, domestic abuse).

Our partnership expressed concern around how trauma-informed an adversarial system can be, as the very essence of this system is not designed with trauma-informed principles in mind. For trauma-informed practice to be truly embedded in justice processes, a complete redesign would be required.

Trauma affects each person differently. Trauma-informed practice involves taking these individual considerations into account and tailoring a response appropriate to each person. The victim needs to have input into the process for safety to be created within the system. Given the adversarial nature of the process, we are concerned that victims will continue to be re-traumatised in accessing justice.

Currently, VAWG crimes require a high burden of proof which is difficult to establish given their personal and intimate nature. Further, the length of time it currently takes for VAWG cases to go through the justice system often leads women and girls to surrender their fight for justice as the lengthy wait is retraumatising and preventing them from moving on. This can also further increase the risk to women and girls affected by particular types of abuse such as domestic abuse and ‘honour’-based abuse. This raises the question of whether embedding a trauma-informed approach and trauma-informed practices will actually bring forward change by expediting proceedings, enabling victims of such crimes to access justice and to be able to move on.

We found the language used in the proposed Bill to be vague with regards to how trauma-informed practice can be embedded in the justice system. We felt that more clarity is needed on what training on trauma is going to be delivered, by whom, to whom, and how the system as a whole will be adapted to adopt measures necessary to prevent retraumatisation.

Our view is that everyone involved in a trial should have a level of understanding of trauma and this should be embedded at different levels for different professionals and the public. We would recommend that Judges, Sheriffs, Solicitors, Court Clerks and Interpreters are offered enhanced training on trauma, the neuroscience behind trauma, and how these impact on the behaviour of people in a formal courtroom setting. We would also recommend that ‘refresher’ training is also offered on a 6-to-12-month basis. Currently, there is trauma training widely and freely available through NHS Education for Scotland through the National Trauma Training Programme (NTTP), such as ‘Opening Doors: Trauma Informed Practice for the Workforce’ (<https://vimeo.com/274703693>) and ‘Sowing Seeds: Trauma Informed Practice for Anyone Working with Children and Young People’ (<https://vimeo.com/334642616>).

Trauma training, together with training on child protection, adult protection and VAWG is mandatory for professionals in the statutory and voluntary sectors, with training undertaken every 3 years, accompanied by annual ‘refreshers’. We believe that as providers of a statutory service, members of the Justiciary and court officials should also be required to undertake this training as it is an integral part of their role.

Similarly to witnesses, jurors can equally be traumatised and/or bring their own traumas to the justice process. Alongside this, prejudices, biases or a lack of understanding of trauma can and do influence the decisions juries reach, and this in turn impacts victims/survivors of VAWG crimes. If we are to embed trauma informed principles in the justice process, the ESEC proposes that some input on trauma is also made available to jury members to enable them to understand the presentation of victims and witnesses and to take this into consideration when reaching a verdict.

Many of the resources on trauma are short and accessible, appealing to a wide range of audiences. We would also propose that these also become available to prospective jurors, in a way that is not time-consuming and supportive of the conduct of a fair trial. For example, from the moment a citizen becomes a jury candidate, they are sent information on how to access the building, supports available, contact information and online resources to guide them through the process. They are further requested to sign up online to acknowledge receipt of their jury citation, and these steps take place 1-2 months before they are asked to present in court. At any point during this time, jurors could be asked to confirm that they have watched (readily available or custom-made) videos introducing them to the concept of trauma and how this might manifest in a courtroom.

Similarly, considering the structure and ways in which cases are heard in court, jurors, victims and witnesses are required to wait, often for lengthy periods of time, until their case goes to court. It would be entirely possible, during that time, to ask anyone waiting for a case to be heard to receive a short input on trauma to help them understand what it is, its impact, and how it may manifest in a courtroom setting.

Training for any court official would also need to be accompanied by an exploration and modification of physical environments to ensure that they prevent retraumatisation. Currently, Edinburgh Courts have waiting rooms in which victims and witnesses are asked to wait, sometimes for numerous hours, to find out whether their case will be heard-often to find out that they need to return on a different day. Victims can easily encounter the accused and their friends/family members either in court buildings or the general vicinity, rendering retraumatisation very likely.

Witnesses to crimes also need to be considered in the embedment of trauma-informed principles in the justice process. Witnesses’ trauma can lead them to struggle or to avoid attending court altogether, which in turns leads to warrants and fines being issued. This is again an adversarial and retraumatising process which needs to be rethought and redesigned if it is to become trauma informed.

ESEC members noted that progress is already being made in this area through the provision of commissioned evidence. They note that this has enabled more vulnerable victims and witnesses to provide high quality evidence than before. When the environment is less formal, more relaxed and perceived as less adversarial, the evidence provided is richer and of a higher standard - and this applies to both civil and criminal courts.

In conclusion, although the principle of a trauma-informed justice system is extremely aspirational and something that our committee welcomes, we are compelled to highlight the need for a complete redesign of systems and processes to enable it. Trauma-Informed Practice training is certainly something that needs to be embedded-however there needs to be clarity as to whether this is to be a recommendation or a requirement.

We recognise that the accused also have rights, and that the system is set up to uphold these rights. Witnesses are an addendum to this but not one that is within the court system/process. There needs to be clear definitions of what Trauma-Informed Practice is expected to look like within the justice context, and a realistic view of how trauma-informed an inherently adversarial system can actually be. The alternative would be creating false expectations for victims of VAWG crimes which would only further retraumatise them.

Our aspiration for a truly trauma-informed justice system would be an ongoing commitment to embedding trauma principles throughout every step of the process. This would need to be accompanied by honest reflection and an admission of the limitations of embedding trauma-informed practice in an inherently adversarial process. It would also require careful consideration as to how such a change might be enforced, monitored, benchmarked and what success in embedding trauma-informed principles would actually look like.

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

The ESEC is strongly supportive of the proposals around special measures in civil cases. We find it to be consistent with Trauma-Informed Practice, which is being discussed throughout this document. We particularly support the recommendation in relation to criminal findings: particularly in domestic abuse and other VAWG cases, if there have been criminal findings, these need to be taken into consideration in any later case, and we would support that criminal cases should be concluded prior to any civil cases going through court.

This would help to:

1) identify perpetrators’ potential patterns of abusive/criminal behaviour;

2) further embed trauma-informed principles in the justice process;

3) promote the safety of victims and, in domestic abuse cases, any children that may have been affected and

4) resolve a number of issues between criminal and civil courts as highlighted by recent research: (Burman, Friskney, Mair & Whitecross, 2023: on Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings. Available at: <https://tinyurl.com/mprhdrrv> as accessed on 27 July 2023).

In spite of our support for this particular proposal, we would still like to express a level of concern around the effectiveness of the special measures currently in use. Although ESEC members agreed that commissioned evidence on video link has been extremely effective in their experience, as it has enabled more victims and witnesses to provide evidence in a more relaxed environment than a formal courtroom. However, other measures such as a supporter or a screen may not be as effective for personal or intimate crimes, as sound can still be heard by the person giving evidence. This is particularly problematic in cases that have involved abuse over long periods of time, such as domestic abuse. Sometimes it only takes the accused making a small noise to be heard by the victim/witness, and this can be extremely triggering, retraumatising and can affect the quality of evidence they can subsequently provide.

We appreciate that commissioned evidence can be challenging to implement in very busy courtrooms, and that the accused also have rights that need to be upheld. However, we feel that when crimes being tried in court also relate to the accused’s exertion of power and control over the victim(s) and witness(es) in the case, then there is a fair case for providing the strongest possible protective measures.

To further promote trauma-informed principles and fairness in the justice system, we feel that it would also be important to see measures against the repeated and malicious raising of cases in civil court by perpetrators of VAWG. This is part of, particularly domestic abuse perpetrators’ pattern of behaviour to continue to exert control and coercion over victims/survivors by using the justice system, and we have provided further information on this under question 4.

Our discussion and subsequent recommendations on trauma-informed practice in the justice system and special measures also extends to how these can be applied to women, children and young people from ethnic minority backgrounds appearing in court. We believe that the way the system currently works not only places them at a natural disadvantage due to cultural, religious and linguistic differences, but the way diversity is manifested in a courtroom can also lead to disadvantageous verdicts for these particular groups.

In cases where VAWG crimes have been perpetrated against women, children and young people, there are immense complications around giving evidence due to cultural conditioning. In many cultures, the very act of giving evidence can be considered ‘shameful’. This is particularly true in cases of sexual violence and domestic abuse, where in many cultures these issues are seen as a ‘failure’ by the victim to maintain her ‘honour’ or to ‘keep her husband happy enough so he wouldn’t have to resort to abuse’. It is even more pronounced in cases of ‘honour’-based abuse, where the perpetrator(s) might be members of the victim’s/witness’s family and community; in such cases, evidence-giving risks ostracism and/or violence towards the individual and potentially other loved ones in their environment by the wider community.

The way ethnic minority victims and witnesses may have been taught to react to authority figures might be very different to white Scottish/British victims and witnesses. For example, in many cultures women are taught that eye contact with men is ‘shameful’ and indicates that they are acting dishonourably, belligerently and challenging authority. On the contrary, in the Scottish context, avoiding eye contact can be interpreted as dishonest.

Ethnic minority victims and witnesses are more likely to require a language interpreter. Currently, no choice over the characteristics of the interpreter is offered (such as sex, age or ethnicity). Interpreters are appointed by the court and may change daily, with no no time or capacity to build any kind of rapport. Further, using an interpreter adds a further challenge, in that ethnic minority victims and witnesses are then unable to speak directly to the sheriff/judge, as they need to address the interpreter. Different languages also present different levels of complexity, with entire questions and responses completely changing meaning if so much as one word is used incorrectly, or if similar words do not exist in the victim’s/witness’s language.

To redress some of these challenges and to bring the process more in line with trauma-informed practice, we propose that special measures need to extend beyond the provision of measures that avoid direct visual contact or confrontation between victims/witnesses and the accused. Given the length of time cases take to reach the Court, this time can be invested in ensuring that victims and witnesses are more fully prepared for the evidence-giving process.

For ethnic minority women, this could include time to build a more trusting rapport/relationship with the interpreter who will be involved in their case. It could also involve giving them more choice over available interpreters based on their individual characteristics. Similarly, to avoid linguistic misunderstandings during court hearings, we would propose the use of two interpreters-one who actively interprets for the person giving evidence, and one acting as ‘backup’ to provide further explanation if needed, or to support the ‘active’ interpreter in case terms are used that are difficult to translate into another language.

In conclusion, although we strongly support the proposals for the extension of special measures in civil courts, we wish to see more flexibility as to what constitutes special measures, and creativity around providing those to victims and witnesses with specific characteristics. We believe that for a truly trauma-informed justice system, there needs to be engagement with people with lived experience of the justice process, where they get the opportunity to share their experience as well as suggestions for how the process can be improved.

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

This proposal generated considerable discussion for members of the ESEC. To respond to this question, we relied both on practitioners’ experience of supporting victims/survivors of violence going through the court system, as well as existing research. In proposing the abolition of the ‘not proven’ verdict, concerns have been expressed on both sides of the argument that juries might disproportionately lean on more ‘guilty’ and ‘not guilty’ verdicts.

We are aware of Rape Crisis Scotland’s research on the impact of the ‘not proven’ verdict, which is used disproportionately in rape cases (44% of the time, compared to 20% of the time for all crimes and offences in 2019-2020). The ‘not proven’ verdict in rape cases was deemed as having the same traumatic impact on the victim/survivor as a ‘not guilty’ verdict (Source: <https://tinyurl.com/yc5wvm9e>).

In discussing this, ESEC members raised various concerns: firstly, the ‘not proven’ verdict is unclear, there is no specific definition for when it is to be used, (so much so that the High Court has actively discouraged judges from expressing views or explaining the ‘not proven’ verdict to jurors (Source: <https://tinyurl.com/35v4zdb4>) and this is mirrored in jurors’ beliefs around when and how the ‘not proven’ verdict should be used. It generally appears that jurors believe that ‘not proven’ means ‘guilty, but not beyond reasonable doubt’.

ESEC members were concerned that the existence of what are essentially two acquittal verdicts is unfair on victims of VAWG crimes; but we are equally concerned that the absence of a ‘not proven’ verdict might sway more jurors towards a ‘not guilty’ verdict. Many partners who provide direct support to women, children and young people affected by VAWG crimes discussed the extremely traumatic impact of a ‘not proven’ verdict, equalling a ‘not guilty’ verdict – especially given the lengthy waits for a trial and the burden of proof required for a case to reach the Court.

Services and organisations are increasingly seeing perpetrators using the law and the justice system to commit acts of violence, coercion and control against victims. Very often, in cases of domestic abuse for example, when the (usually male) perpetrator is the first to call the police, he tends to be believed over the genuine (usually female) victim who, due to the trauma from often years of abuse and violence, is struggling to articulate her fears, concerns and the impact the abuse has on her. This is further compounded by a lack of understanding of ‘violent resistance’: the violent response from victims of domestic abuse in self-defense against intimate terrorism.

From decades of experience in the VAWG sector, we know that the trauma women suffer following sexual violence, coercive control and domestic abuse often leaves them unable to gather, hold and present evidence as eloquently and articulately as the perpetrator, which often leads to revictimization, retraumatisation, and their perception as the perpetrator of the abuse. Further, especially in circumstances where the woman (victim) has used violent resistance, partners report that they are more likely to admit to using violence in self-defense when asked directly by the Court. This is contrary to the perpetrator, who is extremely unlikely to admit or take responsibility for his actions. This honest response in turn fuels the perpetrator’s argument that the victim is ‘violent’, ‘unstable’ or an ‘unfit parent’- when in actual fact, violent resistance is a manifestation of a reaction to (years of) abuse and trauma.

Partners agreed that in situations like the ones described above where women are accused of being perpetrators of violence, a ‘not proven’ verdict might help in ensuring they did not commit the crime(s) they are being accused of. However this raised a further question, linked to the discussion around whether the real issue is the ‘not proven’ verdict in itself.

As far as VAWG crime trials are concerned there was shared frustration around the true meaning behind a ‘not proven’ verdict. There is no shared definition or understanding of its meaning, no clarity over what ‘not proven’ means as a verdict, and the real questions should focus around how we prosecute crime (particularly intimate/personal crime), what constitutes evidence, how much is required to meet the ‘burden of proof’, and what the threshold of certainty ‘beyond reasonable doubt’ is.

We know from experience that personal crime, especially crime that occurs in the context of personal/intimate relationships is notorious to evidence and extremely difficult to convict. There needs to be real effort, especially in the context of the current proposals available within this Bill, to ensure that the entire justice process is informed both by trauma, as well as the impact of the trauma on the victim who needs to provide whatever evidence might be deemed necessary to prove a personal crime ‘beyond reasonable doubt’. Currently, the amount of evidence required to prove a crime ‘beyond reasonable doubt’ could lead to more ‘not guilty’ verdicts, especially if ‘not proven’ is no longer an option.

We propose that what is needed is an examination of how sheriffs, judges, jurors and solicitors gather, understand, analyse and present evidence to support victims. To really make our justice system trauma-informed and fair, especially for VAWG crimes and crimes of a personal and intimate nature, we need to ensure that there is learning and training in place for all parties involved in the process around what constitutes evidence, how much of it is required to prove guilt, how judges, sheriffs and solicitors understand this evidence and how juries are then instructed to make their decision.

In conclusion, we broadly support the removal of the ‘not proven verdict’. Our discussion above has served to highlight the considerable challenges particularly women as victims of intimate/personal crimes face when seeking to access justice. We believe that a complete review of the process of seeking to access justice for personal/intimate crimes is required if we are to create a truly trauma-informed justice system that does not repeatedly let victims down. There should be no room for beliefs that the perpetrator is in fact guilty, but there is no ‘proof beyond reasonable doubt’. Trauma creates huge ‘grey areas’ in the collection, provision and presentation of evidence, but we believe that justice should be binary: the same burden of proof required to find someone ‘guilty’ of a personal or intimate crime should also be required to find them ‘not guilty’.

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

The ESEC considers the move from a 15 to a 12-member jury to be a positive one. We expect that this will simplify the process of recruiting and selecting jurors, in turn enabling the court process to move more swiftly and effectively. We also believe that the number of jurors per se is less likely to change the outcome of a trial as indicated by research findings that ‘*Jurors in the rape and assault trials showed no significant difference in the proportion of rape trial jurors favouring guilty or acquittal verdicts by either the number of verdicts available or by jury size’* (Source: <https://tinyurl.com/4b5kdjbx>).

However, ESEC partners expressed concern over the move from a simple majority decision to a decision requiring consensus of 2/3 of the jury. We were not certain we understood the reasons behind this proposal, and we also believe that this might unfairly disadvantage victims of VAWG crimes, especially domestic abuse and sexual crimes. From experience, we know the immense burden of proof required for a sexual crime to reach the Scottish Courts. This in itself is not compatible with a trauma-informed justice system, and to then require a majority of 66% of jurors prior to a decision being made, we feel offers the accused an advantage. This is particularly problematic given the low conviction rates for rape and other sexual crimes, which sits at 51% compared to a 91% conviction rate overall (Source: <https://tinyurl.com/4x65yxz5>).

We are further concerned that with smaller numbers of jurors, the higher the majority required to reach a decision increases- with a minimum jury number of 9, a consensus of 7 or more is needed which is not just well above a simple majority, but also above the 66% consensus rate proposed in this Bill which, in a jury of 9 would require a consensus of 6. Lastly, by moving from a simple majority to a 66% consensus requirement we are concerned that an ongoing issue that unfairly disadvantages women affected by VAWG crimes will continue, namely the lengthy delays in cases appearing in Court.

A simple majority system would enable cases to move through the system more quickly, enabling a swifter resolution for victims who have to wait for years, sometimes, before their cases are heard in court. In conclusion, although we support the proposal for a reduced number of jurors from 15 to 12, we do not support the proposals for a requirement of 2/3 majority for a consensus and would support maintaining the simple majority system.

1. **What are your views on Part 5 of the Bill which establishes a Sexual Offences Court?**

The Equally Safe Edinburgh Committee is broadly supportive of the establishment of a Sexual Offences Court (SOC). However, this support is conditional on the basis that Trauma-Informed Practice training, as well as further learning and training opportunities on VAWG will be compulsory for all those involved in the SOC at all levels.

Our position is that a SOC would streamline the process of hearing a range of offences by the same sheriff/judge. This means that the issue of a lack of communication of offences other than the one(s) being tried would be more likely to be resolved, leading to a more holistic view of the perpetrators’ patterns of offending, and a more effective hearing and sentencing process. This would go further in ensuring that proceedings are more trauma-informed and that rulings support and promote the safety of victims. Issues around the current process were clearly highlighted in recent research (Burman, Friskney, Mair & Whitecross, 2023) on Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings (<https://tinyurl.com/mprhdrrv>). The research found alarming shortcomings in the communication between criminal and civil courts, leading to decisions that did not support or promote the safety of victims and their children and in some cases actually served to increase the risk to them from the perpetrator.

The ESEC would support the creation of a SOC if that meant that the same sheriff or judge would preside over all cases brought forward against the same accused. This would support more continuity in the process and would ensure that there is a holistic view of the perpetrator’s pattern of behaviour. However, this also comes with the proviso that the presiding sheriff/judge would be thoroughly trained in VAWG crimes and trauma beyond sexual crimes. The reason for this is that many years of experience working directly with women, children and young people affected by sexual violence have showed us how often sexual violence unfortunately coexists along other forms of gendered abuse, particularly domestic abuse. Given the extremely complex and sensitive nature of these crimes, it would be imperative for any sheriff or judge in the SOC to be fully trained on VAWG.

Together with the support the ESEC would like to state for the establishment of the SOC, we would also like to express our support for the recommendation that the accused should not be able to carry out his own defense and welcome the recommendations regarding vulnerable witnesses. We believe that both proposals will support the courts to move towards a more trauma-informed way of working that will be more victim-centred and overall more supportive of the justice process.

1. **What are your views on the proposals in Part 6 of the Bill relating to the anonymity of Victims?**

The ESEC supports the proposals for anonymity for victims. We further propose that, further to the existing proposals, anonymity continues to apply for victims posthumously. We support this view as we believe that it is most aligned with trauma-informed practice. Trauma is not only personal-it is also interpersonal and intergenerational. As a result, we believe that, if anonymity ceased to apply following a victim’s death, this could potentially have unforeseen consequences for significant people in their close environments who might outlive them.

We further wish to express the ESEC’s support for the proposed sanctions imposed on individuals and organisations who might breach a victim’s anonymity. Disclosing information about a victim, especially a victim of sexual or other personal/intimate crime can have catastrophic consequences for them, as well as significant people in their close environment (particularly their children). This is particularly important for victims who might be at increased risk of ‘honour’ based abuse-for example women and girls from minority ethnic backgrounds, LGBTQ+ people, and people from faith-based communities. If information about any experience they may have had of sexual or other intimate crime, this would increase the risk to their life and liberty considerably, as they may be considered as ‘impure’, ‘shameful’, or as having dishonoured the norms and codes of behaviour of their family, community, culture and/or religion.

1. **What are your views on the proposals in part 6 of the Bill relating to the right to independent legal representation for complainers?**

The ESEC agrees with the recommendation that complainers should be entitled to independent legal representation, as this is in line with trauma-informed practice and supports the privacy and dignity of victims. However the ESEC wishes to raise a concern regarding Commercial Sexual Exploitation (CSE). CSE includes prostitution, stripping, lap dancing, pornography and trafficking, and is defined as a form of VAWG in Equally Safe: Scotland’s strategy for preventing and eradicating VAWG.

The current Bill seems to propose that there are restrictions to presenting any evidence that tends to show the sexual history of the complainer, which we welcome. However, we also note that there can be exceptions to this following an application for disclosure to the court. We are concerned that during the course of a sexual offence trial, following application to the court, a complainer’s history of involvement in CSE might be deemed relevant evidence in the case. Our concern around this is that current prevailing discourse presents involvement in CSE as a form of ‘legitimate employment’ regardless of evidence that the sex trade is an exploitative industry that disproportionately victimises women, girls and transgender people.

Further, research evidence demonstrates that there are unfortunately still widely held beliefs that women involved in the sex trade are somehow ‘intrinsically different’ to other women (Farley, M; MacLeod, J. et al. (2011): Attitudes and social characteristics of men who buy sex in Scotland. *Psychological Trauma: Theory, Research, Practice and Policy.* Vol 3 (4), pp.369-383.), that ‘prostitutes should only be concerned with fulfilling the expectations of the sex buyer’ regardless of whether the sex buyer abuses or violates the woman’s boundaries (Farley, M.; Golding, J.M.; Matthews, E.S.; Malamuth, N.M.; Jarrett, L. (2015): Comparing sex buyers with men who do not buy sex: New data on prostitution and trafficking. *Journal of Interpersonal Violence* 32(23), pp.3601-3625), that ‘it is not possible to rape a prostituted woman’, and that ‘once a man has paid he is entitled to do anything he wants to the woman he buys’ (Groom, T.M. & Nandwani, R. (2006): Characteristics of men who pay for sex: a UK sexual health clinic survey. *Sexually Transmitted Infections*, 82(5), pp.364-367. Available at: <https://bit.ly/42Q5L7n> as accessed on 11 May 2023).

Outdated though the above attitudes are, they are unfortunately still highly prevalent in society, particularly for men. Given that the majority of sheriffs and judges are men, we fear that an assessment might be made that if a female complainer was commercially sexually exploited in the past, during the time of the commission of the sexual crime, or if the sexual crime occurred in the context of transactional sex, the inclusion of the complainer’s sexual history and behaviour might be deemed ‘appropriate evidence’ for consideration in the case.

Should this be the case, the complainer would be seriously unfairly disadvantaged. Women are commercially sexually exploited overwhelmingly because of childhood sexual trauma, domestic abuse or due to substance misuse and addiction, yet these are issues that are rarely discussed or understood widely. To ensure that women who are or have ever been commercially sexually exploited are guaranteed a fair trial, we would like to see sheriffs and judges trained on all aspects of VAWG, including CSE.

1. **What are your views on the proposals in part 6 of the bill relating to a pilot of single judge rape trials with no jury?**

ESEC members reached the consensus that the current jury trials in effect for sexual offences in particular, and any kind of personal/intimate crime, are not working. They are not an effective way for women who have experience sexual crime to access justice. Unfortunately, in a similar vein, sheriff-only trials in domestic abuse cases also do not work for the (overwhelmingly female) victims.

The Committee agreed that currently, piloting single judge rape trials with the current system would not be successful, because there is inadequate understanding, training and experience for members of the justiciary on trauma and VAWG. There are further complications with the piloting process in terms of how a particular case of rape might be selected over others for this pilot project, and how successful a conviction might be if only a single judge is responsible for the decision.

The ESEC recognised that in the context of reforming the law and the justice process as a whole, a review of how we prosecute personal, intimate and VAWG crimes also needs to take place. Partners characterised the current justice process as ‘broken’ in regard to how intimate VAWG crimes, including rape and domestic abuse are tried. We recognise that what is currently available is not working, but we also believe that a single judge system would be far too risky an alternative.

What ESEC partners would like to see a more ‘whole system change’ approach to trials of VAWG crimes. This would involve a review of what learning, training and understanding there is with judges on VAWG – including sexual crimes, domestic abuse, commercial sexual exploitation and ‘honour’ based abuse. It would further involve work alongside selected juries in VAWG crime trials to help them understand the trauma of victims and witnesses, as well as what level and amount of evidence might constitute ‘proof beyond reasonable doubt’. Last but not least, an assessment would be required of judges’ competence to understand and evaluate the evidence presented to them before making a decision in a VAWG crime trial.

In conclusion, although the ESEC believes that our current system is not trauma-informed at all and does not, broadly, offer justice to women affected by VAWG crimes, we do not believe that a single-just rape trial pilot would be the appropriate step forward. Although we know that a number of aspects of our justice system do not adequately respond to the needs of victims and witnesses, we would propose that changing our current approaches systemically, particularly through education and training of members of the justiciary and of the jury would provide a much better avenue to justice.

1. **Are there any provisions which are not in the Bill which you think should be?**

ESEC members were very pleased to see the recognition that some crimes, particularly sexual crimes, are extremely sensitive and they require a different approach to non-personal and non-intimate crimes. However, we also wish to highlight that in the same way as there is currently a proposal for a stand-alone sexual offences court, we would like to also see a specialist Domestic Abuse Offences court. This development should similarly be guided by Trauma-Informed Principles and a gendered analysis of the experiences and needs of victims/survivors (including their children) and any witnesses.

1. **Do you have any additional comments on the Bill?**

The Equally Safe Edinburgh Committee was very please to see the serious considerations and proposals within this Bill to embed Trauma-Informed Practice in the justice process. Our response, and the recommendations within it, highlight our recognition and acknowledgment that the current system is not trauma-informed due to its adversarial nature, and that it will take time, considerable effort and a commitment to continuous improvement to change the current culture in the justice process.

For our justice system to become truly trauma informed, we need to engage people with direct lived experience of trauma and of involvement in the justice process to help us redesign it with the 5 principles of Trauma Informed Practice in mind: Safety, Trustworthiness, Choice, Collaboration and Empowerment. This needs to apply from the point of engagement with statutory justice services, to the communication between victims/witnesses with the justice system, to the design of physical spaces such as waiting rooms, corridors and courtyards, all the way through to follow-up with victims/survivors and witnesses following a decision being made.

The ESEC would also like to use this space to highlight the crucial role of services like Victim Information and Advice (VIA) and Victim Support Scotland (VSS) for the support they offer to people who are called to provide evidence at trial. These services embody the values of Trauma-Informed Practice and provide victims and witnesses support, information, advice and reassurance on the process, what to expect, and emotional support to go through with the evidence-giving process.

However, we are also aware that with recent developments in the justice process, including lengthy waits for trials, economic austerity and delays in cases being tried, funding for these services is considerably less than what it used to be. VAWG services and partners in the ESEC recognise the valuable services provided by VIA and VSS and concur that their absence is felt in how the people they support, particularly women, children and young people affected by personal/intimate crime are affected by the justice process. For a truly trauma-informed justice system, services supporting victims/survivors and witnesses through the justice process need to be adequately resourced. This will not only prevent retraumatisation, but it will also ensure a fair trial by supporting the provision of the best possible evidence that victims and witnesses can provide.