

## Domestic Abuse (Scotland) Act 2018 – REPORTING REQUIREMENT

Section 14 subsection 4 (f) requires ‘information about the experience of witnesses (including witnesses who are children) at court’. The [Measuring Justice project](#) is completing a review of methods of measuring justice experiences and offers a summary of how this work might inform the Government’s fulfilment of the reporting requirement.

### What information?

Research correlates satisfaction with witness experiences of:

- A sense of inclusion in court process
- Respectful, dignified, meaningful engagement and treatment
- Provision of adequate information about process
- Provision of support through process and after
- Sense of unbiased, fair performance of justice processes
- Belief that outcomes are fair and correct

### Measuring what?

These factors map onto key paradigms of justice:

- *Distributional justice*: outcomes are fair
- *Procedural justice*: processes are fair, meaningful and respectful
- *Effective justice*: the process is efficient, legal and accurate
- *Therapeutic justice*: the process supports longer term healing and empowerment.

These may be interrogated in *specific* (justice in the encounter) or *global* (overall sense of justice) terms.

### Whose information?

The law specifies information about witness experiences but many of the criteria above require information about interactions among a range of those involved in court processes.

### Measuring how?

Most research uses these methods, in order of frequency:

- Surveys/Questionnaires
- Interviews
- Observational methods
- Diaries
- Apps
- Mixed methods of any/all of the above

Examples and discussion of these are provided in this handout.

# Measuring Justice Project Briefing on the Reporting Requirement of the 2018 Domestic Abuse (Scotland) Act

## Background

The new Domestic Abuse (Scotland) Act 2018 has a reporting requirement (Section 14) which includes the duty to provide a range of data about numbers and features of cases, accused, complainers and efficiency/processing of cases under this legislation<sup>1</sup>. Under Section 14, subsection 4 (f) is the requirement to provide ‘*information about the experience of witnesses (including witnesses who are children) at court*’. There is a three-year reporting period which sets the parameters for data collection.

This briefing note offers a summary of issues relevant to research on criminal justice (i.e. police, courts, prosecution, sentence, post-sentence) experiences mainly of victims of domestic abuse/sexual violence. It then gives examples of the methods used to collect, measure and analyse data on these experiences. It has been prepared at an interim stage of the Measuring Justice project which is still collecting literature to inform the overall project. *It does not include research about the experiences specifically of children as witnesses.*

## What ‘information’ should be sought?

In research on domestic abuse/violence and sexual assault victims, common concerns have been raised about experiences of criminal justice, including:

(Holder, 2015: 189)

- a victims’ sense of alienation and exclusion from all aspects of the justice process;
- the experience of routine discourtesy and disrespect [by a range of justice actors and interactions];
- the absence of information and the withholding of information;
- the lack of support, assistance and advocacy;
- disquiet as to the thorough, unbiased and timely performance of justice as it functions from investigation to prosecution, adjudication and sentence management;
- the perception that process efficiencies trump the proper administration of justice, especially with regard to charge negotiation;
- inappropriate or inadequate decision-making, especially with regard to sentencing;
- the failure to hear from or involve victims adequately or at all;
- a perception that, while defendants have rights and representation, victims have neither.

Collectively and individually, these negative experiences of justice can amount to secondary victimisation (Orth, 2002; Hefner et al., 2018). While the literature focuses on victim

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2018/5/section/14/enacted>

experiences, accused/defendants who feel court processes are unjust also are less likely to accept case outcomes, and so these criteria are relevant as well to this group.

## What is being measured?

Much research in this area groups these issues relating to justice experiences into different frames or paradigms of justice; some of the commonly used paradigms are:

**Distributional justice:** Fairness and correctness of the result/outcome of a proceeding (in the context of criminal justice).

**Procedural justice:** Fairness of process; in procedural justice literature typically four elements comprise this including *participation* (voice, meaningful involvement), *neutrality* (transparent, unbiased), *dignity and respect*, and *trust* (in the legitimacy of the authority). 'Interactional justice' is a related model which focuses on interactions between victim/witnesses and other actors, and also includes an informational dimension that has been more typically applied to domestic abuse/sexual violence justice experiences (see Orth, 2002; Mulvihill et al., 2018 Laximaniyan et al., 2013).

**Effective justice:** Technical, procedural and rational features of the justice system.

**Therapeutic justice:** Justice process as supporting wider personal and social empowerment and healing. This is not yet a dominant model in research on domestic abuse but is increasingly being incorporated into it as ideas about the longer term effects of court processes on the recovery of victims, beyond the experience of court itself, is researched.

These are just a selection among many (often overlapping) paradigms of justice. Mulvihill et al. (2018: 14ff) identified numerous such paradigms across the literature on gender based violence, many of which are non-CJS specific, listing these as: community justice, cultural context model, economic/financial/distributive justice, effective justice, emotional/affective justice, egalitarian justice, feminist jurisprudence/legal thinking, gender justice, interactional justice, neo-liberal justice, parallel justice, peacemaking, problem-solving justice, procedural justice, social justice, therapeutic justice/jurisprudence, transformative and participatory justice, victim's rights, women's/human rights.

## When and how long will information be collected?

The Act provides for a **three-year reporting period** which creates scope for longitudinal/cross-sectional and outcome focused information. Some temporality considerations include:

- *Time intervals:* for example have multiple data collection waves, such as at 0, 3, 6, 9, 12 months from conclusion of a court proceeding. However, more points of data collection are by definition more intrusive and consideration should be given to how

research might become part of court experiences that are experienced as re-victimizing. People may want to move on from the experience of court (and the crime that led to it).

- *Pre-, during and post-court processes*: decisions will have to be made about which or if all phases of a court process are subject to information gathering. It may be important to consider how witnesses experience pre-court (police contacts), pre-trial, trial, sentencing, post-sentencing stages.

## Information from whom?

The law specifies information about **witness experiences** (which can **include victims, accused, family members of these, professionals like police**) but many of the criteria above require information about interactions among additional people involved in the court process including **judges, prosecutors, jury members, and others present in court** (advocates, clerks, etc.) (see Person et al., 2018). It may also be important, for informing improvement of court experiences to gather information from different perspectives to compare whether there is shared understanding of what constitutes, for example, respectful and meaningfully engaged, court processes.

## What method?

This section summarises common methods in research on justice experiences, beginning with the most frequently used tool – the questionnaire – to other methods, including interviews and observations. Research increasingly adopts mixed methods approaches, and each tool presents particular strengths and limits.

## Survey /Questionnaire Methods

- Closed and open response choices
- One factor, multiple factor
- Longitudinal, cross-sectional
- Administration mode (face to face, telephone, CAPI, online/app)

The vast majority of research on attitudes about and experiences of justice involves use of surveys<sup>2</sup>. This is particularly the case in procedural justice studies (and within this, a focus on police interactions), and is not limited to domestic abuse victims though there is a solid body of evidence in this area (Laximanaryan, et al. 2013). Tools are well developed and validated at least for the particular purposes and questions.

In the research on procedural justice, typically four factors are associated with the concept as noted above, but it has also been conceptualised (e.g., Henderson et al., 2010) as a **three-factor** (quality of decision-making, quality of treatment, overall fairness), **two-factor** (quality of decision-making, quality of treatment) or even **one-factor** (overall fairness) model. Surveys generally make use of continuum/Likert scale responses (like ‘never, seldom, sometimes, and almost always’). Henderson et al. (2010: 388) include the most typically used items in procedural justice survey tools (these have been adapted for different settings including court and prison):

**TABLE 1: Items Used in Previous Research to Assess the Measurement Properties of Procedural Justice**

<i>Study</i>	<i>Items</i>
Reisig, Bratton, and Gertz (2007)	<i>Procedural Justice—Quality of Treatment</i>
	Police treat citizens with respect
	Police take the time to listen to people
	Police treat people fairly
	Police respect citizens' rights
	Police are courteous to people they come into contact with
	<i>Procedural Justice—Quality of Decision Making</i>
	Police make decisions based upon the facts
	Police explain their decisions to the people they deal with
	Police make decisions based on their own personal feelings
Maguire, Johnson, and Kuhns (2008)	<i>Procedural Justice</i>
	The police know how to carry out their official duties properly
	The police are neutral and fair when dealing with citizens
	The police address citizens in a respectful manner and appropriate tone
	The police are responsive to the needs of citizens
	The police show care and concern for the welfare of the citizens they deal with
	The police treat everyone equally
	The police make decisions based on facts, not their personal biases or opinions
	The police consider the views of people involved before making their decisions
	The police clearly explain the reasons for their actions

<sup>2</sup> While survey in broadest sense refers to gathering views from a population (which would include any method doing this), we use the word in the more narrow sense of a technique of quantitative data collection via individuals, mainly through questions with closed answers or Likert scale/ranking options, i.e. questionnaire.

Advantages of surveys are they can:

- be constructed to be brief and quick to complete
- allow for information to be gathered across large populations
- provides standardised means of seeing trends over time in cross-sectional and longitudinal research
- can include open-ended questions (text boxes) to allow for extending an answer and offering detail

Challenges of surveys are:

- difficulty of drafting
- can be disengaging/alienating with low response rates, especially in completing open-ended options (particular issue for sensitive topics/witnesses)
- limited depth of information to answer why or how questions
- does not reveal issues not raised in survey
- not typically used with children in research

## Interview Methods

- Semi-structured
- Structured
- Peer led, supported
- Longitudinal, one off

This is the second most common method of gathering data about experiences of justice, and the most common method in research focused on justice experiences in cases of domestic abuse and sexual assault. Interviews of justice experiences commonly involve **structured** (where respondent is kept to answering specific questions as in a verbal survey/questionnaire, e.g. Gover et al. 2007) or **semi-structured** (themes guide interview with opportunity of more open-ended responses). Because of the sensitive topic of gender based violence and sometimes vulnerable position of witnesses, attention to training and conduct in interviews is crucial. Some research has **involved victim advocates** (supporting the interviewee or conducting the interview, Anderson, 2015). Use of **peer led interviewers** is common in some research areas (where interviewer is someone with same experiences) though not systematically addressed in domestic abuse research.

**Multiple interviews at timed intervals** allows for understanding longer-term impact of court experiences. Bennett Cattaneo and Goodman (2010) used a therapeutic justice frame in interviewing 142 women who were in court due to a partner's abuse, at 3 and 6 months after recruitment, eventually finding that 'an empowering experience in court predicted even greater improvement in both depression and quality of life.'

**Structured interviews:** In research with 50 victims and 50 defendants in a specialised domestic violence court in the US, **Gover and colleagues (2007)** asked these questions (with either yes/no or Likert scale options of 'excellent, good, fair, poor, and don't know':

General satisfaction with the court process: [global, effectiveness, distributional justice issues]

"What was your overall impression of the way that your case was handled by the court?"

"How would you rate the overall quality and professionalism of the court?"

Perceptions of the court process: [effectiveness justice issues]

"How was the waiting time to hear your case?"

Having a "voice" in one's case: [procedural, interactional, therapeutic justice issues]

"Do you feel that the court gave you adequate time to explain your side of the story?" and

"Do you feel that the judge was concerned with your side of the story?"

Fairness, justice, and respect: [procedural justice issue]

"Do you think that the outcome in your case was fair/just?" and

"Do you think that you were treated with respect and dignity by the court?"

Court's overall response to domestic violence: [global, distributional justice issues]

"Do you think that the Domestic Violence Court's response to domestic violence cases is too easy, too harsh, or just right?"

"Based on your experience in court would you recommend that other victims seek prosecution?"

**Semi-structured approaches** define themes for interview but allow for open-ended reflections in which additional themes may emerge. They make use of 'both deductive codes from existing literature and the interview guide, as well as inductive codes that emerge... from the data' as Hefner et al. (2018: 7) report in their study on women's experiences of obtaining civil protection orders in cases of domestic abuse. The approach to analysis then involves:

*'The interviews were analyzed using codes and subcodes for both the court process and outcome. As the analysis progressed, more distinguishing codes and subcodes emerged including four final themes: (a) the silencing of women's voices, (b) reproducing abuse through power and control, (c) mediator demeanor and guidance, and (d) fairness in the court outcome.'* (Hefner et al., 2018: 7)

## Observational Methods

- Structured, 'observational survey'
- Filmed
- Interactional, participant observation
- Ethnographic, ethnography

Observational methods are growing in prominence in the literature and involve researchers or others (such as those professionally involved in cases trained to participate as observers in research). Observational methods are useful in capturing interactional information and in real time (how do judges or prosecutors, for example, speak to witnesses). The most structured forms of observation research amount to a form of **quantitative visual survey/questionnaire** where trained observers note and rate traditional procedural justice survey factors often using yes/no or rankings. The excerpt from an observation study of police-citizen interactions shows this (from Jonathan-Zamir et al. 2015: 858):

**Table 2** Descriptive statistics of the individual items composing the sub-indices (N = 319)

	Values	N	%
<i>Participation</i>			
Officer asked the citizen to provide information/viewpoint	Yes	309	62.8
Citizen provided information/viewpoint	Yes	309	80.6
Officer expressed interest in information/viewpoint	Dismissive	249	1.2
	Inattentive	249	4.6
	Passive	249	27.0
	Active	249	67.2
<i>Neutrality</i>			
Officer expressed desire to hear all viewpoints	Yes	313	11.5
Officer indicated he would not make a decision about what to do until s/he had gathered all the necessary information	Yes	311	6.4

Other observational studies are more **ethnographic and participant observational** as in this excerpt from a study of non-contact orders in partner violence cases by Anderson (2015: 113):

*'The clerk calls the name of the defendant in the first case on the probation compliance calendar. The prosecutor tells the judge, "There was a motion to rescind, I guess initiated by the victim. The state did not receive a notice. I want it stricken." The judge asks, "Is the victim present in the courtroom?" and a woman seated in the gallery says, "Yes." The judge looks at the public defender and asks, "Are you representing this client?" The public defender replies, "Yes, but I just found out about the motion this morning." The judge says, "Will the protected party come up?" and the victim stands and walks to the front of the courtroom. The judge asks the woman to state her name for the record, and then says, "Ma'am, the state is objecting to the motion because they were not informed until this morning. Is the victims' rights advocate present in court? Yes, she is present. Perhaps you can check with the rights advocate to schedule a motion? I can't entertain it unless the state is prepared." The prosecutor says, "My office is not going to file it. He went right out and violated it." The victim starts to speak, saying "Your honor, I was not the person who started it." The judge interrupts her to say, "The motion is denied. It can perhaps be heard at omnibus [next month]." The victim says, "So, I went to two different places and [the victim advocate] said she wouldn't be able to help me and I got denied so I went over too . . ." The judge interrupts with, "Well, I can't hear it. Perhaps we can get it at omnibus." The clerk calls the next case. The victim sighs as she walks out of the courtroom.'*

In this methodology, notes are then coded for key themes generated through the data (rather than

pre-set as in the survey approach) and analyzed in multiple stages. In this case the meta themes identified were 'voice' and 'choice'.

A **middle approach is structured qualitative observation** as used in the recent evaluation of the Aberdeen problem solving court, where a tool was devised in collaboration with the Government where the 'aim of the observations was to collect information on:

- the processes, timings and physical context of the hearings
- the topics discussed
- the communication styles used
- the level and type of participation of those in attendance'. (Eunson et al. 2018: 4)

Observational methods have value in:

- not as distressing or inconvenient to victims as interviews and surveys;
- providing holistic information about the quality of experience which is affected by numerous interactions and actors;
- providing richer quality of data where unexpected themes and issues can emerge (in qualitative approaches) compared to surveys;
- overcoming response rate and recruitment problems of surveys and interviews.

Such methods have constraints that:

- the perspective is the researcher's (or observer's) interpretation of the scene;
- it can be time consuming compared to surveys and time limited interviews;
- require resource for training in observational recording methods and calibration.

## Other methods

**Administrative, existing datasets:** Administrative data already collected about cases will be an important source of information for other subsections of the reporting requirement that can enhance analysis of experiential data. This includes demographic data on victims and accused, nature of case, timeline/frames of case processing, and case outcomes and sentences.

There are existing sources of data about victim/witness experiences, for example in the Scottish Crime and Justice Survey. It could be possible to insert questions into such surveys to gather data specifically relating to Domestic Abuse Act proceedings, though the numbers are very small and this presents a less efficient option than conducting research directly with those going through court. Felson and Pare's (2007) study of gender differences in victim satisfaction in domestic violence cases used the American Violence Against Women (and Men) Survey which provided extensive data about nature of incidents and perpetrators and just two questions on satisfaction:

*"How satisfied were you with the way the police handled the case?"*

*"How satisfied were you with the way you were treated during the court process?"*

*Response categories for these items were "very dissatisfied; dissatisfied; satisfied; or very satisfied"*

The measures of victims' complaints about the police are based on responses to the following question: "Is there anything else the police should have done to help you?" The responses to this question were coded into 11 categories

**Diaries:** Participants can be given diaries/journals to keep written notes, phone notes, video diaries documenting in real time their experiences of court processes. This has been used in some research where it is difficult to interview participants or where it is useful to gain contemporaneous impressions of experiences.

**Apps, technology enabled approaches:** This is not a method per se but a mechanism of carrying out methods. For example, it might be possible to develop an app that includes the ability for court participants to complete a questionnaire, take part in an online interview, record diary notes of experiences. Apps also can be sophisticated means of interrogating affective dimensions of court. Apps allow for enhanced privacy of information gathering.

**Mixed methods:** Except for survey research, which often but not always is used in isolation, all the other methods discussed are typically used in combination. Interviews combined with observation is the most common.

## Other Considerations

### Sample Size

Sample size will also need to be considered early on. How many witnesses and cases will be recruited for inclusion in information gathering? Attrition is inevitable in longer term research which should be factored into initial sample size.

### Recruitment

Many interview and in person survey methods recruited participants at court as the person, usually victim, was arriving to participate in court (e.g. Hefner et al., 2018). Information about the study was provided at the same moment as consent was sought to take part, which raises some ethical concern. There may be an opportunity to recruit for research on this Act with more notice and information provided to participants.

### Victims and Perpetrators?

'Witness' as noted may refer to a range of court participants. Most of the literature is about victims, though there is a solid amount about perpetrators of domestic abuse. This research has shown that considerations of procedural justice are important for this group as well and satisfaction about the fairness of processes is associated with positive outcomes (e.g. Paternoster et al., 1997, found that those accused of domestic violence who felt their arrest was carried out in a procedurally fair manner, 'suppressed violence' measured in terms of subsequent assault rates that were as low as those who were not arrested; and see Gover et al., 2007).

### Understanding measurements

Ideas about justice guide the measurement of experience, but what precisely is this hoped to achieve? How we decide that 'justice has been done' depends on whose perspective we focus on, or which stage or setting is explored. Justice itself has been defined in a range of ways. Consideration should be given to the different aims of different justice models including:

- Satisfaction
- Empowerment
- Recovery
- Justice (in a larger sense of societal fairness and right)
- Legitimacy and trust
- Effectiveness

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