

Call for evidence from the Independent Strategic Review of Funding and Commissioning of Violence Against Women and Girls Services: our response

About JustRight Scotland

JustRight Scotland is a registered charity (SC047818) established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality. We provide legal advice and representation on human rights and equalities issues across a range of legal areas including: women's legal justice, trafficking and labour exploitation, EU citizen rights, migration and citizenship, disability and trans legal justice.

We welcome the opportunity to input to this strategic review of funding for violence against women and girls. We have done so by drawing on our practical experience and expertise in providing legal advice and representation to self-identifying women affected by gender-based violence.

We are responding to this call for evidence drawing from the experience of our staff, as well as people we represent, within the Scottish Women's Rights Centre (SWRC), the Scottish Refugee and Migrant Centre (SMRC) and the Scottish Anti-Trafficking and Exploitation Centre (SATEC).

We believe that challenging violence against women and girls (VAWG) requires a multi-faceted approach. This includes: a focus on prevention aimed at redressing the inequalities that lead to violence, on strengthening and improving our protection of survivors, and also ensuring an effective response leading to prosecution of perpetrators of violence.

We maintain this work must be rooted in an understanding of the deeply gendered norms, assumptions and expectations that help to perpetuate gender-based violence, and a commitment to tackling the systemic and structural inequalities that cause it.

Our work – providing legal advice, representation and advocacy support for survivors of VAWG plays a role at every stage in this process – both in helping to meet our obligations in law to protect women and girls from violence, as well as in providing necessary legal information and advice once survivors of violence and widening access to justice so that survivors have access to an effective remedy in law.

Our response to the call for evidence from the Independent Strategic Review of Funding and Commissioning of Violence Against Women and Girls Services.

JustRight Scotland

JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703). Our Registered Office is: Room 1, 1st Floor, Libertas House, 39 St Vincent Place, Glasgow, G1 2ER.

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5.1. Should access to services for those experiencing violence against women and girls be a right in law for any woman who needs them e.g. like child/adult protection?

YES

5.2 Please give reasons for your answer.

We recognise that people of any gender can be affected by abuse and violence (including sexual violence). However, statistics show that these crimes are more often committed by men against women. For example, in 2020-2021, Police Scotland statistics confirmed that of 65,251 domestic abuse incidents recorded in Scotland, four out of every five incidents (80%) had a female victim and a male accused. (Police Scotland, Domestic abuse: statistics recorded by the Police in Scotland: 2020-21, <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2020-21/pages/4/>)

Gender inequality and violence against girls and women have not been eradicated within Scotland. At least one in five women in Scotland will experience domestic abuse in her lifetime and an average of four rapes are reported per day, yet this figure masks the extent of sexual violence due to underreporting. An important dimension of systemic violence against women is lack of equal access to justice and discrimination within the criminal justice system.

This is reflected in low conviction rates for rape, domestic abuse, trafficking of women for sexual exploitation and female genital mutilation (FGM) as compared to conviction rates for other crimes. Police Scotland statistics reveal that the conviction rates for all crimes and offences has remained stable over the last decade fluctuating between 86-91%; but conviction for rape and attempted rape cases stand at 51%, the lowest of all crimes in each of the last 10 years. (Police Scotland, Criminal proceedings in Scotland: 2020-2021, <https://www.gov.scot/publications/criminal-proceedings-scotland-2020-21/pages/6/>)

The Scottish Government's definition of gender-based violence is set out in Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls:

“Gender based violence is a function of gender inequality, and an abuse of male power and privilege. It takes the form of actions that result in physical, sexual and psychological harm or suffering to women and children, or affront to their human dignity, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. It is men who predominantly carry out such violence, and women who are predominantly the victims of such violence. By referring to violence as 'gender based' this definition highlights the need to understand violence within the context of women's and girl's subordinate status in society. Such violence cannot be understood, therefore, in isolation from the norms,

social structure and gender roles within the community, which greatly influence women's vulnerability to violence.”

Scottish Government, Equally Safe: Scotland's strategy to eradicate violence against women, 2018 (<https://www.gov.scot/publications/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/pages/3/>)

Equally Safe Priority 3 states that it is the Scottish Government's responsibility to ensure women and young people can access relevant, effective, and integrated services needs to focus on a joint system of mainstream, specialist and third sector services capable of delivering a coherent and consistent response. It would therefore seem a logical extension of the Scottish Government's commitments in this area, to implement measures that make access to services, specifically access to legal advice, a right in law.

We believe that the UK Government and the Scottish Government are already under obligations arising under international law to ensure access to legal advice for women and girls who have experienced VAWG.

These obligations arise under:

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998
- The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a UN Convention which was signed by the United Kingdom in 1981 and ratified in 1986.

This international treaty is reflective of the importance for gender equality to underpin human rights so that women and girls can enjoy them fully and without discrimination, as defined in Article 1:

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

As Professor Nicole Busby, Professor in Human Rights, Equality and Justice at the University of Glasgow, writes, the convention: “places a positive obligation on states to bring about changes in cultural norms and practices which are ‘based on the idea of the inferiority or the superiority of either of the sexes. This is a positive duty which requires states to take proactive steps to bring about gender equality”. (Nicole Busby

(2018) CEDAW: How can women's rights be better realised in Scotland? Engender. <https://www.engender.org.uk/content/publications/CEDAW-incorporation-paper.pdf>)

Article 5 of CEDAW's places a positive obligation on states which requires that states parties to take proactive steps to ensure women enjoy the fulfilment of their rights under international law to bring about gender equality, including adopting appropriate legislative measures and establishing legal protection of the rights of women and girls.

Responsibility for ensuring that the CEDAW requirements are met in Scotland sits with the Scottish Government - which has already committed to ensuring realisation of the Convention in Scotland (Scottish Government, Convention on the elimination of all forms of discrimination against women: position statement) <https://www.gov.scot/publications/scottish-government-position-statement-convention-elimination-forms-discrimination-against-women/pages/19/>).

Furthermore, it should also be borne in mind that a failure to protect women from gender-based violence, may breach Article 2 (right to life) of the European Convention on Human Rights (ECHR), Article 3 ECHR (right be free of inhumane and degrading treatment) and Article 4 ECHR (right to be free of slavery and servitude) and Article 8 ECHR (right to respect for private and family life). Articles 2 and 3 are absolute rights which can never be limited in any circumstances. (Council of Europe, Freedom from violence against women, <https://www.coe.int/en/web/impact-convention-human-rights/freedom-from-violence-against-women>)

The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK domestic law, and places positive obligations on public authorities to promote and protect those rights.

Further, the Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the 'Istanbul Convention'), sets out minimum standards for how governments must act to prevent violence, protect women and girls experiencing it, and prosecute those responsible. The UK signed up to this Convention in 2012 and has recently ratified it, and it will enter into force on 1 November 2022. That means that the UK Government is legally bound to follow the standards of the Convention.

We highlight a few relevant articles of the Istanbul Convention:

- Article 4 – requires states to “take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere”... including...
- **Legal Information, Advice and Support of Specialist Services**
- Article 19 – ensuring that victims receive adequate and timely information on available support services and *legal measures*...

- Article 20 – ensuring that victims have access to services to facilitate their recover from violence. These measures should include, when necessary services such a *legal* and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.
- Article 22 – ensuring adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of the Convention
- **Access to Justice, Effective Civil Remedy and Compensation, Prosecution and Legal Aid**
- Article 29 – ensuring access to *adequate civil remedies against the perpetrator... and State authorities that have failed in their duty to take the necessary preventive and proactive measures within the scope of their powers*
- Article 30 – ensuring that victims *have the right to claim compensation from perpetrators... and, in some cases, from the State*
- Article 49 – ensuring the effective investigation and prosecution of offences
- Article 57 – ensuring *the right to legal assistance and to free legal aid for victims*

For the above reasons, we believe that access to services for those experiencing VAWG is already a right in law – and support for this has been a clear policy position from the Scottish Government for a number of years.

Having said that, in our work, we see a gap between law and policy outlined above, and the experiences of women who access our services. In particular, we have see legal case relating to VAWG which are not pursued by victims because of gaps in access to legal aid – and we have seen inequality of access for victims, particularly where overlapping and intersecting barriers are at play, and also where geography is a barrier – for example, lack of provision of services in rural areas,

This is why we would support embedding access to services for those experiencing violence against women and girls as a clear right in law, in Scottish legislation – for example, in the incorporation of elements of CEDAW and the Istanbul Convention in a future Scottish Human Rights Bill. Incorporating rights in domestic law – as in the UK Government’s approach to the Human Rights Act 1998 or the Scottish Government’s approach to the UN Convention on the Rights of the Child, makes those rights justiciable and more quickly realised for people living in the UK and Scotland – and also strengthens the case for positive and proactive interventions to increase protections against VAWG and to uphold the rights of survivors of violence.

Further, we refer to the wider principle that gender-based violence is detrimental not just to women, girls and members of their families directly affected by it, but to society as a whole. The Scottish Government estimates that the cost of domestic abuse to the public purse is £2.3 billion. ⁵ It is widely accepted that this is a conservative

estimate given the amount of under-reporting of domestic abuse and the consequent difficulty in ascertaining exact numbers. (The Improvement Service, Briefing Note: Preventing and Eradicating Domestic Abuse, July 2015, https://www.improvementservice.org.uk/data/assets/pdf_file/0016/8314/EM-Briefing-domestic-abuse.pdf)

6.1 . Should access to services for those experiencing violence against women and girls be a right in law for any child or young person who needs them e.g. like child/adult protection?

YES

6.2 Please give reasons for your answers.

We believe that access to services for those experiencing violence against women and girls be a right in law for any child and young person who needs them for the reasons given above in relation to Question 5.1.

Additionally, the Scottish Government's vision to make Scotland a fairer and more equal society where everyone is valued, protected, and respected includes commitment to the principles of the Safe & Together Model to tackle domestic violence. The model looks at keeping children who have experienced domestic abuse safe and together with their non-abusive parent, while supporting and acknowledging non-abusive parents' protective efforts and ensuring perpetrators are held accountable for their abuse. (Safe&Together Institute, Scotland's Programme for Government Commits to the Safe and Together Model, <https://safeandtogetherinstitute.com/scotlands-programme-for-government-commits-to-safe-together-model/>)

We also wish to underscore our commitment to advocating for recognition that children (of all genders) are victims of violence in any domestic situation where a mother (or female carer) is suffer abuse. Children are often, in this context, "silent" victims where they are not also recognised as impacted by these experiences of abuse and not given access to appropriate support and services in recognition of these harms.

We also refer to recent positive work recognising this important connection in Scotland outlined in the Bairns' Hoose model, explored in Scottish Government, The Bairns' Hoose: Scotland's Barnahus: vision, values and approach, February 2022, <https://www.gov.scot/publications/bairns-hoose-scottish-barnahus-vision-values-and-approach/#:~:text=The%20Barnahus%20Model%20provides%20Scotland,not%20only%2C%20child%20sexual%20abuse.>

Finally, Scotland's commitment to realise children's rights is reflected in the incorporation of the United Nations Convention on the Rights of the Child (UNCRC)

into Scots law. The UNCRC (Incorporation) (Scotland) Bill is a milestone on Scotland's journey towards making rights real for every child and incorporation is among the most important things that can be done to ensure children's rights are respected, protected, and fulfilled.

A right in law to access to services for children and young people who are survivors of VAWG, is, further, in line with the Scottish Government's vision where Scotland is the best place in the world to grow up. (Scottish Government, Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019 <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/pages/8/>)

10.1. Should services and providers for women, children and young people experiencing violence against women and girls be the same in every local area?

No

10.2 Please give reasons for your answer

We support a vision where women, children and young people have access to services when they need it, where they need it.

That means that services and providers should not necessarily be the same in every local area, but they should be tailored around the needs of specific communities – and within those communities, to the individual needs of the women and girls receiving support. This is a fundamental principle of a trauma-informed approach to service delivery, and we maintain that we should strive to reach this standard in all localities to ensure true equality of access.

Services should be available, appropriate, of high quality and accessible across Scotland, but it is important to consider overlapping barriers that can often create greater inequality, such as race, class, income, sex, gender, age, sexual orientation, ethnicity, and migration status. It is fundamental that services are designed in recognition of intersectionality and how multiple forms of disadvantage can compound discrimination and inequality.

Further, as these factors can change drastically from one locality to another in Scotland, especially in rural areas, services need to be reflective of this variance. We note that there is limited evidence on the scale and scope of specialised services available by locality in Scotland and suggest that a toolkit developed by Professor Liz Kelly may provide a useful template for identifying the range of services that currently exist in Scotland, and where the key gaps are. (Kelly, L. (2018) Mapping Support Services for Victims of Violence Against Women in Line with the Istanbul Convention

Standards. Council of Europe. <https://rm.coe.int/final-vaw-support-2019-eng-forms/168093b8b9>)

11. What action should be taken to ensure unmet need is met and regional disparities are addressed?

Please give reasons for your answer.

Inequalities and disparities are very much influenced by primary inequalities in power, money, and wealth which as a consequence shape access to services, resources and opportunities. The strongest action to reduce those disparities is to reduce inequality in economic and social conditions but other steps can be taken to prevent and mitigate the impact of those regional disparities.

JRS believe that long-term, sustainable funding to third sector organisations is a fundamental action to be taken to meet different needs across Scotland.

There is strong evidence at the international level that shows that investing funding in women's organisations creates disproportionately positive impacts on the lives of women and girls. (Htun, Mala, and S. Laurel Weldon (2010) "When Do Governments Promote Women's Rights? A Framework for the Comparative Analysis of Sex Equality Policy")

Over recent years, the women's sector in Scotland has secured significant policy changes such as:

- Scotland's 'gold standard' Domestic Abuse Act
- The development of A Fairer Scotland for Women: Gender Pay Gap Action Plan
- Commitments to implement separate and individualised payments of Universal Credit in Scotland
- Development and implementation of Equally Safe, Scotland's strategy to end men's violence against women
- Comprehensive duties to integrate gender into the Scottish National Investment Bank
- Parity on public board positions and the Gender Representation on Public Boards (Scotland) Act 2018
- Commitment to incorporate the UN Convention on the Elimination of All Forms of Discrimination Against Women into Scots Law.

(Engender, Parliamentary Briefing: Equalities and Human Rights Committee Debating Valuing the Third Sector, December 2020, <https://www.engender.org.uk/content/publications/Engender-Parliamentary-Briefing-Equalities-and-Human-Rights-Committee-Debate-Valuing-the-Third-Sector.pdf>)

Longer term funding ensures third sector organisations can hold the Government to account, can provide stable services, and have a continuous understanding of the needs of communities across Scotland.

13.1. For services receiving funding, what would be the optimum length of funding period to ensure they are able to continue to provide services effectively for women, children and young people experiencing violence against women and girls?

Select years – 5 years

13.2 Please give reasons for your answer

Single-year funding cycles are having a significant and negative impact on voluntary organisations in receipt of public funding. Organisations and services that people rely on are being endangered by the current reliance on such short-term cycles.

Short-term funding has numerous disadvantages, including:

- Difficulty in demonstrating the value of a project,
- Staffing resources is even harder to secure
- Partnership working becomes almost impossible, as it relies on building trust over time
- Low level of trust by service users, as they cannot rely on the continuity of the project, placing additional burdens onto people who already live in vulnerable situations
- Time-consuming process that requires resources and capacity that organisations, especially smaller ones, do not have.

Funding cycles of at least three to five years would contribute to a healthier, stronger, and more equal and sustainable way of working for service providers.

14. Should funding application processes remain ‘lighter touch’ as was the case at the height of the COVID-19 pandemic, or revert to a higher level of scrutiny as previously?

Please give reasons for your answer.

We welcome funding application processes to remain “lighter touch”.

Research has shown that the lighter touch approach to funding had been pivotal to the quickness of the fund, reduced the burden on the organisations receiving funding and allowed grants to reach individuals most in need in communities across Scotland.

(Scottish Government, Support Communities Fund: Evaluation, February 2022, <https://www.gov.scot/publications/supporting-communities-fund-evaluation/>)

Q 15: What is the single most important thing that can be done to reduce/mitigate the impact of violence against women and girls?

We quote (with permission) from the response submitted in evidence to this consultation by Rape Crisis Scotland, our partners (together with the University of Strathclyde Law Clinic) in the Scottish Women's Rights Centre:

“There is no ‘silver bullet’, no ‘one thing’ that will reduce or mitigate the impact of violence against women and girls.

The task is immense, and it requires a coordinated approach that encompasses all of the elements we identified in our response to question 1.

We need:

- effective justice services that minimise retraumatising survivors in the process
- adequately resourced and trauma-informed health and social care services
- specialist services that can provide direct needs-led support to all women and girls who experience sexual violence, not matter who they are, or where they live.”

(Rape Crisis Scotland, Response to the independent strategic review of funding and commissioning of violence against women and girls' services: call for evidence, August 2022)