

# Exploring views on sentencing for domestic abuse in Scotland

Submitted to the Scottish Sentencing Council in March 2024

Published August 2024

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Research report prepared for the consideration of the Scottish Sentencing Council. The views expressed are those of the authors and do not necessarily represent those of the Council.

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## Acknowledgements

We would like to thank all of the women who participated in research interviews and to those who expressed interest in this study. We value their time, honesty, bravery and contribution to this research. This report details responses from victim-survivors who reported their abuser and highlights experiences of sentencing from their point of view. We would like to thank ASSIST<sup>1</sup> for their input in formulating the questions. We would also like to thank Scottish Women's Aid; Survivor Reference Group at Scottish Women's Aid; East Ayrshire Women's Aid; EDDACS (Edinburgh Domestic Abuse Court Support and Advocacy Service)<sup>2</sup>; Glasgow Women's Aid; and ASSIST for commenting on earlier drafts of the report<sup>3</sup> and for supporting victim-survivors to engage in this research.

## Introduction

The Scottish Sentencing Council (hereafter the Council) commissioned this research to inform its development of guidelines on the sentencing of domestic abuse offenders. This report explores victim-survivors' views on the sentencing of domestic abuse offenders looking at their own lived experiences alongside wider thoughts on the aims and purposes of sentencing in general. The terms used here include 'accused' to describe when someone is facing an offence (used in the sentencing guidelines), but it is pre-conviction; 'offender' for someone convicted of a crime; and 'perpetrator' if neither apply or to describe the person more generally.

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<sup>1</sup> ASSIST - (Advocacy, Support, Safety, Information, Services Together), a domestic abuse advocacy service that works alongside the police and the domestic abuse courts,

<sup>2</sup> Edinburgh Domestic Abuse Court Support and Advocacy Service is an agency which has been set up to support the Domestic Abuse court in Edinburgh. EDDACS provides an individual, independent support and information service to victims in domestic abuse cases where there is police involvement and charges have been brought.

<sup>3</sup> These organisations received shopping vouchers to thank them for their time which they distributed to their clients.

## Key findings

### The specifics of domestic abuse crimes

The findings highlight the unique, gendered nature of domestic abuse offending. The multi-faceted drivers involved in domestic abuse are very different from mainstream, non-gendered offending. What victim-survivors considered to be the main purposes of sentencing did not necessarily align with those set out by the High Court and developed by the Council in the principles and purposes of sentencing guidelines.<sup>4</sup>

No participants brought up the consideration of remorse (without being asked) and none thought that remorse should be a consideration in the sentence the offender received. For them it was inconsequential as it was already part of the perpetrator's continuum of abuse and they asked that sheriffs remained aware of this.

Women's experiences suggest that a nuanced understanding of domestic abuse is lacking by those who work within the courts. Sheriffs use their autonomy and judgement to make decisions about sentencing. Some of the women we spoke to said that in their cases sheriffs framed offences as singular instances, interpreted them as 'minor' and did not contextualise them within wider patterns of coercive control. It was difficult, during the sentencing process, for many of the victim-survivors to see their suffering 'reduced' to a single incident or offence and not reflect the magnitude of what had happened to them.

### Minimisation of charges and experiences compounds trauma

The practice of altering charges or dropping them before or during the case compounds women's experiences of feeling out of control. Women felt that this practice downgraded and minimised their experiences. Participants were of the view that if the perpetrator was given the option to plead guilty to a less serious charge

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<sup>4</sup> These guidelines are subject to a judicial (i.e.) court decision. The SSC is only advisory. The purposes the guideline sets out are not exclusive of others that can be considered by the court.

(and get a discount for the guilty plea), there should be a cut-off point as to when he<sup>5</sup> could do this. Whilst this is stated as a requirement in Section 196 of the Criminal Procedure (Scotland) Act 1995,<sup>6</sup> it is the view of the authors that sentencers should be further cognisant of how the stage at which the offender pleads impacts the victim-survivor.

Women expressed the view that their experience was invalidated during different points in the court process. The sentence of an ‘absolute discharge’ was viewed by them as insulting. Women maintained it undermined their experience and vindicated their abuser. Similar was said of the practice of single fines<sup>7</sup> which women saw as a monetary measure of their trauma, arguing that when they were used it should be in conjunction with other sentences and safety measures.

## Improved communication

Women expressed a desire for clearer communication of the processes, procedures and outcomes. Victim-survivors were often confused by the language, terminology, and what could happen and when. Women stressed that the processes and motives behind court decisions need to be conveyed for greater clarity and transparency.

## Safety is paramount

Women’s main priority for sentencing was unanimously safety and protection for themselves and their children (and the future partners of the perpetrator). Women expressed that the court process needs to recognise that the victim-survivor (and any specialist agencies involved) should be given access to the information about the court result as soon as it is out to enable safety planning.

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<sup>5</sup> For all 25 participants, their perpetrator was male.

<sup>6</sup> The court must take into account the stage in the proceedings at which, and the circumstances in which, the offender indicated their intention to plead guilty  
<https://www.scottishsentencingcouncil.org.uk/media/jtbhlsre/the-sentencing-process-guideline-d.pdf>

<sup>7</sup> That is, a fine without any other sentence.

In line with this was the expectation of a NHO (non-harassment order). There was general agreement among our participants that NHOs were not uniformly applied and that when they were, the full range of conditions were not attached to them. According to the participants the NHOs were not used as often as they could be, their views (as to what they needed) were not taken into account and the conditions were not as robust as they could be. Victim-survivors were also keen for them to be used in conjunction with other sentencing options.

## **Impact of their experiences**

Overall, women did not believe that the sentence their abuser received matched the impact of their experience. For them, a key purpose of sentencing was to reflect the impact of abuse on their life, children and those around them. They wanted the courts to acknowledge the immediate impact of the abuse but also the long-lasting and continued impact of their trauma - for them the sentence should be an acknowledgment of how the abuse affected them.

## **Validation**

Women wanted the impact of the abuse and their continuing experience to be acknowledged – not in a restorative capacity – but in a courtroom, in front of the accused's family and friends. Women saw the sentence as being a public acknowledgment of wrongdoing and a validation of their experience. The sentence was seen as a wider acknowledgment of the trauma experienced not only by the women themselves but also those around them. The validation of their experience, through the handing down of a sentence which they regarded as proportionate to that experience, gave women the opportunity to move forward. When this did not happen, women not only described the enormous impact the domestic abuse had upon their life but also how they felt the sentence had worked to invalidate that.

## Background

The Domestic Abuse (Scotland) Act 2018 (DASA) has the potential for an improved understanding and awareness of the nuances and dynamics of domestic abuse throughout the criminal justice system.<sup>8</sup> It provides enhanced powers to challenge coercive control as well as physical violence within the context of domestic abuse; therefore, the impact of the DASA should be visible throughout the criminal justice system, enhancing accessibility, safety and the number of women feeling that they had experienced justice<sup>9</sup> (Armstrong 2019). Looking at how victim-survivors experience and understand sentencing and justice is an integral part of this process. It is critical to note that a sentence can only be passed after a guilty plea or conviction. For victim-survivors of domestic abuse this comes at the end of an often prolonged process whereby they may continue to experience victimisation, repercussions and the escalation of risk.<sup>10</sup>

In terms of reporting and understanding the progression of domestic abuse cases it is crucial to contextualise the complexities involved. The under-reporting of domestic abuse is well referenced<sup>11</sup> yet depending upon their motivation for contacting the police, women will be seeking different responses and interventions.<sup>12</sup> While many women have proactively initiated engagement with the criminal justice system, many

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<sup>8</sup> See Lombard, N., Proctor, K. and Whiting, N. (2022) Domestic Abuse (Scotland) Act 2018 and the criminal justice system: women's experiences two years in: the emerging findings.

<sup>9</sup> Armstrong, S. (2019) *Briefing: Measuring Justice in the Domestic Abuse Act Monitoring Requirement* <https://www.sccjr.ac.uk/publication/briefing-measuring-justice-in-the-domestic-abuse-act-monitoring-requirement/>

<sup>10</sup> Maxwell, C. D., Garner, J. H., and Fagan, J. A., (2002). The preventive effects of arrest on intimate partner violence: research, policy and theory. *Criminology & Public Policy*. 2, 51–80; Ellison, L., (2002), Prosecuting Domestic Violence without Victim Participation. *The Modern Law Review*. 65 (6), 834-858; Miller, J., (2003). An arresting experiment: domestic violence victim experiences and perceptions. *Journal of Interpersonal Violence*. 18(7), 695-716; Han, E., (2003), Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases. *Boston College Third World Law Journal*. 23 (1), 159-194; and Goodmark, L. (2004), Law is the answer? Do we know that for sure? Questioning the efficacy of legal interventions for battered women. *Saint Louis University Public Law Review*. 23(1), 7–48.

<sup>11</sup> Silverio-Murillo, A., de la Miyar, J.B. and Hoehn-Velasco, L., (2023), Families under Confinement: COVID-19 and Domestic Violence. In *Crime and Social Control in Pandemic Times* (Vol. 28, pp. 23-41). Emerald Publishing Limited, and Bradbury-Jones, C; and Broadhurst, K. (2015), Are we failing to prepare nursing and midwifery students to deal with domestic abuse? Findings from a qualitative study. *Journal of advanced nursing*, 71(9), pp.2062-2072.

<sup>12</sup> See Lombard, N & Proctor, K (2023), *Women's Lived Experiences of Coercive Control, Stalking and Related Crimes, as they progress through the Criminal Justice System*. The Scottish Centre for Crime & Justice Research.

have not been able to make even that choice themselves, as it is estimated that about one-third of incidents reported to Police Scotland are reported by a third party.<sup>13,14</sup>

The latest figures for reports, charges and prosecutions are detailed below:

## Domestic abuse and stalking charges in Scotland

### 2022 – 23

- In 2022-23, 30,139 charges were reported to COPFS (Crown Office and Procurator Fiscal Service) with a domestic abuse identifier. This is a decrease of 8% compared to the 2021-22 total of 32,776.
- The vast majority of charges identified as relating to domestic abuse are prosecuted. An initial decision was made to proceed to court with 94% of charges in 2022-23.
- The most common types of offences reported in 2022-23 with a domestic abuse identifier were threatening and abusive behaviour offences (27%), common assault (24%) and crimes against public justice (23%, includes bail offences).
- The Domestic Abuse (Scotland) Act 2018 came into force on 1st April 2019, creating a new statutory offence of engaging in a course of behaviour which is abusive of a partner or ex-partner. In 2022-23, 1,753 charges were reported under this legislation, accounting for 5.8% of all domestic abuse charges reported.
- In 2022-23, 921 stalking charges under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 were reported to COPFS. Of these, 485 (53%) contained a domestic abuse identifier.

<https://www.copfs.gov.uk/publications/domestic-abuse-and-stalking-charges-in-scotland-2022-2023/>

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<sup>13</sup> A third-party reporting does not exclude victim-survivor proactive engagement but can be the result of extensive safety planning.

<sup>14</sup> Brooks-Hay and Burman (2019) and Lombard *et al.*, 2022.



## Research Aims

The main aim of this study was to provide a detailed account of the views of victim-survivors of domestic abuse towards the sentencing of offenders. In exploring these lived experiences, the objectives were:

- to utilise innovative, ethical, and safe ways to explore issues relating to the views of victim-survivors to sentencing practices
- to examine the experiences of the participants as their partners/ex-partners are sentenced and the effects of this process
- to frame these experiences in terms of wider understandings and perceptions of the purposes of sentencing
- to contribute to recommendations on sentencing regarding its impact upon victim-survivors of domestic abuse.

## Methodology

This research was conducted from a feminist perspective in line with current Scottish Government policy and practice around gender-based violence (GBV) and in line with similar projects in this area.<sup>15,16</sup> Feminist research is rooted in the belief that women are experts in their own lives and aligns the necessity that methods are ethical, victim-centred, safe, inclusive, and accessible, whilst requiring the creation of practical data with the rigour and validity expected in academic research.<sup>17</sup> (see also Proctor et al. 2023) To find out what victim-survivors felt about sentencing, our research was focused upon their voices. It was crucial that the participants were ready to participate in the interviews and chose to of their own volition. Participants were supported to share their experiences by their own case workers or other support agency workers. Often victim-survivors wish to engage in research when

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<sup>15</sup> This is especially relevant due to the sensitivity of the topic alongside working with participants who may have experienced trauma (see also Proctor et al. 2023).

<sup>16</sup> see Brooks-Hay *et al.* (2019); Lombard *et al.*, (2022); and Lombard and Proctor, (2023).

<sup>17</sup> Proctor, K, Lombard, N & Whiting, N (2022) *Researching Sensitive Topics Online: Using Mixed Methods in the Context of a Transformative Methodology*. Research Methods Online, SAGE Publications.

they believe that the knowledge produced may assist others.<sup>18</sup> Having trauma-informed researchers<sup>19</sup> to undertake the interviews was critical as participants were at distinct stages of their justice journey<sup>20</sup> and many needed additional support before, during and after the interviews. Support agencies were also invaluable in this process.<sup>21</sup>

## Recruitment

The call for participants was shared widely on Twitter (by the authors and support organisations) and on general community groups on Facebook.<sup>22</sup> A number of participants were recruited from previous research studies (where women agreed to further contact). Support agencies<sup>23</sup> distributed the recruitment information to specific women who they knew had recently been through the court process and received a conviction. The majority of the women who took part had been helped during the court process by support agencies. In addition, the following organisations were contacted and asked to help with recruitment and to facilitate participation:

- ASSIST (Advocacy Support Safety Information Services Together)
- East Ayrshire Women's Aid
- EDDACS (Edinburgh Domestic Abuse Court Support and Advocacy Service)<sup>24</sup>
- Glasgow Women's Aid

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<sup>18</sup> Lombard *et al.*, (2022).

<sup>19</sup> The researchers have a wealth of experience of working in the field of DVA, conducting interviews and delivering training. The PI organized de-briefing sessions for the interviewers and the transcribers.

<sup>20</sup> see Brooks-Hay, O. and Burman, M. (2018) Understanding, defining and measuring domestic abuse. In: Brooks-Hay, O., Burman, M. and McFeely, C. (eds.) *Domestic Abuse: Contemporary Perspectives and Innovative Practices*. Series: Policy and practice in health and social care (22). Dunedin Academic Press: Edinburgh, pp. 10-24.

<sup>21</sup> The agencies where workers supported the participants to take part included Survivor Reference Group at Scottish Women's Aid; East Ayrshire Women's Aid; EDDACS (Edinburgh Domestic Abuse Court Support and Advocacy Service); Glasgow Women's Aid; and ASSIST.

<sup>22</sup> These were general groups not specific to victim-survivors. This was to widen the scope for those victim-survivors who were not directly linked to support organisations.

<sup>23</sup> Scottish Women's Aid; Survivor Reference Group at Scottish Women's Aid; East Ayrshire Women's Aid; EDDACS (Edinburgh Domestic Abuse Court Support and Advocacy Service); Glasgow Women's Aid; and ASSIST.

<sup>24</sup> Edinburgh Domestic Abuse Court Support and Advocacy Service is an agency which has been set up to support the Domestic Abuse court in Edinburgh. EDDACS provides an individual, independent support and information service to victims in domestic abuse cases where there is police involvement and charges have been brought.

- Hemat Gryffe Women's Aid
- Scottish Women's Aid
- Scottish Women's Rights Centre
- Survivor Reference Group at Scottish Women's Aid
- Women's Support Project

The research team attempted to include a diverse sample of victim-survivors (asking for any woman who had received a sentence for domestic abuse in Scotland) but it is likely that the sample reflected the location of the networks and organisations who were able to assist with participant recruitment. We would have preferred to include more participants from BMER (Black, minority ethnic and refugee) communities, but the vast majority of participants were white. We had initial contact with 36 women, and 24 women were interviewed (an additional participant sent the details of her case via email but these are not included in this report). Information sheet and consent forms were provided via email so agencies could share with victim-survivors and help explain what would happen. As researchers, we are trained to do this, but it was crucial that, in some cases at least, this first step was undertaken with someone the participants already knew and trusted. Equally, in some cases, the support workers were copied in on emails (when requested by women) so they could arrange to sit in on the interviews should the participants ask them to. However, while some women had support workers facilitate their contact with us, no support workers were present during interviews. Other participants contacted us by email directly and this same process was followed (albeit without support worker involvement).

Once the consent forms had been returned, participants were contacted through email to arrange the interview. Some women (or their support worker) supplied a phone number instead. Often, women had been inundated with information about their case<sup>25</sup> so a phone call was simpler and helped the participant feel at ease. Facilitating choice as much as possible also helps to minimise some of the power hierarchies between the researcher and the participants.

The phone calls, however, created some difficulty in comparison to email, as most of these participants did not answer the phone, or it took quite a few attempts by the

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<sup>25</sup> See Lombard and Proctor (2023)

researchers to make contact.<sup>26</sup> This may have been due to women's schedules, but also, they may not have wanted to answer a call from an unknown number. While this may be the case for a lot of potential research participants, it is likely this reluctance will be heightened for victim-survivors, particularly if abuse is ongoing.

## Methods

36 women contacted us to be part of the study and we interviewed 24; the 24 women were interviewed on Teams, with most interviews lasting one hour. One woman sent replied via email.<sup>27</sup> Each participant received a £20 e-voucher as a thank you for taking part. The twelve we did not interview decided that they were not ready or able to take part.

Once a victim-survivor agreed to take part, the questions were sent out, ahead of the online (Teams) interview (see below). This gave them the opportunity to think about their answers and note down anything important or relevant that they wanted to bring up in the sessions. The research team were also cognisant of the number of questions the participants will have had to answer during their case and wanted to reassure them what the questions for this research would be. The Scottish Sentencing Council secretariat defined the requirements and parameters of the project. Consequently, questions on the aims and purposes of sentencing were included. It was important however, that the participants had the opportunity to define the areas that were relevant for them, especially those that may not have been considered in the creation of this research. The beginning of the interview was focused on their experience and then space was given at the end of the interview to bring up anything further they wished to mention.

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<sup>26</sup> Although each case was different we made a decision not to attempt email or phone contact more than four times and upon the final attempt we thanked them for their time and offered the opportunity for them to share their story via email should they wish to. One woman chose to do this but we did not receive her information in time to include in this report.

<sup>27</sup> This participant was unable to take part in a Teams call, so questions and answers were exchanged through email instead but unfortunately the correspondence was received too late to be included here.

A meeting was held with a team at ASSIST which helped with the development of the questions and wording. Following discussions and feedback from the Scottish Sentencing Council secretariat and ASSIST about the intention of the research and clarity around some terms, the questions and areas for discussion were as follows:

## Questions for victim-survivors

### Part 1

First, we are going to talk about your case specifically:

1. What sentence did your ex-partner get?
2. How was this communicated to you?
3. Did you feel the sentence considered the seriousness of the offence?
4. Do you feel it considered the harm caused to you?
5. Was the type of sentence your ex-partner received important to you?
6. (If applicable) Was the length of sentence your ex-partner received important to you?
7. Can you explain why?
8. What do you consider to be the main purpose of the sentence?
9. Is there anything you wish that could have been different about the sentence?

### Part 2

Now we are going to look more broadly at the sentencing of offenders:

There are different **aims of sentencing** – can you think what some of these might be?

Which of these do you consider to be the most important in terms of sentencing domestic abuse offenders? Can you put them in order and explain why you have ranked them in that way?

**Part 3**

Vignette: Andrew has been convicted of domestic abuse of his partner Marie. Over the last two years she has called the police 4 times. One of the times he pushed her violently into a wall in front of their daughter. What factors do you think are important for the courts to take into account when deciding upon his sentence? You can relate this to your own experience if you find it helpful.

The following prompts were given to spark discussion:<sup>28</sup>

How sorry he is

How long the abuse has been going on

What forms of abuse he perpetrated

Whether he had done this before (and been arrested for it?)

If there were any children present

Several women expressed they were glad they were sent the questions beforehand as it made them feel more prepared and comfortable. Some women read them before the interview, while others wrote notes or full answers. One interviewee spent most of the interview reading from her written answers, and she said that without doing this, she did not think she would have been able to speak about her experience. This was also helpful for parts 2 and 3, where some women had the document open while going through the questions, and others had already prepared their answers, which resulted in more in-depth responses.

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<sup>28</sup> Most participants started with their own experience by comparing it to Marie's story, and then addressed the prompts.

## Terminology and ‘use’ of language

At the sentencing stage, either the judge or the jury will have convicted the offender if they consider the COPFS has proven the case beyond reasonable doubt, or the offender has pled guilty and the COPFS has accepted the plea. Then it is down to the autonomous decision of one person: the judge, or sheriff, to decide the sentence. Most women referred to all the processes and people involved after reporting as ‘the court’. At times some of the victim-survivors confused and misused terminology or described the processes incorrectly. We have left these in the report because it is important their understanding of the system is conveyed here.<sup>29</sup>

## Risks and Ethics

As demanded in all sensitive research, ethical procedures were robust, drawing upon the research team’s extensive experience and knowledge. A detailed ethics application and risk assessment were drawn up which GCU (Glasgow Caledonian University) Ethics Committee reviewed and approved.

Care was taken to ensure that the risks to, and potential impacts on, all participants were minimised by supplying them with adequate information to make informed decisions about whether to take part. Participants were informed of the nature of the research, the time commitment, how information would be used and stored, and issues related to anonymity and confidentiality. Written or digitally recorded informed consent was obtained. Participants were also made aware of access to further support following their interviews. All of the women who took part will be sent a summary and a link to the report.

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<sup>29</sup> The reporting of charges and sentences is taken entirely taken from victims. Some read this from official letters. Others relayed the information to us as they understood it. When the sentences appear that they may be ‘legally’ incorrect we have added clarifying information in footnotes.

## Thematic analysis of the interviews

All interviews were recorded, fully transcribed and anonymised. Both transcribers were offered, and took up the offer of, a debriefing session. Using thematic analysis, the first analysis of the interview transcripts was undertaken by both researchers. Responses to the questions were drawn out and themes were identified independently and then collectively. These were then mapped onto existing aims and purposes of sentencing as set out by the High court and developed by the Scottish Sentencing Council (2018)<sup>30</sup> in the principles and purposes of sentencing guidelines, alongside other prominent and recurring themes that were considered relevant to the report's aims.

## Demographics

In terms of demographics, we asked for the area of Scotland they lived in, their age, their ethnicity and whether they considered themselves disabled. Not all women wanted to share this information in case it made them identifiable. The results pertaining to those who responded to these questions are collated in tables below:

**Table 1: Area of Scotland**

Area of Scotland	Number of women
<b>Aberdeenshire</b>	1
<b>Angus</b>	1
<b>Argyle and Bute</b>	2
<b>East Lothian</b>	1
<b>Fife</b>	1
<b>Glasgow</b>	5

<sup>30</sup> <https://www.scottishsentencingcouncil.org.uk/media/1964/guideline-principles-and-purposes-of-sentencing.pdf> - These guidelines are subject to a judicial (i.e.) court decision. The SSC is only advisory. The purposes the guideline sets out are not exclusive of others that can be considered by the court.



Area of Scotland	Number of women
Inverclyde	1
Inverness	1
Midlothian	2
North Ayrshire	2
Perth and Kinross	1
South Lanarkshire	1
South Ayrshire	2
Not specified	3
<b>TOTAL</b>	<b>24</b>

Table 2: Age of women

Age	Number of women
18 - 24	-
25 - 34	6
35 - 44	2
45 - 54	6
55 - 64	3
65 +	-
Not specified	7
<b>TOTAL</b>	<b>24</b>

**Table 3: Ethnicity**

Ethnicity (self-declared)	Number of women
<b>White Scottish</b>	15
<b>White English</b>	1
<b>White British</b>	2
<b>White</b>	2
<b>Asian</b>	1
<b>Not specified</b>	3
<b>TOTAL</b>	24

**Table 4: Disability**

Disability	Number of women
<b>Yes</b>	9
<b>No</b>	9
<b>Not specified</b>	6
<b>TOTAL</b>	24

## Sentences

The first question in Part 1 asked women about the sentence the offender received. All used their own experience as a reference point and similarly related the questions in Parts 2 and 3 back to their own experience. Where women knew what the charges were, they were clearer about what the offender was being sentenced for. Others relied upon the 'letter from the court' (from COPFS VIA -Victim Information and Advice service)<sup>31</sup>, whilst some did not know what the charges had been (either there had

<sup>31</sup> The VIA (Victim Information and Advice) service is provided by COPFS in criminal court cases.

been many charges, some had been altered and/or dropped before or during the court case by the COPFS and others said they were not told). This has implications regarding the need for clearer communications throughout the process.

Several women mentioned early guilty pleas made by the defence where their perpetrator pled guilty to a less serious charge and also received a sentencing discount for a lesser charge.<sup>32</sup> None of the women (5 who mentioned this specifically) who experienced an early guilty plea and a sentencing discount or an altered charge were happy about this.

Table 5 shows the range of domestic abuse charges and sentences (where known). The information in the table reports what the women told us, as opposed to a summary of official sentencing data on their case. Some women read out their official letters or had made a note of what the perpetrator had been charged with. Other women were not entirely clear what the charge or the sentence was. The inconsistencies between the official charges and sentences and what the women knew, were told or assumed is challenging in terms of the reliability and presentation of the information. It is however significant in terms of acknowledging differences in clear and official communications:

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<sup>32</sup> The court may reduce the sentence if the perpetrator pleads guilty before or at trial. This is separate from the fact that the sentence may be lower if the COPFS and defence have negotiated a less serious charge that he will plead guilty to. So the offender may both receive a lesser sentence because the COPFS have accepted that the accused will plead guilty to that particular less serious offence and a discount on that lower sentence because of the guilty plea.

*Sentencing discount - if an offender pleads guilty, a judge can discount (reduce) a sentence. This recognises the fact that when an offender pleads guilty there is no need for a trial to be held. This means witnesses do not need to give evidence and court time is freed up for other cases. A judge must take into account how early in the court proceedings offenders make it known that they will plead guilty. [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1995/46) It is a matter for the judge to decide whether to give a discount in a sentence, and how much a discount should be. When judges decrease a sentence because of a guilty plea, they will tell the offender by how much it was discounted. Reductions are not normally more than one-third of what a sentence would have been otherwise, and are often less than that.*

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

**Table 5: Domestic Abuse Charges and Sentences**

Identifier	Charge	Sentence
1	Stalking	£400 fine
2	Stalking	£350 fine / One year NHO (non-harassment order)
3	Breach of the peace with domestic aggravator <sup>33</sup>	£230 fine
4	Six charges of rape, two sexual assaults with penetration, four physical assaults (one severe injury) two stalking	Order for lifelong restriction / served six years in prison
5	Section one of DASA	Two year supervision order / Attend DA programme / 225 hours community payback order / five year NHO
6	GBH (Grievous bodily harm) <sup>34</sup> or DASA (victim-survivor was unsure)	Four years custodial sentence
7	DASA reduced to breach of the peace	Absolute discharge
8	Threatening and abusive behaviour	£250 fine / two year NHO

<sup>33</sup> 'On 24 April 2017, the statutory aggravation of domestic abuse was introduced by the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 section 1. The aggravation only applies to conduct that took place on or after 24 April 2017. An offence is aggravated if in committing the offence the person intends to cause or is reckless about causing their partner or ex-partner to suffer physical or psychological harm. The aggravation can only be applied where there is evidence capable of proving it and evidence from a single source is sufficient to prove that an offence is aggravated. All charges which carry the aggravation should carry the domestic abuse identifier, but the identifier may apply to charges to which the aggravation does not.' <https://www.copfs.gov.uk/publications/domestic-abuse-and-stalking-charges-in-scotland-2022-2023/html/>

<sup>34</sup> GBH is not an offence in Scots law so this would not have been the charge the accused was convicted of.

Identifier	Charge	Sentence
9	Threatening and abusive behaviour	£450 fine / NHO
10	Breach of the peace	6 month NHO / 6 month good behaviour bond <sup>35</sup>
11	Behaving in a threatening and abusive manner, assault to injury (breaking bail with special conditions)	52 weeks reduced to 48 weeks custodial sentence and a three year NHO
12	Historical domestic abuse (a charge of attempted murder was dropped due to plea deal) <sup>36</sup>	Three and a half years custodial sentence
13	Breach of the peace Breach of the peace	Absolute discharge Caledonian Project Order <sup>37</sup> and a two-year NHO
14	Domestic breach of the peace, stalking, a telecommunications offence Schedule 1 offence against a child	Community service Six months custodial sentence
15	Breach of NHO and stalking with an aggravating factor of domestic abuse	Twelve-month community payback order and a lifetime <sup>38</sup> NHO (for her and her son)

<sup>35</sup> Called a Good Behaviour Bond by the victim-survivor but describing a deferred sentence.

<sup>36</sup> This is the phrasing used by the victim-survivor which is not cognisant with the official sentencing language.

<sup>37</sup> The Caledonian System is an integrated approach to addressing domestic abuse. It combines a court-ordered programme for men, aimed at changing their behaviour, with support services for women and children. <https://www.gov.scot/publications/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/pages/3/>

<sup>38</sup> We have taken out the specific amount of time awarded here so the victim-survivor is not identifiable.

Identifier	Charge	Sentence
16	Three charges (specific charges unknown)	Absolute discharge
17	Two counts of rape and assault to injury (charge of stalking dropped)	Ten years and six months extended sentence (Six years and six months custodial sentence and four years under supervision)
18	Stalking	Lifetime NHO <sup>39</sup>
19	Rape and sexual assault (five domestic abuse charges dropped)	Five and a half years custodial sentence (reduced from seven years due to guilty plea)
20	Assault with intent to injure	£500 fine, £20 victim surcharge and a three-year NHO
	Breach of special bail with aggravated breach of NHO	£300 fine
	Aggravated breach of NHO	£200 fine
21	Unknown offence ('he assaulted me')	Fine (unknown amount)
22	Threatening and abusive behaviour, motoring offences, and unlicensed rifle (threats to kill and other unlicensed weapons charges were dropped)	Eighteen-month supervision order, community payback order with a condition of 160

<sup>39</sup> We have taken out the specific amount of time awarded here so the victim-survivor is not identifiable.

Identifier	Charge	Sentence
		hours unpaid work and a fine (unknown amount)
23	Serious assault <i>resulting in permanent disfigurement</i> <sup>40</sup>	Community payback order with a condition of 200 hours unpaid work and £5000 victim compensation
24	A section 38 offence	£300 fine

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<sup>40</sup> Wording by V-S.

## Findings

Very few women felt positive overall about their sentencing experiences. Some were relieved when the criminal prosecution process, including the sentencing, was over; others were disappointed or angry. Over two-thirds of the women felt let down not just by the sentence that was delivered but the process and experience leading up to it. They described the enormous impact the domestic abuse had upon their life but also how they felt the sentencing had worked to invalidate that. A small number of women (six) described themselves using the term: ‘the lucky ones’, as they acknowledged not all domestic abuse cases get to court, and if they do the perpetrator is not always convicted and/or given a sentence that the victim/survivor is satisfied with, for example:

I just think I’ve been quite lucky in my experience and I know not everyone is and not everyone gets the sentence that they need and that’s not always fair cos I do think that a lot of what helped me as my like recording of everything and like my ability to express myself (...) it’s been great for me but it is an unfair system in that sense because someone’s not able to express themselves or in the same way or log evidence and that type of thing, (...) although personally I’ve had a good experience, I know it’s not the same for everyone and that’s not fair. (11)

Often women were left feeling re-traumatised by the sentence their perpetrator received which they felt did not match the impact of their experience. They felt their experiences were invalidated and what they all unanimously wanted was to be safe, and for their children to be safe, but the process did not always grant them that.

### The criminal justice process

Women spoke of how long the process was - from the first reports to the police, arrests, charges, finally ending up with a prosecution, and then the trial process in court. Women were frustrated by how long the process was in terms of the time their cases took to get to trial, waiting for the trial itself, the verdict, and then waiting for the sentencing decision (which may have been given at the trial or later) if the perpetrator



was found guilty. Evidence of the elongated process and the emotional impact of sentencing is reflected in existing work.<sup>41</sup> The extract below from one of the participants echoes the experience of many:

Kind of drained, you know? There's only so much you can do. You run out of enthusiasm. You feel disheartened because you feel you are one person fighting against loads of different people and every time you call you get different police officers and they can be really supportive on the phone and then come out and be really dismissive because the person on the phone is a different person to the person that comes out. There's just too many people involved in the one thing because you are then having to repeat everything from the start, everything you've gone through which, obviously as you can see, is really emotional and really draining to keep doing that. But it's just the way it is. (1)

Many of the women we spoke to felt they had no control over what was happening to them during this process. While most had the support of advocacy services it was the time everything took, the build-up, things starting and then stopping and not knowing who was in charge of particular aspects of the process that compounded their stress.

By the time fae the assault and to him actually being sentenced I feel I done more time than him worrying and stressing. (11)

As described by the above participant, the trial process was frustrating and generated further anxiety for many of the victim-survivors we spoke to. Several women wanted to hear their perpetrator apologise, to acknowledge the impact of their abuse and say sorry:

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<sup>41</sup> Forbes, E. (2021) *Beyond Glass Walls: How Domestic Abuse Victims Experience the Criminal Justice Process in Scotland*. Glasgow: Scottish Justice Fellowship Briefing Paper; Lombard *et al.*, (2022); Lombard and Proctor (2023); McPherson, R., Gormley, J. and Wheate, R. (2022) The sentencing of offences involving domestic abuse in Scotland. Documentation. Scottish Sentencing Council, Edinburgh

Well, I think a lot of people, I know me anyway, you want to hear the apology. You want to hear that they acknowledge what they did to you was wrong and that is something you're never going to get closure for. (20)

However, none of the women we spoke to felt that expressions of remorse made by the perpetrator, or their 'saying sorry' should have an impact on the sentence they received:

You know, remorse, I'm a bit cold on that one because you know I really don't think it should affect the sentence. And the same with pleading guilty – I feel that's, it's not really, I feel it's done through good intentions but not really good intentions for the victim, if you know what, again it's going back to the perpetrator's rights rather than the victim's rights. I really don't feel that, I'm just gonna say pretending to be remorseful for 5 minutes in court should really affect the outcome of the charges. (14)

## **Sentence reduction/discount for pleading guilty<sup>42</sup>**

'Sentence reduction for pleading guilty' refers to the process of negotiation between the prosecution and the defence, whereby the accused agrees to plead guilty to a reduced or adjusted charge or charges. This practice meant that women felt less believed, their experiences less validated and described themselves as having even less control in what was happening to them. For many women, the sentence reduction was unexpected – they trusted that their perpetrator would be sentenced for what he had originally been charged with. Several arrived at court anticipating the outcome

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<sup>42</sup> *Prosecutors will consider any offer to plead guilty to lesser or amended charges. When considering whether or not to accept pleas of guilty or not guilty in relation to various different charges against an accused, the Crown will consider, among other factors, the distress and inconvenience a trial may cause to the victim and other witnesses and the available evidence against the accused. Only when the prosecutor considers it to be in the public interest will a plea of guilty to lesser or amended charges be accepted.* <https://www.gov.scot/publications/domestic-abuse-scotland-act-2018-interim-reporting-requirement/documents/>

But also: "In Scotland, plea bargaining consists of explicit charge bargaining and fact bargaining between the defence and the prosecution (the Crown Office and Procurator Fiscal Service (COPFS))." <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jols.12360>

from the original charges for them only to then be reduced. They felt their experience had been further minimised and gave their abuser back control.

For a small number of women, the domestic abuse aggravator was removed<sup>43</sup> and their perpetrator was sentenced to a lesser offence; and the domestic abuse element was therefore not considered by the court when determining the sentence, or the charges were reduced because of a guilty plea, as in the case below:

He was originally threats to kill, unlicensed weapons (...), all sorts and it just ended up as threatening and abusive behaviour (...) and that were about it (...) and in the paper it was reported that it was an argument. (22)

Early guilty pleas also meant that perpetrators received a shorter custodial sentence than women anticipated if the original charges had been proven at trial:

He was originally charged wi' attempted murder, em and domestic abuse. He was charged wi' historical domestic abuse, but he ended up, because he plead guilty at court, the attempted murder was dropped so he done a plea deal wi' the Crown and he ended up he was only sentenced to 3 and a half year (...) because he plead and he didnae make the witnesses stand up he was rewarded by doing that and I just felt as if it was aw wrong (...) the main charge for that to be dropped, aye, I feel that it was, I feel that it was irresponsible and I feel as if he just got away wi' it. (12)

Some women were not told about the sentence reduction at all:

I have only recently found out in family court that he was given a deal of a fine and the charge was amended to slap and not punch. I was not made aware of this. (email correspondence from victim-survivor who chose not to be interviewed).

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<sup>43</sup> The aggravator can be removed by the prosecution, the jury or the PF.

When this happened, women expressed disappointment and frustration that they were unaware of decisions that affected their lives. Some procurators fiscal presented the option of accepting the guilty plea as a ‘choice’ for women, which appeared appealing for one woman who didn’t want to face her abuser in court:

I got the phone call out of the blue from the procurator fiscal to say we’ve had a meeting with my ex’s solicitor, would you be happy if I pushed for this year long non-harassment and then it wouldn’t go to trial if he agrees, like, if we all agree to that and he pleads guilty and that’s what we’re pushing for as a sentence and I said, at that point, yeah because I didn’t want it to go to trial. Do you know, at that point, we’d been split up for like two and a half years, you know? It was just dragging on and never getting to the end of it. (2)

This process formed part of the bigger picture linked to communication between the different individuals and agencies involved in the process and the women, and how the processes and the reasoning behind the court’s decision making were conveyed (or how women felt they should have been conveyed). In this context, women felt like the imposition of a NHO was presented by the COPFS as a ‘bonus’ or ‘placation’ in some cases where it was already legally required under the DASA legislation.<sup>44</sup> In any case attracting a domestic abuse aggravator under the 2016 Act or under the DASA, there is a presumption that the court will impose a NHO unless it considers that there is no need for one to protect the victim's safety.<sup>45</sup>

## Communication

Alongside other studies examining experiences of the criminal justice system when reporting domestic abuse, communication (or a lack of) was a key factor in the

<sup>44</sup> Para 75 of the Joint Protocol between Police Scotland and the COPFS.

<https://www.copfs.gov.uk/media/xjtd4i4p/joint-domestic-abuse-protocol.pdf>

<sup>45</sup> This was included in the DASA to avoid the COPFS having to ask the court for a NHO; therefore the court should have been considering this anyway as a matter of course for DA. If the COPFS had removed the 2016 DA aggravator or had decided to downgrade the charges so that there was no DASA charge, meaning the case would have no DA element whatsoever, then the presumption under the 2018 Act would not apply and the COPFS would have to actively ask the court for a NHO.

experiences of these women.<sup>46</sup> Good and poor communication impacted upon both their lived experiences and reflections on it. As mentioned above some women were unclear as to what their ex-partner had been charged with, particularly if this changed during the prosecution process.

This was mirrored in women's experiences of having the sentence relayed to them. Often perpetrators were not sentenced on the day of the trial so the outcome would be communicated at a later date – or rather this is what they assumed would happen. Not knowing what had happened, or whether he had been sentenced or not, caused women a great deal of stress and anxiety. Several women worried that they did not know if he had walked out of court (either acquitted or a non-custodial sentence had been imposed) and therefore still posed a risk to them and this worsened their worry and affected their sense of safety, as described by the following women:

Um, it was quite a surprise because I didn't know the case was being heard that day. So when she did ring and tell me that he'd got that sentence, it was a bit of a surprise, but only, mainly because I didn't know that the case was being, you know, it was being held that day (...) there was a lack of communication really there. (4)

I think it's disgusting. They knew there and then and so when [we] left the court on that Thursday even on our way home, somebody would have known.<sup>47</sup> They all would have known. The Procurator Fiscal Office would have known. Definitely. Definitely, the people who had represented me, they would have definitely known. (...) what would it take to make a 5 minute phone call to somebody and say here's the situation especially when it's a volatile person (...) So, it's not fair when they just leave people hanging. We, the victims, should be the first to know, not the last to know because to keep ourselves safe. (8)

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<sup>46</sup> Forbes (2021); Lombard and Proctor (2022)

<sup>47</sup> This relates to the updating of the electronic system with the outcome so that VIA and court advocacy services can then make contact. Currently there is a 24 hour timescale for doing this which may not always support effective safety planning.

I was left chasing and because of Covid nothing was manned and so it was a case of phoning up the number you were given and sitting on hold for anything up to 2 hours waiting for someone to answer. (9)

Women were again left feeling like they had no control, which was exacerbated by the lack of communication and overall knowledge of a system that at times they felt was working against them.<sup>48</sup> From the interviews, we found that women were more likely to receive communication from COPFS VIA when their abusers had received a custodial sentence:

And it was the guy that I spoke to there that I'd spoken to a few times and he said that it was a harsh sentence (...) So you know, the fact that the guy, the VIA said it was a harsh sentence you know and that, I felt relieved then, I felt that he had actually got a decent sentence. (5)

Almost all of our participants talked about how communication could be improved within and by the 'court'<sup>49</sup> for example:

You know, nobody had told me that he'd been released and, again, that was a real failure in terms of court and I thought, well gosh, what if he'd been released and ended up on my doorstep and I wasn't expecting it. So, just the communication side was just horrendous the whole way through. (9)

Poor communication can lead to a lack of transparency and may result in victim-survivors failing to access appropriate resources and information. Without this, victim-survivors are unable to comprehend what is happening with the case and will be ill-informed at every stage of the court process.

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<sup>48</sup> See also Forbes (2021).

<sup>49</sup> Women used the generic term 'court' to describe everyone within that system but would have generally been referring to COPFS.

## Types of sentence

As highlighted in the table above we asked women what the charge was and the sentence that was given. We have used the definitions from the Council webpage<sup>50</sup> to explain what each sentence meant and have only included the sentences that were received. On the website they are separated into: without punishment; community based and custodial.

### Absolute discharge

When a person is guilty of a charge, the judge can decide to 'discharge' them (unless the sentence for the offence is fixed by law). This means that no punishment is given. In solemn (more serious) cases, a conviction is recorded. In summary (less serious) cases, no conviction is recorded, however, for some purposes (for example if the person is convicted of another crime in the future), it may be regarded as a previous conviction. An absolute discharge is only given in exceptional circumstances. Reasons for an absolute discharge can include, for example, that the crime is very minor, that the offender has been previously of good character, or that the offender is very young or old.

This is when a sheriff or judge decides that no punishment will be given to the offender. Whilst an independent justice system is based upon sheriffs using this autonomy and judgement to make decisions, the women we spoke to clearly expressed the view that the legislation needs to prevent sheriffs from being able to interpret any offences of DA as 'minor', as this dismisses the pattern of abuse and reframes it as a singular instance. A woman whose ex-partner received this sentence described her response to this as 'raging':

I just feel that he was allowed to get away with it and he was intending not to plead guilty and he only pleaded guilty at the very last second and it was just basically so that he would get away with it but I just feel like for what he put me through and like everybody else through that knows me it's an insult like it's

<sup>50</sup> [Sentences and appeals | Scottish Sentencing Council](#)

horrible (...) See the women you see all the time in the news that sadly aren't here anymore. He's the exact same pattern that you read about that's him. (16)

He was considered guilty of the crimes he committed against her, but no sentence<sup>51</sup> was imposed, which she felt undermined her experience:

It's just basically taught him that he can get away with it. Like, you can threaten somebody, you can harass them. I had to change everything. I had to change my phone number, my address, absolutely everything to get away from this guy. (16)

This 'sentence' meant that there is no punishment and in summary cases no conviction is recorded on the offender's criminal record. This has implications for future partners seeking disclosures of their partner's criminal offending under the Disclosure Scheme for Domestic Abuse Scotland,<sup>52</sup> as this would result in an incomplete and essentially inaccurate record of his perpetration of domestic abuse crimes.<sup>53</sup>

Women who received an absolute discharge (3) told us that the legislation needs to prevent sheriffs from being able to impose this type of sentence as they felt it empowered the abuser, make him feel like he is 'above the law', and therefore, feel vindicated by the criminal justice system to continue to abuse. This often results in abusers escalating their abuse and leaves their victims disempowered and less likely to report further abuse. This sentiment was echoed:

[It] did not reflect the years of torture, the years of hurt. It just felt like somebody had cut my voice off like nobody was interested in hearing what happened or the potential that type of behaviour could have. There was pushing and shoving on me but that was probably the most physical part. It was more coercive control and

<sup>51</sup> An absolute discharge can be laid before the court as if it were a previous conviction in subsequent proceedings for another offence.

<sup>52</sup> Several women referred to "Clare's Law" in Scotland it is the DSDAS - see <https://www.scotland.police.uk/advice-and-information/domestic-abuse/disclosure-scheme-for-domestic-abuse-scotland/#What>

<sup>53</sup> Even without a conviction, police call outs, referral to COPFS and prosecution would be known to police.



the abuse, the verbal, the mindset and because I didn't have any scars or physically broken bones nobody was interested to the point where, when I was at court, I was all over the place and I kept saying I wasn't ready. I was all over the place. (7)

### Fines

The offender must pay money to the court within a certain amount of time. The highest level of fine that can be given is set by law depending on which court the case is heard in. Fines are based on how serious the crime is. Judges will also consider how much the offender can pay. The offender can be told to pay the fine all at once, or in smaller amounts over time by instalments.

When their offender was fined, women found it difficult to associate their experience with what they saw as a monetary measure of their trauma. Particularly in cases where this was the only sentence given, women judged the amount of money as a direct correlation to how their abuse was perceived. Women thought a fine as a stand-alone sentence was 'pointless' as it did not protect them or deter him from abusing again. In the quote below, the woman explains that if there is enough evidence to prove a crime has been committed then there should be a fine and additional conditions, as a fine is not enough to deter him:

I think that a fine is fine but I think some kind of, as soon as you are charged with that and it goes to court it should be a given that there are conditions afterwards straight away because if it's proven that that's what you've done and you've done enough things for you to be arrested then it should be straight away because like it just leads on. It just doesn't stop. (1)

In the majority of cases a monetary fine was dismissed as it was seen as too little an amount to have any impact upon the perpetrator's pocket, daily life or signify any long-term impact:

£400 maybe if harsher sentencing had been done in the first place it might have had more of a deterrent but paying 20 pounds a week, you know, that doesn't affect his life. He totally changed our lives, you know, whereas the effect on him has no effect whatsoever. (1)

The monetary fines in particular were measured in terms of the amount of money the perpetrator was ordered to pay – and women felt this amount was an indication of the severity of their experience – the lower the amount the more insulted women felt. Several women expressed that the fine did not account for the continued impact of domestic abuse or consider any ongoing safety concerns:

I'm not sure that I expected a custodial sentence for him because he was a first offender but this is a guy who £450 is not even a third of his weekly wage. I've lost over 2 decades of my life. Just something more than that would have made me feel a little bit better. They didn't really take into account the impact on my 2 boys. (...) So, some kind of sentence that would have safeguarded my kids as well would have been better, but they just don't seem to take that into account at all. (9)

I think that giving somebody a fine for domestic violence, I'm trying to think of the right word, I think it's quite dismissive of the victim but also I think there's no accountability there. £230 is nothing to him. £230 is massive to me because I've walked away with absolutely nothing but to him £230 is nothing. He could do a job on a Saturday and that would cover that, you know, and so it doesn't impact him in any way. (3)

Several women were aggrieved that their experience had been reduced to a minor monetary value. In comparing their sentence to other forms of crime, they felt their experiences were further minimised:

You get sentenced more for embezzling some money instead of hurting somebody and virtually destroying their life. (22)

Comparison was a method used by a number of the women to make sense of their own experiences and outcomes. In a similar way that monetary fines were tiered so were forms of crimes that their perpetrators had been charged with.

With the advent of the new domestic abuse law (DASA), women expected their perpetrators to be charged under that. The most recent COPFS statistics highlight:

The most common types of offences reported in 2022-23 with a domestic abuse identifier were threatening and abusive behaviour offences (27%), common assault (24%) and crimes against public justice (23%, includes bail offences). (2023:5)

Several of the women in our study told us that their perpetrators had either been charged or sentenced with a breach of the peace offence. At times it was unclear whether the perpetrator had actually been charged with the common law offence of breach of the peace or women were using the term as a shorthand for the s38 offence,<sup>54</sup> not realising it is different. There were also examples of when the abuser had originally been charged with a domestic abuse charge that had then been downgraded resulting in stand-alone offences (or an offence) of threatening and abusive behaviour under s38 without a domestic abuse aggravator.<sup>55</sup> What is clear is that women were not sure what their perpetrator was charged with or sentenced to, highlighting gaps in communication. One woman told of how her breach of the peace charge has a domestic abuse aggravator but in her mind – and that of her perpetrator – he was charged with breach of the peace, which they both saw as a lesser charge. For the women who experienced this, they felt their abuses were undermined by having a comparator (rather than a clear domestic abuse charge), and their experience was seen as lesser:

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<sup>54</sup> Section 38 - threatening or abusive behaviour - Criminal Justice and Licensing (Scotland) Act 2010.

<sup>55</sup> Unless the offence specifically involved a public order offence element, the perpetrator is unlikely to have been charged with breach of the peace either as a stand-alone charge or under the DASA. After the case of *Harris v HMA* (2009 HCJAC 80) police were unable to routinely use BoP as their main charge in relation to DA which led to the insertion of the s38 threatening or abusive behaviour offence into the Criminal Justice and Licensing (Scotland) Act 2010 to replace the BoP charge.

The man tried, threatened to kill me, so that, you know breach of the peace can be shouting in the street, it could be I'm pretty sure if you urinate in the street I'm pretty sure that comes under breach of the peace. No, the seriousness wasn't kind of captured under whatever the breach was, or whatever they were labelling it as and I don't know, I think that's how, it just didn't feel as if it was you know very serious. (13)

There were other examples of a domestic abuse conviction resulting in 'lesser' sentences than crimes the perpetrator had committed previously:

What is the point of having guidelines there and saying this is the maximum sentence if by the third offence that he's on, he's getting a lesser sentence than what he got prior to that and for speeding? (20)

Particularly with fines, it was easier to make a comparison. This resulted in perpetrators (and victim-survivors) seeing the monetary sentence as confirmation that the perpetrator had done nothing wrong as they had been fined more on previous occasions for other (non-violent) offences.

#### Non-Harassment order

Offenders who have been convicted of causing a victim alarm or distress can be ordered to stop the behaviour. This can include unwanted texts or shouted abuse.

A non-harassment order is designed to protect a victim from a course of conduct which amounts to harassment and causes the victim fear, alarm and distress. Criminal non-harassment orders can be put in place after a criminal court case if the accused is found guilty, with a presumption that one will be imposed for convictions relating to domestic abuse offending under the DASA<sup>56</sup> or those where a domestic abuse aggravator was attached under section 1 of the Abusive Behaviour and Sexual Harm

<sup>56</sup> And paragraph 9 of the Schedule to the DASA  
<https://www.legislation.gov.uk/asp/2018/5/schedule/enacted>

(Scotland) Act 2016.<sup>57</sup> Section 5 of that Act also provides that a child does not have to have directly witnessed the incident to be considered for protection under a NHO – any children usually residing with the victim or accused, or in respect of whom there is a child aggravation will be considered.

Women felt this was effective in terms of protecting themselves and keeping themselves safe – not necessarily in terms of a ‘sentence’. Many women felt this part of the sentence should be ‘a given’: indeed Section 234AZA of the Criminal Procedure (Scotland) Act 1995, as introduced by paragraph 9 of the Schedule to the DASA provides a presumption,<sup>58</sup> albeit rebuttable, to the effect that it should be added on to all domestic abuse sentences under the DASA or those attracting the 2016 aggravation.

The non-harassment order was useful because he said ‘I’ll be in your face forever. You’re [not] going to be rid of me’ and so it gave me 3 years of not having to, well, it was certainly a safeguard in terms of him contacting me directly but no, I don’t think it took any account of the risk that he poses. I’m not the first person that he’s groomed and I don’t it’s safeguarded the public in any way or any other women or children from him. (9)

My older daughter was on the non-harassment order because he directly threatened her and he had a real bee in his bonnet about her and then she got taken off. I don’t why. They considered that he wasn’t actually a threat to her anymore. I don’t know why. They didn’t know the things that he had been saying

<sup>57</sup> <https://www.legislation.gov.uk/asp/2016/22/part/1/crossheading/abusive-behaviour-towards-partner-or-expartner/enacted>

<sup>58</sup> <https://www.legislation.gov.uk/asp/2018/5/notes/division/3/2/2/1/4/2> New section 234AZA(3) provides that a non-harassment order, in addition to making provision to protect the victim as defined in section 234A of the 1995 Act, can include provision in respect of children close to the domestic abuse offence i.e. children living with the perpetrator or the victim of domestic abuse or children to whom the aggravation at section 5 applies.

New section 234AZA(4)(a) provides that the court is always required to consider whether to make a non-harassment order. An application by the prosecutor is not required to initiate this process.

New section 234AZA(4)(b), as read with section 234AZA(5), provides that, after hearing the prosecutor as well as the person, the court must make a non-harassment order unless it concludes that there is no need for a victim, or the children covered by subsection (3), to be protected by such an order.

New section 234AZA(4)(c), as similarly read, provides that, if the court concludes that a non-harassment order is not required, it must explain why.

and doing. We did. We knew he was still very much a threat to all of us. My younger daughter, because he was her biological father, she wrote a letter to the court. The court said no, the sheriff said no, at the end of the day he's still your father. (8)

Although there is a presumption that the court will impose it to protect the safety and wellbeing of victims-survivors, this was not thought to be always what happened in practice, and the order was used in varying degrees especially in relation to children:

There is a non-harassment order for me but still nothing for my daughters. That was important. I wanted us all to be included so that, as a family, we felt safe. He could come and harass my daughter and if I was across the street that would be ok, you know? It's nonsense. (8)

Women involved in cases where a NHO was imposed maintained it was significant in helping them feel safe in their homes but pointed out that their daily lives were still impacted by fear as the NHO was restricted to their homes, not their daily routines or lives. A NHO usually prohibits an offender from entering the street in which the complainer lives and approaching or contacting the complainer. The NHO does not stop an abuser being in the vicinity of a victim-survivor (and thereby intimidating her). Several pointed out that their ex-partners knew where they went shopping, filled up their car or picked up their takeaways from and could easily still stalk them without it appearing obvious. Even the anticipation that their abusers may try this was enough to mean the women did not feel safe in public, which was particularly exacerbated for women who lived in smaller communities with their perpetrator:

I felt safe in my own house but I was on edge with things like going to the supermarket or going for a walk with my dogs (...) picking up your Chinese...It definitely impacted upon how I felt going out and about in my local area that I've lived in like forever (...) all I wanted to hear was that he was getting something legally binding telling him to stop it. That's all I wanted to hear. I felt that was the only thing he respected. (2)

Victim-survivors can apply for a civil non-harassment order through the civil courts before, during or after a court case without the requirement of a guilty verdict. If breached, both orders can result in criminal penalties. Often the women had applied for this through the civil route and it was the breaching of this that led to a 'newer' sentence. Often there was a lack of connection between the criminal and the civil<sup>59</sup> where there was no communication between both courts. This was particularly the case with the non-harassment order and the enforcement (or not) of it:

The NHO [obtained through the civil court] was never registered by the procurator fiscal or the sheriff court or the police, so it was a waste of paper really. (13)

And the non-harassment order, I feel they should have asked me how long like I would like that to be put in place but that was never asked and it was just an automatic 3 years and it wasn't until later I found out that that, he had already had a 3 year non-harassment order, his previous girlfriend had already got a 3 year non-harassment order so I feel if he's already had one then it should go up, it should have a stronger, longer than 3 years non-harassment order. (11)

The above quote implies that the NHO had little impact on the behaviour of the offender, as it was not seen as a signal of wrong doing. This may be due to the lack of consideration of the repeated behaviour of the perpetrator that is being replicated in each subsequent relationship. There were times (highlighted in the interviews) when new NHOs were piled on top of existing NHOs which, by the very fact of the perpetrator being in court on a further charge relating to domestic abuse, illustrated limitations in their effectiveness, and women expressed there needs to be further consideration of this, when using them as part of sentencing.

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<sup>59</sup> see Lombard *et al.* (2022).

### Compensation Order<sup>60</sup>

This orders offenders to pay money to the victims of their crime. Offenders may be ordered to pay compensation for an injury or distress they have caused, or for damage they have caused to property. The judge sets the amount to be paid, which takes account of the crime and the offenders' ability to pay. The offenders pay the money to the court which then gives it to the victim. Offenders who don't keep up with payments can be taken back to court and could be sent to prison (or detention if the person is under the age of 21).

One of the women from our sample received a compensation order due to the nature of the injuries she received, but to her the money was irrelevant, as without a custodial sentence she felt her perpetrator had gotten 'away with it':

It was also the humiliation that people could see the scarring that was left never mind the scarring that was actually mentally inside (...) [I said to the sheriff] I just wondered how much more evidence you require? Or was it the fact that he was a very wealthy man and he had a very highfalutin job. How did you get to that outcome?' (23)

### Deferred Sentence

This is when the final decision about a sentence is postponed to another date for the offender to be of good behaviour during that time. The sentence is usually postponed for between 3 to 12 months. Other conditions can sometimes be added, such as attending counselling or repaying money. The sentence will depend on how the offender has behaved. If the offender has stayed out of trouble, then the sentence will normally be lower than if they get into trouble.

<sup>60</sup> <https://www.scottishsentencingcouncil.org.uk/about-sentencing/sentences-and-appeals>



One perpetrator received a deferred sentence (what the victim-survivor called a good behaviour order)<sup>61</sup> for six months alongside a non-harassment order,<sup>62</sup> which made her question ‘what was the point?’ in her reporting in the first place as she believed that this was not an appropriate sentence for her ex-partner:

That was his bail conditions and a good behaviour for 6 months. So he was very narcissistic so obviously a narcissist don't like other people to see them as though, (...) so he's no gonnae kind of do any bad behaviour within that 6 months so to me it's a kind of pointless sentence, do you know what I mean? You're, he knows that if he behaves badly then obviously the blame lies with him, do you know what I mean, whereas he could easy pass the story everything is my fault and he's the innocent victim here by staying good behaviour for the 6 months which he did. (10)

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<sup>61</sup> These are the same thing - these disposals are formally referred to as deferred sentences - see the Scottish Sentencing Council website. <https://www.scottishsentencingcouncil.org.uk/about-sentencing/sentences-and-appeals>

<sup>62</sup> The sheriff might impose a NHO and a period of good behaviour as a way of monitoring the offender, as committing a further offence would result in a breach of the NHO and he can still be sentenced for the original matter. If they do not impose the NHO when deferring sentence, then they must defer sentence and ‘continue consideration of a NHO’ otherwise it cannot be imposed later.

### Community Payback Order (CPO)

*A community-based sentence. There are ten possible requirements<sup>63</sup> that can be imposed by the court as part of these Orders and these include:*

- **Unpaid work:** *Up to 300 hours of work in the community*
- **Supervision:** *The accused will have regular appointments with a supervising Social Worker for a period of time and must undertake the work their Social Worker directs them to do*
- **Programme:** *In domestic abuse cases, this is usually the Caledonian Men's Programme. This is a 2 year order where the accused must attend individual work with a worker and group work with a view to changing their abusive behaviour.*

None of the six women whose perpetrators received a community-based sentence believed this was an effective sentence, either because it was not appropriate for the nature of the offence, or appropriate for their ex-partner specifically:

So, you know, in my opinion, like I say there's been quite a history of this, but in my opinion it's never been adequately dealt with by the courts. And because of that I think that in part has enabled the reoffending, you know there's not been a very, a harsh punishment at any time, (...) I think when we're talking about domestic abuse, and especially people who have a history or these types of offences, I personally think there should be something more, more robust in place, I don't think community service really sends out the message that they've done very much wrong, if that makes sense. (14)

I work in [redacted] (...) so I'm quite aware of criminal justice and their role and, their role in recommending to the courts for things, you know background reports, (...) I just felt that he didn't meet the criteria for the Caledonian Project. And I kind of made that very clear when I spoke to his social worker when she

<sup>63</sup> Requirements that the court can impose as part of the CPO- see the Scottish Sentencing Council website.

<https://www.scottishsentencingcouncil.org.uk/about-sentencing/sentences-and-appeals>  
<https://www.scottishsentencingcouncil.org.uk/about-sentencing/community-payback-orders>

was looking for background information, that I didn't feel that this was a suitable you know order for him, I didn't think that he would engage, that it would rehabilitate him and it would change any kind of behaviour due to his personality traits, which was the case but it wasn't taken on board unfortunately. (13)

The above comments demonstrate one of the ways that victim-survivors feel they are often not listened to by the courts and how their unique understanding of their ex-partners' behaviour/personality is disregarded.

#### Restriction of Liberty Order (ROLO)

The accused is tagged for up to 1 year. There are two types of ROLO:

To remain in a place for up to 12 hours (usually the accused's address)

OR to stay away from a place (for example your home). This would last for 24 hours a day. It means a box would be installed in your house which would alert the organisation who manage the tag that the accused has breached the order. This will not be suitable if you are trying to keep your address a secret from the accused.

This sentence may be given as an alternative to prison. One offender in our sample received a 12-week restriction of liberty order, and while this did enhance our participant's sense of safety during his restricted hours, her fear of further victimisation persisted:

The first time he got done for having a gun, he got a £600 fine and now this time he's got a 12 week tag. So, instead of being home by 9 o'clock this time, he's got to be home by 7 o'clock. That's good news, I guess. It does actually make me feel quite good knowing that he's in the house at 7 o'clock every night because I'm like, wooh, I know where he is. That is actually quite a nice feeling but obviously it's always in the back of my mind that he could just go and get another gun and he could find me and kill me as well. It's not all good news. It is quite a serious thing actually. (15)

## Custodial Sentence

### Short term sentences (less than four years)

People given a short-term sentence normally will be automatically released from prison into the community after serving half the time in prison. The person isn't normally supervised by a social worker unless they are a sex offender convicted on indictment (more serious crime), or is placed on a Supervised Release Order.

### Long term sentences (four years or more)

A person given a long-term sentence can serve all but the final 6 months of the sentence in prison, unless the Parole Board for Scotland recommends that they should be released. The Parole Board will only start to consider their release as they approach the halfway point of their sentence - the earliest point at which they normally can be released. If an offender is not released, the Board will re-consider parole within 12 months. People serving a long-term sentence will be 'on licence' after they are released until their sentence finishes. They can be recalled to prison if they commit an offence or otherwise breach the terms of this licence.

### Extended sentence

An extended sentence combines a period in prison with a further set time of supervision in the community. The person serves the full prison part of the sentence - unless the Parole Board for Scotland recommends early release, which would normally be considered halfway through the prison part of the sentence. When released, they are on licence until the end of the extension part of the sentence and can be recalled to prison if they breach the terms of their licence.

In our sample seven of the offenders received a custodial sentence. Some of the women, whose perpetrators received a custodial sentence shared the following:

And I think because I suffered for such a long time, I think he should suffer the same amount of time. You know I think it should be proportionate, you know so for the length that I suffered I feel he should have that as well. Not that he'll suffer in prison, but he'll have that lack of control, he won't be able, that lack of freedom, the lack of control, everything that he took for granted, I think you know you should have that taken away for longer. (4)

It's a punishment. It should be a punishment. Yeah, I guess that the only time that I ever felt that was when he went to prison. There was justice, that that was a deterrent and he was finally being punished because nothing that the courts had done before that had had any effect on him. (15)

I was surprised to be honest because I don't know if you are aware but most domestic assaults never really lead to the perpetrator being held in prison normally, for example my friend's just went through the court, she's not part of the Panel,<sup>64</sup> and he was charged with domestic and sexual assault, but he got 250 hours community service. So for mine, like I thought it was great [that he was sent to prison] to be honest. (6)

Yeah, like for me I was happy with it, happy, I mean, there was really no other emotion. Cos like after the trial I was really emotional, but then when I got the call that he was getting put away, it was like a relief. You are kind of, like you don't have to lead this double life anymore. It's kind of like closing that chapter, helping you move on (...) Through personal experience I just know I wouldn't have been able to move on if he hadn't been sent to prison. (6)

I just needed the validation and need to be vindicated and it never really occurred to me that he was going to prison until they called and said he's been sentenced to 5.6 years, and then it was like, 'Wow he's going to an actual prison'. (19)

While a custodial sentence provided validation, space to move forwards and a sense

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<sup>64</sup> Some of the support organisations had court contact peer support groups or panels. The participant is referring to her friend not being part of this support group.

of justice for some women, the length of the sentence and the acknowledgement that the full sentence may not be served was a blow to some women:

I think it's a joke to think 48 weeks and then he could get out in half that time. I think that's a disgrace, like for what he done. Even just wi the assault like my face was a mess wi him and I've got [condition] and I feel that made my [condition] worse, I don't know if it was the injury or the stress of it all, and none of that was taken into account. (11)

[I had been told] he was looking at least 5 year and attempted murder can go anything up to 25 year and he got 3 and a half year and it was just an absolute disgrace. (12)

I didn't feel it was reflective of the crimes he had committed and the emotional and mental and physical damage he's done not only to me but to my family, to my child and to the other people that were involved because I wasn't the only victim. I understand that perhaps the courts are restricted within the law as to how much of a sentence they can give but it didn't seem enough to me but I was glad he was going to jail. (17)

## Purpose of Sentencing

Women were asked what the main purpose of sentencing for domestic abuse offences should be, and where relevant these are overlaid onto the purposes listed in the Council<sup>65</sup> guideline on the principles and purposes of sentencing below. In the section following this we examine what it was that victim-survivors deemed important when their perpetrator was sentenced as these did not always align.

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<sup>65</sup> <https://www.scottishsentencingcouncil.org.uk/media/j1jo1tw2/guideline-principles-and-purposes-of-sentencing.pdf>

## Scottish Sentencing Council: Principles and Purposes of Sentencing Guideline

### Protection of the public

Sentencing may seek to protect the public from offending behaviour through preventative measures and by deterring offending behaviour.

When asked generally about the purpose of sentencing, more than a third of women spoke about the importance of protecting the public. The focus upon protecting the public is significant as domestic abuse is still considered a 'private' crime between a couple or ex-couple and so such perpetrators are not immediately considered a threat to wider society. However, women highlighted that due to the complexity of domestic abuse the protection of the wider public should not be the immediate concern of the court. Instead women repeatedly expressed that the focus should be upon the victim-survivor and her family:

Him being put on the sex offenders register was a big thing for me because it means that there's always going to be that level of protection for other women, and other women who have children. (17)

It shouldn't just be about just stopping it for me. It should be preventing him for doing it to other people too. (2)

I actually wonder like if lassies in the future that he gets involved with because I know there's Clare's Law<sup>66</sup> and you can check but I don't know if that charge will show up if another girl's concerned about her safety, you know? (16)

Again, a much wider consideration of what public protection and safety consists of is relevant here even though it might not be directly considered by the sheriff. The priority for the participants was to protect themselves, their wider families and also future potential partners (of the perpetrator):

<sup>66</sup> In Scotland it is the DSDAS- see <https://www.scotland.police.uk/advice-and-information/domestic-abuse/disclosure-scheme-for-domestic-abuse-scotland/#What>

## Punishment

Sentencing may seek to punish the offender as a consequence of their criminal behaviour, normally resulting in some sort of loss depending on the sentence chosen.

In this study, sentencing was seen as a punishment when it resulted in a loss of liberty – either in terms of a custodial sentence or a restriction of movement – telling the abuser that they could not go somewhere or do something was judged a welcome punitive response. For some, only a custodial sentence was seen as a punishment – as women often felt it was the only sentence their perpetrator would be impacted by:

I felt for my safety he should have been given either a jail time a social work order or community service (...) It would have given me safety in terms of I would have got the sentence that I wanted. I would have got the peace of mind and he wouldn't have been able to do anything. (23)

For the victim-survivors we spoke to, punishment was linked to the offender having his life restricted in some way in an attempt to reflect the ways that their lives had been restricted by the abuse:

Because I think if the courts really recognise and take into consideration everything that the victim has been through then it will lead to more suitable sentencing, more suitable punishment if you like, it should be more reflective in relation to what's happened to them rather than the confines of the legal system. (17)

Punishment per se was not a victim-survivor's main motivation in reporting and the concept of punishment in general was not a term raised by many of our participants:

But meaning like a fair, like a good outcome, as in the sense of, and I didn't like to use the word 'punishment' cos I thought we were kind of away from that, people being punished, but I notice when I do look up online punishment is still part of the whole, the whole sentencing so used the word. (5)



It's not about punishment. Everyone says 'Oh, you're so revengeful. I can't believe you want that.' It's not about punishment for me. It's about him finally not to be able to hurt us because they will do absolutely nothing to stop him hurting us otherwise. Like him being locked up. (...) I know people hate me for it but why is his right to freedom greater than a child's right to be safe? (24)

### Rehabilitation of offenders

Sentencing may seek to reduce the risk of reoffending through the effective rehabilitation of offenders, providing people with the opportunity to change and move away from past offending behaviour.

In terms of rehabilitation, the Caledonian Programme was identified as an alternative to custody. Of those we spoke to, only two had ex-partners who had attended such a programme. They expressed that while this may aid in rehabilitation for some perpetrators, they did not believe this was suitable for their ex-partners.

I didn't think that he would engage, that it would rehabilitate him and it would change any kind of behaviour due to his personality traits, which was the case but it wasn't taken on board unfortunately (...) And nobody really seemed interested, even when I spoke to the procurator fiscal, I sent an email, you know asking could this please be registered with the police and I never received a reply, so .... It just felt like a bit of a kind of tick box exercise from the court and them not really following through with what they should have done to be honest. (13)

Most viewed this option as unrealistic for their perpetrators who they saw as 'narcissistic' 'entitled' and 'psychopathic', judging it rather as an option to secure the sheriff's leniency and a 'lesser' sentence. Victim-survivors suggested that the completion of the rehabilitation project should be a legal requirement and further reoffending should result automatically in a custodial sentence:

So, (...) from what I've seen, a lot of these guys don't just stop with one person, they target and they target and they target and I don't there's anything that people that are psychopaths, narcissists I don't think any rehab would change that. (9)

For participants whose partners had been found guilty of an offence but still refused to acknowledge any wrongdoing or guilt, they were particularly sceptical of the prospect of rehabilitation:

The man tried, threatened to kill me (...) No the seriousness wasn't kind of captured under whatever the breach was, or whatever they were labelling it as and I don't know, I think that's how, it just didn't feel as if it was you know very serious and I think even with the Caledonian Order as well didn't really kind of match either. (13)

#### Giving the offender the opportunity to make amends

Sentencing acknowledges the harm caused to victims and communities. Sentencing may also aim to recognise and meet the needs of victims and communities by requiring the offender to repair at least some of the harm caused.

None of the women we spoke to thought the perpetrator should be given the opportunity to make amends. It is critical to recognise that for many women 'making amends' forms part of the pattern of coercive and abusive behaviour they experience with perpetrators acknowledging the harm they have caused and promising not to do it again. Instead, over two-thirds of the women we spoke to wanted the opportunity to illustrate the impact his behaviour had had on her life and that of her children and/or wider family. For them this was the opportunity for sentencing to acknowledge the 'harm'. Importantly they did not want to do this face to face or in a restorative structure, they wanted it to be part of the court proceedings so he was forced to listen, and his supporters or family could hear this too. They wanted such statements to be

taken into account when sentencing but also used as a public acknowledgment or recognition of the abuse she had endured.

Because we didn't actually go to trial, I just felt I had been robbed of my opportunity to sit in there and actually speak about my lived experience and I just felt that was kind of taken away (...) I don't know if it would have impacted the sentence but I think it might have just given me, I hate the word closure, but closure may have been a bit more cathartic and maybe it would have affected the sentence but I guess that's why he probably didn't want to go to court room because of the amount of evidence there was. (9)

One participant had video footage of the attack and she expressed that she would have liked her perpetrator and his supporters to have viewed this in court to demonstrate what was done to her:

[He] should have been made to see the evidence of what [he] did. I think also as well [his family] should have been made, like his immediate family, his daughter (...) [He] should have been made to see what happened that night. (...) because it's not right. (23)

#### Expressing disapproval of offending behaviour

Sentencing may act as an expression of society's concern about and disapproval of the offending behaviour under consideration.

Here women saw the sentence as being a public acknowledgment of wrongdoing and a validation of their experience. Such a view is pertinent here as for many women their abuse occurred in private and was not always visible to those outside of their relationship:

I wanted it to be acknowledged (...) the kind of sexual predator that he is (...) Recognition of what the victim has been through. (17)

But at the same time his family also knew a lot of what was going on so for them to sort of dismiss it and not acknowledge it when they knew what was going on, it was validation when he received that sentence to say well ok you know this is it. The jury believed me, you know, the judge believed me so you can be in denial but you can't be in denial if you know what I mean, so it was important. (4)

It was important to women that their abuse was recognised as such:

I think a lot of it is relief that they have been understood (...) what they have been through is valid and appreciated as well, you know, it's not undermined or minimised by the judicial system. (20)

Others saw the sentence as a wider acknowledgement of the trauma they had experienced, not only themselves but those around them too:

It should be paramount that it's added on as part of the sentencing, the ricochet effect and the trauma these children have gone through. That should be added onto their sentencing. (23)

The impact upon others, especially children, is discussed in the next section.

## **What did victim-survivors consider to be paramount in the sentencing of offenders?**

As highlighted at the start of this section, the responses of victim-survivors did not always align with the existing official sentencing guidelines. Rather the women we spoke to framed their discussion of the purposes of domestic abuse sentences (and what they hoped to gain from the sentencing process) around their lived experiences of domestic abuse.

### Acknowledge the impact upon victims

In all but one of the cases, the participants' first response when asked about the purpose of the sentence was to reflect the impact of the abuse upon her life and the lives of her children and wider family. The sentence was viewed as an acknowledgement (or should have been) of how the abuse had affected her. Women described that it was crucial that the courts took into consideration not only the immediate impacts of the abuse, but also the long-lasting and continued impacts:

And yeah I guess the other one that was really important to me was the forms of abuse the perpetrator had the impact on, freedom, time, finances, cos that's like the main thing for me was about kind of my mental and physical health and my freedom, my time, autonomy and things like that, cos he knew that's what he was doing, cos there would be letters saying 'oh I know I scared you' and that kind of thing but then continuing to do it, so I think that's really important as well. (18)

Unfortunately, most women, shared that they felt the long-lasting and continued impacts were not taken into consideration during the proceedings and therefore were not considered during sentencing:

Even the physical injury side, you know, I've got a specialist [redacted] physio for [redacted] injuries that I've got as a result of sexual assault from him during Covid. He's not even being charged for that. (...) [...] every time I have a pain or something it reminds you, (...) it reminds me of him because of the injury he's caused me and, yeah, the sentence doesn't reflect any of that. (9)

I'm furious, absolutely furious. Because of the amount of suffering that he has caused me, I went through psychosis last year. (...) I had to get medicated for my PTSD and sleep related night terrors and sleep paralysis and things like that and I have no doubts that he has not lost any sleep about this. (...) It doesn't warrant any of the charges that he's got because when you have psychosis and you have PTSD, you are a prisoner of your mind and you're a prisoner of his actions and a prisoner in your home, a prisoner everywhere but the real prisoner is still out there. He's not got the appropriate sentence. He's not in the cells. He's not where

he should be. (20)

Women wanted the opportunity to convey this to the courts and for it to be included in the sentencing decisions. The impact was described repeatedly as the most significant thing about the abuse and having this recognised validates their own experiences:

I'd then asked could I put in an impact statement and they asked [someone from the Procurator Fiscal's office] what court it was going to and I told them the Sheriff Court. They said, no, they don't read them in the Sheriff Court. They said well you could do if you want to but they probably won't see it. They might see it after sentencing. What's the point in that? They will already have decided what the sentence is. (1)

I think they should take into account the impact it's had on the person and how it's affected [them]. (17)

All women described the need to acknowledge the impact of the domestic abuse in their life either with the sentence or during the sentencing. It was seen as a validation of their experience, recognising how it had affected them and acknowledging the significance of the impact on them in the determination of the sentence. It was also important that the perpetrator acknowledged this too:

They should be made to see the evidence. (23)

I think a lot of it is relief that they have been understood, you know, what they have been through is valid and appreciated as well, you know, it's not undermined or minimised by the judicial system. In my case, as well, safety was a big one. I think a lot of it is validation, I guess, is what you could say and relief. (20)

## Children

Scotland was also an early adopter of the understanding, again led by feminist activism and academic theorising, that children are not simply witnesses to violence and abuse but are victims in their own right, experiencing a range of coercion, control and fear<sup>67</sup>. Aligned to the Getting it Right for Every Child (GIRFEC) principles, the *National Domestic Abuse Delivery Plan for Children and Young People* was published in 2008.

Most of the women we spoke to talked about the impact of the abuse upon their life, but women who had children also commented on the impact of the abuse and subsequent sentencing on their own *and* their children's lives:

I mean I know that my children were never asked about, because when it comes to court cases and things like that it's a crime against an individual isn't it, the crimes were committed against me but there was no, obviously the children were affected by it, they heard, they saw, even though there was no actual physical you know crime committed against them they were still witness to it, still has a knock on effect, so I think that needs, that's important that those sort of things are taken into consideration. (4)

Now [name redacted] is 10, I think he was 8 at the time of the incident. He is still very, very young, so if he is not deemed appropriate you know to give his own views, or you know he doesn't have to pass you I know that, but he is still able to express how he feels and putting, even if they were to get, you know to take the child's views into consideration. (6)

Nobody ever considered the impact it would have on my daughter. I used to pick her up at the back door of the school. Her guidance teacher would arrange for her

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<sup>67</sup> Hester, M. (2011) 'The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence', *British Journal of Social Work*, 41(5): 837-853; Katz, E. (2015), 'Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed By and Resist Regimes of Coercive Control', *Child Abuse Review*, 25(1): 46-59; Mullender, A. (1996), 'Children Living with Domestic Violence', *Adoption & Fostering*, 20(1): 8-15; Morrison, F., Tisdall, E.K.M., Reid, A. & Jones, F. (2013), *Child Contact Proceedings for Children Affected by Domestic Abuse*. Edinburgh: Children and Young People's Commissioner Scotland.

[https://cypcs.org.uk/wpcypps/wpcontent/uploads/2020/03/Child\\_contact\\_proceedings\\_March\\_2013.pdf](https://cypcs.org.uk/wpcypps/wpcontent/uploads/2020/03/Child_contact_proceedings_March_2013.pdf)

to sneak out the back door because he would show up at the school and they couldn't do anything. After we reported him for showing up at the school, the police must have gone and spoken to him and he stopped coming to the school after that but he would just hang about the general area after that. (...) She was 14. She was terrified and then eventually she couldn't even get out of bed never mind go to school. I think they have absolutely no idea. I think they have a lot to learn about stalking and the impact it has on people. (8)

There were no charges as such against him for anything relating to my daughter but I don't really think they took into consideration the impact that living in that environment and around him had on her. Still to this day, it affects her. I don't really think it was considered (...) like (...) how it's affected your family, like your child, and things like that whereas I think that's a big part of it. (17)

I think sometimes because everybody focuses on the victim so much that the kids get either brushed aside or they put on a brave face or they try and block it out and later on it's not good. (23)

As demonstrated above, the abuse that women experienced affected their children, whether they were directly targeted or not; however, women felt the courts failed to consider this impact and/or risk when making sentencing decisions.

#### Other people in the victim-survivor's life

As well as children, other people in the victim-survivor's lives were impacted by the abuse, which was highlighted by the following woman:

I think it's also important when thinking about the impact of domestic abuse that it's not just the impact on the victim. This affected my parents, brother, friends, neighbours and colleagues. They were scared for me, but also contacted by him and he also stalked one of my friend's addresses to find me. My neighbours were also worried about him coming to the flat and what he might do. So there's been a big emotional impact on them too, and I don't think it's always thought about the



wider impact on those around the victim. (18, via email)

### Victim (impact) statements

Women saw victim statements (VS) as one way that the impact on their/others' lives could be acknowledged but several women explained that often they were not used, or they were not given the opportunity to write one. The authors of the report found little clarity as to when and where victim statements could be used and discussions with the participants highlighted this ambiguity of who could provide one and why:

There's a list of prescribed offences where a victim impact statement is applicable, admissible in court, and so it's things like murder, sodomy, rape but also hate crime. I think there's maybe a list of about 10 different offences but there's also a category for cruel and unnatural treatment. (15)

So, I've got PTSD, I've moved house, I've moved job, everything, my whole life changed and victim impact statement wasn't allowed. He [another person in the same case] got called a [name] and his victim impact statement was allowed. Unbelievable and crazy, upsetting and really, really a broken system. (15)

Yeah because the other thing is, they won't take an impact statement. You can write it but it's highly unlikely they'll read it. I said, well, there's probably no point in me writing it then, is there? Well, you know, there's probably no point. Some crimes are instant. It happens, bang. That possibly has less impact than living with this. (1)

The Scottish Government website details the leaflet sent out by the procurator fiscal<sup>68</sup> providing guidance as to what to include in the statement but not the conditions that leads to eligibility. As demonstrated above, women were frustrated with the barriers they encountered to giving a victim statement or wanting to but not fulfilling the criteria to submit one. Women felt like this took away their right to be able to share their story and express the impact that they and their children had experienced:

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<sup>68</sup> <https://www.gov.scot/publications/making-victim-statement/>

I wish they would have listened to me (...) and kinda made him realise what he put my son through. (10)

I ended up getting diagnosed with PTSD through it, like, and I still suffer the day and just, even like maybe when he went to court I feel I should have been offered to give an impact statement. I feel I never got my side across and how it did affect me and my wee boy at the time. (11)

It is important to acknowledge here that the process of a victim statement is different from restorative justice because whilst women wanted the option to illustrate how the abuse had impacted them – and some wanted their abuser to hear it from them – none of them wanted to hear his response to this, or give him an option of responding.

One woman who provided a victim statement, acknowledging that while it was difficult, believed that victim-survivors should be given the opportunity to articulate how the domestic abuse has affected her and her family:

I did a victim impact statement which was very difficult to do. I found it really daunting. [you should be able to] put in how it's affected your family, like your child, and things like that (...) I think you should be able to do that. (17)

The relevance of the victim statement illustrates that for the women it is not just about the sentence but also the court process and the acknowledgement of their experiences. It was important for women to feel believed and that their experiences were being listened to throughout the court process. There have been ongoing consultations<sup>69</sup> regarding widening the scope of the victim statement. The authors of this study support this expansion, provided a woman wishes to provide one.

A few women mentioned that Women's Aid or other supporting organisations should be able to write statements to convey how the abuse has affected victim-survivors,

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<sup>69</sup> SG consultation on widening the scope of the VIS (2019) <https://consult.gov.scot/justice/current-victim-statement-scheme/> and subsequent analysis. <https://www.gov.scot/publications/widening-scope-current-victim-statement-scheme-consultation-analysis/documents/> Responses supported extending categories to include stalking offences. To date there is no further publically available information about the status of the consultation.

especially if the perpetrator is allowed to use character statements. Some women do not realise the full impact until much later – support agencies could enable this to be conveyed using their professional expertise.

### Naming of the experiences as abuse

The naming of violence and abuse generally and women's experiences more specifically has played a crucial role in raising awareness of domestic abuse and subsequent legislation<sup>70</sup>. Naming of behaviours (which previously could not have been prosecuted as they were not a criminal offence, such as controlling behaviours under the DASA) was a significant step in the development of domestic abuse legislation.<sup>71</sup> It enables women to name, understand and challenge what has happened (or is happening) to them, by moving the private into the public domain and shifting the boundaries of acceptable and unacceptable behaviour. For the women we interviewed, the naming of what they had experienced as abuse within the sentencing was significant. What is critical here is that abusive men are compelled to recognise their own actions and consequences as violent and abusive and in doing so acknowledge the impact upon the victim-survivors:

We're talking about the financial impact, mental health impact, physical health impact, social impact, I'm scared of technology now, I don't answer my phone now, my ringer is always on silent, I can't deal with paperwork anymore and so things that people really take for granted, I really struggle with now and it's all because of him and his behaviour. Huge impacts, absolutely enormous impacts. My whole life has changed (...) I've had to move house; I've had to change my job. I've had to change my career. Enormous life changing impacts. (15)

<sup>70</sup> Lombard, N & Whiting, N. (2015), Domestic abuse: feminism, the government and the unique case of Scotland. in R Goel & L Goodmark (eds), *Comparative Perspectives on Gender Violence: Lessons From Efforts Worldwide*. Oxford University Press (OUP), Oxford; Lombard, N & Whiting, N. (2018), What's in a name? : the Scottish Government, feminism and the gendered framing of domestic abuse. in N Lombard (ed.), *The Routledge Handbook of Gender and Violence*. Routledge Handbooks, Routledge, London, pp. 28-39.

<sup>71</sup> See Brooks and Burman (2018); Lombard and Whiting (2018).

The naming of violence generally and women's experiences more specifically has played a crucial role in the raising of awareness of domestic abuse and subsequent legislation. Naming of behaviours which have previously been normalised was a significant step in the development of domestic abuse legislation. Naming their experiences as abuse validated the experiences for women. It also gave some control back to them, as did asking them what they wanted from the criminal proceedings:

I really appreciated the respect of being asked about what do you want to see happening here because it made you feel that sometimes you had a wee bit of control in a situation where you so often you've not got control. (2)

In recent years, the Scottish Government has acknowledged the severity and impact of domestic abuse on the lives of women and children; however, the legal system still compounds the ordeal of victim-survivors.<sup>72</sup> Lombard and Proctor (2022, 2023) in their research conceptualised 'justice work' whereby women described the significant amount of practical, bureaucratic, and emotional work that they had to do to keep their cases 'live' e.g. conducting their own investigations and gathering evidence, keeping detailed records, and maintaining the visibility of their case within the system. Forbes (2021) identified the notion of 'tertiary victimisation' whereby waiting for, and time spent at court, generates compounding trauma. Brooks-Hay et al. (2019) detailed the disempowerment and retraumatisation of victim-survivors through their 'justice journeys'. Much of these recent research findings were reflected in women's understandings of the criminal justice system:

If the Government are really serious about violence against women and girls then they need to include what's happening in the court processes and the sentences given because it's all well and good saying 'yes, we're serious about it' but actually what are you doing about it and what are you doing to help us as victims and put the victims first instead of the offenders. (9)

So, there are a lot of problems with the court system, with the whole criminal justice system, a lot of problems and the fact that victims are kept in the dark and

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<sup>72</sup> Brooks-Hay *et al.* (2019); Forbes, (2021); Lombard and Proctor (2022, 2023)

they don't have any rights and so once you give your evidence it's no longer your evidence, it's the Crown's evidence and that whole feeling of my story doesn't belong to me anymore. It belongs to somebody else, and I've never met that person, I don't know what they are going to do with it. So, I guess that's kind of my voice in court about my opinion on sentencing, I guess, but if I hadn't been as articulate as what I was to that criminal justice social worker, he would probably have walked. (15)

### The frustration of charges being dropped or 'minimised'

Women spoke frequently of how the charges against the perpetrator were dropped or reduced which led to feelings of the abuse being minimised. This resulted in the court and jury 'not having the whole picture' of the totality and scope of the abuse:

I think to some extent [the court] weren't really fully made aware of the seriousness of it all really in its entirety because so many charges were dropped like the stalking and the videoing me without permission and all the basic domestic abuse kind of charges because they didn't want to muddy the waters with the big charges and so they wanted to keep the jury focused. There was so much details, I think, basically that's what it was and they didn't want to detract from what was essentially probably going to get him his sentence. It kind of almost makes you feel like the whole story's not been told. Like it's been minimised almost. You know, we don't want to talk about that bit, we just want to talk about this bit because this is the important bit kind of thing but, yeah, it just felt a bit like, you kind of want them to know the whole picture to be able to fully understand the whole situation but, yeah, it didn't work out that way. I can understand to a certain extent that they've got to do that but I think that it's damaging really to the victim. (17)

Well, this is the mind-blowing thing. He was originally threats to kill, unlicensed weapons, unlicensed knives, all sorts and it just ended up as threatening and abusive behaviour because the nature of domestic abuse, the broken fingers, the broken collar bone, I never told anybody about. You just don't. They couldn't do

him for domestic abuse at all because there was no corroborating evidence and it was just threatening and abusive behaviour, motoring offences, unlicensed rifle and that were about it. (22)

So I think that the sentence did consider the seriousness of rape but I don't think that the sentence took into account like the years of abuse that I suffered and it didn't take into account like the way that he mocked me during the court case, like the way that he was still continuing to try and threaten to play games with me. I'm just not always sure that domestic abuse is taken as seriously as it should be because the rape for me was one tiny part of my relationship. It was 1%, the domestic abuse was the stuff that I really had to work on healing from. (19)

I wanted him to go to jail. I wanted, he still had freedom, he still was able to go out, he was still able to enjoy his social life, he was still, nothing was really taken away from him, there was no, so for [name redacted] and his personality, he was still able to do whatever he wanted to do, he just had to attend a meeting every week. You know he's self-employed, that's no bother to him. He didn't have to go to his employer and say 'oh I've been you know found guilty of domestic abuse', (13)

A few women discussed their desire for a custodial sentence and when they did it was not in terms of prison as a punishment but as a solution to keep the perpetrator away from the victim-survivor and to ensure her safety. Of the women whose perpetrator did receive a custodial sentence, they expressed relief in knowing where their ex-partner was and that he was unable to harm them. This offered women a 'breathing space' that other sentences did not.

### Validation of experience

Women wanted their abuse to be recognised by others. They wanted their experience validated and acknowledged as wrong and/or criminal through a conviction *and* an appropriate sentence. Women saw victim impact statements as providing this validation and saw the role of the criminal justice system to acknowledge and label the

behaviour as wrong. For many women, the recognition of their experience through sentencing was fundamental, as described by the following participant:

Like I found out when he was getting sentenced, was vindicated, cos I think it's quite common in abusive relationships that you doubt yourself and your brain almost doubts itself and yeah, you need that validation and I think all any, like the only thing that someone who's gone through abuse really genuinely wants is for their abuser to admit that they were abusive and I got that so I think that you know definitely vindicated was probably the right word for like that period of my life. (18)

Women discussed the importance of their perpetrator's behaviour being officially labelled as abusive to hold him accountable:

Oh yeah, I wanted it to be stalking. Yeah, because I knew from the behaviours that that was what he was doing and not only to me but also to [name redacted], my little girl, you know, following, sending messages, putting messages on Facebook, constantly if we came in or out of the property either the front or the back to play or hang out washing, he was out there all the time. He was trying to engage with her. I couldn't let her out on her own. Yeah, it was very important to me that it was stalking and the same this time as well. Yeah, if you read the definition of what stalking is then that's definitely what he's doing. (1)

It wasn't until he was charged and given bail conditions that it actually stopped. It was like he only had a level of respect when it was legally binding. (...) All I wanted to hear that there's something legally binding telling him to stop it. That's all I wanted to hear. I felt that was the only thing he respected. (2)

It would have been nice for him to have realised that he couldn't do that. That's what I wanted. For him to realise that he has to stay away because the law says that he has to stay away from us now and enough is enough, if that makes sense. (8)

He was charged with domestic abuse and, aye, that was important for me. Aye that definitely was important because it kind of a, I think you doubt yourself when

you're going through it all, you're like is it really as bad as I think, is it this, is it that, and the longer that it goes on, the Court proceeding actually took 2 and a half years to get him to Court and I think that the longer it goes on you're like is this, why is this taking so long, do they no believe me? And I think for him to be convicted of domestic violence was a kind of a, do you know, he did dae this and people dae know that he's done this and for the rest of his life it's gonnae be on his criminal record that this is, that this is what he is so that if he does go into a relationship wi somebody else and they maybe apply through Clare's Law<sup>73</sup> or whatever, it's gonnae be noted and maybe save somebody else having to go through what we went through. So, it was important for me for him to be convicted of that, yeah, aye. (12)

The legal validation of women's experiences was also important for women to prove to other people that the abuse had happened, and how serious it was:

So, I wanted people to realise the seriousness of his behaviour. I needed to feel empowered. I needed to feel that the law was listening to abuse victims, not just me, all victims and I hoped that the sentencing would be reported as I said in the paper, and that others who are going through this, and had not yet found the courage and the strength to report their abuser, because it takes such courage and strength. They would see that the police and the courts really were taking domestic abuse seriously and the victims were being listened to and abusers were being held to account. That was important to me. (5)

Some women described how they hoped that the acknowledgement of their experience might protect women and children in the future:

But I mean there's been a whole catalogue of offences and I think the only thing that's, the only positive thing to have come from that is that there is a big history

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<sup>73</sup> In Scotland it is the DSDAS- see <https://www.scotland.police.uk/advice-and-information/domestic-abuse/disclosure-scheme-for-domestic-abuse-scotland/#What>



now so there's no, you know there's no kind of question of people believing you, you know. (...) there's certainly a paper trail, an extensive paper trail of offending, so in that respect I think it is important that where possible, things do go to court, cos obviously there's a lot of offences that equally never went to court or were never reported, or recorded as such, so yeah, I do think it's important to see some evidence of almost justice, it's not quite justice I don't think but you know, there's some evidence that people are paying attention. (14)

I wanted it acknowledged because he hides it so well, the kind of sexual predator he is and him being put on the sex offenders register was a big thing for me because it means that there's always going to be that level of protection for other women and other women who have children as well. (17)

The validation of victim's experience is not possible unless the process becomes more victim oriented.<sup>74</sup> Without this validation women were more likely to experience a sense of 'injustice'.

### Sense of injustice

Several women discussed their feelings of injustice after the sentencing, often referring to the sentence not taking into consideration what they had endured:

You feel you've been done, it's a pure injustice and as I said I feel, that's what I used to say when I spoke to like the ASSIST Team and stuff. Like I don't feel I would ever be the same person again as what I was before I met him. (11)

Absolutely raging! But I was so gutted, the amount of people, we were aw sitting in the court, in the witness room it was everything and for the amount of trauma and the amount of just everything that comes along wi being in a domestic violence relationship, everything that goes along wi it, I just felt robbed. I felt as if justice hadnae really been served and as if he'd got an easy way oot and aye I

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<sup>74</sup> Forbes (2021); Herman, J. (2005) 'Justice from the Victim's Perspective', *Violence Against Women*, 11(5): 571-602; Lombard and Proctor (2023)

was devastated to be honest. I felt let down by the people that are supposed to protect us. (12)

They need more information to apply the correct sentencing, in my opinion and I'll say women, but it's not just women, are just not getting the justice they deserve or that they want or that is appropriate at all. In my position, for example, I shouldn't be doing this, I shouldn't be writing to my MSP, I shouldn't be fighting for justice because that should have been given to me. (20)

As with other studies in the area of domestic abuse<sup>75</sup> victim-survivors experience complex emotions when it comes to justice:

I felt as if justice hadne really been served and as if he'd got an easy way oot and aye, I was devastated to be honest. (12)

This is so common for women in my position if, and that's the thing, if they get to sentencing, (...) if they get to court (...) I've sat so many times in our peer group talking about how disappointed we've been and how it's impacted us and that we have to go and seek support for that disappointment. (9)

They don't care about the impact this has had on my life. (...) the first time that he breached the non-harassment order they would have had him done for stalking then and so they don't care. It's not helping me to feel safe and live a normal life. (...) I'm appalled at what I've experienced. Appalled. (15)

Many women spoke of feeling let down. They expressed that they were let down by the system, the process, the sentence and their own expectations of what they thought would be achieved by sentencing:

I felt let down by the people that are supposed to protect us. (12)

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<sup>75</sup> Brooks-Hay and Burman (2018); Lombard and Proctor (2022)

He's had to change absolutely nothing about his life whereas I've had to change everything. (16)

Women often associated their sense of injustice with the disconnect between the impacts on themselves and their ex-partner. Women described their disappointment with the severity of the sentence as it did not, in their view, compare with what they had been through (and are still going through):

I think the, the restriction part of it [order for lifelong restriction], the thing, the ongoing part, which will obviously he'll have for the rest of his life, I think that takes into account the seriousness of what he's done, but I don't necessarily think the actual prison sentence was long enough. (4)

I felt in comparison to the stress that he put my family through and myself, it was an insult really, yeah. He stalked us for about a year and actually the final thing that we went to court for I felt like it should have been a driving offence as well because he was harassing me while we were both driving on a dual carriageway. (8)

I just don't feel as though it kind of covered what had happened, do you know what I mean? Just to say that it disnae work and it just makes you feel as though what a waste of time, do you know what I mean because I felt as though, wi going to court and what happened, it didnae change a thing. All it did was make people aware that something was going on in our relationship and he tried to make me look as though I was the bad one. Do you know what I mean. It just gave him room to talk, he was going to everybody as I says, I just felt as though nothing punishable to him came out it, it was mair a defamation of character towards me. (10)

I was given a [redacted] year non-harassment order, me and my son. That was great because, obviously my son's 21 now but means that whatever the stalker does in the future, my son has protection and the stalker was given a tag for 12 weeks I think it was. He had a restriction of liberty. He had to be at home at 9 o'clock at night and then stay in his house from 9 until 7 which is no big deal, not

really. It was winter. It was Covid. He was going to be in the house anyway. That was ok. I couldn't believe that he wasn't sent to prison after being in front of the sheriff so many times. (15)

I think the fact that he's been given a sentence of 10 years and 6 months, I feel that the 10 years should be in jail. It shouldn't be 6 years in jail and 4 years out of jail because, I mean if we're being entirely honest, he's probably never going to even spend the 6 years in jail anyway. It's probably only going to be about 3 and so, yeah, it feels like it's not really reflective of the crimes. (16)

No. I just feel like he was prosecuted. He was found guilty of certain charges and the judge gave him as much as he could really. That's the way it felt. It didn't really feel like it was really reflective of how he made me feel. (17)

Cos I know he's got plenty of money and a fine would have been just whatever and that's it. (21)

He got an 18 month supervision order which, to my mind, is what they used to give to children. (22)

I was very disgusted. I was very disappointed. Because my ex-partner plead guilty as soon as he was arrested, he never got to see any of the evidence of what he'd actually done. He obviously never got to experience the ricochet effect and the impact that it had on my family. He had contacted my 86 year old mother to tell her he was coming to get me. He'd contacted my daughter and there was an awful lot of evidence because he was a really high up, well respected gentleman in the field that he worked in and they stood by him. He said he'd had a massive breakdown. It just seemed to be dismissed that I was the victim. It seemed to be that I was kind of pushed out the road. It was all to do about his breakdown. No, I wasn't happy is the short version. (23)

I'm in my 50s. How dare you change my life forever and my family's life forever? (...) You've still got your freedom and I think even if it had been for something like 2 months because he parades about. (23)

### Constraints of the law

Many of the women conveyed a sense that the sentence meted out to their perpetrator had been constrained by the limits of the law:

The sheriff was apparently quite angry that he could only give him a fine and a NHO. (20)

Counted as a first time offender but he had been banned from driving. (20)

I really would question the discretion they have. (20)

Because he pled guilty as soon as he was arrested, he never got to see any of the evidence of what he'd actually done. (23)

All women, however, wanted the abuser himself or the system to acknowledge what the abuser had done – to validate her experience of abuse and acknowledge his behaviour as wrong. Often they felt the sentence worked against this and was seen as being more positive and beneficial to the perpetrator and to him and his wider family – it only served to invalidate her experience and justify his. The lack of a 'meaningful' sentence for women illustrated that their abuse was perceived to not be significant or severe enough to warrant a stronger sentence, and therefore minimised the perpetrator's actions to himself and his family. This was particularly pertinent for women whose perpetrator had received a sentence of a monetary fine as this was viewed as a dismissal of his behavior and the harm caused.

### Nuances of domestic abuse crimes and the burden of proof

The burden for proof was a struggle for women as most of their experiences of abuse had taken place with no witnesses, or no-one else present, apart from the abuser and/or in private:

That's the hardest thing about this domestic abuse and this particular crime is when it goes to court it is very factual, it is all about specific dates, specific offences that have happened, there's not an overall look about the psychological

effects, the effects on the family, the children, you know the school, nothing like that is considered at all, it's just very, they broke this particular law... so I think that would be useful. (4)

Such a quote also highlights the importance of thorough police evidence collection and consideration of evidence (in terms of the protocol) as what they submit to the COPFS. Those who raised this as an issue also talked about the many previous incidents that they had not reported:

It's like one woman coming forward is not enough. We need to come forward in groups before anything is taken seriously, you know before anything is done about it. It's like how many more women has he got to do this to before the court actually listens? (16)

Women often felt the criminal justice system set them against one another rather than seeing the perpetrator as the one who had committed the crime, as one woman described:

To this day, my feeling about the courts is not a great one. It's just that the laws are outdated. I felt like I was being on trial. I felt like I was being punished. (7)

The women we spoke to felt domestic abuse was not always recognised as a pattern of behaviour.<sup>76</sup> Multiple women argued that the criminal justice personnel do not always understand the nature and complexity of domestic abuse, particularly in reference to the strength it takes to report:

I don't think it should be relevant whether or not he's been arrested for it. So much domestic abuse goes unreported, so for example, I didn't report a single incident of domestic abuse. It was only after I left (...) and he continued to stalk me (...) I eventually reported. (17)

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<sup>76</sup> See Lombard and Proctor (2022).

He broke my ribs countless times but if you tell, you're going to be in bother with the person who's done it and if you don't tell, you can't get him done for it. (22)

What do you actually need to do to get a sentence? (...) I feel sorry for the amount of people and manpower that was put into just my case that now feel oh my god why do I even bother? (23)

Often victim-survivors would see the court process as a means for the perpetrator to extend their abuse. For many, the sentence did not reflect the magnitude of what they had experienced.

#### Protection of self and their future

Many women felt that their past and present had been taken from them by the abuser and the abuse. They wanted the sentence to reflect that, by giving them 'time' to sort out their lives, which became an emotional discussion of what they wanted for their futures:

I think that it's important for the courts to understand that women who complain to the police, this is not revenge. It's not payback. This is desperation. They haven't got anywhere to go and so they need to be kept safe and also, it's complicated. They are being kept safe from somebody that they once loved. (8)

Some women described this as a custodial sentence while others described this as a NHO, as both can allow women the time and space away from their ex-partner to heal and give them the opportunity to possibly safely rebuild their own and their children's lives. They wanted to be able to rebuild their lives away from the fear. Women commented on the utility of NHOs and how this could depend on their length - for instance that a NHO only lasting a year did not give them enough time or protection to consider options, since it took more than that time for them to recover from the most immediate impact of the abuse.

One woman reflected that if her perpetrator had been given a longer NHO she could have finished college and then moved house – on her terms rather than in a hurry to avoid him finding out:

I would have liked a little bit longer. Maybe even 2 years. I felt like if I could have just had that security. You know, a year's not a long time and I thought 2 years would have been long enough for me to have maybe done things like to have moved house or, you know, things like that, we've bought a bigger house under other circumstances rather than doing it because I didn't want to be where he knew I lived or whatever. I kind of thought that would have been enough time to maybe have like finished my college course and all these little things that needed to come together for that to sort of happen. (2)

### Future partners

Women wanted something to change – if not for them then for his future partners, so they were warned about him and wouldn't experience the same as they had:

For all the offences and I think it just sort of invalidated everything and I thought what was the point in actually reporting it although the police were pleased he pled guilty because they said he is now in the system. It's useful for Clare's Law<sup>77</sup> now and warning people in the future but actually in terms of what happened to me, there was no justice for what had happened and it just felt like he could just say it was my word against his and it was a no comment interview and that's all he gets because he's a jolly good chap because he's a first offender, you know? (9)

According to victim-survivors providing a warning to others (so they do not experience what they have) should be a key factor in the sentencing process.

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<sup>77</sup> In Scotland it is the DSDAS- see <https://www.scotland.police.uk/advice-and-information/domestic-abuse/disclosure-scheme-for-domestic-abuse-scotland/#What>



The wider message it conveyed to them, the perpetrator and the rest of society

The women we interviewed felt the sentences imposed often served to invalidate their experiences, highlighting to others that domestic abuse did not matter and that their cases were not being taken seriously:

I just think the sentencing is a joke. Women aren't protected at all. It's still going on to this day and see if he ever finds out where I live then something bad could end up happening to me. It's like I need to live with that possibility every single day that he might find me, he might spot me in [place] one day and follow me home or he find out from somebody where I'm staying. I have to live with that every single day but he's had to change absolutely nothing about his life whereas I've had to change everything. I feel like even though he's in the background, he's just like this dark shadow that's following me about. (16)

Domestic abuse laws have changed and coercive control behaviours are now considered criminal, yet the women we interviewed did not see these changes as reflected in the sentences that perpetrators were receiving in court. For them this highlighted to themselves, perpetrators and wider society that perpetrators were being allowed to '*get away with it*'. (16)

## Concluding thoughts

This report collated the views of 24 women on their own experiences of their domestic offender being sentenced. The main overarching finding is that the unique, gendered nature of domestic abuse offending needs to be considered during the sentencing process. The multi-faceted drivers involved in domestic abuse are very different from mainstream, non-gendered offending. Victim-survivors were keen to share their thoughts about their own cases, but they offered very little in terms of the abstract sentencing examples offered, other than those which resonated with their own experiences.

What victim-survivors considered to be the main priorities of sentencing did not directly align with the main purposes set out by the Council. Victim-survivors wanted protection of the public (and for themselves and their immediate family) and acknowledgement that what they had been through garnered societal disapproval. Yet the other drivers of sentencing were less relevant for them unless they were part of a wider collection of measures that recognised the unique nature of their abusive experiences. For all of the women we spoke to, their priorities for sentencing were immediate and continued safety for them, their family and potential future partners and validation of their experiences.

For women, successful sentencing provided a validation of their experiences and the public acknowledgment of its impact upon their own lives, those of their children and wider family and friends. For women who felt their experiences (and their abusers' crimes) were minimised, they described how the sentencing of their perpetrator invalidated the enormous impact the domestic abuse had upon their life and further compounded their trauma.

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**ISBN: 978-1-912442-56-0**