

# **PE2102/E: Require anyone found guilty of rape or sexual assault to be registered as a sex offender**

## **Victim Support Scotland written submission, 20 November 2024**

Victim Support Scotland (VSS) supports the petition to require anyone found guilty of rape or sexual assault to be registered as a sex offender.

From the perspective of victims/survivors of sexual crime, we strongly believe that the option of an absolute discharge should be abolished for this specific crime type and a statutory minimum sentence that includes the convicted person being registered as a sex offender should be introduced.

There is no evidence to support a view that there are cases which are sufficiently exceptional to warrant an absolute discharge for sexual crimes. VSS strongly holds the view that absolute discharge should not be deployed for sexual crimes and that this should be embedded in law as this is in line with the interests of victim/survivors.

We take specific issue with examples of mitigating factors raised in the Citizen Participation and Public Petitions Committee session on Wednesday the 25th of September 2024. These were: minor offence, good character, and perpetrator is particularly old or particularly young. In line with the committee, we call on the Scottish Sentencing Council to provide greater clarity regarding what mitigating factors would be eligible for absolute discharge and provide robust guidance on what exceptional circumstances would be considered.

While these are examples, VSS wishes to rebut the three exceptional circumstances and mitigating factors raised during committee discussions in turn:

1. VSS does not believe someone found guilty of rape or sexual assault can be considered to have good character. Past behaviour or the absence of previous convictions should not be considered relevant when assessing this crime. Past behaviour does not mitigate against rape, especially given that sexual crime is under-reported, particularly in the context of domestic abuse, therefore the lack of previous conviction is not a true indication of past behaviour. Additionally, past behaviour holds no bearing on the impact the rape has had on the victim-survivor and therefore should not be considered.
2. VSS does not believe in minor rape or sexual assault. Even if that is the legal classification given, from a victims' perspective this is a highly invasive crime type with longstanding and distressing impact that can be felt for years to come. The traumatic and emotional impact of sexual crimes on victim/survivors cannot be underestimated. As such, it cannot be considered minor and there must be appropriate consequences for committing such a crime. We believe that being subject to notification

requirements as a registered sex offender is the minimum permissible punishment.

3. VSS does not believe that the age of the offender, either particularly old or particularly young, should be considered a mitigating factor. Regardless of age, if you have been found guilty of a crime there should be appropriate consequences for those actions. We again stress that being subject to notification requirements is a very light sentence, especially considering that in instances of a guilty verdict for rape cases custodial sentences are highly common.

VSS believes that rape and sexual assault are among the most invasive, distressing and traumatising crime types. As such, there should always be some form of punishment and safeguarding for the public as a result of a guilty verdict – being subject to notification requirements is the minimum. Sexual crimes have notoriously low conviction rates, with the burden of proof more often than not resting with the victims of crime. They are often subject to highly personal lines of questioning and victims of crime often feel like they are the ones on trial. It is unjust that a victim of sexual crime should have to go through this retraumatising process, securing a guilty verdict, just that to be undermined by an absolute discharge. We note that this is only used in an average of three cases per year, however this is no solace to the victims in affected cases.

Absolute discharge is widely considered a loophole that we maintain should be closed. It has been widely criticised by victims and witnesses across crime types, but it is particularly insulting to victims of rape and sexual assault. The disappointment felt by victim/survivors when their rapist has been found guilty, following the retraumatising trial process, has been described as ‘a slap in the face’. The victim/survivor will live with the impact and trauma of their rape or sexual assault for the rest of their life, therefore it feels profoundly unjust that even after a guilty verdict the perpetrator faces zero consequences.

Abolishing absolute discharge for sexual crimes will have little to no resource implications due to the low number of cases impacted per annum. However, for the victim/survivors of rape and sexual assault it will have a profound impact, as it will:

- Validate their experience, as many victim/survivors of sexual crimes report feeling unsupported and not believed
- Evidence a clear outcome from the trial, proving that the retraumatisation associated with the criminal justice system was in aid of something
- Demonstrate that justice has been carried out and that there has been a proportionate consequence for committing such a personal and invasive crime

People affected by crime strongly oppose the use of absolute discharge for rape and sexual assault, and as the leading charity dedicated to helping people affected by crime, VSS seeks to amplify this view. As such, we fully endorse this petition and agree that there is not any circumstance that is exceptional enough to allow a person found guilty of sexual assault to go unpunished, and that sexual assault always

merits a form of punishment. We call on the abolition of absolute discharge for sexual crime in line with the aims of this petition.