OFFICIAL REPORT
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Criminal Justice Committee

Wednesday 22 September 2021

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Pàrlamaid na h-Alba

Wednesday 22 September 2021

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CRIMINAL JUSTICE COMMITTEE
5th Meeting 2021, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)
*Jamie Greene (West Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)
*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tim Barraclough (Scottish Courts and Tribunals Service)
Sandy Brindley (Rape Crisis Scotland)
Professor Michele Burman (University of Glasgow)
Professor James Chalmers (University of Glasgow)
Superintendent Colin Convery (Police Scotland)
Sean Duffy (Wise Group)
Detective Chief Superintendent Sam Faulds (Police Scotland)
Mary Glasgow (Children 1st)
Teresa Medhurst (Scottish Prison Service)
Moira Price (Crown Office and Procurator Fiscal Service)
Ronnie Renucci QC (Faculty of Advocates)
Rabia Roshan (Amina—the Muslim Women's Resource Centre)
Dr Marsha Scott (Scottish Women's Aid)
Kate Wallace (Victim Support Scotland)
John Watt (Parole Board for Scotland)

CLERK TO THE COMMITTEE

Diane Barr
Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 22 September 2021

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning and welcome to the fifth meeting of the Criminal Justice Committee. There are no apologies this morning.

Under item 1, do members agree to take in private item 5, which is consideration of today's evidence?

Members *indicated agreement.*

Domestic Abuse, Gendered Violence and Sexual Offences (Priorities in Session 6)

10:01

The Convener: The next item is a round-table discussion on the committee's priorities in session 6 around domestic abuse, gendered violence and sexual offences. I refer members to papers 2 and 3.

We will take evidence today from a round table of witnesses who are joining us virtually. I am sorry that, because of the rules on social distancing, they cannot join us in person.

I welcome our first panel of witnesses: Rabia Roshan, violence against women and girls development worker at Amina—the Muslim Women's Resource Centre; Moira Price, procurator fiscal, domestic abuse, at the Crown Office and Procurator Fiscal Service; Ronnie Renucci QC, vice dean of the Faculty of Advocates; Detective Chief Superintendent Sam Faulds, head of public protection in Police Scotland's specialist crime division; Sandy Brindley, chief executive of Rape Crisis Scotland; Dr Marsha Scott, chief executive of Scottish Women's Aid; and Professor Michele Burman, professor of criminology, and Professor James Chalmers, regius professor of law, at the University of Glasgow. We appreciate the time that you have taken to join us this morning.

I thank those witnesses who provided written submissions. The submissions are now available online. I intend to allow an hour and 20 minutes for questions and discussion. I ask members to indicate which witness they are directing their remarks to. We can then open the floor to other witnesses for comments. If other witnesses wish to respond, please indicate that by typing R in the chat function on BlueJeans and I will be happy to bring you in, if time permits. If you agree with what another witness says, there is no need to intervene to say so.

Other comments that you make in the chat function will not be visible to committee members or recorded anywhere, so if you want to make a comment, please do so by requesting to speak.

We move directly to questions. I ask members and our invited guests to please keep their questions and comments as succinct as possible so that we can have a free-flowing discussion.

Rona Mackay will open the questioning, followed by Fulton MacGregor. We will start with some general questions.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Before I ask my question, I declare that I am a co-convener of the cross-party group on men's violence against women and girls.

I direct my first question to Dr Marsha Scott and then to Rabia Roshan. In 2014, the Scottish Government and the Convention of Scottish Local Authorities published "Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls". Statistics show that not much progress has been made since then. What is the level and nature of violence against women and girls? What are its main drivers? Can you elaborate on where we are now and how Covid has exacerbated the situation?

Dr Marsha Scott (Scottish Women's Aid): All that in, what, five minutes? [*Laughter.*]

If the political strategies that we have had over multiple Governments since the Parliament reopened are the framework for how we look at gender-based violence, we certainly know that women's inequality is the cause and consequence of domestic abuse, of rape and sexual assault and of all the forms of gender-based violence against women and girls. If you are asking me what outcomes we have seen for women and girls since the first strategy or, indeed, since the equally safe strategy, my response is, sadly, that we have seen very few.

We have seen some important process changes. I absolutely do not want to minimise the importance of the Domestic Abuse (Scotland) Act 2018, the work of Lady Dorrian's group on sexual assault and other work in a variety of areas. However, unless we get serious about dealing with unpaid work, the lack of childcare, the pay gap, women's homelessness as a result of domestic abuse and all the things that enable violence against women and girls, the fact remains that, although we will continue to be better at responding to it when we see it, we will have done nothing about preventing it.

I sincerely believe that the Criminal Justice Committee and the Scottish Parliament in general are committed to preventing violence against women and girls. The question is whether we are going to do the things that we need to do.

You asked about Covid. As we said in our paper, we have two big concerns. One is that we do not really know how well the Domestic Abuse (Scotland) Act 2018 is working, because it was in force for only a year before Covid and the first lockdown—that was its first year of implementation.

The other is that the impact of the changes to court schedules because of Covid is such that we now have a backlog of 40,000 cases in the summary court alone—I think that that is the most recent figure that I heard. The bromide "Justice delayed is justice denied" has never been more true. We are already hearing reports from our services and colleagues in the public sector criminal justice system about women voting with their feet. The fact that they will not be in court any time soon and that cases that come to court are almost all delayed means that there is no safety for women in calling the police or asking the public sector for help.

Rona Mackay: Thank you. In your opinion, have the main drivers of domestic abuse changed over the years? Are they different from the drivers of five or 10 years ago? Domestic abuse has always been with us, I am sad to say.

Dr Scott: No, they have not changed. A whole process has to happen for the situation to change. Some of the important early steps have happened—I want to nod at a number of smart officials who, a number of years ago, began to talk about primary prevention of violence against women and girls as being about addressing and significantly reducing, if not ending, the inequality of women and girls in our communities and families and in our Parliament and all our institutions.

Until we are willing to grasp that nettle, we will continue to have domestic abuse. There is just no getting around that. It is a hard message for people to hear, I know. It is easy to be against domestic abuse, but it seems to be less easy to be for quotas to ensure that our local authorities have the proper number of women, and for available and accessible childcare, so that women do not have to live in poverty with their children in such disproportionate numbers and therefore be vulnerable to abuse. It seems less easy to take action against all the issues that explain abuse and are exacerbated by all the multiple ways in which women experience that inequality.

Rona Mackay: Thank you.

Rabia Roshan, are there specific issues to do with ethnicity in the context of domestic abuse? Will you talk about your experience and what Amina does?

Rabia Roshan (Amina—the Muslim Women's Resource Centre): Good morning, everyone. It is really nice to be able to contribute.

On the specifics regarding black and minority ethnic communities, the situation is so multifaceted. The fundamentals of domestic abuse are still the same, whether people are BME or not, but there is an impact of being from a particular community. There are perceptions within that community, and there are misconceptions.

Much of the time, people come up against religion and culture being intertwined and mixed—

they become clouded for a lot of people. A lot of our work is about breaking down barriers, separating the two and challenging the misconceptions. As with prevention work in schools and challenging young people's misconceptions, we aim to do the same in BME communities. We hope to move forward with some more men's work, looking to challenge from the ground up. My background is also in supporting survivors of sexual violence, and I am hoping to carry that forward a bit more in my role at Amina.

It is such a big question, and there is so much that we could talk about. There are so many complexities when it comes to being from a BME community. There is a lack of sex education to begin with and a lack of understanding of consent as well as the fact that the issue does not even get discussed within communities—let alone there being an understanding and awareness of violence against women and girls within communities. There is a big area that still needs to be covered. We are hoping to do a lot more to break things down, helping people from BME communities to understand that violence against woman and girls is not acceptable, even though it was accepted and normalised for so long. It is not something that is alien to BME communities or something that does not reach them; it very much does happen, and it should not be accepted.

I hope that that has answered your question.

Rona Mackay: Thank you. I have a quick follow-up question. Have you seen progress in, say, the past five years on breaking down the barriers and on the cultural side of things? I guess that there are specific issues that you must deal with. Are things getting a bit better?

Rabia Roshan: I would like to hope so. Gauging progress can be challenging. I suppose that it depends on what that progress is within. The fact that we have been able to access more funding, reach out to more people and expand the organisation has been really positive, as that means that we can make more progress.

Whether there has been a lot of progress over the past five years is really hard to gauge. Covid has impacted everyone in so many different ways, and it has made it so much harder to reach women or to reach communities and do prevention work. Prevention is a bit on the back burner given Covid: we are looking to fire-fight and support women who are in crisis and who need immediate support. As I say, prevention then goes on to the back burner.

In that sense, I would like to hope that, over the next five years, we would be able to make a lot more progress—and that we do not end up in another pandemic and have to deal with the influence of that.

The Convener: I think that Fulton MacGregor is interested in asking some general questions. Then, if nobody else wants to ask general questions, we will move on to considering priorities for action, at which point I will bring in Russell Findlay.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I welcome our online panel—thank you very much for being here today. As the convener says, my questions are quite general—I want to give the panellists an opportunity to open up.

Following on from Rona Mackay's questions and from what Marsha Scott and Rabia Roshan have said, do any other panellists wish to discuss the impact of Covid on violence against women and girls?

First, I want to reflect on the work that was done in the previous session by the Justice Committee, of which I was a member. We talked quite a lot about the issue when we were considering the impact of Covid.

10:15

When the first lockdown kicked in, I remember an incident at a popular local park in my constituency, which was very busy one day. At that stage, of course, everybody was the Facebook and Twitter police, calling people out and saying how dreadful it was that they were going to the park. Most of the people who were there were young women with children, and people started to comment on that, saying, for example, "You don't know their circumstances. You don't know why they left the house today." They made really powerful points that certainly got me—and others—thinking. I tell that story because I know that the lockdown will have been particularly difficult for women experiencing violence and abuse.

Can any of the witnesses talk about the impact of Covid and of the first lockdown in particular? Perhaps Moira Price could answer first.

Moira Price (Crown Office and Procurator Fiscal Service): It is well recognised that the pandemic and the periods of lockdown were very difficult and dangerous for victims of domestic abuse. The situation was compounded by the fact that the ability of the criminal justice system to progress criminal trials was also significantly affected. That caused delay and uncertainty for victims of domestic abuse who were waiting for cases to come to court.

Dr Scott referred to the number of cases in the summary court backlog. There are 40,543 cases awaiting trial in the summary courts. That is a 132

per cent increase on the position in March 2020, prior to the pandemic.

The pandemic has also had a very significant impact on solemn business. Summary courts were able to continue, with limited trial space available. That space was given to priority cases, particularly those involving domestic abuse and child witnesses. Many solemn cases also involved victims of domestic abuse and sexual offending, but the solemn courts were unable to progress trials for a number of months during the pandemic. That had an impact on victims and witnesses. We worked closely with criminal justice agencies and with victim support organisations during that time to try to support victims and witnesses, who undoubtedly had been significantly affected by the pandemic.

Fulton MacGregor: I think that your submission goes on to mention issues around reporting and whether people felt able to make reports during the pandemic, but I know that that area will be covered later.

I ask Sandy Brindley to answer my initial question about the impact of Covid.

Sandy Brindley (Rape Crisis Scotland): Covid had a profound impact on the survivors of sexual crime who we are in contact with, not least in their ability to safely access support. People phoned us from cupboards or from their cars as they tried to find a safe space during lockdown. They had to do that either because they were living with their rapist or because they had not told their family or the people that they lived with about what had happened to them.

The pandemic had a profound impact, but it is important to stress that, in our experience, the biggest impact has been caused by the delays and uncertainty that Covid caused in the justice system. Even before Covid, we had people waiting for two years or more for their case to come to court, which caused huge distress. The delays are much worse now because of Covid.

We commend the efforts by the Government, the courts service and bodies such as the Faculty of Advocates to work together to put remote jury trials in place, but there are major issues with court scheduling. Rape trials are being allocated to floating trial diets and there is huge uncertainty about when cases will go ahead. People may have been waiting for two years to find out when they will give evidence—they tell us that they wake up every day thinking about what will happen. Then they are told that the case might be called during a two-week period. They wait every day for a call saying that the case is going ahead, only to get a call saying that it has been put back for another three months.

The practicalities of court scheduling, particularly with rape trials now routinely being allocated to floating trial diets, are causing additional distress. Lady Dorrian's report on improving the management of sexual offence cases talks about moving to a more trauma-informed approach to justice. The current approach is the antithesis of a trauma-informed approach.

We might discuss this more later, but there are frustrations around the giving of evidence on commission. That could have been a good way to mitigate some of the distress caused by the uncertainty of the pandemic. It would have enabled complainers to give their evidence on a set day, in advance of the trial and closer to the time when the incident took place. However, because there is poor availability of commissions, some of the complainers we are supporting are being told that it would be quicker for them to give evidence in a live trial than to hold off for a commission. That is entirely unsatisfactory.

Fulton MacGregor: You are right to say that other members are likely to pick up on that.

I think that the answers to the questions from Rona Mackay and me have covered a lot of the general background and that the witnesses want to move on to specific areas. I am happy to leave it there, convener, unless any of the witnesses wants to come in on the impact of Covid.

The Convener: Pauline McNeill wants to come in, and then we will move on to the delays to criminal cases that Sandy Brindley spoke about.

Pauline McNeill (Glasgow) (Lab): Staying with the general background, I have a question for Dr Marsha Scott. Everyone seems to be painting a bleak picture. I have been following the issue closely, and I have written to the Lord Advocate.

I note the statistics that Moira Price used. It seems to me that violence against women throughout the United Kingdom, and probably globally, is getting worse. Marsha Scott talked about how the underlying issue is the need for women's inequality to be resolved. I have been reading in the press about teenage girls of 13 and 14—and some boys, but particularly girls—being bullied to provide nude photographs of themselves.

I am tying all of that together in my own mind. Violence against women by men seems to me to be worse than it was when I first became a politician, in 1999. I follow the international trends. It is a depressing picture.

Marsha Scott, do you agree with that?

Dr Scott: That is a difficult question to answer. Violence against women and girls is an epidemic. Now that we are more familiar with the experience

and the framing of pandemics and epidemics, we might take that more seriously. We have been saying that across the world for a decade.

We have become better at seeing and naming violence against women. We do not have any evidence that domestic abuse is worse in Scotland, but we do not have a good way of measuring it. I know that justice analytical services will whip out the crime and justice survey and the police data, both of which have significantly improved in their ability to measure domestic abuse, but they are still far from being good enough.

The figures have always been shocking, with one in four to one in five women in Scotland experiencing some form of domestic or sexual violence and one in five children having to live with it. How much more shocking can it get? Nevertheless, we still fail to take the steps to stop the situation.

Covid has exacerbated things because it has given women even fewer choices and perpetrators even more tools for controlling and abusing them. I remember that, at a cross-party group meeting in the Scottish Parliament not too long ago, a politician said, "I don't want to do a research study on how much violence against women costs in Scotland, because, even if it doesn't cost anything, it is still wrong." Going back to my New England background, I think that either you stop trying to weigh the sheep over and over and just feed them or you can continually strive to count them.

The numbers are shocking and have remained ridiculously level. They have not shifted by any significant amount; there has been pretty much a trend of 60,000-plus domestic abuse calls to the police, and it has been going up slowly. The reality, though, is that we are in an emergency situation.

The Convener: Before I move on to Mr Findlay—it is third time lucky, Mr Findlay—I will bring in Professor Burman, who I think was quite interested in contributing to the general discussion.

Professor Michele Burman (University of Glasgow): I agree entirely with what Marsha Scott has just said. Perhaps I can talk about some of the findings of our Scotland in lockdown study, which has looked at the impact of the coronavirus—[*Interruption*.]

The Convener: Oops—we seem to have a problem with Professor Burman. Hopefully, we will be able to come back to her later.

If no one else has any questions, I will bring in Mr Findlay to pick up on the earlier point about delays in criminal cases. Do you want to direct your question to a particular witness?

Russell Findlay (West Scotland) (Con): Yes, please. I would like to ask everyone a question, but we just do not have the time, so this question is for Moira Price and Dr Marsha Scott.

The court churn issue has been with us for decades, if not for ever, and, in my past life as a journalist, I often reported on cases that had been subject to extreme delays. Without identifying any individuals, I can say that one case involving a victim of serial and serious domestic violence took three and a half years to be concluded while another case involving an alleged stalking victim was concluded just this year after four years. Both female victims spoke not of being revictimised, as though their experience was a one-off occasion, but of living in a perpetual state of revictimisation that had consumed their entire lives, and both said that they would not engage with the system again. I know that improvements have been made and that there has been Covid to deal with, but my question for Moira Price and Marsha Scott is this: what can and should be done about male offenders who appear to use the criminal justice process to sustain their victimisation?

Moira Price: I would say in the first instance that a male perpetrator who continues to commit offences and perpetrate abuse should be reported to the police. If there is sufficient evidence, they will report the matter to the Crown Office and Procurator Fiscal Service, which will consider whether additional charges or action can be raised. We have a range of criminal offences that we can use to prosecute such behaviour; indeed, where there is a course of domestic conduct amounting to coercive control or abuse, we have the advantage of being able to use the Domestic Abuse (Scotland) Act 2018 to bring a perpetrator to justice and hold them to account.

10:30

There may be a range of reasons for delays in particular court cases, but I could not comment in the abstract. If there are motions to adjourn existing trials, from the Crown or the defence, the court will hear the motions that both parties have put forward and it will be the court's decision whether to adjourn the case. The situation has, of course, been compounded by Covid, and there may simply be a lack of court capacity to hear a trial in the same timescale as before. However, if abuse continues, it will certainly be treated very seriously, and we apply a robust attitude to the prosecution of any instances of abuse or gender-based violence.

Dr Scott: Perhaps I am a little less optimistic about the robust operation of the courts in respect of what they deliver for victims of domestic abuse and sexual assault. When we see how the system operates, it is unmistakeable that the issue is not

just smart perpetrators who are using the system; the system is designed to be used in that way. Until we are willing to do something like Lady Dorrian's group has done and say that, because the system works to prevent justice and access to justice, we have to change it, we will continue to have the same outcomes.

We were beginning to see some light at the end of the tunnel a few years ago, when we had well-supported and well-resourced domestic abuse courts that cases came to in a timely fashion—in eight to 10 weeks. The prosecutor had special training to prosecute domestic abuse cases and the sheriffs and judges had special training to understand the dynamics of domestic abuse. We saw in the Glasgow domestic abuse court, I think, that the attrition rate for the defence witnesses was higher than it was for the victim witnesses.

We had a model, but the system did not like that model. We really need to take a look at that. It required a number of things, such as funding, enough sheriffs, and sheriffs getting training. We know how to fix a lot of the problems; we simply need the political will to do so.

During the Covid pandemic, we have seen difficult decisions being made by multiple actors in the criminal justice service—the court service has been high on that list—that privileged the safety of those who were in the courtroom and those who work in the court system over victims and witnesses, who were often told, with less than 24 hours' notice, that their case was not going ahead. Some of them were not even notified in person—there was a general broadcast, as though victims keep an eye on a website just in case there is something of interest to them on it.

Let us not fool ourselves. We are in a country that is at the cutting edge of work on violence against women, and that requires that we do things differently. If we continue simply to say that our system works okay and that it just needs more people, more money, or more this or that, we will continue to fail to deliver our own ambition.

The Convener: I think that Ms Roshan is keen to come in on that.

Rabia Roshan: Yes. I echo—110 per cent—what Marsha Scott said. When we see on the front line how women and girls are being impacted by the system, we know how much it is failing.

At Amina, we do a lot of work around extended family abuse, because it might not necessarily be a partner who is perpetrating the abuse. There is a massive loophole in the law in that regard, as it does not cover that situation. Victims of violence against women and girls against whom that type of abuse is being perpetrated are therefore let down by the system again, because there are loopholes.

I completely agree with what Dr Scott said, and I emphasise how much more work needs to be done to make the system far more robust than it currently is. We are kidding ourselves if we think that it is robust at this point. We see that when we speak to survivors on the front line and hear of the horrible experiences that they go through. After having had abuse perpetrated against them, they think that they can have full faith in the system, but they are really let down. In the aftermath of abuse, that is a retraumatising experience for them.

The Convener: I will bring in Jamie Greene and then Collette Stevenson, who is keen to ask some more questions on priorities for action.

Jamie Greene (West Scotland) (Con): I am afraid that I may open a can of worms here, but I think that we need to step back and look at the bigger picture of what is happening in Scotland and the reality on the ground. The joint submission to the committee from James Chalmers, Vanessa Leverick and Fiona Munro states that

"only ... six per cent of reported rape cases result in a conviction".

Rape Crisis Scotland's submission notes that,

"Of those that do"

go to court,

"only 43% result in a conviction",

which can be compared with an overall crime conviction rate of 88 per cent in Scotland. The same submission goes on to state:

"Rape and attempted rape have the lowest conviction rate of any crime type"

in the country.

We all agree that that is not acceptable—no one disagrees with that. We all know that something needs to change, and we also know that we have been saying that for a long time.

I want to hit the nail on the head a little bit more. What exactly needs to change? What do you need us to do? We are the legislators, lawmakers and policy makers. There is no point in going round in circles, talking about what a terrible world this is and why Scotland should be leading the way. I want you to tell me why we are getting it so wrong. That is perhaps a question for the Crown Office. What is going on in the system that means that the conviction rate is ridiculously low?

I also want to hear from the organisations on the front line. What do you want us to do about this?

The Convener: Are you directing your question to Moira Price?

Jamie Greene: In the first instance, yes.

Moira Price: I do not know whether you can hear me.

The Convener: Yes, we can.

Moira Price: Offences of rape are difficult to prove because, by definition, many of them take place in private, so there may be difficulty in proving facts for a case in law. That is one of the main factors leading to the low conviction rate.

That said, the Crown Office and Procurator Fiscal Service has taken many steps to support victims and witnesses through the process. We have dedicated units that specialise in the prosecution and investigation of sexual offence crimes in the High Court. Our dedicated teams work to fully investigate and prepare cases, and the national sexual offences unit within the Crown Office then prosecutes those cases—they are prosecuted by dedicated specialist advocates depute.

I cannot comment further on the conviction rate, because each case will depend on the individual facts and circumstances and the views of the particular jury that hears the case. However, we strive to prosecute all such cases in which there is sufficient evidence while supporting the victims and witnesses and taking a trauma-informed approach.

We also work closely with victim support organisations, particularly Rape Crisis Scotland, with which we have a protocol to receive anonymous feedback from victims and witnesses, if they are willing to provide that feedback, after court, so that we can learn and continually improve the service that we provide.

Jamie Greene: I note that, in the prosecution service, a lot of good work takes place with victims in sensitive cases, which is to be commended. I know that you are doing everything that you can at your end to improve outcomes, but the numbers speak for themselves. That is what I am trying to get to the nub of.

We all know that the numbers are unacceptable. It sounds to me as though you are doing as much as you can and going as far as you can, so there must be a blockage somewhere in the system. What is it about cases at a technical level in the prosecution procedure that results in the low conviction rate? Is it the nature of how they are tried? Is it the inherent bias of juries? Is it our three-outcome system? Is it the difficulty in achieving decent and substantial evidence?

I am not talking about specific cases; I am talking about the generality and I ask that you comment on that, because the numbers speak for themselves. Something, somewhere, is not working—what is that something? What do we need to do to help you to increase the conviction rate?

Moira Price: I cannot comment on that, simply because we respond only to the cases that are reported. A large number of the cases that you have referred to might never be reported to the Crown Office and Procurator Fiscal Service. Inherently, cases can be reported to COPFS and we can prosecute only when there is sufficient evidence. The question might be better directed to an early stage in the process in relation to what evidence is available, as opposed to procedures that are followed once the case has been reported for prosecution. Once a case has been reported for prosecution, we adopt a very robust attitude to carrying out further inquiries to clarify whether there is evidence available from any other source that might provide corroboration to allow us to take action.

If I were to direct you to the official statistics for 2020-21, you would see from them and from our written submission that we raised court proceedings in 87 per cent of rape or attempted rape cases with a domestic abuse identifier that were reported to us. That demonstrates the very robust attitude that we take on receipt of any reports of rape, attempted rape or other sexual abuse.

Jamie Greene: Thank you for that follow-up response. It is also the case that the conviction rate was nearly 49 per cent in 2015, but that dropped to 43 per cent this year, so there is a downward trend.

This is a chance to open up the discussion to the panel more widely. What do you want us to do and what do you think the Crown Office needs to do to improve the conviction rate? What should legislators be doing and talking about in this parliamentary session?

The Convener: Is there a particular witness you want to ask?

Jamie Greene: No. If anyone has a strong view, please wave at me or put an R in the chat function.

The Convener: Perhaps Sandy Brindley would like to come in on that.

Sandy Brindley: Yes, I would. Thank you. That is a really key question in relation to access to justice for survivors of rape in Scotland. We often hear comments such as, “These events take place in private,” or, “It’s one person’s word against another’s,” but I could not disagree more with that. The cases that get to court would not be in court if there was no supporting evidence, because there is a requirement for corroboration. We see acquittals and, in particular, not proven verdicts in cases in which, in my view, there is overwhelming evidence—cases in which there are significant physical injuries, cases in which the whole incident has been recorded on audio and cases involving

stranger rape. Juries simply will not convict. It is not good enough just to say, "These things happen in private." I am not saying that as a criticism of the Crown; I am saying it as a criticism of our overall approach to accepting such a low conviction rate.

The conviction rate is much lower for rape cases in which there is only one complainer. In those cases, complainers really struggle to get justice, no matter how much evidence there is. A lot of it is because of jury attitudes.

Lady Dorrian's recommendations include a lot of really important ones, which are to be commended. We absolutely need to reduce the trauma that is being experienced by complainers in our current system, and the current cost of justice is unacceptable. However, unless we engage meaningfully with the question of why juries are so reluctant to convict in rape cases, all that we will be doing is reducing the trauma while still having a process that gives very little chance of justice at the end of it. If we have a system with such systemic barriers to justice following rape, we will inevitably keep seeing guilty men walk free, and that should concern us all.

10:45

The Convener: Quite a few witnesses and members wish to contribute to the discussion. I was going to bring you in next, Ms Stevenson, but, if you do not mind, I would like to bring in Chief Superintendent Sam Faulds to comment first. I will then bring in Mr Renucci.

Detective Chief Superintendent Sam Faulds (Police Scotland): I echo what Moira Price and Sandy Brindley have said. Verdicts are a matter for juries and the courts; they are not really for Police Scotland. I emphasise, however, that a lot of significant collaborative work is going on regarding the policing response to reports of rape and serious sexual crime. That includes engagement with Crown Office colleagues, with Sandy Brindley and her colleagues and with the wider third sector, Marsha Scott included, to ensure that we get constructive feedback and that we continuously improve our response to victims.

There has been an increase in the reporting of both recent and non-recent sexual crime. There has also been an increase—thankfully, although it is still not the best—in detection rates for the police. However, to echo what other people have said, it remains challenging always to corroborate the circumstances, particularly, as Sandy Brindley says, when there is a single report. I acknowledge the challenges for victims.

On the policing response, it is really frustrating for us that we are never getting to the prevention stage. We need much earlier intervention through education and so on before reaching that stage.

Ronnie Renucci QC (Faculty of Advocates): Thank you very much for inviting me along to this session. I will say at the outset—I appreciate that I am perhaps perceived as coming from the defence side—that we are not opposed to change; what we are really opposed to is change that will perhaps weaken or devalue our criminal justice system.

On the figures that have been referred to in relation to conviction rates for rape and attempted rape, I am not sure whether they are conflated with cases that are reported but that do not proceed to court. There is a serious danger of putting them together and saying, "Look, the problem is the courts," or saying that it is the courts, the juries and the trial process that are not working. I do not recognise that—and I say that as a practitioner who has perhaps done more than 150 or 200 rape trials in my time.

There has been a sea change in the way that such cases are prosecuted when they get to court, as well as in the way that the police approach them proactively, certainly in relation to historical domestic violence and domestic sexual crimes. On the matter of trials and the figures, or the cases that proceed to court, I do not recognise that very low figure for cases that go to court.

I am aware that a freedom of information request was made to the Scottish Government, which responded on 4 June. That was nothing to do with the Faculty of Advocates. The information related to the data on not proven verdicts and guilty pleas, and it gave figures for all categories of crime. If you were to refer to that information, you would find that, in cases that have actually proceeded to court, the conviction rates for rape and attempted rape are much higher than the figures that you are speaking of today. I ask all members to look at those figures.

The problem does not necessarily arise once the case comes to court; it can often arise before it gets to that stage, for a whole variety of reasons. I am anxious that it is not all thrown into one pot and that we are not saying that the problem is with the end process, in the court. That is certainly not how I see it.

The Convener: Thank you very much, Mr Renucci. That is very helpful.

Collette Stevenson (East Kilbride) (SNP): Good morning, panel. I want to focus on the priorities for tackling violence against women and girls. The submissions touched on that subject both within the criminal justice system and beyond it, more generally. I think that Dr Scott mentioned that there is a civil element as well, which needs to be tied up to protect people and prevent such

violence. I understand that this is the Criminal Justice Committee, but how is that issue being addressed?

The Convener: Do you have someone in mind to answer that question?

Collette Stevenson: I think that Dr Scott mentioned that in her submission. I am keen to know more about it.

Dr Scott: Yes, we did. We are very concerned that criminal justice and civil justice matters have been separated. The reason for that concern is that domestic abuse cases travel from one court to the other, and one of the biggest problems, especially in child contact cases, is that women will be in court between 15 and 20 times in two years because of the use of the system by convicted perpetrators of domestic abuse to get child contact or access to the child's mother, to reabuse. We hear about that routinely.

The most solvable problem that we have is the gap between criminal justice and civil justice. Back when people went into courtrooms, a horrific domestic abuse case could have concluded and a perpetrator could have been convicted, and there could then have been a child contact hearing in the same courtroom not long after that in which almost none—if any—of the evidence that had been raised in the criminal case was raised in the court's consideration of child contact.

We talked to previous justice committees about that issue for some years. We had hoped that, in the Domestic Abuse (Scotland) Act 2018, we could get children identified as co-victims and that that would carry over into any civil hearings that the children were involved in. I understand that there was a press of work and that members were trying to get through the Parliament's business, but I hope that a formal plan can be made for the Criminal Justice Committee and the Equalities, Human Rights and Civil Justice Committee to consider such issues together, because we have found that it is really difficult to address issues from just one side of the aisle or the other.

There are various things, such as one-judge and one-sheriff cases and the question of an amendment to the Domestic Abuse (Scotland) Act 2018 to change the status of children, that could be discussed and that the committee could usefully weigh in on.

Collette Stevenson: That is really helpful. Thank you. I have no further questions.

The Convener: Katy Clark would like to come in. I will bring in Professor Chalmers after her. We will then move on to another area of questioning, on criminal courts and reform.

Katy Clark (West Scotland) (Lab): We will be asking detailed questions about Lady Dorrian's report and the idea of specialist domestic abuse courts later.

Marsha Scott said that she thought that Scotland was at the cutting edge. Do any of the witnesses have knowledge of other jurisdictions, either from their own practical experience or through academic research? The academics may be able to help us here. Scotland has an adversarial system, and some of the reforms that are being suggested might significantly improve conviction rates. It is clear that the system is not working at the moment. Other jurisdictions, such as France, have a more inquisitorial system that is all about finding out the truth.

Without getting into the issues of single judges or corroboration, which we will pick up when we discuss Lady Dorrian's recommendations, do any of the witnesses have knowledge of other jurisdictions where they do things that we should learn from? It may be that some of the basic principles of how we do things in Scotland are not right for some types of cases. Are there any areas that we should be looking at but that are not covered in Lady Dorrian's report? South Africa has specialist domestic abuse courts. Are we going down the right path?

The Convener: Is there a particular witness that you would like to address that question to?

Katy Clark: Professor Burman and Professor Chalmers may have looked at that issue or have a view on it. They may well think that we are going down the right path, but it would be interesting to explore whether there are elements of other systems that we have not looked at but should look at if we want to improve conviction rates.

The Convener: I will bring in Professor Chalmers first. I think that Professor Burman is only on audio at the moment. I might be wrong, but we can start with Professor Chalmers.

Professor James Chalmers (University of Glasgow): It is difficult to compare how successful different jurisdictions are at achieving justice in such cases. Some work was done in the past on conviction rates in a range of countries. The problem is that those rates depend on how many cases are recorded by the police in the first place. That is one part of the figure; the other part is the number of convictions.

Because police recording practices vary massively, a jurisdiction can look very good on that sort of comparison simply because the police are very reluctant to record an allegation of rape or sexual assault as being such.

You can then look at the number of convictions that are being achieved by individual systems. My work on that was done quite a long time ago, so I would not want to rely heavily on it. If you take

Europe as your comparator group, it was not my impression that any system out there has it right. All criminal justice systems struggle with that. There is no easy solution to be found in moving to an inquisitorial model, because there can be problems with convincing judges and lay assessors that a sexual assault has taken place. I do not think that there is a simple answer there.

In answer to Mr Greene's question about what should be done, the straightforward answer is that we should implement the recommendations of Lady Dorrian's review and report. It is also my view that the not proven verdict should be abolished.

I want to return briefly to Mr Renucci's point about the figures released by the Scottish Government—I own up to being the person who made that freedom of information request. I have the figures in front of me. The conviction rate in cases of rape and attempted rape that were brought to court was given as being 43 per cent, but Mr Renucci doubted that. I never expected to be sitting in a committee meeting performing calculations on Excel, but I can confirm that the figure of 43 per cent—which is also the figure in the Scottish Government's statistical bulletin, as Sandy Brindley has noted in the BlueJeans chat—is correct. In 2019-20 there were 300 prosecutions. Of those, one either led to a guilty plea and that was accepted or the case was deserted; 95 resulted in not guilty verdicts; 74 resulted in not proven verdicts; and 130 resulted in convictions—if my maths is correct, I can confirm that as being 43 per cent.

That compares to a 77 per cent conviction rate across solemn prosecutions as a whole. There is a big difference between convictions in rape and sexual assault cases and what happens more generally.

11:00

The Convener: Thank you very much. At this point, I will try to bring in Professor Burman, who is now on the screen. Hopefully, we have managed to get you back, Professor Burman.

Professor Burman: I very much agree with James Chalmers on the difficulty of drawing comparisons with what happens in other jurisdictions. I have experience of the specialist rape courts in South Africa, having done some research on them some years ago. It is an adversarial system but without jury trials. Those specialist sexual offence courts have been in place since 1993. They ceased for a short period and rape cases went back into mainstream court business, but they were reinstated.

The system in South Africa is understood to work very well from the complainer's perspective. It has to be said that the country's conviction rate is not great at all, but it is a very different jurisdiction with much higher crime rates and sky-high numbers of rapes and other forms of serious crime. When the specialist courts were initiated, people—particularly those in the legal profession—were very suspicious of them, and it took quite a long time to convince everybody of their validity. However, they were piloted extensively and they are now considered to be the best way of adjudicating rape and serious sexual offence trials.

As I said, there is no jury. Moreover, evidence is not taken in the courtroom: everything is done by video, so that the complainer is not present at court. There might be no jury system, but, with the diverse range of cultures and languages in South Africa, two community representatives are present to provide informal advice to the judge.

The courts went through a really difficult period, but legal professionals and support organisations now consider them to be the most appropriate way of dealing with rape and serious sexual assault in South Africa.

The Convener: Were you going to ask a question, Ms Stevenson?

Collette Stevenson: No, I was going to come in later, convener, if that is okay.

The Convener: That is fine.

There is quite a lot of interest in issues of reform and court process, and a number of members want to come in. I will hand over to Mr Findlay first and then bring in Ms McNeill.

Russell Findlay: My questions, which are on the not proven verdict, are for Ronnie Renucci and James Chalmers. I will ask them one after the other.

Mr Renucci, on the not proven verdict and what might happen to it, the Faculty of Advocates highlights the need

"to identify the changes in our criminal justice system"

that would come along with any such change and that failure to do so would risk "jeopardising reliable justice". Can you expand on what those fears or potential unforeseen consequences might be?

Ronnie Renucci: Before I answer that question, I want to say that I think that James Chalmers misunderstood my previous comments. I was not challenging the 43 per cent figure—in fact, I was trying to say that that was accurate for cases going to trial. I was questioning the earlier figure of 6 per cent.

In James Chalmers's study with mock jury trials, it was recognised or suggested that the not proven

verdict was used as a form of safeguard or as a barrier to conviction. We have a unique system: we have one of the largest jury numbers—15 jurors—but we require the smallest majority for a verdict, which is a simple majority of one. We might go to a two-verdict system of guilty or not guilty, yet no other country in the world operates such a system with a simple majority of one. That is our concern.

Our feeling is that, if we remove the not proven verdict and go to a two-verdict system, some form of safeguard must put in place—some change must be made. In 2016, when Michael McMahon lodged a member's bill on scrapping the not proven verdict, there was unanimity among the people on the then Justice Committee: they were in favour of that. The difficulty was the other changes that would be required for our criminal justice system. The most obvious would be a change in the majority—discussion on that is on-going. The next question would be what the change in the majority should be. In England, the verdict must be unanimous unless the judge directs that they will accept a 10:2 majority, but that is for a verdict of guilty or not guilty. The question for us would be whether to change the majority from 8:7, as it is at the moment, to 12:3 or 10:5.

Our concern is that, if you change our system so fundamentally, there must be another change to go along with it. You cannot simply scrap the not proven verdict without looking at the system that it operates in.

Russell Findlay: That is very interesting.

Let me move on to Professor Chalmers. Your evidence, along with that of your colleagues Fiona Leverick and Vanessa Munro, is really informative and interesting. To many people, it might deliver a fairly damning verdict on the not proven verdict. In the light of what Ronnie Renucci has told us, do you believe that getting rid of the not proven verdict requires a change to the majority structure of juries?

Professor Chalmers: Yes, I agree with Mr Renucci on that point. A system that convicts people of very serious criminal offences by a vote of one—a majority of 8:7—is not easily justifiable. That said, the practical consequence of that change might not be huge, because, when groups deliberate on points, they usually manage to find consensus. Mr Renucci mentioned the English approach of requiring at least 10 votes out of 12 for a conviction or an acquittal, which means that a jury in England, unlike in Scotland, can fail to reach a verdict. However, that is rare. It has been calculated that fewer than 0.1 per cent—one in 1,000—of all charges that are brought in the Crown Court result in a hung jury. A jury will usually manage to reach a consensus.

I hope that that assuages what I suspect are fears that, if there were to be a change to the Scottish system to require something closer to unanimity, it would be a step backwards in dealing with the particular problem of the rape conviction rate. I would not necessarily suggest adopting the English approach, but it is a change that could be made without some of the negative consequences that would, understandably, worry people.

Russell Findlay: In your submission, you talk about the history of the not proven verdict and the fact that, in 1846, a Lord Cockburn was very critical of it. We, in the Scottish Parliament, have probably been talking about it since the Parliament's inception. Is there intent on the part of the Scottish Government to make the change, or will we still be talking about it in another 176 years?

Professor Chalmers: Yes—there is a danger that we would end up talking about it for that length of time. I emphasise that, although there is a question to be asked about what other changes would have to be made if not proven were to go, it is important to separate out the two questions and the consequences.

The starting point has to be that the not proven verdict is a historical accident; it is not a verdict that we designed. It is an unprincipled and unacceptable feature of the system, and it ought to go. Having answered the first question in the affirmative, assuming that that is the answer, we then move on to the question of what else has to change to make that change work.

One of the problems in recent decades has been the fact that the waters have been muddied to the point that it becomes impossible to reach a consensus, by failing to separate—[*Inaudible.*]—the complexity of the whole issue therefore prevents us from reaching a consensus.

The Convener: Sandy Brindley is keen to come in on the discussion.

Sandy Brindley: It seems that, on this issue, the Faculty of Advocates is trying to make two arguments: first, that, if the not proven verdict goes, all those verdicts will become not guilty verdicts; and, secondly, that the verdict is a safeguard and that, if we remove it, we must make other changes. Those two arguments are not consistent.

I do not agree with the previous comment that, if we remove the not proven verdict, we will need to look at making a change to the jury majority. I would be very concerned about such a change. If you spoke to judges, they would say that they almost never see unanimous jury verdicts in rape cases, even when there is overwhelming evidence.

Unless the Scottish Government and the Scottish Parliament, in considering the matter, engage seriously with the question of jury attitudes, changing the jury majority would definitely make it even more difficult to get a conviction in rape cases. That is surely the opposite of what we should be considering.

The Convener: I will hand over to Pauline McNeill, who is keen to come in, and then move on to Katy Clark, who is also keen to come back in. There is understandably a big interest in this area, so I propose that, if everyone agrees, we extend the session to around 11.35. Again, I ask witnesses and members to keep questions and responses as succinct as possible.

Pauline McNeill: First, I will ask Sandy Brindley to go back to where she left off, on the jury majority issue. I want to be clear in my own mind that you would be comfortable with a majority of one if we remove the not proven verdict. I note what you say about a fully unanimous jury verdict being rare; I think that in England, a two-thirds majority is required. Are you comfortable that a conviction for rape or attempted rape in the High Court could be achieved with a majority of one?

Sandy Brindley: That is what we have in place just now—all that we would be doing is removing the accidental situation of having two acquittal verdicts. If you accept the argument from the Faculty of Advocates, which I do not necessarily fully accept, that all the current not proven verdicts would become not guilty verdicts, I do not understand why a change in the jury majority would be required. In some ways, the wider issue—

Pauline McNeill: I know that. I just want to know what your position is. If we remove the not proven verdict, there could be a majority of one, and you would not have any concerns about that.

Sandy Brindley: No, not at all. The wider question is whether juries should be used in rape trials at all. We should engage with that issue.

Pauline McNeill: I was going to come on to that, but I might as well ask you now, as you are on the screen. What is your view on the complete removal of juries from cases of rape or attempted rape?

Sandy Brindley: As I have said, unless we engage with the question of jury attitudes and jury decision making in rape cases, the possibility of getting justice following rape will continue to be very low. Lady Dorrian made a number of recommendations in that regard, such as using a video to try to debunk rape myths. That is worth considering, but I do not think that it would have a huge impact. There is overwhelming research evidence now about the use of rape myths in jury decision making, which should give us real pause for thought about whether justice is being done in cases of this nature.

11:15

I take seriously the concerns of the Faculty of Advocates about the danger of having one single person making decisions in cases of such seriousness. It would be helpful for the Parliament and the Government to consider doing a scoping of the models elsewhere. I am thinking in particular about Europe, where there is a judge with lay assessors. That means still having some form of citizen participation but ensuring that those citizens have had some training in how to assess evidence. My concern is that juries are not always making decisions based on the evidence in rape cases; they are making decisions that are filtered through their attitudes. We know that in Scottish society there remain some problematic attitudes to rape but also to women's sexual behaviour.

Pauline McNeill: That is helpful—thank you.

My second question is to Ronnie Renucci of the Faculty of Advocates. There is quite a lot in your submission, but I will try to narrow it down. I note the faculty's concerns about the setting up of specialist courts. In your evidence to the committee, you point out that the High Court is already a specialist court. You have concerns about the specific proposal, suggesting that it might downgrade the status or importance of the crime of rape. I wonder whether you wish to say something in response to that.

Ronnie Renucci: It is perhaps somewhat ironic that, of all the groups that are represented here, the faculty is the one that is concerned about the downgrading of serious sexual offences. I have set out in our written submission the reasons why we believe that to be the case. If we are taking rape cases out of the High Court, the highest court in the land, and putting them into a different court, it cannot be anything other than a downgrading. Thereafter, there is a danger of grading rape. At the moment, all rape charges are treated the same. They are all prosecuted in the High Court, and they are all regarded with the same degree of seriousness.

If some of what are deemed to be the more serious rape trials are to be prosecuted in the High Court, while others are not, they must be deemed to be less serious. Otherwise, they would not be put in the specialist court. There is then a danger of a graduation of rape. From our point of view, rape is far too serious a charge for that to happen.

I have highlighted an example—and Detective Chief Superintendent Sam Faulds will be aware of this. The police now have a proactive unit, which works incredibly effectively and brings more cases into the High Court. They go out and speak to ex-

partners—people who have never made a complaint before—and they feature in cases. There could be a case involving a victim of domestic violence and rape, who could be a single complainer. That case would almost certainly go to the specialist court whereas, if there were a number of complainers who were all complaining of the exact same set of circumstances, the case would be deemed more serious because the perpetrator had committed more crimes, and it would go to the High Court. The trauma and the effect would be exactly the same for each of the victims but, for one of them, simply because she was the only victim, the case would be prosecuted in a lower court. That cannot be correct. It cannot be correct to take rape out of the High Court and put it into an inferior court. You can clothe a specialist court any way you like, but it would be an inferior court.

We are not against specialism. We are not saying that such cases should not be treated differently. As I think we make clear in our submission, and as Sandy Brindley will know—I have met Sandy and I have expressed my view—I agree that specialism is required, for a variety of reasons. However, that specialism can come from judges and from practitioners in the Crown and the defence being properly trained. I think that a ticketing system is used in England, under which people must be trained and must have passed a test or met criteria to take such cases. That can be done, but the proper forum for any serious sexual offence is the High Court.

Pauline McNeill: I note from your submission that you oppose the removal of juries. You will have heard Sandy Brindley talk about another way—about having a judge with lay assessors—and about providing a video for juries to watch in advance, which Lady Dorrian proposed. Would any of those things work or make any difference to outcomes?

Ronnie Renucci: I do not understand why there is such pressure or such a wish to have judge-only trials. I am unaware of any research that has been conducted that shows that that would change the figures. A reference has been made to South Africa, where such an approach does not seem to have made a material difference.

The problem is one of trust. We live in a democratic country. If you adopted judge-only trials, you would be saying that, if somebody is accused of committing a certain crime, they will be treated in a certain way and have the benefit of the jury system, but if they are charged with another type of offence, the jury system will be removed.

More important, you would in effect be saying to the citizens of Scotland that you are happy for them to vote for you and other politicians and for whatever it might be but that you do not trust them to vote in a rape or other sexual offence trial. Notwithstanding the fact that jurors are the very people who hear and evaluate all the evidence and take directions from the judge, the message would be that you do not trust people and that you are handing the matter to a single judge, who comes from a particular group in society, and are entrusting all such important decisions to that very small group. We find that difficult to comprehend, and there are many other problems inherent in a judge-only system.

The Convener: A number of members want to speak—I am watching the time—but I will bring in Sandy Brindley, followed by Professor Chalmers.

Sandy Brindley: There is a much broader discussion to have about judge-led trials, but I will comment on Ronnie Renucci's remarks about having a specialist court. The way to address such concerns is to remove the 10-year sentencing limit that is proposed for the new court. I agree with him that a danger is inherent if a hierarchy is set up. At the moment, rape cases are heard only in the High Court, which has unlimited sentencing powers. I do not entirely understand the rationale for the new specialist court to have limited sentencing powers. I worry about the message that that would send by creating a hierarchy for rape, as Ronnie Renucci said, which would be very undesirable.

If part of a specialist court's purpose is to ensure that complainers benefit from a trauma-informed approach, it is counterintuitive that some of the most serious cases—in which an order for lifelong restriction could be imposed, for example—would not go through the specialist court because the sentence was likely to be more than 10 years. Complainers in such cases would not benefit from that court.

If we are moving to a specialist court, we need one approach to rape cases. As Michele Burman said, there is a lot of good evidence about the benefits of specialism—we can learn about that from what has happened on domestic abuse in Scotland. The specialist court should be equivalent to the High Court or be part of it and have unlimited sentencing powers; otherwise, the faculty is correct that we would create a hierarchy, which would be completely undesirable.

The Convener: I will bring in Professor Chalmers. Please make your comments fairly succinct. After that, I will bring in Katy Clark, followed by Jamie Greene, for more questions.

Professor Chalmers: I have two quick points. I agree with what Sandy Brindley says about removing the proposed 10-year limit on the sentencing powers of the specialist court. The court would be presided over by High Court judges or by sheriffs who were considered appropriately qualified to sit in that court. At the moment, High

Court judges and sheriffs who sit regularly as temporary judges of the High Court have unlimited sentencing powers, so the limitation on the same judges in the different court would not be necessary. I can see that the Dorrian review considered that in great detail, but it seems to be an unnecessarily complex system, particularly if, as was suggested, you preserve the possibility of the specialist court remitting, as the sheriff court can do, a case to the High Court for sentencing. That could result in someone who is normally a High Court judge remitting a case to the High Court to impose a sentence that they would have the power to impose if they were sitting in the High Court. That is unnecessarily complex.

I will briefly pick up on Mr Renucci's point about whether judge-only trials would make a difference to verdicts. There is some evidence on that, albeit anecdotal, in the Dorrian review, which, in paragraph 5.7, notes that some judges to whom the review spoke

"reported cases in which"

they considered

"the evidence ... justified conviction of rape and where it was difficult to understand the rationale for the ... verdict returned."

There is a suggestion that that view is shared by at least a number of senior and experienced judges.

Katy Clark: I want to pick up on points that have already been made. Taking on board everything that has been said about the proposal potentially downgrading offences and the comments about it being considered as an inferior court, and on the presumption that it would be part of the High Court, I want to know whether, if the system was one of a jury-free specialist court with a single judge or single judge with wing members, that would have an impact on how cases were marked and on whether they would be taken to court in the first instance. That is probably a question for the police and prosecution service.

We have already heard that there are problems in resourcing the taking of evidence on commission. Is that an issue? If changes were made so that there was more availability to take evidence on commission and the system had a single judge or a single judge with wing members, and if we put aside corroboration and treat it as a completely separate—although obviously very important—issue, would more cases come to court and, therefore, could more rape and attempted rape convictions be secured? That question is for Moira Price from the prosecution service; if Detective Chief Superintendent Faulds wants to come in, that would also be helpful.

Moira Price: The issue of corroboration cannot be put aside, because it is central and crucial to whether criminal cases can be raised in the court. That is the primary consideration, along with factors such as the impact on the victim, the severity of the offence, the accused's criminal history and whether the accused was following a course of conduct. All those factors are taken into account every day when considering whether someone should be brought to court, so we cannot put aside corroboration in coming to that conclusion.

It is of course a matter for the Crown to determine the most appropriate forum in which a case should be raised. If there was a change to the forum, that would be factored into our considerations. However, the primary decision relates to the availability of evidence and whether it is in the public interest to raise proceedings.

Katy Clark: That is helpful. DCS Faulds, do you have any thoughts in relation to cases not being taken forward because of issues to do with the forum, as opposed to the evidence? Would changing the forum lead to more cases coming forward, for whatever reason?

11:30

Detective Chief Superintendent Faulds: Whether a case is taken forward is a matter for the Crown, not the police. We have a singular role at the very start to gather evidence and to ensure that we have a sufficiency of evidence before we report to the Crown Office and Procurator Fiscal Service, but the decisions that are taken thereafter are a matter for our colleagues in Crown and not something that we would wish to influence.

I appreciate that corroboration is a very hot topic at the moment, but it is a central tenet of what we do and, in all our investigations, we seek to corroborate the circumstances as they are reported to us. It would not be inappropriate for the police to participate in those other discussions but, in a democratic society, it is not for us to determine the standard of proof. It is very much for our colleagues in the Crown Office and Procurator Fiscal Service to make the decision about whether a case is proceeded with and, if so, in which court. We have certainly made huge steps forward in how we investigate—Mr Renucci kindly commented on that—and we continue to try to improve that, but the decisions made thereafter are not really a matter for the police to try to influence.

Katy Clark: You have a great deal of experience of dealing with rape victims at a very early stage. DCS Faulds, would more rape victims come forward if they felt that the process was going to work in a different way?

Detective Chief Superintendent Faulds: Yes, unfortunately, we have a lot of experience of

dealing with victims at that early stage. That is when support from partner organisations is critical. When they come forward, at the start, many victims do not understand the criminal justice process. If you ask a member of the public whether a certain crime should be prosecuted in a sheriff summary court or under solemn proceedings in the sheriff and jury court or in the High Court, you will probably be faced with a blank expression. That is not the first thing that victims consider when they report. That comes much further down the line and it can be explained to them, so I am not sure that that would be such an influencing factor, to be perfectly honest.

Katy Clark: Will Sandy Brindley come in on that? Presumably, you speak with many victims of rape who decide not to go to the police.

Sandy Brindley: Yes. Despite significant increases in reporting over the past two decades, it is still the case that about half the people in contact with Rape Crisis have not reported to the police. There are many reasons for that, but one of the common reasons that we hear is fear of the criminal justice process. Although Sam Faulds is right to say that complainers do not necessarily think about the specific court that the case would be heard in, if they had confidence that the system would not unduly retraumatise them and that they would have a fair chance of justice at the end of it, that would remove a substantial barrier to reporting.

Whether that would improve the conviction rate is an entirely separate question. If we improve the process for the complainer and take evidence earlier, we will get better evidence, and that might have a marginal impact on whether the case is successful. However, although how we treat complainers is very important, given the level of trauma that is being caused by the process, dealing with that will not necessarily improve the conviction rate. To engage with the reasons why, for example, acquittals take place when they should not, because there is enough evidence to convict, we need to engage with the issue of jury attitudes.

Katy Clark: Dr Marsha Scott, from your organisation's experience, why do victims decide not to go down the path of taking issues to the police? You must have extensive experience of that.

Dr Scott: I think that I might have alluded to it—

The Convener: Dr Scott, may I ask you to be very brief, so that I can bring in Mr Greene before we bring the evidence session to a close? Thank you.

Dr Scott: I am happy to agree with everything that Sandy Brindley said. The majority of women who experience domestic abuse also experience sexual assault and rape, but they often choose not to disclose that because of their concerns about how they will be treated in the system. Women who have gone to court because of domestic abuse have told us over and over again that going to court was often worse than the abuse.

Calling the police is very dangerous for women if their case is not going to come to court for two, three or four years. The reality is that we have all those lovely, shiny Scottish justice systems that provide justice for some people, but certainly not in any proportionate way for women and children who live with domestic abuse and sexual assault. Therefore, the question is whether we protect the status quo or take some chances.

The Convener: Thank you very much.

Jamie Greene: Thank you for what has been a fascinating discussion. I am sure that some of those big-ticket issues will rumble on for many months to come. I probably should have declared an interest, in that I will be bringing forward legislation that will touch on some of those areas. The consultation on that will shortly be published through the official parliamentary process, and I invite the witnesses to take part in that consultation. The views that I have heard today will inform much of that work.

Witnesses will be aware that our next round-table evidence session is about victims' rights and victim support. We have talked a lot about the process up until the point of conviction and what happens before that, but not much about what happens after that point. Given that you will not be in the next session, do you have any views on how the law best protects, informs, supports and includes the victims of such crimes? For example, should victims have the right to make a statement in a parole hearing for someone who has been convicted of a sexual crime or domestic violence? Should the prosecution service offer a rationale as to why a decision not to prosecute was taken in the first instance? Are exclusion zones being used enough?

Those are all big questions—we could spend all day on them—but, as we segue into the next round table, do you feel that victims of domestic abuse or violent or sexual crime are treated properly after a conviction? Those questions are directed to Rape Crisis Scotland and Scottish Women's Aid.

Sandy Brindley: Those are big questions, but they are important. In relation to parole, I know that there has been a commitment to review the victim notification scheme. When someone's rapist is considered for parole, it can be an extremely frightening time for that person, so how they are supported and the communication that they receive are crucial. At the moment, it is very

confusing, because there are disparate responsibilities between the Scottish Prison Service and the Parole Board for Scotland. We need a single point of contact for that process, and there needs to be a trauma-informed approach.

I have acted on behalf of rape survivors in those circumstances. At a really fearful time for them, the letter that is sent is confusing about who they should contact. So little information is given about the safety measures that are in place when somebody is notified that their rapist is being released. Much more can be done at the end of the process—just by giving proper, easily accessible information—to at least alleviate some of the trauma that people experience.

At times, the Crown can handle the decision not to prosecute really well. Even though it will be difficult for a complainer if their case is not prosecuted, it can make a huge difference if that news is communicated well and sensitively to them. The more information that somebody can be given—if that is what they want—the easier it will be for them to navigate a really difficult point in their lives.

Dr Scott: Those questions need a long answer, which I will try not to give. It is important to understand that there is a whole continuum of experience of domestic abuse cases—including in the criminal and civil courts—most of which is unsupported by appropriate, affordable and geographically accessible legal services. I hope that that can be picked up in the round-table session that is coming up, because victims tell us that some of their negative experiences after a conviction had to do with the fact that they had poor or non-existent legal representation or could not afford good legal services.

I want to underscore that children, in particular, have a right to legal representation in many situations in Scotland in which they are never offered it. That is a critical gap. We are trying to do something about that, but the reality is that, at the moment, the system does not see children as being eligible for many services.

Although I know that the committee has no control over sentencing, we are very worried about the extent to which convicted domestic abuse perpetrators are given community sentences. Even before Covid, the focus was not on the safety of the victim but on some mechanism for discharging criminal justice social work's responsibility. It is a mess, from our perspective, and Covid has aggravated the problem significantly.

We would be more concerned about the elimination of work hours that have been part of sentences if we thought that work hours actually did anything particularly good for victims and their children. We would like to see a much more aggressive approach to electronic monitoring through a set of mechanisms that actually make women and children safer, and feel safer. We are not particularly committed to custodial sentences; we are just committed to safety, and we do not have a system that privileges that.

Jamie Greene: That is another can of worms, which we will not open now. It is very much a live discussion. You will be aware that there is to be a statement in the chamber on the topic this afternoon. I am sure that the committee will look at the issue, and I hope to read more written submissions from you on what is and is not working in relation to community sentencing.

The Convener: I will bring the session to a close. There has been lots of really interesting discussion, and I thank the witnesses very much for their time. If any witnesses feel that they have outstanding points that they would like to raise with the committee, please feel free to follow up in writing and we will take that evidence into account. Thank you for attending the session.

We will take a short break before we hear from our next set of witnesses.

11:42

Meeting suspended.

11:51

On resuming—

Victims' Rights and Victim Support

The Convener: Our next agenda item is a round-table discussion on victims' rights and victim support. I refer members to papers 4 and 5. We will take evidence from a number of witnesses, who are joining us virtually. I am sorry that they cannot join us in person, but that is due to current rules on social distancing.

I welcome Mary Glasgow, chief executive of Children 1st; John Watt, chair of the Parole Board for Scotland; Superintendent Colin Convery of the partnerships, prevention and community wellbeing division of Police Scotland; Tim Barraclough, executive director for tribunals and the Office of the Public Guardian at the Scottish Courts and Tribunals Service; Teresa Medhurst, interim chief executive, and Allister Purdie, interim director of operations, both from the Scottish Prison Service; Kate Wallace, chief executive officer of Victim Support Scotland; and Sean Duffy, chief executive officer of the Wise Group.

We appreciate the time that you are taking to join us this morning. I thank those of you who provided written submissions, which are now available online.

I intend to allow about an hour and 20 minutes for questions and discussion. Witnesses who wish to respond to a question should indicate that by typing the letter R in the chat box on BlueJeans and I will bring them in if time permits. There is no need to intervene just to agree with something that another witness has said. Other comments that are made in the chat function will not be visible to committee members and will not be recorded anywhere, so witnesses who want to comment should do so by asking to speak. I ask members and our invited guests to keep their questions and comments as succinct as possible. I am keen to encourage a free-flowing discussion.

I have a broad opening question, which might be for Ms Wallace and Mr Duffy. What do victims want from the criminal justice system? What are your main concerns about how they are supported in the system? What do they experience as they come into it, and how are they involved in it? How does the system support and work for victims as—we hope—they navigate away from it?

Kate Wallace (Victim Support Scotland): Thank you for asking me to join the meeting. Overwhelmingly, victims tell us that they want to be confident that the criminal justice system is robust, such that what happened to them does not happen to anybody else.

On the question of the system's interaction with victims and their specific circumstances, they want to be treated with dignity and respect—often, however, we hear that they are not. They do not want to be retraumatised by the system, and that has been borne out in a number of reports over a good number of years. The retelling of a story can be retraumatising for many victims and they do not understand why they are continually asked the same things by different people.

The way in which the process treats victims is of concern from the beginning, with regard to how statements are taken and how that then translates into whether the case goes to court. The whole court process is traumatising, including delays, disruption and adjournments, and victims find court buildings intimidating. The way in which the court process happens means that, often, the victim or their family sees an accused or their family, which can also be traumatising.

Beyond that aspect, there can be a lack of understanding of the verdict and sentence if they are not explained to the victim in a trauma-informed and trauma-sensitive way that allows the victim to make sense of the situation. There is also a feeling that release, victim notification and parole are not dealt with in a trauma-sensitive way or explained in such a way that victims can understand them. We might come back some of those aspects later.

Sean Duffy (Wise Group): I thank the committee for the opportunity to contribute.

I echo what Kate Wallace said. The issue is not necessarily in our area of expertise, which is more to do with creating fewer victims through reducing reoffending. However, the aspects that we hear about from the people whom we support, who can also be victims, are to do with being heard and being visible, which Kate mentioned, and having their position in the overall process considered. It can sometimes feel quite cold and binary.

In the previous evidence session, I was struck by a point that I have heard many times before to do with the importance of victims getting timely access to accurate information about what the process will look like for them and the need to not retraumatise them or increase anxiety and tension around the situation. That is the slightly-more-than-anecdotal evidence that we have picked up.

As I said, our real area of expertise is trying to rehabilitate more early, introductory offenders in order to break the cycle so that there is no graduation towards the creation of more victims.

The Convener: Thank you. I am interested in your thoughts on the priorities for a victims commissioner, which we have been discussing in a wider context. I will bring in Kate Wallace and Mary Glasgow on this follow-up question. What

should the priorities be from the perspective of the journey through the criminal justice system, particularly in respect of the experiences of children and young people? What should the priorities be with regard to supporting children and young people, not only as they navigate the criminal justice system, but to ensure that they avoid the system in the first place?

12:00

Mary Glasgow (Children 1st): I thank the committee for the opportunity to give evidence on behalf of the children whom we support.

Children 1st supports the moves to introduce a victims commissioner. I listened to the previous responses, and we similarly feel that children's rights to get justice and to be protected and kept safe through the process are incredibly important. We believe that a commissioner would be able to ensure that children's particular needs and rights are upheld. They need to be kept safe through the process and there needs to be understanding of their development, of how they might give evidence and of how they require to be communicated with in order to ensure that they are heard and understood.

We also need to understand the impact of this sort of thing on children. The biggest single impact that children highlight to us at Children 1st is that the current system often causes more harm than the original abuse or incident did. They continually talk about being retraumatised by a bewildering, complex and delayed process that they do not understand. We therefore feel that the priority for a victims commissioner must be to remove any retraumatisation of child victims and witnesses and to address delays.

Long delays can form a substantial part of a child's life. There can be a huge delay between the incident and the child being in a position to get justice, and that can impact on their ability to recall events. Such delays often lead to a delay in children being able to access support for recovery, which can have a lifelong and devastating impact. If we had a victims commissioner who could pay attention to those particular needs and the rights of child victims and witnesses, that would be incredibly welcome.

The Convener: Thank you for those interesting points.

Kate Wallace: I agree with Mary Glasgow, particularly on the impact of delays on children. As you know, there were delays pre-Covid, but things have got much worse during Covid, which is a particular concern. We feel that a key priority for a victims commissioner should be to hear from victims and understand their experience. We want a commissioner who is independent of Government, who has a clearly defined remit and who will establish panels of those who have lived experience in order to ensure that that is built in from the start.

We also need to ensure that the rights of victims and witnesses, as enshrined in the Victims and Witnesses (Scotland) Act 2014 and the victims code, are being fulfilled by the criminal justice system, because it does not feel like that is happening at the moment. As Mary Glasgow has pointed out, standards of service should be looked at, too.

At a previous round-table session, I talked about the need for system change. That is what we hope will happen with a victims commissioner, because that is really what is required.

The Convener: You have referred, rightly, to victims and witnesses. Should there be more of a focus on witnesses, in addition to victims, in the criminal justice system? If so, what should the priorities be with regard to ensuring that witnesses get the support that they require and access to the support options that they need?

Kate Wallace: At Victim Support Scotland, we support anyone who feels that they have been a direct or indirect victim of crime, and we also support vulnerable witnesses at court. We have a remit and a protocol in place to do that with the SCTS and the Crown Office. We are interested in and we support anybody who feels that they have been detrimentally impacted by a crime.

We have had debates and discussions about the use of the word "victim" but, from our point of view, it is about how a crime has impacted on a person. We see victims and witnesses collectively in that regard because of the impact that a crime has had on them. Whether they are treated by the court process as the direct victim or complainer is a different matter for us. We would like a victims commissioner to have a broader remit and an understanding of that, rather than there being a narrow definition. For example, in the case of children, depending on the circumstances, siblings might be just as affected by a particular incident as the direct child victim.

The Convener: That is helpful. As no other member has a general, opening question, we will move on to look at legislation. I will bring in Fulton MacGregor on that, to be followed by Rona Mackay.

Fulton MacGregor: Convener, I was going to ask about the barnahus model later, if that is okay.

The Convener: That is fine. In that case, would you like to pick up the questioning on legislation, Ms Mackay?

Rona Mackay: Yes. Thank you, convener.

Mary, what is your view on the provisions to protect children as victims of abuse, including domestic abuse, in the Children (Scotland) Act 2020, the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 and so on? Could more be done in legislation to protect children?

Mary Glasgow: The short answer is that much more can be done. Although progress has been made, it has often involved incremental tinkering to make things a little bit better for children. We are continuing to try to have children's needs met in a very complex system that was never designed around an understanding of child development, how children communicate and the impact of trauma on them. That is why we believe in and, on behalf of the children and families that we support, have been calling for transformational change to the way in which child victims and witnesses are dealt with in the justice system.

For too long, children have been denied justice because the system that is supposed to protect and help them causes them harm at times, and there are long delays. There is often a complete lack of opportunity for those children to recover. They are often denied the opportunity to recover, which has a huge impact throughout their lives, so my answer is yes: much more could and should be done.

Rona Mackay: I have a question for Superintendent Colin Convery. In March this year, the Scottish Parliament passed legislation to introduce domestic abuse protection orders, which would mean that the perpetrators of domestic abuse could be removed from the house. I think that royal assent was granted in May. Are those orders up and running yet? If they are, are they being used much and are they having an effect?

Superintendent Colin Convery (Police Scotland): I am afraid that I cannot comment as I am not aware of that, but I will happily get you that information and report back to the committee.

Rona Mackay: Thank you. That is fine.

The Convener: I think that Katy Clark is keen to pick up on that.

Katy Clark: Yes. In the previous evidence session, we heard that there are resourcing issues with regard to evidence on commission hearings. I want to ask Mary Glasgow in particular and perhaps Kate Wallace about that. Are you experiencing that? Do you believe that there is more scope for using evidence on commission in relation to children?

Mary Glasgow: I am not specifically up to date and aware of that, to be honest. Our understanding is that there have been some challenges that have, understandably, been made much worse by Covid. We have supported the Crown Office with access to some of our premises. As far as we are aware, there are some things that need to be improved. I do not have the specifics, but we can come back to you with an opinion on that.

Katy Clark: Does Kate Wallace want to add anything to that?

Kate Wallace: Yes. There is huge scope to do a lot more around commissions. As Mary Glasgow said in her earlier answer, courts are not places for children. They are intimidating buildings, and they retraumatise children. They are very adult spaces, and they are not designed in a way that is at all child friendly. Even some of the new facilities are not child friendly.

Taking evidence on commission provides a really good opportunity to get the best evidence without a child needing to go to court at all. That model could be expanded. I appreciate that the Covid situation has had an impact, particularly on the Glasgow facility, but there should be an opportunity to expand commissions further. Those rights are enshrined in existing legislation. Why not use what we have as best we can, given that it will undoubtedly improve the experience for children?

The Convener: Tim Barraclough would like to come in on that issue.

Tim Barraclough (Scottish Courts and Tribunals Service): Thank you for inviting me to speak to you.

In relation to evidence by commissioner hearings, speakers have been absolutely right that the pandemic has caused difficulties in using the facilities that we have, principally because of physical distancing requirements. The facilities were well designed for evidence by commissioner hearings before Covid, but they are not particularly suitable to take into account physical distancing.

We have begun to recover from that position, and the number of commissions that are happening is increasing year on year. In 2017, well before the legislation took effect, only 29 commissions were held throughout the year. In 2021, we are just over halfway through the year, and we had already had 145 by the end of July. We are looking to reach about 300 by the end of the year.

We are keen to facilitate an increase in the number of commissions, and we will be developing facilities in places other than Glasgow. We now have facilities in the new Inverness justice centre and in Edinburgh, and we will develop facilities elsewhere. We think that that is the way to go in future, and we support the facilitation of a considerable increase in capacity to hold commission hearings.

In order to hold commission hearings, the judge and the legal practitioners have to be involved, and that takes them away from the conduct of trials. We need to think about how to resource that increase in the number of hearings within the criminal procedure process, but we are very supportive of that.

Kate Wallace: Evidence on commission hearings are one aspect, but there are other aspects of gathering evidence in a way that does not require a child to be in a court. I do not want us to forget about remote links. We can gather evidence from children by remote videolink. As we have demonstrated in the summary criminal virtual trial pilot, that does not have to be done from a room within the court building; it can be done outwith it. Therefore, there are other methods of evidence gathering. One method will not be suitable for all children and young people. It is about looking at the range of tools that we have and thinking about how we can expand them and do more with them to reduce the number of children who have to go into court to zero.

The Convener: If there are no more questions about the current legislation, we will move on to issues around victim notification.

12:15

Russell Findlay: The first question is for John Watt. Most people might not appreciate that the parole system in Scotland effectively operates behind closed doors and in secret. I should declare an interest, as I did before: I am a signatory to or participant in the victim notification scheme. I personally regard that scheme to be impersonal and unclear, and it puts the onus on victims to be proactive and to choose to engage.

In your submission to the committee, John, you say that the

"scheme should be radically revised".

Given that you agree that significant changes need to be made to the scheme, what is preventing you from doing that?

John Watt (Parole Board for Scotland): We do not control the VNS; the SPS does that. Given the opportunity, we would certainly welcome the chance.

I am not quite sure where your question is coming from, so I will ask you a question. What makes you think that the Parole Board for Scotland can change the VNS?

Russell Findlay: Giving the Parole Board the powers to administer it might be a way to allow that.

John Watt: Possibly.

Russell Findlay: I could redirect the question to Teresa Medhurst.

John Watt: I understand where you are coming from now. I will explain the board's position.

To deal with the first part of your question, we favour more openness and transparency, but there is a limit to how far we can go with that.

In relation to dealing with victims, our preference would be to have victims involved immediately after a conviction and sentence or perhaps after an appeal, if they want to be, so that nothing comes as a surprise down the line. That must be done in some personal way that is, ideally, chosen by the victim. The board's preference would be to have face-to-face or virtual contact.

There is nothing more infuriating than not being able to talk to a person—anyone who has dealt with an internet supplier will understand that. The frustration levels are intense. Our position concerns the board of Parole Scotland. There is a difference between the two boards: Parole Scotland is the administrative arm, and it could play a role as a single point of contact right from the earliest stage through to parole hearings and all that goes with parole hearings. There is a level of expertise there that does not exist elsewhere on how everything operates and why things happen as they do. Given the powers and the resources, I would like Parole Scotland to provide an opportunity for a victim to talk about their concerns and to understand the process, right through progression to parole and all that goes with it—including the role that victims have at a parole hearing and even, roughly, the date when it will happen.

The other benefit there is that Parole Scotland is quite a small body, and it is ideally suited to dealing with victims. It can offer a much more personal and personalised service, and there is a sporting chance that a victim might even end up talking to the same person in repeated tribunals. I think that that is preferable to a monolithic organisation having to deal with that.

I do not know whether that answers your question, but I hope that it goes some way towards doing so.

Russell Findlay: Yes—thank you.

I want to ask Kate Wallace from Victim Support Scotland about the victim notification scheme. Your submission is similarly critical of it, Kate. You have described it as "not fit for purpose." You have also pointed out that the Scottish Government has not given any specific commitment to do anything about it in the current programme for government. Why do you think that the Scottish Government does not share your sense of urgency? What should be done to fix the scheme?

Kate Wallace: The Government has committed to conducting a review, so I think that it shares an understanding of the impact. It is aware, as I am, of cases that have been particularly distressing as a result of the way in which the victim notification scheme is carried out.

We see a lot of retraumatisation through the victim notification scheme. It is a very complex scheme. There are effectively two of them, and a number of different organisations are involved, as you have heard.

It is important to remember what the scheme does. Victims are asked whether they want to be a member of the scheme at a point, we would argue, at which they are most traumatised and least able to make such a decision. Often, they cannot remember that they have been asked, or they do not know what the scheme is. They might think to themselves, "That's not something that I need to worry about just now, so I will delay that decision," but they are not asked again whether they want to be a member of the scheme.

As you know, we have a specialist service to support families who are bereaved by murder or culpable homicide. In those situations in particular, we can see the impact, because there can be a nine-year delay before someone has any contact at all with the victim notification scheme.

All that people are entitled to is to know that the perpetrator has been released. At the moment, under the process, the information comes out by letter. My argument is that that is the least trauma-informed approach that can be taken. There could be a nine-year gap, during which there has been no other communication, and there will then be absolutely no prior warning that the letter is coming, or what its contents are. We know that some victims have opened those letters while they were on their own, were extremely vulnerable and had serious issues going on in their lives, and we know that that has led some victims to harm themselves. There have been serious repercussions in some cases.

We have asked for a wholesale review of the victim notification scheme. The Government has, thankfully, agreed to that, although it would be good to know when it will happen. Day in, day out, we see the impact of what the scheme means for victims across Scotland.

Russell Findlay: Has the Government indicated how long the review will take, or when it will get round to it?

Kate Wallace: No, not to me.

Russell Findlay: I have a question about the victim surcharge fund, which is also for Kate Wallace. The Scottish National Party's 2016 manifesto pledged that more than £1 million a year would be paid out through that fund. It took until 2019 to set it up. Earlier this year, it paid out in the region of £157,000. Your organisation received some of that money for your own victims fund, which, in turn, paid out £285,000. In your submission, you cited "an unprecedented demand" for that fund. Some of the money in your fund came from charitable donations. Is it the case that charity is being left to pay for an SNP manifesto pledge? Is that a disincentive for the Government to finally get the £1 million-a-year fund up and running?

Kate Wallace: The first thing to say is that the surcharge fund is a levy on top of fines. The gap between the money that came through and what was forecast was impacted by Covid and the disruption to the courts. That had a big impact on the amount of money that could be collected.

For a considerable period of time, we have had a victims fund into which we have put different funding. However, with the victim surcharge fund, we have managed to dramatically increase how much money is in the fund and respond to far great levels of demand, because we thought that the pandemic would have a compounded impact on victims.

Where we are coming from with the victims fund is that no victim in need should be financially impacted due to their being a victim of crime, which has occurred through no fault of their own. However, what we have seen during the pandemic has been the impact from furloughed people losing their jobs and really high levels of destitution, and it was critical for us to ramp things up. As a result, we scaled up that work, and we are looking forward to getting more funding from the victim surcharge fund as we see more court activity and more court fines. We will look to scale up our operations accordingly.

Funding from the surcharge fund should be protected as much as possible to ensure that it goes directly to victims who are in great financial need. There is a type of surcharge fund in England, but that funding goes to different projects and services rather than directly to victims themselves. What we have managed to put in place in Scotland is really good. It is unfortunate that it is needed, but I am very glad that the fund is there and that we can use it.

Russell Findlay: I understand that Covid has affected that, as it has affected just about everything else, but have you had any indication of the funding that you will get in future years? Has there been any projection of what you might expect?

Kate Wallace: Not at the moment. Another round of funding will be released quite soon from the victim surcharge fund, which I think you are

asking specifically about. The Government waits until a certain amount of money has gathered in the fund and then releases it. I think that that happens about every six months. We are about to get another amount of funding but, because the fund itself is still in its pretty early stages, making any sort of forecast would be challenging. That said, I certainly expect that, by the beginning of next year, we will be in a better position to make projections for future years.

As I have said, we have used the money to lever in other types of funding, and any efficiencies that we can make get funnelled towards the victims fund. If that fund had to close because we were struggling to lever in sufficient funding, we would give people really long notice of that.

Russell Findlay: Thank you.

The Convener: At this point, I will bring in Teresa Medhurst, who wanted to respond, I think. Given that we are discussing the issue of victim notification, do you have any views on the current support or arrangements in place in that respect, particularly with regard to notification of release dates?

Teresa Medhurst (Scottish Prison Service): Good afternoon, everyone. Thank you for the opportunity to come before the committee.

I whole-heartedly agree with Kate Wallace that the VNS needs to be reviewed. Different parts of the criminal justice system have responsibility for different elements: the Crown Office and Procurator Fiscal Service issues the application packs and confirms whether a victim qualifies to be part of the scheme; the SPS takes responsibility for notification during a person's sentence; and Parole Scotland is, of course, responsible for cases involving parole.

It is clear that there is no connectedness between the different parts of the system and that a review would flush out where there needs to be greater connectivity, how best to achieve that and what support arrangements would be required. The review would need to focus very much on engagement with victims' organisations, to ensure that the voices of victims are at the core of any review and—[*Inaudible*.]—in England, for example, the Probation Service administers the process on behalf of the system, so there are other models of victim notification schemes that we could consider as part of the review.

12:30

The Convener: I will ask a follow-up question about the practical aspect of release days. Do you have any comment on how appropriate it is for Friday to be a release day, given that, for example, some services might be closed over the weekend? Thinking about it in the context of victim support, should that arrangement continue?

Teresa Medhurst: I am probably not the best person to respond on victim support. Kate Wallace might best respond to that. In the broadest sense, with regard to people being released on a Friday as opposed to any other day of the week, and on access to services, consideration needs to be given to when services and support are engaging with those in custody. For example, if somebody requires to make a Department for Work and Pensions application, they can do that only on the date of release. Such aspects make the system clunkier with regard to support and release arrangements. That might be the same for victim support, but Kate would be the best person to respond to that question.

The Convener: Kate Wallace, would you like to comment on that?

Kate Wallace: Yes. We get a lot of feedback from victims who say that receiving letters late on a Friday afternoon is really not helpful, because, by the time they receive the letter, there will be no one in to answer the number that they are given to call for further information. People say that they are then worrying about what the letter means for the whole weekend, without access to further information. I think that that is where the question has come from.

Obviously, there are support services available, but we cannot contact them on a victim's behalf to get further information, because there is nobody to speak to. I think that that is where the question has come from. I understand that the date of the letter is often triggered by the release date, so that should be considered in the victim notification scheme review.

The Convener: That is helpful. Thank you. Let us move on to questions about the on-going development of a barnahus model for Scotland. I will bring in Fulton MacGregor and Rona Mackay on that issue.

Fulton MacGregor: Good afternoon. I will ask about the development of the barnahus, or bairns' hoose, model. The issue came up during the passage of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 in the previous parliamentary session. It was a big part of what the committee asked the Government to commit to, and I am pleased to see that that commitment has been taken forward.

Mary Glasgow, what has been the role of Children 1st in expanding that work? What have you done and how have you worked with partner agencies? What stage is the work at?

Mary Glasgow: Along with Victim Support Scotland and the University of Edinburgh, Children

1st has formed a partnership to develop and practice a test, learn and develop model. We have come together and, with support from the Postcode Dream Trust of the People's Postcode Lottery, we have accessed a grant to develop in practice the first house. Beyond that, we have worked with partners for a long time to bring the voices of the children and families we support to the centre of the conversation, to ensure that children's particular needs in the justice system have been heard and attended to.

We have reviewed the evidence and have worked carefully with colleagues across Europe through the PROMISE Barnahus Network to identify that barnahus is the most effective model for allowing children to get justice, be cared for and protected and get the support that they need to recover from the trauma that they have experienced. Primarily, the issue is about upholding children's rights to justice in a way that does not compromise their wellbeing—in other words, in a way that does not cause them more trauma. For decades, we have supported children to recover from the impact of abuse, crime and violence, and they have told us that, in going through the process, the single biggest thing is that the system can often cause more harm than the original incident itself.

We are really pleased with where we have got to. We have funds in place and we have identified the buildings that we are going to develop. We are working in partnership alongside social work colleagues, police colleagues and other partners in the arena to develop a model of practice that can be researched, evidenced and scaled up across Scotland.

We are delighted with the progress that has been made, and we see ourselves as working very much in partnership with the Government as well as all the other agencies and players that are committed to bringing that transformational change into the system for children.

Fulton MacGregor: Thanks, Mary. It is really encouraging to hear that. I would like to bring in Kate Wallace to speak about the role of Victim Support Scotland in that development. What impact could that have for child witnesses?

Kate Wallace: We are working in partnership with Children 1st, the University of Edinburgh and Children England on the child's house for healing project, which is the test, learn and develop pilot model that Mary Glasgow referred to. It is a really important and exciting development that aims to ensure that children are supported through the process in a completely trauma-informed and child-friendly way and in spaces that are designed in that way. Earlier, I spoke about keeping children out of the courtroom completely and bringing services to children as opposed to their having to go into adult services when, as Mary says, we know that that would retraumatise them.

The project has a lot of potential benefits for children and young people. However, the reason for VSS's involvement—aside from the fact that we think that it is really important—is that we think that some learning will come out of it that we might be able to use for adult victims, too, because we know that the system retraumatises them as well. Services going to the child as opposed to the child going to services is at the heart of it.

Earlier, we talked about the methods and models in Scotland, but, as I said, there are still some limitations on those, because they are not necessarily being followed in buildings or areas that are child friendly or in a way that is designed to be trauma informed from the outset. The project will have a huge impact by reducing retraumatisation, improving children's experience and helping them to recover. It has a great deal of potential.

Fulton MacGregor: I know that Rona Mackay has an interest in the same area, convener, so I am happy to leave my questioning there.

The Convener: Thank you. Jamie Greene has a follow-up question, and then I will bring in Mr Barraclough before I hand over to Ms Mackay.

Jamie Greene: Good morning. I commend the panel members for the work that they are doing on the establishment of the barnahus model, which is a testament to the good work of our predecessor committee on the issue. However, you will be aware of the document that the Government produced on 14 September, which outlines the visions, values and approach of the model. It was brought to my attention that there was some phrasing therein that might raise one or two eyebrows with regard to who might be eligible to use the barnahus model.

I want to explore that, in order to get a direct understanding of whether the scheme is designed to assist only children who are victims of crime, or who are vulnerable in the true sense, or whether there is any possibility that it will include children who are under the current age of criminal responsibility but who may have caused significant harm to others. Might they, too, be using that facility as opposed to being processed in a court environment? I have received one or two letters that have raised concerns about the interaction between those two different groups of children.

Does anyone have any knowledge of that issue, or can anyone clarify the situation for me? A hand is waving—I think that it is Ms Glasgow's.

Mary Glasgow: We need to approach the issue from the understanding that children are children. It is very much our experience that the line

between child accused and child victim can be a very fine one in that arena. We therefore welcome consideration of the issue in line with Scots law and the approach that Scotland takes to children's policy.

Obviously, there is a lot to be worked out, but I want to reassure Mr Green and the committee that, within our design and consideration of the development of the physical space in the child's house for healing—Scotland's first barnahus—we are considering how the needs of both child accused and child victim or witness can be met safely. For example, through designing separate entrances and separate spaces, we can protect vulnerable witnesses while making sure that children who are accused of crimes are recognised as also having been victims, most often, and as requiring specialist support that understands their needs—which is so often lacking in the current system. We think that the move is welcome.

There is a lot to be worked out. The test, learn and develop approach that we will take will, we hope, inform that learning. Our work with the University of Edinburgh will be very robust in researching and disseminating that learning.

It is a complex area. We are aware of concerns, but we think that the model fits very well with the principles of the United Nations Convention on the Rights of the Child and with the way in which Scotland considers child victims, witnesses and accused in policy.

Jamie Greene: Thank you. That is helpful clarification. I do not think that anyone disagrees with the premise of how the law and society treat children. However, I raised the issue because specific concerns have been raised that what was initially perceived as being a safe space for the victims of crime may also be a place that will be used to facilitate the processing of those who have been accused of something. There are genuine concerns out there, and you are acutely aware of them—I can tell that from your response. As we go through the process, we will be looking for any comfort that you can provide that all children will be protected in that environment.

The Convener: I will bring in Tim Barraclough, as I think that he was quite keen to speak.

Tim Barraclough: As someone who first visited a barnahus as long ago as 2014 and who was part of the evidence and procedure review team that was one of the first to bring the initiative to the attention of the Scottish justice system, I have two things to say.

First, it is really important to understand that a barnahus is not just an offshoot of the justice system. Its very concept is about bringing together a range of services for the child who has been either the victim of or a witness to serious abuse.

The barnahus has four rooms—child protection, health and wellbeing, and recovery, as well as justice. Justice is just one element. Some of the children who go to a barnahus might never end up in court proceedings at all, because their needs have to be met in a different way. That must be borne in mind when thinking about who goes to a barnahus: it is not just for people who will be witnesses, or potential witnesses, in court proceedings.

One of the biggest advances of the past few years in the development of the barnahus concept has been the coming on board of the health services. The barnahus started out as a justice project but has now expanded—as it should—to incorporate health services and local authority child protection services. That is absolutely where we want to be going.

Nevertheless, it is still incredibly important for potential child witnesses in court proceedings. A barnahus interview takes place before court proceedings have even started, and, if we get that initial interview right, we can eliminate the need for the child to get involved in court proceedings at all. The quality of that interview may be sufficient for all subsequent proceedings, and there will be no need for cross-examination and further examination.

12:45

There will always be a right for the accused to have the evidence against them examined, but getting barnahus right—getting the environment and the quality of interviewing right—would be a massive step forward. We are very supportive of that.

The Convener: I would like to bring in Superintendent Convery, who I know is very interested in that.

Superintendent Convery: I will make a general comment as well as responding directly to Mr MacGregor's direct ask and Mr Greene's point.

The whole concept of barnahus mirrors the principle of a rights-based approach, which we take to delivering policing and policing services alongside our partners. It is something that supports many of the on-going developments relating to interviewing vulnerable witnesses, presentation of their evidence and joint investigative interviews.

To pick up on Mr Greene's comment, we recognise that there can be a fine line between the harm doer and the victim. We recognise that, for young people, the barnahus offers opportunities to explain the reasons for offending behaviour, which

we can try to address through appropriate measures. We look forward to working alongside Mary Glasgow and Kate Wallace and their teams in order to learn and develop as we look to roll out that work across the country.

The Convener: Our colleagues from Children 1st have invited members to visit the barnahus, and I am sure that we will be keen to take up that invitation.

Ms Mackay has been waiting patiently to ask a question.

Rona Mackay: That was a very useful discussion about the barnahus and I am delighted to hear about the progress that has been made so far. I endorse all the comments on that. We have perhaps explored that enough, so I will move on to another topic.

My question is for Sean Duffy. How has Covid impacted the good work that you do in getting people on the right pathways and helping to reduce reoffending? I am keen to know how women are going through the process. What success are you having in getting employment pathways for women?

Sean Duffy: Unsurprisingly, Covid has been quite a challenge, given what we do. In the last operational year, we have had just over 1,000 males go through our programme. It has been challenging. The programme is structured through six months of support in prison and six months of support post-liberation. Providing the support in prison was quite challenging. Teresa Medhurst's colleagues have been fantastic in supporting us and keeping contact with potential programme participants during the lockdown period.

One of the most pleasing things during that period was the recognition that things that were previously not seen as doable were all of a sudden doable. We should remember that as we come out of the pandemic. Necessity is the mother of all invention, as they say, and we managed to do things together, particularly in relation to technology, that were previously difficult or were not even considered possible.

During the most recent operational year, more than 1,000 people in the male prison estate have gone through the programme and the reoffending rate—those who returned to custody within a year—is 8.7 per cent. That means that over 90 per cent of our participants are not going on to reoffend in a way that results in a custodial sentence.

We need to look at that in a more acute way, given the conversation that we are having today about victims. What we are doing is a bit like a vaccine, in that we are severely weakening or even breaking the link between introductory criminality and the graduation from that to serious criminal offences. I should also say that Kate Wallace and others do phenomenal work in supporting the victims of such offences.

There is no doubt that this has been a challenge but, with support from the SPS and the Government, we have continued to support, on liberation, those coming out of prison, even under the early release programme. We have been able to bring technology and partnership working to the fore in a way that has not been evidenced previously, with greater access to services and greater integration of services with local authorities and so on. It was a challenge, but it forced us to do the things that we were always able to do but had never managed to do as a collective. That is the overriding lesson that we have learned.

The female estate has suffered the same challenges. We work in partnership with Sacro and Apex Scotland, which are fantastic, but the same issues are prevalent.

I do not have any employment figures for the female estate but, as far as the male estate is concerned, we have been able to find employment for roughly 10 to 15 per cent of those who have gone through the programme successfully. That is because we are able to cross-integrate existing programmes in different Government directorates, but we need to look at how we design or bake in such an approach at the beginning and not have disparate programmes running almost contrary to each other as far as successful outcomes are concerned.

Rona Mackay: Do you have an approximate gender breakdown of the people whom you help? What is the male to female ratio?

Sean Duffy: As I have said, there are more than 1,000 males on the programme, but there are far fewer females. I think that the ratio is 20:1 or 15:1, but I will send the committee the exact figures. There are far fewer females simply because the number of females in the estate is far lower, but I will get you the exact information.

Rona Mackay: That will be helpful.

The Convener: Time is slightly against us, but I will bring in Katy Clark with a final question on criminal injuries compensation.

Katy Clark: As you know, responsibility for compensating victims of crime and the criminal injuries compensation scheme was devolved to the Scottish Parliament a number of years ago, but the Scottish Government has continued with the Westminster scheme. Kate Wallace, what have been your experiences of it? How well does it work for victims?

Kate Wallace: We are keen to see the outcome of the consultation and review, which has been

very delayed. It should have been out more than a year ago. We made a number of recommendations for improving the scheme, including reducing the amount of waiting time. As I mentioned earlier, our experience of the service that we provide for families who are bereaved by murder and culpable homicide is that the people involved often face a lengthy delay in receiving a criminal injuries compensation payment for funerals, and that can be difficult for families. No one expects a murder to happen in a family, and people often do not have funeral plans; as a result, families who have to pay for a funeral up front can find it a challenge, but this delay still happens.

Also, the way in which the scheme is laid out, with the conduct of the victim of the crime being taken into account, is unfair. The issue needs to be fundamentally looked at, because it can mean that, before they get a payment, the victim sometimes has to wait until the end of the court proceedings and the Criminal Injuries Compensation Authority gets an answer to the question whether the victim was involved themselves. That said, I am aware that the authority tries not to delay anything.

In cases of murder and culpable homicide, the families themselves have to bear the costs, which seems very unfair. We made a large number of recommendations on how to improve the scheme, but we are still awaiting the outcome of that.

Katy Clark: That was very helpful. I know that we are short of time, so if you want to share anything else in writing with the committee, it will be really appreciated.

Kate Wallace: Can do.

The Convener: Before I bring this session to a close, I will bring in Superintendent Convery, who I believe has been able to find some information that Ms Mackay sought earlier.

Superintendent Convery: First, I want to confirm that Ms Mackay's question was on domestic abuse protection orders.

Rona Mackay: That is correct.

Superintendent Convery: Thank you, and I apologise for not answering you at the time. I did not feel that it was appropriate to give you half an answer.

Essentially, we are supporting the Government's implementation board with regard to domestic abuse protection orders. In fact, Sam Faulds, who gave evidence in the previous session, sits on the working group for that in order to work towards delivering something that we support. However, we absolutely recognise that that must be done carefully to ensure that it is delivered safely for victims.

I hope that that gives you the information that you need, Ms Mackay. I am not sure about the timeline, but it is something that we will be working on with stakeholders to deliver.

Rona Mackay: Thank you so much for coming back to me on that. It is much appreciated.

The Convener: As ever, time is against us, but the discussion has been informative and helpful. Anyone who feels that there are still outstanding points to be shared with the committee is invited to follow that up in writing, and we will take that evidence into account.

On behalf of the committee, I give a big thanks to all the witnesses who have attended today's meeting.

Subordinate Legislation

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment (No 2) Regulations 2021 (SSI 2021/282)

12:57

The Convener: Item 4 is consideration of two Scottish statutory instruments under the negative procedure. I refer members to paper 6.

If members have no comments on the regulations, are we content not to make any comments formally to Parliament on it?

Members *indicated agreement.*

Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No 2) Rules 2021 (SSI 2021/289)

The Convener: Do members have any questions or comments on this instrument?

Collette Stevenson: I would like to get more information from the cabinet secretary and whoever else is involved on the role of Her Majesty's chief inspector of prisons with regard to some of the human rights issues and the length of the extension of the powers as set out in the instrument.

Jamie Greene: I echo Ms Stevenson's comments and would welcome more information on this. What seems like a minor negative instrument extends for a significant period of time certain powers that governors in our prisons and young offenders institutions have, such as the ability to confine prisoners to their cells for prolonged periods of time, to restrict activity, to suspend prison visits and to curtail work, educational activities, counselling and purposeful activities for another six months.

I appreciate that this might be linked to the extension of other Covid regulations that were debated in the chamber more widely as part of other legislation. However, I note that paragraph 9 of the policy note says:

"SPS intends to publish the consultation, the responses received"—

which, I should add, were not all positive—

"and its response to the consultation responses on its website in October".

However, the powers run out at the end of September, and we are being asked to approve their extension prior to the publication of the consultation and the SPS's response. I find that wholly unacceptable. I therefore expect the Minister for Community Safety or whoever is presenting the SSI to give us more information on the concerns that have been raised in the consultation process so that members can take a view on the suitability of extending the powers as the SPS or the Government is asking for.

The Convener: I will bring in Ms Barr to outline the next steps.

Diane Barr (Clerk): The committee can look at this negative SSI again next week, which will allow us in the meantime to write to the Scottish Prison Service, the cabinet secretary and the inspectorate with members' concerns. Hopefully, you will be able to look at the responses next week.

The Convener: As Ms Stevenson and Mr Greene have raised some questions to which it would be valuable to get some answers, I propose to hold off asking the committee to agree the instrument until next week. Are members content with that?

Members *indicated agreement.*

The Convener: We now move into private session.

13:01

Meeting continued in private until 13:05.

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