



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 15 December 2021

Session 6



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CRIMINAL JUSTICE COMMITTEE

14th 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:

Keith Brown (Cabinet Secretary for Justice and Veterans)

Willie Cowan (Scottish Government)

Detective Chief Superintendent Sam Faulds (Police Scotland)

Deputy Chief Constable Malcolm Graham (Police Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual

Scottish Parliament

Criminal Justice Committee

Wednesday 15 December 2021

[The Convener opened the meeting at 09:37]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning, and welcome to the 14th meeting of the Criminal Justice Committee in 2021. We have received no apologies. I ask everyone to ensure that their mobile phones are switched to silent and to wait for the sound engineer to switch their microphones on before they speak.

Our first item of business is to agree whether to take agenda item 5 in private and whether our work programme, reviews of evidence heard and approach to forthcoming legislation should be considered in private at future meetings. Does anyone disagree?

We are agreed. Thank you.

Prosecution of Violence against Women and Girls

09:38

The Convener: Our next item of business is the continuation of our consideration of evidence on efforts to improve the ways in which we prosecute violence against women and girls and on how we support the survivors of such crimes. I refer members to papers 1 and 2.

I am pleased to welcome two senior representatives of Police Scotland: Deputy Chief Constable Malcolm Graham of the crime and operational support division and Detective Chief Superintendent Sam Faulds, the head of the public protection unit within the specialist crime division.

I will allow up to an hour for this panel. Before we start, I will go over a few practical points. This is a fully virtual meeting, and I intend to use the chat function as the means of communication. If you want to come in, please type R in the chat function and I will bring you in, if time allows.

If we lose the connection to a member or a key witness, I will suspend the meeting and try to get them back. If we cannot do so after a reasonable period of time, I will have to deem the person to be not present and we will continue. If I lose my connection, our deputy convener will take over. If we lose him, too, our colleague Rona Mackay will step in as temporary convener with the committee's agreement.

Please keep questions and answers as succinct as possible. If that is clear and there are no questions, we will make a start. I refer members to the sheet with the order of questions on it.

DCC Graham, I have a question about Lady Dorrian's review of the management of sexual offences cases. In the written evidence that was submitted to the committee's September round table on violence against women and girls, Police Scotland listed which of Lady Dorrian's recommendations had its support. Those included the creation of a specialist court for serious cases, independent legal representation for complainers and single-judge trials for rape cases

What action has Police Scotland taken in response to the recommendations, bearing in mind that the review was published back in March?

Deputy Chief Constable Malcolm Graham (Police Scotland): I am sorry that we cannot be with you in person. I am sure that everyone shares that feeling after the sudden rise in the omicron variant of the coronavirus.

The committee is going through a hugely valuable process by listening to the experiences of victims and survivors. That is critical to informing the shape of the current and future work that Police Scotland is leading, which builds on work that we have been doing for many years. Just before the process began, and with the help of Rape Crisis Scotland, the chief constable, DCS Faulds and others met survivors and heard brave accounts of their experiences. That gave us valuable feedback that we have used to shape our thinking and actions.

It is not within the gift of Police Scotland to shape and influence some of the elements of Lady Dorrian's review at pace. The main thing that is within our gift at this early stage is the visual recording of interviews to allow evidence to be given by that means. We have been involved in setting up and running a test of change that commenced shortly after the review was published and that ended last month. That is now being evaluated. We will look at the evaluation to see what worked and what did not, but it is my expectation that, following that test of change in three of Police Scotland's local divisions, we will support and engage in that process. I anticipate that we will roll it out further.

There are challenges, and we will come to more of those as we discuss Lady Dorrian's other recommendations. We need system-wide change. We can record the interviews; the challenge for us is to have appropriately skilled staff and to give them the time, space, experience and support to do those interviews in a way that gathers evidence properly and that supports traumatised victims. We are working through the cost implications, to ensure that we have the resources to spend on the roll-out of new technology.

What might be more important to the committee is that the high-quality, large-volume digital material that we will produce must be able to be shared and accessed across the criminal justice system. That must happen in a way that is commensurate with disclosure obligations and that applies all the expected safeguards in line with the nature of the material and the rights of victims. The system, from the Crown Office and Procurator Fiscal Service to the Scottish Courts and Tribunals Service and the judiciary, is not yet ready to do that fully.

09:45

We are pushing ahead and are engaged in a digital evidence sharing programme, which all the justice system is signed up to and the police are leading. Through measures such as that and investment in the technology, we will ensure that those things happen in the future.

The Convener: Thank you very much, Mr Graham. I am pleased to hear that update on the visual recording of interviews, in particular. I take your point about the challenge of that being part of a system change.

On pushing ahead with some of those changes, do you have a timeframe for what requires to be done to put visual recording in place, particularly for serious sexual offences interviews?

Deputy Chief Constable Graham: Yes. There are three aspects to it.

The first is ensuring that we have the technical equipment and can get suitable facilities. I understand that there has, rightly, been feedback on some of the Police Scotland estate and facilities where victims of serious sexual crime and rape are interviewed. We will seriously consider investing in that estate as we move towards the visual recording of interviews to ensure that people are comfortable that they are in as suitable a setting as possible at such a difficult time in their lives. That will be complemented by investment in the technology that is required. It is not just recording devices; it is the infrastructure that sits behind those to manage the volume of data that is gathered.

That is the first aspect. It will not be the limiting factor for the pace of progress, because we are well advanced with that.

The second factor is the skills and training that we need to give to sexual offences liaison officers—SOLOs. We commenced that in May this year. We have already trained a large number of the SOLO cadre. I think that we have trained all the SOLOs in the pilot areas. We have conducted 230-plus interviews during the pilot, which gives us a good number to evaluate. We will feed back into the training loop and ensure that we get feedback from some of the trusted agencies that feed back victims' and survivors' experiences to us, so that we can shape the training as we go. That work is making good progress, and we have plans to roll it out commensurate with the evaluation.

The third area is the point that I raised earlier about the wider justice system's ability to absorb and use the material in the way that it is intended to be used. It has benefit only if it can see its way through to the criminal justice system at the points where it will make a difference by improving the victim's experience from the accounts that we have heard and by improving the opportunities for evidence to be used in the way that is intended.

The Scottish Government has convened a group on the matter, and the Cabinet Secretary for Justice has written to Lord Carloway in the past two weeks. I am attending the first meeting of that group next week, to set up the procedures for how the wider considerations in Lady Dorrian's report

will be addressed collectively and collaboratively. The timescales for that are not yet set.

The Convener: Thank you very much. We certainly look forward to updates on how that area of work is progressing.

We will move on to questions from members about taking statements.

Collette Stevenson (East Kilbride) (SNP): Good morning. I thank our two witnesses from Police Scotland for joining us.

As you will probably be aware, we had a private session with people who have been victims of varying degrees of sexual crime, and we heard powerful testimony from them. I want to ask you about your process for taking statements and what happens from the outset right through the process, including what information is provided to the complainer. Will you give us a wee bit of insight into that, perhaps with a walk through of the process? If I presented to you today as a complainer in relation to a sexual or violent crime, what could I expect from Police Scotland?

Deputy Chief Constable Graham: I am mindful of the experience that you have had in hearing from survivors and listening to their experiences. As I have said, we really value feedback from people, and I have looked carefully at the reports from your committee as well as at all the other feedback that we have received. We are actively exploring more structured and sustainable mechanisms to ensure that we continue to listen to victims and understand and reflect on their experiences. It is hugely valuable for us to get that insight, and I am in active discussions with a number of groups who are keen to work with us in that regard.

Turning to your question, I will perhaps ask DCS Faulds to provide a little more detail, but, broadly speaking, there is a pathway that victims should experience when they come forward, starting with the point at which they make a report. It is likely that they will do that by telephone, and the people who answer calls, make assessments and prioritise reports are trained both at the basic level of taking a trauma-informed approach and in the steps that they need to take when somebody reports a serious sexual offence such as a rape. The report will be assessed by a supervisor, and it will then be passed on for dispatch. In the case of a recent event, an officer will attend as an emergency response. If the event is non-recent, an arrangement may be made for the individual who has contacted the police to be seen directly by a specialist officer at a suitable time.

In the case of a recent event, there is comprehensive guidance—in effect, a set of things that the attending officer must do. They must take account of the medical and other welfare needs of

the victim, take an initial account of what has happened so that we can assess the nature of what we are dealing with, and capture any early evidence. On the back of some of the feedback that we have received recently, we have strengthened that advice, because we recognise that, at such times, every officer in Police Scotland needs to be trained and competent to do that work.

Of course, many such reports will come through a different route. Reports do not necessarily come through somebody phoning up and directly reporting what has happened. It may be that we start with a report of a domestic assault that then develops into an understanding that there has been sexual crime such as a rape. In that case, the route will be the same but there will be a referral to a specialist department in the local policing division. The specialist department will deploy a sexual offences liaison officer, who is a specially trained officer, to take a statement, gather all the evidence and tell the victim what is likely to happen during the process and thereafter. We have strengthened the information that is provided to victims at that point and have emphasised the need, which has consistently been raised in feedback, to keep in touch with them thereafter.

I could go into an awful lot more detail, because the question was very broad. I am conscious of time, so I will not do that, but I will be happy to answer any more detailed questions on things that I have covered at a fairly high level, or, indeed, as I mentioned, to invite DCS Faulds to provide more detail on elements of the process that you are particularly interested in.

Collette Stevenson: I will bring in DCS Faulds and ask the same question so that we can explore her understanding of the issue.

Detective Chief Superintendent Sam Faulds (Police Scotland): Good morning. The deputy chief constable covered the issue comprehensively. The DCC covered the various routes that we can get those reports and the fact that they are assessed in terms of threat, risk and harm and whether it is recent or not. There are a number of impacting factors—for example, whether the incident falls within a forensic window.

Regardless of that, we have regular contact with Rape Crisis Scotland, the various rape crisis support organisations across the country and other advocacy services and we take on board all the feedback that we get from them. It has been reassuring that we always listen to that feedback and take it on board. Positive and negative feedback gets passed back to the senior investigating officer cadre to make sure that we are continuously working to improve our response to victims. In the past year or two, that feedback

has been mostly positive, but we always welcome negative or critical feedback so that we can learn from it.

In relation to the initial response, this year we refreshed and updated the briefing report that is completed by the initial attending officers who go out and engage with the victim in the first instance. The briefing report provides clear and unequivocal guidance for the first responder police officers following the report of rape or serious sexual crime. It includes guidance on the minimum standards of information that are required and guidance on the use of early evidence kits, forensic medical examination and Rape Crisis Scotland referrals. It is also a template to record any evidence that is seized at that point. After that, a sexual offences liaison officer will be deployed. The IBR—initial briefing report—captures only the basic details.

We have tried to develop a victim-centred and trauma-informed approach and we try to understand the impact of trauma. We train officers to understand the impact of trauma. As the DCC mentioned, a specialist officer—a sexual offences liaison officer—will be deployed and will make contact with the victim and make arrangements to take a statement at a point that is suitable for the victim, so that we do not retraumatise them.

As I said, we have had meetings with Rape Crisis Scotland and the survivors reference group. It is disappointing and disheartening to hear that people have had negative experiences, but those experiences that they are willing to share with us inform what we do, and we try to learn from them and improve our approach.

Collette Stevenson: I have a question/observation that I put to witnesses at last week's committee meeting about the feedback that we got from the survivor group that mentioned a disjointed approach and an expectation gap when it comes to reporting a sexual crime. I mentioned that Rape Crisis Scotland has a video on YouTube called the RCS survivors guide to the Scottish justice system. Do you use that video, or do you direct complainers towards it? I found it helpful, although the reality sometimes does not match up with the process that it shows.

Detective Chief Superintendent Faulds: I am aware of that video. I have watched it, it has been part of my training in the past and I am aware that other officers have seen it. I am not sure whether it is on our intranet—I will check that—but I have seen it and colleagues have seen it, and I am sure that it forms part of the training. It is a very helpful resource.

We always signpost rape victims. They are always asked whether they would like a referral to Rape Crisis Scotland.

10:00

The Convener: I ask for succinct questions and answers. We have until just before 10.30, and I know that members would like to get through quite a lot of questions.

Pauline McNeill (Glasgow) (Lab): My first question is about DNA results. A survivor told us that the result took a year. I imagine that that is unusual, but is there a certain timescale window for DNA results? The survivor told us that the case could not proceed without that result. Are there any other concerns in the system about getting quicker evidence and DNA results?

Deputy Chief Constable Graham: I am happy to answer that question on forensics.

First, it is important to say that every forensic examination is prioritised against threat, risk and opportunity, and it is not a case of just sending a sample or a set of samples to be tested and waiting for results. It is often an iterative process in which different samples are examined for different things at different stages during the course of the investigation. It certainly would not be the case that a set of samples would be taken and submitted for testing, and there would be a delay of a year, for instance, if an answer was critical for the case to progress. However, the process might take some time because of a series of examinations.

Rape and sexual crime investigations come very high in the prioritisation list along with other unsolved major crime investigations, such as murder cases. There is not anything that we would prioritise more highly. More routine delays in forensic examinations—there has been some public reporting on those—are likely to be in relation to high-volume drugs offences and drugs examinations, or less serious crimes that we could perhaps solve through DNA examination, such as housebreakings and acquisitive crime. It is clear that they would not be prioritised to the same extent as rape and sexual crime.

I do not have concerns that the timescales are limiting cases in any way. The data shows us clearly that they are not. We need to ensure that we explain fully the complexity of some of the examination considerations and process to victims, with samples from different opportunities, whether that is from a forensic examination of the victims themselves, clothing or other items. We have received feedback on that before, and Sam Faulds has alluded to our desire to improve on that. Things can be hugely complex in any single case. We must ensure that we explain that in as much detail as is appropriate and that we update complainers to ensure that they understand why there might be those timescales and that we can give them confidence that the reporting will come

in good time for other elements of whatever process is playing out.

Those points are well made.

Pauline McNeill: I have a quick question for DCS Faulds. You talked about the specialist sexual offences liaison officers. Does every complainer get access to a specialist sexual offences liaison officer, or are they just here and there?

Detective Chief Superintendent Faulds: I must apologise, Ms McNeill. The moderator muted then unmuted the sound, and then the machine talked over you. Could you please repeat the question?

Pauline McNeill: You said in answer to Collette Stevenson that there were sexual offences liaison officers to take statements when it was more suitable for the victim. Does that happen in every rape case?

Detective Chief Superintendent Faulds: I am sorry if I have not been clear, but the sexual offences liaison officer will always and on every occasion be deployed to a victim of rape. What I said was that the statement would, wherever possible, be taken at a time and date that was suitable for the victim and where the threat, risk and harm allowed that to happen. In every case of rape that is reported, we will deploy a SOLO; indeed, we have a significant cadre of SOLOs—in excess of 700 specially trained officers—across the force.

Pauline McNeill: That was really helpful.

I want to follow up my previous question with a question for either DCS Faulds or Deputy Chief Constable Graham about the potential use of recorded police interviews, which the committee has heard about. How might that be taken forward? I recall such a thing as a precognition statement being taken from all witnesses, but that does not seem to happen any more, and I was just wondering what a recorded police interview would actually be in that respect.

Detective Chief Superintendent Faulds: With the visually recorded interview, our aim and the aim of the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service and, indeed, everybody involved is, ultimately, to prevent victims or witnesses from having to attend court and give evidence. With a visually recorded statement, that evidence can be tested and can be given on commission.

The test of change that DCC Graham mentioned has been running for two years in three areas, and we have evaluated it from a police interviewer perspective. We are still waiting to test it in court, as it will have very obvious impacts on the court process and delays as it goes through.

However, we are continuing to run the VRIs, and we have had very positive feedback from witnesses and victims about its being a more positive and supportive experience. We would like to VRI every witness who wanted it; it is the interdependencies that the DCC mentioned that are currently holding us back, but our aim is to roll this out nationally.

Pauline McNeill: Thank you very much.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Just to follow up my colleagues' questions, I think that the process that you have described sounds very encouraging but, according to the evidence that we have heard, it is certainly not happening in this instance. We have heard that survivors are often asked to make statements while in a traumatised state and that officers did not make them aware of available support. In fact, one said that their statement was taken by a male SOLO; the process took hours during which they were not allowed to take a break or have a drink of water; and then they were immediately given a forensic examination. I found that pretty shocking. You do not need to be specially trained to know that such treatment is not very considerate.

The example that I have highlighted might be an extreme one, but when you hear of situations in which the guidance has not been followed, what action do you take? Moreover, what redress does the complainer have if they have such an experience? How do they make it known to you that the guidance has not been followed?

Perhaps DCC Graham can respond first, and then DCS Faulds.

Deputy Chief Constable Graham: I am aware of the example that you have highlighted from reading your reports, and I just want to repeat what I said about our desire to hear that kind of feedback and to have the means of doing so.

I fully recognise that it is highly likely that anybody who comes to report such an offence to the police—it is clear that not all victims get to that point, which is an issue in itself—will be in a traumatised state, and that they will be in that state for a long period of time, because it is not one that people can transition out of quickly. We need to recognise that and to do the things that will best support them through the police and the criminal justice process in a trauma-informed way.

We must explain the process, make sure that people can choose a female SOLO and make sure that breaks are taken and that water is available and so on. Those are very basic things that I would expect to be in place on every occasion. If some of those things are not in place on occasion, we would like to hear about that, but I understand why people who are victims are unlikely to want to

flag that at the time or to find the means easily to do that.

That is why we have in place all the systems that we have. Through Rape Crisis Scotland in particular, we have a structured approach of gathering feedback from victims about their experience with SOLOs. The feedback from that is overwhelmingly positive in more than 80 per cent of cases. In the cases in which it is not, we always pick up the issues. We play that back to individuals, and if there is a theme to do with supervision in a particular division or area, we feed that back. We also ensure that the learning from that is built into future policy and practice.

It is an awful time in people's lives. We recognise that people in this situation are traumatised. To go through giving an account of what happened to them, to do it in an unfamiliar environment and to have to undergo a forensic examination will never be pleasant experiences for anybody. I can only seek to appreciate that from listening to the experiences of others, as I have done, and to make sure that we do everything that we can to minimise any further trauma that people might experience.

As DCS Faulds has said, the use of visually recorded interviews will ensure that, in future, people will need to give their account only once, and that it will be given at the most suitable time. We are doing everything that we can to take on board the feedback on the points that you have raised, to address that through action on our part and to minimise any further trauma to victims at what is a horrendously difficult time in their lives.

Rona Mackay: That was helpful. I do not know whether DCS Faulds wants to come in; she might have addressed the issue in her earlier response.

Detective Chief Superintendent Faulds: I have just one point to add. We acknowledge that we do not always get it right. One victim having a poor experience with us is one victim too many. The whole feedback process has been reviewed this year, in consultation with Rape Crisis Scotland and other advocacy services to capture feedback from victims in the broader violence against women and girls environment. We are looking to set up structured feedback for all those services so that it is qualitative and we can capture the learning as quickly as possible, to inform the training and the guidance.

A process has been under review for the past few months during Covid to make sure that we capture that feedback.

Rona Mackay: Thank you—that was helpful.

The Convener: I will bring in Jamie Greene, after which we will move on to look at trauma-informed training.

Jamie Greene (West Scotland) (Con): Good morning. I want to follow the same line of questioning. I will not elongate it too much, because you have covered a lot of the ground.

There seems to be a general acceptance that things do not always go well 100 per cent of the time and that every case that does not go well is unfortunate. However, what struck the committee was the scale and volume of the negative feedback that we heard. We do not seem to be talking about isolated incidents. The whole experience of reporting such offences seems to be traumatic.

10:15

What improvements could be made to the environment in which crimes of this nature are reported? We have heard that they tend to take place at certain times of the day and on certain days of the week—at weekends, during the night or early in the morning. Some witnesses or victims might be intoxicated or under the influence, voluntarily or otherwise. During the night, officers at the front desk or on the front line might not be as trauma informed as officers would be at other times of the day. Could the police do more to ensure that that first contact is not as traumatic and scary as it seems to be for many victims? That is directed at anyone who wants to respond.

Deputy Chief Constable Graham: The short answer is yes, improvements could be made. In relation to the issues that we have been discussing, when I look back over nearly 30 years in policing, I see that we have made seismic changes in the approach towards victims, in recognising the impact of trauma and in the attitudes and behaviours of police officers and staff. The culture in the organisation has improved seismically, and I do not use those words lightly. However, it is clear from the feedback that we are getting at the moment that there are more improvements to make.

The committee has spoken to a number of victims about their experiences. Undoubtedly, those things happened to them, but I would contextualise that by referring to the large amount of positive feedback that we get about people's experiences. To go back to my earlier answer, we are talking about what is an incredibly challenging time in people's lives.

I would say two things about improvements. The first is that the organisation is engaged in more general awareness raising and training about trauma-informed approaches, respect and the human elements of addressing people's needs. We want to ensure that, when somebody presents at whatever time—as you say, it could be at any

time—and in whatever circumstances, their needs are best met.

Secondly, it is about our specially trained officers having a much higher level of understanding as well as the time, space and the right facilities to ensure that people's needs are met. Part of that is about skills and training. We are part way through the provision of training on the issue for our sexual offences liaison officers. The issue is now a key element, with two days in the sexual offences liaison officer course now dedicated entirely to trauma-informed approaches. Of course, another key part is about the estate and ensuring that facilities are as welcoming and conducive as possible when we get to VRIs and so on.

I acknowledge that there is more work to do, although I note that a huge amount of work has already been done and that improvement has been made on a lot of the issues.

Jamie Greene: That response is welcome. We will come on to the issue of training—other members have questions on that. In the scenario that I painted in which it is 4 or 5 o'clock in the morning on a Saturday going into Sunday, what is the likelihood that someone who has had that robust and comprehensive training will be at hand in a local police station in the middle of nowhere? Such a station might deal with these incidents only a couple of times a year. Is it more likely that people will get that trauma-informed approach in our large cities, where the volume of cases is higher or where you simply have more staff on duty, than in rural environments or small towns?

Deputy Chief Constable Graham: That is a fair point to raise. We are acutely aware of the potential for different responses in rural or remote locations although, of course, at times that can improve the response that people get. Our plan is to ensure that every officer and member of staff has a basic level of awareness of trauma-informed approaches, and that specialist officers are available in every location, whether rural, remote or urban across the whole of Scotland. That is currently the case. Of course, it might take a little bit longer to get a sexual offences liaison officer to somebody who is in a very remote area but, again, measures are in place to make sure that it happens.

Thereafter, there are other challenges that are well reported. We have been working to ensure that people get access to suitable medical and forensic examination facilities in some of those areas that are, at times, even more challenging. We have been working through those challenges with some Scottish Government and national health service-led work, which continues.

Jamie Greene: DCS Faulds wants to come in.

Detective Chief Superintendent Faulds: We give clear guidance about not obtaining statements from a traumatised victim. Mr Greene talked about a victim who might be under the influence of alcohol during the night. As I said earlier, we take initial details for an initial briefing document to allow a senior investigating officer to deploy a specialist officer. That would happen later in the morning and there would be contact then.

I accept that what members have described is a survivor's experience and they have shared it with us and with you, but I would question when those things happened. The guidance that has been in place for the past two years means that that should not be happening. Obviously, when it does, we will pick it up and respond appropriately to the individual if they want to raise the issue with us. We would welcome them raising it with us.

Jamie Greene: That is helpful. Thank you for that. I know that we are tight for time, convener. Do I have time for one more question? I will then be happy to pass on to others.

The Convener: Yes. We can extend the meeting by about 15 minutes but I remind everyone that succinct questions and answers would be helpful.

Jamie Greene: My question is short but it might be difficult. In 2019-20, around 2,300 rapes were reported to police in Scotland, of which around 300 went to prosecution and 130 were successfully prosecuted. We all know that everyone wants to improve that ratio. What role can the police play in that? The taking of an initial statement is only one part of the process. More evidence must be gathered and robust cases must be given to the Crown to improve prosecution rates. What more could the police do to improve that ratio in the coming years?

Deputy Chief Constable Graham: I agree that we all have the ambition to see that rate increase. The part that the police play is in gathering evidence and ensuring that the material for the case is prepared to the highest of standards when it is reported to the Crown, and we are involved in ensuring that further evidence is gathered to support any prosecution.

The number of rapes that are reported to the Crown is, I think, higher than it has ever been, although I am not entirely sure. It is certainly higher than it has been in recent years at almost 55 per cent during the first six months of this year. That is a remarkably high level. Although I acknowledge that the number of prosecutions that ultimately result in a finding of guilt in the courts is lower than people would want to see, we should recognise some of the unique challenges in these cases in terms of the nature and availability of

evidence compared with some other cases. That, again, has been well rehearsed.

That being said, it is well recognised that there are systemic challenges. The recommendations in Lady Dorrian's report that we talked about earlier seek to address those, and we are fully supportive of doing everything that we can to improve on them.

Specifically on what the police can do in addition to committing to what is in Lady Dorrian's report, everything that we have spoken about today will contribute towards the achievement of the things that I have mentioned.

Work is needed on ensuring that victims feel able to come forward in the first place and to have confidence in the police and in the criminal justice system. We know that there is a high level of underreporting and, therefore, underrecording of those crimes, and we need to do as much as we can to ensure that people come forward. I attribute to the pandemic a small drop in reporting during its initial stages, but, other than that, there has been a steady trend of substantive increases in reporting and recording, which I put down largely to victim confidence and to support through victim support and advocacy agencies, which are also a route into policing.

I have largely covered the other things that we can do when it comes to the professional, trauma-informed approaches of officers to supporting victims' needs and in ensuring that we gather evidence to the highest of standards. The development of those techniques and that knowledge can be only a good thing in the likelihood of their contributing towards the aims that we share.

Detective Chief Superintendent Faulds: In the past few years, we have significantly developed a proactive approach, whereby police officers identify victims and make an approach to them, affording them the opportunity to report matters that, previously, they might never have reported. That tactic is very effective; it often allows us to gather corroboration and to report cases to the Crown Office and Procurator Fiscal Service.

We have also tried to develop impactful prevention campaigns and to work with other partners in delivering education.

The Convener: I move swiftly on. Fulton MacGregor has questions about trauma-informed training, albeit that we have been covering that off.

Fulton MacGregor (Coatbridge and Chryston) (SNP): As you said, convener, trauma-informed training and practice have been quite well covered in response to questions from Jamie Greene and Rona Mackay, and throughout the session. I am in no way bothered about that, nor

precious about my questions. It is good that both officers have proactively talked about the trauma-informed training that they are doing.

Both will be aware that Lady Dorrian recommended that there should be

"one consistent trauma-informed source of contact, from the outset".

We have heard a wee bit about liaison officers, who could perhaps fit into that model. I will find a new question because, as I have said, the issue has been covered.

How do we get those specialist officers to the individual as quickly as possible? We have heard that, although there is a general level of training throughout the force and in the various criminal justice agencies, it might not always be to the standard of training that those specialist officers have received. In addition, for how long can they stay with the victim or the complainer—whichever word you want to use—during the process?

Deputy Chief Constable Graham: I will kick off. Thank you for the question and the acknowledgement of the discussion that we have already had.

The role of the sexual offences liaison officer has been a huge improvement since its introduction many years ago. The evolution of and investment in that role has provided that single point of contact.

However, those officers are individuals who have welfare and wellbeing needs, too. I am sure that DCS Faulds will back that up from her own experience. I consistently see people making themselves available outwith duty hours and having mobile contact with victims. We must ensure that individuals are not made available 24 hours a day, seven days a week, because we must ensure that they can rest and recuperate from their extremely demanding and challenging work.

10:30

It might be the case that, although there is a single point of contact, that person will not always be available 24 hours a day, seven days a week. I do not think that anyone would expect that they should be. We must ensure that there are other arrangements in place and that people know who to contact. There have been understandable concerns about getting through to the right person via the 101 phone number. We are looking at that to ensure that there is some consistency if a SOLO is not immediately available.

I have not heard that there has been an issue with staff being available for rapid deployment. Timing should be carefully considered. It is not always the case that someone has to come out

immediately. It might be better for the victim to have someone available when that best suits them, particularly with the non-recent cases that make up about a third of the rapes that are reported to us. It is important to consider the most appropriate time on a case-by-case basis. I have not heard anything that would suggest that there are prolonged periods of time when sexual offences liaison officers are unavailable.

DCS Faulds can give more detail about the feedback that we get from SOLOs and their supervisors.

Detective Chief Superintendent Faulds: As the DCC said, we do not get frequent feedback about the time that it takes to deploy a SOLO to a victim. We do that as quickly as possible. We have already given the example of someone who might be under the influence of alcohol and needs a night's sleep. That person should be afforded that time. The SOLO would be deployed the following morning.

We try to ensure that the same individual maintains SOLO contact throughout, but the SOLO might change. People move on: they get promoted or they retire or leave the service. If that happens, we have a handover that should happen in a structured manner that ensures that the victim remains informed at all times.

Lady Dorrian's review goes beyond that and looks at having a point of contact for victims throughout the whole criminal justice process. The police are not best placed for that. We cannot have the same person available 24/7. That is why victim advocacy services and victim support services have a critical role throughout the victim's entire journey and not only when there is police involvement until the trial.

Fulton MacGregor: In the interests of time, and given that the responses have been extensive, I will leave it at that and thank both witnesses for their contributions.

The Convener: In the interests of time, please keep questions and answers succinct. Katy Clark has some questions about misogyny in policing and then I will bring in Russell Findlay.

Katy Clark (West Scotland) (Lab): We know that repeated concerns have been raised about misogynistic and sexist behaviour in Police Scotland and that there have been numerous complaints. We have tried to get more detail about that, but gender-specific information is not available. On the complaints that reached the Police Investigations and Review Commissioner in 2020-21, we understand that only 202 of 279 referrals were investigated at the time of reporting.

If we open the newspapers, we see the Sarah Everard case. Obviously, the detail of that case

will lead women to lose trust in the police. According to what is written in the media, there is a very high level of domestic abuse and violence by police officers. Harassment cases have been reported to the police, although we do not know the detail of those cases.

What work is being done to implement the recommendations in the "Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing" from November 2020? How will you address the issues that Dame Elish Angiolini raised in that report? What needs to be done? Is there a significant cultural problem within the police that needs to be addressed? If you do not think that there is a cultural problem, how do you explain what is being reported and said?

The Convener: I ask DCC Graham to come in and to be as brief as he can.

Deputy Chief Constable Graham: There is a lot to say in answer to those questions, but I will try to be brief.

Katy Clark mentioned a range of cases from outwith Scotland, but she also referred to Police Scotland. Any such behaviour is abhorrent and is in direct opposition to Police Scotland's values and to the role that constables and any other members of staff hold. The vast majority of our staff come to work to ensure that we provide a service to the public in a way that is commensurate with our values and ethics and with upholding the rights of everyone to be safe at work and treated equally. There is a strong link between the confidence that people should have in our ability to provide a public service—in relation to investigating rape, sexual crime and domestic abuse—and ensuring that, as an organisation, we are able to hold ourselves to the highest of standards.

Katy Clark mentioned Dame Elish Angiolini's report from November 2020. We were already working on some of the issues that were highlighted in her report but, since it was published, we have redoubled our efforts to ensure that we tackle misogyny and improve sex equality across Police Scotland. We have done that in a number of ways. We have gone through a process that is similar to what the committee has done. We have listened to and tried to understand the experiences of the groups and individuals who have been affected by the issues that we have been talking about. We have set up a review group, which is independently chaired and provides advice and guidance on, and constructive criticism of, Police Scotland's policies, practices and actions at strategic and operational levels.

On tackling misogyny and improving sex equality, as a public agency, Police Scotland is providing strong leadership by saying that,

although the issue affects women, men have a responsibility to stand up and challenge behaviour, because people rightly expect to be treated with respect and equality while they are at work and are providing a service to communities. Those communities should have faith in us that we are doing that. We have done work internally, and we have done strong work externally, through personal leadership. The chief constable and I have been clear that men need to stand up and not only take responsibility for their own behaviour but challenge the minority of people who choose not to behave in a way that meets the standards and values of the organisation.

Katy Clark asked whether there is a systemic cultural problem across the organisation. I do not identify with that, but enough examples are coming forward to show that there is a problem that we need to address. We need to tackle such behaviour on each and every occasion that it arises. I am encouraged by the fact that the vast majority of cases that are coming forward are being reported by colleagues, who are saying that the behaviour is not acceptable. As a result of addressing the issue and those in the leadership of Police Scotland being clear that we expect people to let us know when they experience others behaving in a way that is not acceptable, more reports are coming through. That is a positive step towards ensuring that we get no such reports in the future.

My final point is that the issue is a massive, wider societal one that does not start and finish with the police. We are keen to play our part in leadership across society, as I have said, with the campaigning and pop-up messaging that we do across civic society. As a national organisation, we are in a strong position to step up to that role, but others need to look within themselves, as well. The first way to do that is to listen to the experiences of people in your own organisation so that you understand what it is like for people who come from different perspectives and have experiences that you will not necessarily understand until you reach out and want to hear them.

Katy Clark: You said that I used examples from outside Scotland. I said that the Sarah Everard case, which, obviously, was a case down south, would erode women's confidence in the police. However, there are many examples in Scotland. If you are suggesting that the problem exists elsewhere but not in Scotland, I want to draw you on that.

I am quite happy to put cases to you. A lot of the information that I have is from the media, and you will know about it better than I do. For example, the Channel 4 "Dispatches" documentary "Cops on Trial", which was shown in October, reported

that 166 police officers and special constables within Police Scotland had been accused of 245 counts of sexual misconduct. We can go through some of the Scottish examples.

I mentioned the Sarah Everard case because the saturation media coverage of that case and its details erodes women's confidence in the police. Are you trying to suggest that the problems that might exist down south with domestic abuse, for example, are not a problem in Police Scotland? I would like to know whether you are trying to suggest that you are in a better position on those issues than the police down south are, for example.

The Convener: I am very aware that time is tight. The cabinet secretary is waiting, and we have already pushed him back. I suggest that, with members' agreement, DCC Graham should respond to Katy Clark's question in writing. That would be helpful.

Katy Clark: That is helpful. My main question is: does DCC Graham believe that there is a cultural problem?

Deputy Chief Constable Graham: My previous answer should not in any way be understood as suggesting that there are not issues to be addressed in Scotland.

Katy Clark: Thank you. That is very helpful.

The Convener: Thank you very much for that, DCC Graham. I also thank Katy Clark for her forbearance.

I think that Russell Findlay has a couple of questions on the gender recognition legislation.

Russell Findlay (West Scotland) (Con): Good morning, DCC Graham. It has been reported that Police Scotland may record rape as having been committed by a woman when the alleged male-born rapist does not have a gender recognition certificate. How did Police Scotland arrive at that decision?

The Convener: Would DCC Graham like to come in on that?

Deputy Chief Constable Graham: I will do so briefly, convener; I am conscious of the time.

The sex and gender identification of individuals who come into contact with the police will be based on how they present or self-declare. That is entirely consistent with the values of our organisation. We do not require evidence or certification as proof of biological sex or gender identity other than a person's self-declaration, unless that is pertinent to an investigation with which they are linked as a victim, a witness or an accused.

I appreciate that the debate and some of the recent media publicity around those complex issues have become extremely polarised. To explain the scale of what we are dealing with, 1,229 rapes have been reported to us in the first six months of this year. That is nearly 47 rapes every week or nearly seven rapes every day, and we have never had the sort of circumstances that you have suggested in which somebody who had committed an act of rape was biologically a man but self-identified as a woman. At the moment, it is a hypothetical debate and, if that were to happen, we would look carefully at each set of circumstances.

10:45

We are also awaiting Scottish Government guidance on that complex issue. Our desire is to ensure that the rights and equality interests of any individual, whether they be from the trans community or whether we are talking about the long and hard-fought-for rights of women, are recognised, and I believe that that can be done in a way that is not mutually exclusive.

Russell Findlay: That has not happened yet, but there is a possibility that it might. The question is: what would transpire? Would a female victim be informed that the alleged rapist was choosing to identify as female?

Deputy Chief Constable Graham: In the eventuality of such circumstances arising, we would have to work very carefully through them to ensure that those specific aspects were addressed and that everybody's rights were respected and upheld. As the situation has not yet arisen, we have not done that detailed planning.

I go back to my previous point that the substantive issue here is the enormous scale, prevalence and impact of sexual violence and domestic abuse in Scotland. A large proportion of the incidents in the figures that I have highlighted already go unreported to the police and, although the issue that you have raised is clearly important, I do not think that it is the dominant issue that we need to address with regard to violence against women and girls in today's society.

Russell Findlay: Okay. Convener, do I have time to go back to the line of questioning that Katy Clark was pursuing?

The Convener: I am afraid not. The cabinet secretary is waiting, and we have already overrun. As I said to Katy Clark, I am very happy for any additional questions to be sent to DCC Graham for a response.

I thank DCC Graham and DCS Faulds for appearing today. I am sorry that things were rather rushed at the end, but there will likely be a number

of questions that we will follow up with you in writing.

There will be a very short suspension while we have a changeover of witnesses.

10:48

Meeting suspended.

10:51

On resuming—

The Convener: Welcome back. I am pleased to welcome our second panel of witnesses: Keith Brown, the Cabinet Secretary for Justice and Veterans, and Mr Willie Cowan, the deputy director of the Scottish Government criminal justice division.

I ask everybody to keep questions and answers as succinct as possible. I will allow up to an hour for this panel.

I invite the cabinet secretary to make some brief opening remarks before we move to questions.

The Cabinet Secretary for Justice and Veterans (Keith Brown): Thank you very much, convener. I am, once again, grateful to the committee for the opportunity to meet. I will make some remarks on the areas that the clerks have asked me to cover, with the intention of trying to answer some questions, which might help with timekeeping.

As we are all aware, the consequences of the Covid-19 pandemic have placed huge pressure on the criminal justice system and the people who work in it. Our justice partners have worked incredibly hard and creatively to adapt to the sustained and complex challenges presented. I put on record my gratitude for their efforts.

The backlog of cases is one of the areas that I have been asked to cover. Its impact on victims and their perception of justice cannot be underestimated. The additional £50 million that has been made available in this financial year via the recover, renew and transform programme is being used to increase capacity across the justice system. That includes the recruitment of additional staff, greater use of digital tools and improved support for victims and witnesses. That support is being extended into the next financial year, as was outlined in the budget last week.

The budget delivers more than £3.1 billion for justice in 2022-23 to strengthen and reform our vital front-line services. That includes £188 million in additional investment, which amounts to a 7 per cent increase, in recognition of the challenges that the pandemic has presented and continues to present.

That figure includes £40.5 million for the Scottish Police Authority, which maintains our commitment to protect the police resource budget in real terms each year for the entirety of this parliamentary session; £9.5 million to support the modernisation of the Scottish Fire and Rescue Service, which includes investment to allow it to expand its work on fire prevention and fire safety with vulnerable households; £4 million for victims services measures to tackle violence against women and girls and support for the justice system to respond to victims' needs; and £53.2 million for the renewal and transformation of the justice sector, which includes court recovery, addressing trial backlogs and expanding community justice services.

We are starting to see some signs of recovery. I welcome the additional 16-court capacity that was introduced from September. Statistics from the Scottish Courts and Tribunals Service appear to show a positive impact from that. There is a long way to go, and, as with much of society, the justice system's recovery from the pandemic will take time.

Last month, I participated—as many members of the committee did, I think—in a debate that focused on men's violence against women and girls and our efforts to tackle the devastating impacts that it causes. Right at the centre of that discussion is the justice response to gender-based violence.

Recently, I have been in discussions with the chief constable on spiking, which is a despicable, cowardly act. From what we know, spiking is committed mainly by men, and we understand that the victims are mostly women. It is yet another example of the disproportionate impact that men's offending has on women. I am reassured that our legislation on the matter is robust and that Police Scotland is actively pursuing every report of spiking. It has established a gold command in the area.

Last week, I convened a second round-table discussion with justice partners and the health, education and night-time economy sectors to discuss the issue further. I am reassured by the concerted efforts of our cross-sector partners to better understand the problem and to take appropriate measures to address spiking, including the development of standard reporting protocols, consistent messaging and training to raise awareness, and investigation of the use of drug-testing strips for drinks. I am keen to ensure that our preventative approach continues through our equally safe strategy and Police Scotland's strategic approach to investigating and preventing these issues.

I have announced that, after careful consideration, we will move forward with the

immediate establishment of a Scottish Government-led governance group that comprises key stakeholder interests to enable progress on and detailed consideration of the individual and collective recommendations in the Lord Justice Clerk's review group report on improving the management of sexual offence cases. In coming to that determination, I am very much of the mind that what is required is a whole-system approach to both consideration and delivery.

Although the recommendation to provide complainers in sexual offence cases with a lifelong right to anonymity is free-standing and we have committed to legislate to give effect to it in the current session of Parliament, many of the recommendations cross multiple interests, and it is self-evident that, given the many dependencies, we will require the support of key partners in order to deliver change. I think that that came through in the evidence that the committee has just heard from the police. It is important to reflect on the fact that the report was the product of a cross-justice review group and to recognise that ownership, responsibility and delivery rest with us all.

I expect that the group will move at pace, with the first meeting taking place next week, but with an equal focus on ensuring that there is recognition of wider and related Scottish Government initiatives.

We all recognise that, if we get this right, the report has the potential to drive transformational change across the system, beyond sexual offence cases. There is a great deal of cross-sector consensus, as was demonstrated by several statements of support at the time of publication, and my view is that the recommendations can be used as a catalyst for whole-system transformation. That is the intention.

I appreciate that the committee is keen to see progress on the recommendations. However, given the complexity of the proposed changes, careful consideration is essential. I assure the committee that I consider the recommendations to be a priority. Looking ahead, I note that we will hold a consultation on sexual offences and victims' rights in the spring, which will cover many of the recommendations. Some of them can be pursued now, and we have supported a two-year pilot project to visually record rape complainers' police statements, which you have heard about. That was named in Lady Dorrian's report. Working closely with Police Scotland, the Crown Office and Rape Crisis Scotland, we have enabled the initiative to become a reality in Edinburgh, in the Highlands and Islands and in Dumfries and Galloway.

As of 12 December 2021, 266 VRIs have been carried out, with a total of 247 complainers. However, no cases have proceeded to trial, so we

do not have data throughput for evaluation purposes. We want—as the police do—the initiative to be available across the whole of Scotland in the future, and we have secured collective agreement to start preparing to scale it up beyond the pilot. There is a clear direction to move as quickly as we can without compromising the training or the skill that is required of those who deliver VRIs for court use.

The Scottish Courts and Tribunals Service led the recover, renew and transform workstream, which championed the introduction of virtual summary trials. It worked closely with the third sector, which has enthusiastically supported the innovation. I met Sheriff Principal Pyle last week, and I look forward to receiving his report from the virtual trials national project board and considering next steps.

On Monday, as the committee will know, we launched a consultation on the not proven verdict and related reforms, in recognition of what we believe is a strong case for its abolition. However, these are complex issues, and many stakeholders have expressed principled objections to a move to having two verdicts or have highlighted the interconnectedness of the system, including the potential interaction with the jury majority, so we must consider the issues carefully.

As we discussed at our recent cross-party round table, as a Government, we take very seriously the concerns that some stakeholders have about how the corroboration rule may affect access to justice for survivors of crimes that are committed in private. The consultation therefore also contains questions on that matter.

11:00

We are committed to ensuring that victims' rights are at the centre of our justice system. Over the past five years, we have invested £88 million in victims services, and we recently announced details of our new victim-centred approach fund, which is worth at least £30 million over three years and will provide support to victims organisations across Scotland. We are working closely with victims and support organisations to scope out the role of the new victims commissioner. Furthermore, we have already strengthened the victim notification scheme and are committed to undertaking a detailed review early next year.

There is much to do. My colleague Ash Regan will take forward a strategic, longer-term, evidence-based assessment of the totality of the experience of women in relation to the justice system, with a view to understanding where innovation, better data collection and learning, perhaps from different jurisdictions, could help to

reform or redesign aspects of it to better meet women's needs.

Over recent months, in collaboration with our justice partners, we have been developing a new justice strategy for Scotland. In the new year, I will set out a new vision for justice and take forward what I believe will be transformative action in the current session of Parliament and beyond.

As we emerge from the pandemic, it is right that we should look at how we renew our public services and build on the lessons that we have learned, in respect of both the progress that has been made and the opportunities that might exist to provide greater resilience in critical services. We must continue to be steadfast in our zero tolerance of men's violence against women and girls and the relentless challenge of the spectrum of behaviours that enable it.

I am happy to take questions from the committee.

The Convener: Thank you, cabinet secretary. I appreciate those comprehensive opening comments. Before we move to questions again, I remind members and witnesses to keep questions and answers as succinct as possible.

I will kick things off with a general question relating to your recent announcement regarding the establishment of the governance group to progress the detailed consideration of the Lord Justice Clerk's recommendations. Can you outline in a little more detail the remit and timetable for the work of the governance group? In particular, how will you ensure that the group's work does not duplicate the review that has already taken place and that it focuses on making real progress on the review recommendations and how to take them forward?

Keith Brown: Convener, you will have seen in the letter that I sent to the Lord Justice General, which I copied to you and the committee, the draft remit of the governance group. I expect that that will be finalised when the group meets, as I have said, next week.

I can provide some details—I am happy to provide the relevant correspondence if committee members would like me to do so. The discussions next week will cover the work plan, the timetable and the identification of any working groups that the governance group wants to set up to look at specific areas that the report covers. The committee will be aware of the breadth of the report.

As the committee will also be aware, there is a very public timetable commitment, which is outlined in the programme for government, to legislate in the current session of Parliament for a statutory right to lifelong anonymity for

complainers in sexual offence cases. We will also give serious consideration to the Dorrian review's other recommendations, including the potential introduction of specialist courts and what the implications of that would be.

As I said, I expect that the group will work at pace and provide regular updates to the national criminal justice board and the Lord Justice Clerk's review group. I also expect that the committee will be kept fully up to date.

I have one final point, convener. Your question touched on the idea of duplication. As I mentioned, we have, this week, initiated a consultation on the not proven verdict, which involves a number of related issues such as the size of a jury and the majority that is required for a conviction. Many of Lady Dorrian's recommendations, a number of which would require legislation to take them through, will start to come in at that point, once we have undertaken that consultation and we have a way forward. Those issues are not all of a piece, but they are certainly interrelated, so we would want to take them through in concert. That might give the committee an idea of the timetable that we are looking at.

I will say this now, and I am sure that it will come up again. We know of about 22 pieces of legislation that we have to take through, and there will be more that others will bring forward. There is a crowded landscape and we cannot do everything at once. We are trying to do some of those things as quickly as possible while taking the time to consider them properly.

The Convener: Katy Clark and Rona Mackay have some follow-up questions about the governance group.

Katy Clark: The minister has already addressed some of what I was going to ask about. To what extent has it been possible to implement any of Lady Dorrian's recommendations already? You have outlined the future timetable, but has there already been any implementation of the recommendations?

Keith Brown: You are right. We have already produced one thematic report, which details 11 or 14 recommendations—I cannot remember exactly how many—that we can take forward right away. Another tranche of recommendations that do not require legislation can also be taken forward right away, and we will continue to do that. Some of the recommendations are for other agencies, such as the police, and they will take time to do what they will do.

Some governance arrangements are already in place before the governance group is established. We have looked at that, and progress is being made already, where possible. Willie Cowan can give more detail about that.

Katy Clark: That would be helpful.

Willie Cowan (Scottish Government): I will chair the governance group, and we recognise that that is a joint endeavour. As the cabinet secretary said in his opening remarks, there is a whole-system approach to transformational change.

We will establish the work programme next week. Some aspects of Lady Dorrian's report might be described as dealing with policy, practice and culture, and those can be progressed by individual organisations and in the system as a whole. Delivering some other aspects of the report might require legislation. The group will also want to consider a third aspect, which is whether there are any recommendations that do not technically require legislation for delivery but that might benefit from an underpinning of legislation.

I do not want to prejudge what the work programme will look like after the governance group meets next week, but we are all quite clear. You heard evidence last week from David Fraser and Danielle McLaughlin of the Scottish Courts and Tribunals Service. Danielle is heading up the courts service team that will take forward Lady Dorrian's work, and there is active consideration of what can be worked on, developed and implemented now. At the same time, there is policy consideration and consultation about possible legislation, as was outlined by the cabinet secretary.

Katy Clark: Have any of the recommendations already been implemented? Is there any particular reason why there has been a delay in implementing recommendations that could already have been implemented?

Willie Cowan: Some of the thinking and development work has been done, but the implementation has yet to move forward at pace. There are a couple of major issues. A lot of the people who will be involved in this have been involved in front-line Covid recovery work or have been addressing backlogs. Others have been involved in work leading up to, and during, the 26th United Nations climate change conference of the parties—COP26.

Now that the governance group is being established, we hope that we will be able to take the work forward collectively and at pace. The recommendations that can be developed and implemented without legislation can move forward in parallel with the policy development for the aspects that might require legislation.

Rona Mackay: Good morning, cabinet secretary. I want to ask about an aspect of the specialist court, which, as you referred to, was one of Lady Dorrian's recommendations. Last week, the Scottish Courts and Tribunals Service told us

that it does not envisage any specialist training for jurors in that court. What is your view on that? Given the nature of the court and the need for trauma-informed practice, should there be such training and, if so, how could it be provided, practically?

Keith Brown: I will be a little cagey on this. When there are proposals to change the courts, the decisions on that rest with the judiciary and not with me. We tend to wait to see how the judiciary is approaching issues such as the establishment of specialist courts before we get too involved. It is now easier for us to talk about the issue because Lady Dorrian has made that recommendation and we are not being seen as trying to determine how the court system should be run. The governance group will consider the issue, starting from next week.

I especially do not want to talk about how we might treat jurors, because that is for the judiciary to talk about. However, your point about trauma-informed approaches is important. The point that I was trying to make earlier was that, in addition to all the different pieces of legislation, I hope that we will achieve a justice system that is trauma informed and victim centred from end to end. There is a danger that those phrases can become buzzwords that people throw around, so the challenge is how we can make that real. We are undertaking training with the NHS to try to ensure that it happens.

We had a good discussion on the issue recently at the victims task force. We want to get to a stage at which that approach applies in all the different elements of the system. I call it a system but, as I know you are aware, there are areas such as the judiciary and the courts that are distinct and independent. In many respects, the police have a role that is independent from ministers. However, we want an end-to-end process that is victim centred, that focuses on people who have suffered crimes and that is trauma informed.

I will give just one example, although it does not relate to the issue that Rona Mackay asked about—I have explained why I do not want to go into too much detail on that. One survivor—the chap was not a victim; he was the father of somebody who was murdered—said that, when he had to go to court and sit a couple of feet away from the family of the person who was accused of murdering his son, that felt off to him in so many ways.

The justice system has been focused on trying to get justice delivered, if you like. The way in which victims are treated and the trauma-informed approach have to feature much more in its thinking. I generally support the idea of people being trauma informed, but it is not for me to say

whether jurors should be trained or given background information.

Rona Mackay: Thank you—I understand that.

The Convener: I will bring in Russell Findlay to kick off with questions on reporting and recording.

Russell Findlay: Good morning, Mr Brown. We have heard from Police Scotland that it might record rape as being committed by a woman when the alleged male-born rapist does not have a gender recognition certificate. There are many concerns about that, not least that it could corrupt crime statistics. You spoke in your opening remarks about the importance of accurate data collection. A former Scottish National Party justice secretary has called that a “legal absurdity”. Do you agree with him?

Keith Brown: [*Inaudible.*]—from DCC Malcolm Graham, where I think that he pointed out that there had not been a single case of the type that has been mentioned, despite the fact that, if I have the figure correct, there were 1,129 rape cases in the first six months of this year. That is a horrendous figure that we are trying to deal with through some of the reforms that I have mentioned. In many cases, the police will do the data collection on the issue, although you are right to suggest that the Government will have an interest in and view on that.

It is important that the police take a human rights approach; that the rights of everybody involved are, as DCC Graham said, observed, respected and upheld; and that the safety of everybody is upheld, too. That is the right approach for the police to take, and I am therefore very supportive of DCC Graham’s comments.

11:15

Russell Findlay: I did not catch the beginning of your answer—I do not know whether it was a tech problem. Are you saying that you do not agree with your predecessor Mr MacAskill?

Keith Brown: I have not seen Mr MacAskill’s views, but I am much more inclined to take the up-to-date position presented by DCC Graham in the previous evidence-taking session.

Russell Findlay: I asked Mr Graham whether a rape victim would be informed should this situation transpire. I understand that it has not yet happened, but that might be because this is a new development. It is clearly causing women across Scotland significant concern. How do you think a woman who had been raped would feel if she found that her attacker had been categorised as a woman by Police Scotland?

Keith Brown: I think it important that the police respect the rights of everyone in this situation. It is

not a cliché to say that Police Scotland is very focused on human rights—indeed, that was very much the case at COP26 and has been so in various other respects—and I think that the police should, as DCC Malcolm Graham said, try to uphold the rights of everybody involved.

You have said that such a situation is new, but I am not sure that that is the case. In fact, I am not sure what new situation you are referring to. Trans people have been a feature of the justice system for a long time, and I think that the police have dealt with this rightly in the way that DCC Graham suggested.

Moreover, just in case there is any confusion, I would point out that nothing in the proposed gender recognition reforms should impinge on this area. There are no proposals for changing crime recording in that respect. Given that not one of the 1,129 rape cases that were reported in the first six months has fallen into the category that you have mentioned, I think that the police's proportionate approach is the right one.

Russell Findlay: I should quickly clarify that what I meant by the phrase “new development” was the recent confirmation from Police Scotland with regard to how this could be applied.

Keith Brown: I want to come back to the member's comment about the response that he had received from DCC Graham about notification of victims. The DCC said that, although the situation has not yet arisen, the police will have to look at it. That is the right approach, and it is consistent with taking into account the rights of victims and ensuring that public safety and human rights are at the forefront. You are right to say that the police have not encountered this situation yet, but they will have to give some thought to how they will deal with it, and I support the police in doing so.

Russell Findlay: Sure. This is largely theoretical, but if you follow it to its logical conclusion, you might have rape victims in court having to call their alleged rapist “she”.

Keith Brown: I do not control the court system—it is the judiciary and the Scottish Courts and Tribunals Service that deal with it. However, no matter whether we are talking about the courts, the prisons or the police, I would say from all the evidence that I have seen—and I have looked at this in some detail—that they are very cognisant of the rights and safety of individuals. They are trying extremely hard to ensure that they are upheld, and I support them in that process.

The Convener: Pauline McNeill would like to come in briefly on this topic.

Pauline McNeill: Good morning, cabinet secretary. I am not going to draw you into a policy

discussion about this issue, but I would like some clarity. As I understand it from the reports in *The Times*, what we are talking about here with regard to what Police Scotland has said is not a trans person per se but an accused person presenting as a woman for the purposes of the alleged crime. The issue is about Police Scotland seeming to protect that rather than someone who had previously identified as a woman. There needs to be clarity on that—although I will not draw you into that today.

The deputy chief constable said that the Scottish Government was going to provide clarity on that point, but I was not sure what he meant by that. Did he mean that you are having on-going discussions? I am just wanting an answer to that: are there on-going discussions, or was the deputy chief constable referring to the gender reform legislation or to something else? Could you tell the committee what he meant by that?

Keith Brown: I am afraid I cannot tell you what the deputy chief constable meant. Like you, I think that he was perhaps talking about when we move forward on the gender recognition legislation. That may be the most obvious thing to say on what he meant, but I do not know. The police will be watching this meeting—not in any sinister way—and I am sure that they can provide a response.

I think that the police are aware—as you are hinting—of the complexities of the matter and of the dangers in the situation. The same is true of the Scottish Prison Service. The approach that the police take is a very sensitive one. They are sensitive both to the human rights of the people involved and to the safety of those involved. Your basic point concerns somebody trying to use the system in some way; I think that the police are very well aware of that. They are also aware of the individual rights of people.

In any event, it may be for DCC Graham to come back and clarify exactly what he meant by his comments, rather than it being for me to say.

Pauline McNeill: I finish by asking the cabinet secretary to read the press release from Police Scotland after today's meeting. It is in the *Times* article, and it makes an implication about anyone who presents as a woman. Perhaps the police did not mean to say that, but that might be something that you would want to discuss with them.

The Convener: I would like to move on to some questions about the introduction of a specialist court.

Pauline McNeill: Cabinet secretary, we had a really interesting and good exchange with David Fraser last week on what a specialist court is. Are you satisfied that, in legislating to create a specialist court—as I understand you have to do—it would not look like we were downgrading sexual

offences. According to one view, we are being told that the court would be part of the High Court, but we would need to legislate to create a specialist court. It is a bit unclear. I think that I am right in saying that the bench consists of about 32 to 35 judges, who deal with rape cases every day, I would have thought. We need some clarity on why we need a specialist court and on what that specialist court would do.

I can see the case for a court that treats victims differently. We have heard evidence on the trauma that victims experience in going to courts that are not equipped, spacewise, to ensure that they can enter the building without coming across the person they have accused of a crime. Could you provide any clarity on that view? Do you have any concerns about what legislating for a specialist court might look like, as having at most 10-year sentences might look like a downgrading of sexual offences?

Keith Brown: It is a very good question. It may be useful to hear from Willie Cowan on this, too. The governance group will consider the issue. There is a particular issue around the court considering domestic abuse, although rape will be part of what the court will examine. Where does that properly sit? I know that you will be speaking to the Lord Advocate next week and, as you know, she has discussed how we can get the pace to address the backlog. There is a huge issue with the backlog, and part of that is to do with the impact that it is having on victims and witnesses. We want to deal with the backlog, given the preponderance of sexual assault and rape cases in it. That is one of the drivers for the specialist courts.

It is also true, as I am sure you will know, that the Faculty of Advocates, the Law Society of Scotland and the bar association have expressed concerns about some of the proposals. That is more to do with judge-only trials, but it concerns both specialist courts and the proposal for judge-only trials. The latter area, at least, was one where there was no consensus when Lady Dorrian's group considered the matter.

The governance group will have to give more thought to those aspects. Of course, whatever we choose to do, Parliament will get the chance to have a say. If we decided to bring in specialist courts, we would have to legislate in any event. It might be worth hearing from Willie Cowan on some of the detail.

Willie Cowan: Ms McNeill makes a hugely valid point. Sexual offences are a thoroughly heinous crime, and how they are viewed by the public is important. Lady Dorrian's review sets out her recommendations and why she thinks that a specialist court could add to the experience—I hesitate to say "positive experience"—of victims in

the justice system. The idea of such a court is to improve the way in which victims experience the justice system.

One of the key aspects of the governance group and the subsequent policy development and consultation that will follow will be exactly that. Lady Dorrian recommends a sentencing power of up to 10 years for the sentencing judge in the specialist court, which, as David Fraser mentioned at last week's meeting, would cover over 90 per cent—in the high 90s—of sentencing in relation to sexual offence cases.

My take on Lady Dorrian's report and recommendations—I was part of the group in the early stages, before I moved on to do some Covid work—is that, far from downgrading sexual offences, a specialist court would take due cognisance of the particular experiences of people who are caught up in those types of offences. There is a question around how we would transition from rape cases being automatically held at the High Court to having sexual offences in the round, including rape cases, held in a specialist court.

As the cabinet secretary said, one of the potential complications, which would be for the Lord Advocate to consider with regard to subsequent marking decisions in individual cases, concerns the mix of offences in any particular case, and whether it would be pointed towards a specialist court or towards the High Court. For example, I suspect—although I hesitate to speak for the Lord Advocate—that rape and attempted murder would be considered in the High Court as opposed to the specialist court, whereas for a sexual assault without the additional offence of attempted murder or additional violence, the specialist court would be considered more appropriate.

I acknowledge that, as the cabinet secretary outlined, there are concerns from some groups. We will need to work through that with the governance group, towards consultation. We can then bring forward a proposition that will be considered both by the public, through the consultation, and subsequently by Parliament when the Government introduces draft legislation.

The Convener: I bring in Jamie Greene on that issue, followed by Katy Clark.

Jamie Greene: Good morning, cabinet secretary and guests. The central question with regard to specialist courts is whether they are intended to be used instead of, or as well as, existing infrastructure. The fundamental issue, which is still unclear, concerns what would be taken away from other court mechanisms in order to specialise in those dedicated courts.

Would we be taking things away from existing mechanisms or simply adding to the capacity of the courts in order to clear the backlog? We need to clear the backlog—nobody disagrees with that. Each of those approaches creates its own set of very different issues, and I think that the committee is struggling with that. There is a top-level recommendation from Lady Dorrian, which seems to have a lot of positive elements to it, such as the importance of taking a trauma-informed approach. However, the devil is in the detail. What will the Government present to the committee and the Parliament, so that we can work through the detail? There will clearly be financial and resource issues in relation to how specialist courts might work in the future.

11:30

Keith Brown: The matter is central to how the court system is run and, as such, the decision is ultimately for the judiciary. Jamie Greene is right to say that there will be implications of having such courts. I understand that we do not want to have court systems tripping over or cutting across one another. It is not for me to speak for the Lord Justice Clerk, but I think that her intention is that the specialist courts will be able to build up a body of experience. As Pauline McNeill said, there is such experience in the High Court, given that it frequently deals with the same issues. That will also lead to greater efficiency, which might help to deal with the backlog. I hesitate to say much more about how those potential duplications and crossovers might be detrimental. It is for Lady Dorrian and the judiciary to comment on such matters.

However, as he said, Willie Cowan is on the governance group that will consider the issue. I know that this only partially answers the question, but the Government stands ready to help, whether that is through introducing legislation on sentencing powers or, as Jamie Greene said, through providing resources to fund whatever the judiciary believes is needed. I think that it expects to report on the matter next year.

If there is a change, there are likely to be resource implications, and I hope and expect that the Lord Justice Clerk will be well aware of any potential problems with duplication or overlap.

Jamie Greene: Absolutely. There will be resource implications not only for the SCTS and the Crown but for the defence sector. If more cases per day are run than is currently the case, we will obviously have to provide sufficient resources to ensure that people are represented.

The concept of a specialist court is not new, and I hope that we can learn from the integrated domestic abuse courts. We accept that, if a large

number of crimes are of a similar nature, they can be dealt with in a similar way in a central place, for example. What feedback has there been on domestic abuse courts from the Faculty of Advocates, the Law Society, the police, victims organisations and the third sector? Those groups will have had to interact with specialist courts in the past, so have any learnings—positive or otherwise—come from that?

Keith Brown: That is a good question. We are probably not yet ready to answer it completely, but I will give some background information. We are working with Police Scotland, the Crown Office, Rape Crisis Scotland and other organisations that have been involved in developing domestic abuse courts, which, so far, are in Edinburgh, the Highlands and Islands and Dumfries and Galloway. Evaluation has still to be undertaken, but Crown Office statistics from earlier this year showed that the number of charges related to domestic abuse last year was at its highest since 2015-16.

Again, it is important to reflect that specialist courts are a matter for the judiciary to consider. If the judiciary and Lady Dorrian indicate a willingness to progress specialist courts, we will consider what is needed. There are areas in which domestic abuse courts operate, and there are areas in which domestic abuse cases are dealt with on an ad hoc basis. Those are all operational decisions for the Scottish courts.

The date on which the new domestic abuse offence will have been in operation for three full years is 31 March 2022, which will trigger the need for the Government to publish a statutory report that details the qualitative and quantitative information about the operation of the new offence and the experience of victims. That will probably be the most useful publication in answering Jamie Greene's question.

Willie Cowan might be able to say whether there has been informal feedback from the different partners.

Willie Cowan: There is broad support for specialist courts and for the build-up of the experience of all the practitioners, be they in defence, prosecution, the court service or third sector support organisations. As the cabinet secretary and Mr Greene have said, the concept of a specialist court is not new. The difference with Lady Dorrian's recommendation is that we would require legislation to enable that specialist court to be put into place, whereas domestic abuse courts and drugs courts and the like can be put into place within the existing legislative framework, at the behest of SCTS and the Lord President.

Jamie Greene: I am happy to leave it there.

The Convener: Katy Clark will be followed by Fulton MacGregor, who has questions about the use of recorded police interviews.

Katy Clark: From what Mr Cowan has said, it is likely that the Crown would have criteria for referral of a rape or other sexual offence case to the High Court or the specialist court.

To go back to the issue of downgrading, the concern is that, if there is a cap of 10 years on sentencing in the specialist court, that makes it look like a lower court—similar to the sheriff court. The sheriff court has a range of disposals, and if a longer sentence is desired than is within its powers, the sentencing aspects are referred to the High Court. I understand that the thinking is that that is how the specialist court would operate. Even though a High Court judge was sitting in the specialist court, they would be able to impose a sentence of up to only 10 years and, if they thought that a sentence of more than 10 years might be appropriate, that would have to be referred to the High Court.

Will the kinds of issues that the governance group looks at include consideration of whether the specialist court is subject to that sentencing cap or has a full range of disposals? Is that still a live issue, cabinet secretary?

Keith Brown: I think that it has to be live. The governance group will decide what to look at, but you have made a very reasonable point. Referral to the High Court, when the specialist court does not think that it has the required sentencing powers, would replicate what happens in other spheres.

The basic point is about ensuring that there is no confusion, overlap or duplication. Knowing the people who are on the governance review group—not least Willie Cowan, although he can mention others—I think that they will have that in their minds. It is not in anybody's interest, especially in the context of the current backlog, for us to duplicate anything. We want to make things as efficient as possible at the same time as making sure that justice is delivered and is done in a trauma-informed and victim-centred way. I therefore think that the group will be considering that issue. It might be looked at by one of the working groups that could be set up to look at various aspects; however, that will be for the group to decide. Willie might want to come in on that.

Katy Clark: I will be interested to hear from Mr Cowan. The High Court is, obviously, a higher court than the sheriff court. We would not want there to be an impression that the specialist court was a lesser court than the High Court. My understanding is that, depending on how the legislation is constructed, the specialist court

would, in effect, be a specialist part of the High Court. Is that fair?

Willie Cowan: Again, that is one of the key aspects of the governance group's discussions, which will lead to consultation. Lady Dorrian's group has recommended a specialist court with sentencing powers of up to 10 years' imprisonment, on the basis that, as I have said, the percentage of existing sexual offence convictions that fall within that 10-year bracket is in the high 90s. The governance group will need to consider the advice that it wants to put forward to Government, and the Government will need to consider the basis on which it will want to consult. To take the report as read, the Government may decide to consult exactly on the basis of Lady Dorrian's recommendation that a specialist court is set up with a power to impose sentences of up to 10 years.

Then, in the same way as it is for every consultation on legislation, it is for interested parties to respond to that consultation and for Government to take account of the evidence that comes before it before bringing a final proposition to Parliament. There are a couple of steps to take.

I have had the same feedback from many sources that I deal with every day, so I absolutely understand that that perception or optic is quite difficult for some people, and that is something that the governance group and the Government will have to consider carefully in due course.

Katy Clark: I have a further question about the court establishment. When you listen to victims of sexual offences, you hear that the physical process of going to court can be very traumatic. The cabinet secretary has already referred to the family of a murder victim having to sit in a court with the accused. Is it envisaged that the new specialist courts will have separate facilities? Would that have big resource implications? At the moment, we are developing facilities at Inverness for witnesses and so on. Will there be significant resource implications with the specialist courts and will they have separate facilities that will be designed in a different way? Alternatively, is it envisaged that they will operate within the current court estate? Are those issues going to have to be discussed?

Willie Cowan: Cabinet secretary, do you want me to respond?

Keith Brown: Before you do, Willie, I would hope that we are going to say the same thing. That would be good.

Katy Clark makes an important point. I have previously mentioned to the committee forensic medical examination suites, which we are trying to roll out across the country. They give those who have been traumatised by sexual offences a very

different experience in the way that they are initially treated and dealt with.

I have also said that the current court infrastructure is of a different time. I am not going to pretend that we can completely recast the physical built infrastructure of the entire justice system overnight. We certainly cannot do it by holding back on dealing with the backlog. I cannot assume what the judiciary will propose that the specialist courts will look like, but we want to make sure that, wherever we are making changes, we can push through with a trauma-informed approach.

Although I mentioned a specific case, it is true that there is great public demand for court proceedings to take place in public, transparently and with everybody there. There are therefore different pressures that apply, but we are trying to deal with them, as is evidenced by some of the stuff that we have done already, such as giving evidence by commission, video-recorded interviews and forensic medical examinations. We are trying to make the system as victim centred as we can.

Do you want to add to that, Willie?

Willie Cowan: You have covered the bases. The general point goes back to the cabinet secretary's opening statement, which is that this is a system-level approach. Lady Dorrian's report looks at the system from end to end. As the cabinet secretary just mentioned, evidence by commission is where victims give evidence and are cross-examined away from the court in a private setting. We have invested in that in Glasgow and touched on it in Inverness, and we are looking at other areas.

As in Lady Dorrian's report, and as touched on by DCC Graham, the whole concept is that the initial interview is conducted by VRI and that that is the primary source of evidence for the case. If necessary, that will be followed up by evidence by commission in advance of the court case. The intention of that flow is that the victim might never be required to attend the final trial to give evidence, either in person or remotely.

The other thing to bear in mind is the fact that vulnerable witnesses already have the right to give evidence either from behind a screen with protection or from a remote location. The drive of the approach is to reduce trauma by having the victim give their evidence as early as possible. That should be revisited only for specific issues, so that the victim is not retraumatised by revisiting their experience at various parts of the system.

We have invested in the facilities to improve evidence by commission, and if we are going to increase the use of evidence by commission and

VRI, the infrastructure to enable that will require investment.

All the way through the process, the key points are that it should be trauma informed and person centred, that the victim should be able to give evidence at an appropriate place and not be retraumatised, and that the whole system for giving evidence should, wherever possible, mean that the individual does not need to attend the trial.

11:45

Katy Clark: That is helpful, thank you. Finally and briefly, could I ask—

The Convener: Katy, I wonder whether I could come in here.

Katy Clark: Yes, of course.

The Convener: I am sorry to cut you off, but there a couple of other areas for questioning that I would like to get to before we close the session at 10 minutes to 12. I want to ask a couple of questions about independent legal representation, which I think that you covered in your opening statement, cabinet secretary. In the testimony that we took in private from survivors, many of them said that they felt that their voice was not heard in court, whereas they felt that the voice of the accused was heard. Of course, section 275 of the Criminal Procedure (Scotland) Act 1995 means that particularly intimate and sensitive information about a complainer can be used in the court. What are your views on access to legal representation for victims of sexual assault? Could that be extended to domestic abuse victims?

Keith Brown: I hate to preface my answer with the same point again, but that will be a matter for the courts with regard to how they run the system. You are right to say that Lady Dorrian has made a recommendation on that, and we will give careful consideration to that and the on-going research on the issue. We are clear that there should be restrictions on the use of sexual history evidence, with the court, as always, having a critical role in deciding whether to allow such evidence in any given case. As you will know, there are safeguards in Scots law that mean that the court must give explicit approval for character and past behaviour evidence to be used in sexual offences cases. Convener, you might also note that we hosted a round-table discussion in November 2020, before either of us was doing the jobs that we are doing today, on the safeguarding of privacy rights for sexual offence victims and the perceived barriers to their coming forward to report crimes against them.

We must ensure that complainers are aware of their rights. That issue has come up in evidence to the committee and was covered in the committee's

earlier evidence session today. Some of the victims that you heard from highlighted that point as well. We have to ensure that they are aware of their rights. We also look forward to receiving further information on the proposal for the Scottish Legal Aid Board-funded pilot project. That is not to say anything definitive, because we will wait to see how Lady Dorrian's recommendation is taken forward in the governance group, but important safeguards exist, and we must ensure that people are aware of how their rights can be safeguarded to a greater extent than is currently the case.

The Convener: That is certainly an area that I am interested in watching closely as it develops. We have time for one more question. I will bring in Rona Mackay to cover the option for a pilot run of single judge rape trials.

Rona Mackay: Thank you, convener. As you said, in evidence from survivors, we heard that they sometimes got the impression that juries had not fully understood the legal implications of what was going on—the legal process. We also heard that there was a perception of unconscious prejudice to do with, for example, the way a complainer was dressed or whether they had been drinking. Many victims' groups support single judge trials, but opinion is split within the legal profession. What is your view on the issue? In what circumstances could single judge trials be used?

Keith Brown: As you said, we have Lady Dorrian's recommendation, and the committee has heard from the Lord Advocate. One of her main concerns is that the backlog be impacted in a positive way, which single judge trials might help with. There are other factors, too, such as the specialist nature of the judge's knowledge.

We want to see what comes out of the governance review group. I cannot give you a definitive answer at the moment, but we are mindful of the fact that various groups and political parties, as well as some members of the committee, have serious concerns about the use of single judge trials, as do the Faculty of Advocates, the Law Society and others in the system. They say that they think that there is not widespread support for such a measure. That is probably reflected in the fact that Lady Dorrian's review group could not come to a consensus on the matter.

The issue will form part of the work of the governance review group. There is no way that it would ever be proceeded with without full parliamentary involvement, to the extent that that is necessary and appropriate. We must wait and see what the governance review group comes up with.

Rona Mackay: Thank you.

The Convener: Thank you very much for giving us your time, cabinet secretary—it is very much appreciated. As we always do, we have run out of time. We appreciate your forbearance in letting us run over a little. The same goes for Mr Cowan. There are some other questions that we would like to have asked, but we will follow that up in writing.

We will have a short suspension before we move on to the next agenda item.

11:51

Meeting suspended.

11:56

On resuming—

Police, Crime, Sentencing and Courts Bill and Judicial Review and Courts Bill

The Convener: Our next item of business is consideration of legislative consent memoranda on the Police, Crime, Sentencing and Courts Bill and the Judicial Review and Courts Bill. I am pleased to welcome back the Cabinet Secretary for Justice and Veterans. He is joined by the Scottish Government officials Phil Lamont, who is from the criminal justice division, and Ms Alison Morris, who is head of serious organised crime policy—divert and deter. I refer members to papers 3 and 4.

I invite the cabinet secretary to make some brief opening remarks on the LCM on the Police, Crime, Sentencing and Courts Bill, after which we will move to questions on that LCM.

Keith Brown: The LCM for the Judicial Review and Courts Bill relates to a minor provision in the schedule to the bill. The policy provision is uncontroversial and relates to fines enforcement. There is a provision in the schedule that will mean that the Scottish Courts and Tribunal Service will be able to enforce a new type of financial penalty that has been imposed in England and Wales through the online justice procedure.

Cross-border enforcement of fines has been a long-standing approach in the nations of the United Kingdom. The UK and Scottish Governments agree on the need for cross-border enforcement as a normal part of the operation of their respective justice systems. The approach relates to the fact that people in the UK can move between nations. That means that enforcement in Scotland is needed when, as in this case, a person who receives a financial penalty through the new online procedure moves to Scotland.

However, there is an issue that is worth mentioning to the committee. The Scottish Government considers that the provision in question necessitates an LCM, whereas the UK Government believes that it does not. As the LCM explains, fines enforcement is a devolved matter, so we consider that any additional provision that adds responsibilities for the SCTS to enforce fines that have been imposed in England and Wales is a devolved matter. That is why the LCM is necessary. The UK Government disagrees. It argues that the provision in the schedule could not be included in a Scottish bill, which means that it is outwith competence.

The Scottish Parliament agrees with the Scottish Government's position, which is why the LCM is before the committee.

We believe that the purpose of the relevant provision, which is to empower the SCTS to enforce fines that have been imposed in England and Wales, is a devolved matter, and that it is only because of the manner in which the provision is drafted that it is outwith competence. The purpose of the provision is clearly a devolved matter. As the LCM was accepted for lodging, that means that the Scottish Parliament agrees that the necessity for an LCM has been triggered by the bill.

It is important to stress that the LCM does not mean that the Scottish Government supports the entire policy content of the bill. I am aware of other provisions in the bill that have generated some controversy, such as the proposed changes to the operation of judicial review powers. The LCM is very narrow and relates only to the fines enforcement issue.

I and my officials would be happy to take any questions.

12:00

The Convener: Thank you, cabinet secretary. Just for clarity, those remarks were in relation to the Judicial Review and Courts Bill. That is absolutely fine. Could you also make your remarks in relation to the Police, Crime, Sentencing and Courts Bill LCM? We can take any questions after that.

Keith Brown: Apologies—I had the wrong one there. I am happy to cover the second LCM.

I am grateful to the committee for the opportunity to take questions on the supplementary legislative consent memorandum for the Police, Crime, Sentencing and Courts Bill, which the committee has had before it previously. The memorandum covers the clauses on extraction of data, which are intended to clarify the existing position following the Information Commissioner's report on procedures in England and Wales. The measures are not intended to create any new powers.

The Government lodged an LCM on 5 August for the provisions that extend to Scotland. At the time of lodging, I advised that the Government was not able to recommend consent for the power to extract information from digital devices of witnesses, victims and others, as discussions were still on-going between the former Lord Advocate and UK ministers. I also stated my intention, once the position on investigation of deaths was resolved satisfactorily, to lodge a supplementary memorandum for those provisions

in order to ensure a consistent approach that takes account of Scotland's distinct position.

Following confirmation from the UK Government that the issue of investigation of deaths will be kept under review once the measures are in force, we have now concluded that the identified risk is not sufficiently material to prevent the Scottish Government from recommending that the Scottish Parliament consent to the provisions.

The Convener: Thank you, cabinet secretary.

I ask members to indicate by putting an R in the chat box or raising their hand if they have any questions on the Police, Crime, Sentencing and Courts Bill LCM. I am not seeing anything, which is fine.

Likewise, do members have any questions in relation to the Judicial Review and Courts Bill LCM? There are no questions, so we will move on to the next item of business, which is consideration of any issues for our final reports on the LCMs.

I will again start with the Police, Crime, Sentencing and Courts Bill LCM. Do members have any final views that they wish to include in the committee's report on the LCM?

Members have raised no issues, so does the committee agree that the Scottish Parliament should give its consent to the relevant provisions in the Police, Crime, Sentencing and Courts Bill, as set out in the Scottish Government's draft motion? We are agreed.

Are members content to delegate to me the publication of a very short factual report on the outcome of our deliberations on the LCM? Members are content. The issue will now move to the chamber for all members to decide on the basis of the report that we will prepare.

I turn to the second LCM, on the Judicial Review and Courts Bill. I invite members to share their views on any issues that they would like to include in the committee's report on the LCM.

Members have raised no issues, so does the committee agree that the Scottish Parliament should give its consent to the relevant provisions in the Judicial Review and Courts Bill, as set out in the Scottish Government's draft motion? We are all happy with that.

Are members content to delegate to me the publication of a very short factual report on the outcome of our deliberations on the LCM? Members are content. As with the previous LCM, the issue will now move to the chamber for all members to decide, on the basis of our report.

That concludes our consideration of the two LCMs. I thank the cabinet secretary and his officials for their attendance.

That concludes the public part of the meeting. Our next meeting will be on Wednesday 22 December, when we will take evidence from the Lord Advocate on prosecuting cases that involve violence against women and girls.

12:06

Meeting continued in private until 12:51.

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