OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 4 October 2023

Session 6

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Wednesday 4 October 2023

CONTENTS

CRIMINAL JUSTICE COMMITTEE

25th Meeting 2023, 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)
*Sharon Dowey (South Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)
*John Swinney (Perthshire North) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sandy Brindley (Rape Crisis Scotland)
Ann Marie Cocozza (Families and Friends Affected by Murder and Suicide)
Dr Louise Hill (Children 1st)
Graham O'Neill (Scottish Refugee Council)
Bill Scott (Inclusion Scotland)
Dr Marsha Scott (Scottish Women's Aid)
Kate Wallace (Victim Support Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 4 October 2023

[The Convener opened the meeting at 10:00]

Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 1

The Convener (Audrey Nicoll): Good morning, and welcome to the 25th meeting in 2023 of the Criminal Justice Committee. We have received no apologies this morning; Katy Clark joins us online.

Under our first item of business, we will continue to take evidence on the Victims, Witnesses, and Justice Reform (Scotland) Bill. Last week, we began with an overview session on the bill with the Cabinet Secretary for Justice and Home Affairs, Angela Constance. Today, we move on to phase 1 of our evidence taking, which will focus specifically on parts 1 to 3 of the bill. Those parts cover the establishment of a victims and witnesses commissioner, the embedding of trauma-informed practice in the justice system and the extension of special measures to civil cases. We expect phase 1 to run to mid-November, after which we will move on to consider other parts of the bill.

This morning, we are joined by people from organisations that represent victims and survivors of various crimes. I give a warm welcome to Ann Marie Cocozza, the co-founder of FAMS—Families and Friends Affected by Murder and Suicide; Sandy Brindley, the chief executive of Rape Crisis Scotland; Dr Marsha Scott, the chief executive officer of Scottish Women's Aid; and Kate Wallace, the chief executive officer of Victim Support Scotland.

I refer members to papers 1 to 3. I intend to allow up to 75 minutes for this session. Given that we have such a large panel, before we get under way, I ask members to be as succinct as possible with their questions and the witnesses to be as succinct as possible with their responses. I remind everyone that in phase 1 of our scrutiny we are focusing on parts 1 to 3 of the bill, so, if we can, let us try to work through those parts in turn in our questions.

I will begin with an opening question on part 1, which covers the proposal for a victims and witnesses commissioner. What are your views on the pros and cons of such a post? I will bring in Sandy Brindley and then Dr Marsha Scott, because I know that Rape Crisis Scotland supports the proposal and that Scottish Women's Aid is more opposed to the creation of the post.

Sandy Brindley (Rape Crisis Scotland): At the start, Rape Crisis Scotland probably took a similar position to that taken by Scottish Women's Aid, in that we were quite sceptical of the need for a victims commissioner and of the benefits, given that they could not get involved in individual cases. We have changed our position somewhat because a number of victims have said, not specifically in relation to sexual offences but more generally, that they would value such a post being created. However, I still have some concerns about victims' expectations that the commissioner would be able to assist with their cases.

I also worry about the cost of the role, because we are all aware that the Government is in a very difficult financial position. We are looking at losing 28 Rape Crisis workers across Scotland from next March, and it makes it quite difficult for us to support whole-heartedly the creation of a victims commissioner when front-line services are being decimated. We need to think about the proposal in the context of the financial position, what the priorities should be and what is most important for victims and survivors.

Dr Marsha Scott (Scottish Women's Aid): It is quite uncomfortable to oppose such a commissioner in the sense that we see our organisation as one that advocates any expansion of access to power for victims and survivors. My colleagues and I have had multiple discussions about the proposal, and it came down to a couple of things for us.

When the idea of a victims commissioner was first mooted, I had conversations with Sarah Mason, who is the CEO of the Women's Aid Federation Northern Ireland, Sara Kirkpatrick—there are a lot of Sarahs—who is the CEO of Welsh Women's Aid, Nicole Jacobs, who is the Domestic Abuse Commissioner for England and Wales, and Farah Nazeer, who is the chief executive of Women's Aid in England.

I listed all those people because the response that I got from them was unanimous. Namely, they felt that Scotland—and the violence against women sector in Scotland—was in a singular and unique position in the UK in having really good access to politicians, ministers and MSPs and that creating an institution that would stand between us and them was a retrograde step that would interfere with that.

Also, some of the areas that those people represent have victims commissioners, and they have not been convinced that they have helped to get the voices of victims and survivors heard. There is the message that "I'm listening to you," but then there are the policy changes that actually result from what victims say, and those people who I spoke to said that those are two very different things.

On top of that, we heard from one of those people that there is a high risk of getting a victims commissioner who does not understand violence against women and girls well and who certainly does not have what we would consider to be gender competence in looking at criminal and civil justice issues around domestic abuse. That is very, very risky, because if that were to happen, the person who was supposedly speaking for the people who we serve actually would not understand what those people need and want.

I have had these conversations with previous multiple cabinet secretaries for justice. I am not sure that they were as convinced as they might have been that this is a good idea. I hope that the Parliament will reconsider it.

The other possible alternative, which was suggested in the report of the independent review of funding for front-line services that was published in June, is that, if we have a victims commissioner, we need a domestic abuse commissioner. Like Sandy Brindley, I am worried about the money for that. I still do not want somebody between us and Government, but if we have a victims commissioner, the only way that I can imagine that we could reduce the risk would be to have a domestic abuse commissioner.

The Convener: Thank you very much indeed.

I will bring in other members now, because what you have just outlined, Marsha, is something that we are all very sensitive to. Russell Findlay is first.

Russell Findlay (West Scotland) (Con): In its submission, Victim Support Scotland said that it wants to know what action the commissioner might be able to take in respect of criminal justice agencies that are not doing their jobs properly—in essence, it is asking whether the commissioner will have teeth. Apparently, that is what victims are calling for.

Connected to that is the point about not being able to act in individual cases. Again, victims would like to see that power. Otherwise, what is the point—other than to generate reams of paperwork for people such as us to read? What can be done to give the commissioner teeth? I suppose that that question is for you, Kate Wallace, because it relates to your evidence.

Kate Wallace (Victim Support Scotland): There are a couple of things to remember about the provision in the bill for a victims commissioner. Firstly, it came from victims themselves, who overwhelmingly wanted it. They wanted the establishment of a figurehead who would champion their rights and hold criminal justice agencies to account.

Lack of accountability in the criminal justice system is something that this committee has talked about a lot, and we see the commissioner's role as key in that regard. The commissioner could take a number of actions in respect of that accountability role. Holding organisations to account for their standards of service under the victims code is one of them. That is something that we really need and want to see. At the moment, the rights under the code are meaningless, because no one is being held to account for those standards of service.

We would like more clarity and detail around that, but it is worth remembering that—yes, you are right—victims were behind the proposal and it is victims who wanted it. Therefore, victims themselves have directly asked for that provision in the bill.

It is worth saying that Victim Support Europe said in a report that it produced last week that an independent victims commissioner is key for a good fabric of victims' rights and for upholding victims' rights in each of the member states. That organisation sees a commissioner as good practice.

On Russell Findlay's second point, we think that the victims commissioner's powers should mirror those of the Children and Young People's Commissioner Scotland. Like Sandy Brindley, we seek reassurance that the funding for the commissioner will not impact on front-line victim support services. We are still seeking that assurance. Victims' feedback has been that the commissioner needs enough resource to have weight behind it and to be able to carry out its function, but it should not be a bloated office, as we have seen in other cases. It is important to achieve that sweet spot in between and to have a figurehead who champions victims' rights, who holds organisations to account and who is not conflicted in their role, because they are there solely for victims. I absolutely agree with Marsha Scott's point that it is crucial that we get the right person with the right skills, knowledge and experience. I think that that can be done through the processes that are there.

Sandy Brindley: I will come in briefly on the question of how to make rights meaningful and how to hold bodies to account. I think that the most effective way of doing that is to provide access to legal advice, particularly for sexual offence complainers. For example, there is a right to information in the Victims and Witnesses (Scotland) Act 2014 that is pretty meaningless, because there is no way of victims being able to assert that right. The way to effectively enable them to assert that right is to provide access to legal advice and representation, whereby a solicitor acting in a case can assert those rights on behalf of the individual victim. I think that that is

what victims are looking for, rather than a figurehead.

Russell Findlay: That is probably more related to part 3 of the bill.

Sandy Brindley: Absolutely.

Russell Findlay: Okay. The next question is on the general disquiet in the Parliament about the number of commissioners in Scotland. There are seven commissioners, costing £16.5 million, with seven more potentially in the pipeline. The victims commissioner will cost up to £1 million. We have had evidence from various organisations that that risks creating an extra layer of bureaucracy and might clutter the landscape even further. Kenny Gibson, who is the convener of the Finance and Public Administration Committee, has talked of a sunset clause for commissioners generally. That would mean that, if a commissioner was deemed to have achieved their work, there would be a mechanism whereby the office could be disbanded.

Might that go some way towards meeting your concerns, Dr Scott?

Dr Scott: Sorry—I was having a little snort moment there. I love the idea of our saying, "Okay, we don't need you any more, because we've eradicated domestic abuse in Scotland."

Russell Findlay: Could the sunset clause be brought in if the commissioner was not doing their job properly then?

Dr Scott: I think that we would want a sunset clause that operated when the commissioner did their job so effectively that we did not need them any more. If they were not doing their job properly, the problem could be solved by ways other than eliminating the commissioner post.

I do not really disagree with anything that my colleagues have said. I think that we all want to be in the same place, but we have different ideas about how to get there. However, the problem that we are all trying to solve is about accountability. The problem from our perspective, and from that of the women and children who my organisation supports, is that the system does not change in response to the things that they say. Maybe putting in a figurehead will help—I am not arguing that it will not—but my concern is that that then gets everybody off the hook of actually changing the way that the system operates to hold itself accountable. I would be very unhappy if anybody thought that they had solved the problem of accountability by creating a commissioner.

Russell Findlay: Thank you. I am conscious of time, so I will stop there.

John Swinney (Perthshire North) (SNP): I would like to pursue the issue of accountability, if I might, because I am struck by the point that Kate Wallace made and that Dr Scott has just made about the importance of things changing in response to concerns about practice. We have to be really careful about the fundamental dilemmas that exist in relation to expectations about a victims commissioner.

I want to talk particularly about accountability around the Crown and the legal profession, so that the committee can understand your perspective about where accountability should be exercised in the proposed provision. Would it be your view, for example, that a line of accountability has to exist between the Crown and the victims commissioner for the decisions that the Crown makes in relation to criminal cases?

10:15

Kate Wallace: The Crown already has standards of service in relation to victims, which are set out in the victims code. At the moment, that process ultimately goes to the Scottish Public Services Ombudsman, but victims do not use that service often. Part of the issue is that it is not always clear which body victims should pursue in respect of how they have been treated and how their situation has developed, so that point could be clarified.

What happens with the children's commissioner is that action that has already been taken in an individual case is excluded but an ability exists within the role to investigate individual circumstances if a case has not already been taken through a process through other bodies. We think that mirroring that procedure would be helpful.

We often see common themes and issues around how people have been treated—they are mentioned in the bill's provisions—so the commissioner role could be built around those themes and those accountability issues could be resolved. We are asking for the role of a victims commissioner to mirror that of the children's commissioner.

John Swinney: If there is a route to pursue some of those issues through the Scottish Public Services Ombudsman if it is considered that the standards of service have not been applied, there is an argument that we need to have a victims commissioner because the SPSO is not effective, which would play into the hands of people who think that we are creating another commissioner to deal with the fact that a commissioner that we are already paying for is not that effective. Do you see my line of argument?

Kate Wallace: The commissioner's role is wider, though, than the Public Services Ombudsman's. The latter is around complaint and

the ultimate complaint process. The SPSO publishes its cases and you can see for yourself that it is not that well used in the criminal justice system; it is mostly used around areas such as health. Its decisions are public; its role is very broad and not embedded in the criminal justice system. You can look at the judgments that it has made in relation to complaints, in which it often says, "The victims code and victims' rights under the standards of service have not been met by this organisation," which could be the Crown Office and Procurator Fiscal Service, for example. The commissioner's role would be much wider than that and would be able to take forward the learning from such a situation and identify where there are commonalities, which we on the panel know that there are in relation to issues around how victims are treated in the system.

You are right about being absolutely clear with victims and managing expectations—Sandy Brindley made that point earlier. As we put in our submission, whether that "ability to investigate" individual circumstances and the mirroring of the children's commissioner's role exist, what really needs to happen is for the bill to absolutely spell out what the commissioner does and does not do, as has been done in Australia.

John Swinney: I move to the question of accountability around the legal profession, because other committees in the Parliament are looking at the regulation of the legal profession.

Strong messaging has come to the Parliament that the legal profession's absolute independence cannot be intruded on. All of that is very important, but it strikes me that some of the issues about how defence solicitors interact with victims raise an awful lot of questions about conduct, actions and standards. I am interested in how a commissioner can apply accountability for the legal profession's conduct, given that the legal profession strongly represents to the Parliament, in quite strident terms, that its independence must be maintained.

Sandy Brindley: One of the most important ways of making the legal profession accountable is to have clear and transparent complaints processes, which we do not have just now. The Faculty of Advocates has just taken three years to investigate a complaint against Gordon Jackson for naming complainers on a Glasgow to Edinburgh train. That is not a complaints process that provides accountability.

My priority would be to ensure that bodies such as the Faculty of Advocates have in place processes that are accessible for complainers to use. Complainers have tried to use such processes to raise concerns about their treatment during cross-examination, but the processes have been untransparent, lengthy and inaccessible. Addressing that would be my priority. That approach in no way compromises the legal profession's independence, but it ensures that clear processes are in place that people can use, which provides accountability.

John Swinney: Is there a role for a victims commissioner in that?

Kate Wallace: I think so. The commissioner could oversee the quality of complaints processes and their transparency. As I have said, it is often challenging for victims to understand what role different organisations have played and which complaints policy to use. I had a conversation about that with a senior member of the Crown Office a few weeks ago. Even the Crown was struggling to understand which organisation should be complained to about what, because the issue is so complex and has so many aspects. The perfect role for a victims commissioner is to provide support and ensure that complaints processes are clear, transparent and easily understood by people who need to use them.

The Convener: Can I—[*Interruption*.] Marsha Scott can add a brief comment.

Dr Scott: I will do my best to be brief. I was in the Parliament building yesterday morning to give evidence on the regulation of legal services. I have two observations. First, I worry less about the independence of the legal community and more about the independence of regulation. Failing to recommend an independent regulator for the legal professions would be an egregious mistake as far as we are concerned. We hope that, in the consideration of the Regulation of Legal Services (Scotland) Bill, the Parliament will choose to go with an independent regulator, because any system that allows people in its own cohort to regulate themselves will deliver outcomes such as those from the Faculty of Advocates complaints committee.

Secondly, we need to be much more ambitious. Are we really going to fix what we know are deep and decades-long problems in how victims experience the criminal and civil justice systems by bolstering the complaints process slightly? Surely, we want accountability to be built into how institutions set themselves up and operate and into how we evaluate them, rather than trying to fix what happens when they do not operate properly and people complain.

In the context of domestic abuse, the vast majority of victims are women and children, who are retraumatised by the system. The complaints process is irrelevant to them, as far as they are concerned. A commissioner helping people to make a complaint is not a bad thing, but it is deeply unambitious.

The Convener: I want to bring in Ann Marie Cocozza, who has not yet had an opportunity to

comment, by asking a broad question. What are your views on the proposals for a commissioner?

Ann Marie Cocozza (Families and Friends Affected by Murder and Suicide): My views are similar to those of Kate Wallace and my colleagues. When the idea was first mooted, I and everyone at FAMS thought that it was great that there would be someone who, as Kate Wallace said, would be a champion of victims, but, when we looked at the proposal more closely, we realised that the commissioner's remit is very unclear. At the moment, it is too broad. An attempt is being made to tick too many boxes. For me, the fact that the commissioner will not be allowed to review individual cases means that the role loses its teeth. I share Kate Wallace's views.

The Convener: I bring in Rona Mackay, to be followed by Fulton MacGregor. I ask for succinct questions and responses.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. I want to come to Sandy Brindley first. You said at the start that you were not whole-heartedly in support of the creation of the role of commissioner, although I understand your argument about it being another voice for victims. What would make you convinced that we should have a victims and witnesses commissioner? Would the commissioner having the ability to intervene directly in cases do that? What would solidify it in your mind that we should definitely have such a commissioner?

Sandy Brindley: We have supported the proposal to a degree because victims are saying that they want a commissioner, which makes it difficult for us to oppose. We have reflected on the submissions that have been made to the committee, which suggest that there is not a unified view among victims that they want a commissioner, or that they want one only if the commissioner would be able to intervene in individual cases. I think that it is fair to say that our position is a bit more neutral than it was.

I am representing sexual offence complainers. When we consulted sexual offence complainers, there was similar ambivalence. Some people thought that the creation of a commissioner could be a good thing, while other people were worried that it would not really do anything.

Rona Mackay: That leads me on to my next question, which is for all of you. In your vast experience, given the trauma that all the victims whom you support have been through, how many of them do you think would go down the route of saying, "I want to go to the victims commissioner on this"? I know that you cannot give an exact answer, as the role has not been created yet, but how many of them, roughly, do you think would want to go to the commissioner?

Sandy Brindley: People definitely want to have a voice—that is overwhelmingly the case. Victims and survivors have a real appetite for using their experience to make things better for other people. At Rape Crisis Scotland, we have 60 people in our survivor reference group. All of them want to take what has generally been a very negative experience and use it to try to make things better. There is certainly an appetite for being involved and contributing to change, regardless of whether the way for them to do that is through a victims commissioner or through other routes.

Kate Wallace: We asked that question. Similarly, we have two reference groups. One of those, which extends across the whole organisation, has about 60 people in it; the other is for our service that supports families who have been bereaved by crime. With the exception of one person, all those people—a total of 70-odd people—expressed an interest in engaging directly with a victims commissioner to speak about their experience in order to make sure that what happened to them did not happen to anyone else.

We think that it would be helpful to have a victims commissioner and that it would be the responsibility of us all to help to make it work in the right way. We understand the arguments about money and so forth, and we would seek an assurance that the creation of a commissioner would not impact on front-line services. That would be the main thing. From where I am sitting, I think that a lot of people would want to engage with a victims commissioner.

Ann Marie Cocozza: It is definitely the same for us.

Rona Mackay: You said that you were disappointed that the commissioner would not be able to intervene in individual cases. If the commissioner was able to do so, would that make a difference to people saying, "What's the point?"?

Ann Marie Cocozza: Yes—100 per cent. When I said to people in our lived experience support groups that I was coming here and would be asked questions, 100 per cent of them said that they would like there to be a commissioner, and, as you say, there was an appetite to contact the commissioner on individual cases in order to prevent any other family from having to go through what they feel that they have gone through. They feel wronged by the system, and not having their voices heard adds to their recovery time from the trauma. They feel frustrated about not being heard, so I think that a commissioner would be a good thing.

10:30

Rona Mackay: That is really interesting.

Dr Scott: I will be the sole voice here. The survivors who get involved in our reference groups are committed to trying to get change, and, if there is another avenue for trying to get that change, they will certainly use it. However, what has been proposed will be very skewed towards upper-middle-class people; those who have the energy, finances and safety to engage. For most of the folks we support, it would just be a burden and would not be available to them, so we would wind up doing it again to somebody who was between us and the Government rather than directly with them.

Rona Mackay: I understand that.

The Convener: I will bring in Fulton MacGregor. I ask members to direct their questions to two witnesses at most, because we still have parts 2 and 3 to get through.

Fulton MacGregor (Coatbridge and Chryston) (SNP): It feels as though almost all the witnesses are roughly in the same place. Some people, such as Marsha Scott, are opposed to the proposal for a commissioner but can see some good points to it, while others, such as Sandy Brindley, are for it but have given huge caveats.

I apologise to the convener, but I want to ask a general question. If the Parliament or the Government decided to withdraw part 1 of the bill, how could the main aims behind the proposal for a commissioner be achieved through existing statutory or voluntary mechanisms? Marsha Scott is nodding, so I will come to her first.

Dr Scott: We have, of course, thought about that. Yesterday, Kate Wallace and I were in a meeting with officials, including the deputy director of justice, to talk about how we deliver the vision for justice. For us, the questions are about where you put accountability in the system and how you get the system to start talking about who will be helped. One of the themes of the discussion was the fact that, although we often have high-level commitments, with the Government and the Parliament saying, "We're going to do this and we're going to do that," they do not say who they are going to do it for, how they will prioritise resources, what the change is that they are looking for and how they will measure success.

I know that it sounds as though I am asking for SMART targets, but I am really not. I am asking for people to prioritise. We are in a situation in which resources are very constrained, and there is no way that some of the things that people are saying will be accomplished can be accomplished for all victims. We need to have a hard discussion about who the priority victims are and how we will manage our resources in order to have the biggest impact. If there were an easy answer, we would have figured it out.

We also need to think about how the Parliament holds the Government to account for delivering change and how it pays attention over time. In relation to the Domestic Abuse (Scotland) Bill—I am so sorry, convener; I know that I am going on too long—ministers had to report back to the Parliament three years after the bill was passed. Covid was a problem, but the information that was available in that report after three years was really scant, and the Parliament needed to have said, "These are the things we want to know, and you're not giving them to us," or, "Thank you for A and B, but C and D are missing. We would like you to come back." Those kinds of things are needed. It is everybody's responsibility to hold the Government to account.

Fulton MacGregor: I was to ask only two people, so I will come to Sandy Brindley.

The Convener: Please be very brief.

Sandy Brindley: As a means of providing accountability and making rights real, which is what we are talking about, if a lack of resources meant that I had to choose between providing legal advice to sexual offence complainers or creating a victims commissioner, I would absolutely choose legal advice. That is the only way to make rights real.

The bill contains a lot of good words, particularly on trauma-informed practice. The biggest question that the committee faces is about how to make that mean something on the ground. The way to achieve that in reality is to provide access to legal advice that will enable people to assert their rights effectively.

The Convener: I will bring in Pauline McNeill and Sharon Dowey, and then we will have to move on.

Pauline McNeill (Glasgow) (Lab): I will raise the question that other members have posed about the effectiveness of commissioners who have been appointed in the past. In relation to the children's commissioner's remit, the Government has initiated all the relevant legislation in the Parliament. I am struggling to think of a substantive issue that the Scottish Human Rights Commission has raised in the Parliament that has not been determined by a court. My questions arise from that.

I will follow on from John Swinney's questions about accountability. Can one postholder do all this—hold the Lord Advocate to account, hold the legal profession to account and hold the court to account? We all agree that that would be desirable, but it is difficult to envisage how that could all be wrapped up in one person. I ask Kate Wallace whether she accepts any of that.

Kate Wallace: The committee has spoken a lot about the lack of accountability throughout the whole justice system. That goes back to Fulton MacGregor's question about how we could do this if we had no commissioner. I put that question back to the committee. Without the commissioner as a key component of an approach to accountability, I do not see how that can be achieved.

I have views about expanding the range of organisations that have standards of service under the victims code, because there are many statutory services that it does not apply to. I could talk at length about that, but I will not.

I flip the question round. We have a problem of a lack of accountability, and I am hugely sceptical about whether we will manage to address it, as we have not managed to do that yet. We see the commissioner as playing a key role. They could not do all the work on their own, but they would be a key part of changing the system to make victims' rights meaningful and to hold organisations to account on that. I see that as part of a whole-system change.

Pauline McNeill: I agree with that; I think that we all agree with that. However, you are convinced that one person—the commissioner—could hold all the criminal justice agencies to account. That is your organisation's position.

Kate Wallace: My view is that, if the commissioner's role is established, it will be up to all of us to support it to be as effective as possible. Victims are asking for it; it is what they want. There would be other mechanisms—

Pauline McNeill: Is it fair to say that, as Ann Marie Cocozza said, victims are asking for a voice in a system in which they feel submerged by a lack of accountability? The question is about what the way forward should be.

Rape Crisis Scotland has posed a question about the need for legal advocacy, and my next question is for Ann Marie Cocozza as well as Kate Wallace. I can see how bodies could be more accountable for court proceedings and co-ordination. The committee has heard ad infinitum, including through Kate Wallace's organisation, about the terrible experience of victims who have not been advised of court changes. Would the money be better spent on legal advocacy to provide a hands-on person to hold people to account?

Kate Wallace: As far as I am aware, no proposal is on the table anywhere to give all victims legal representation.

Ann Marie Cocozza: What would people do with legal advice and where would they go with it? They could get legal advice and be told what they should be doing and what their rights are but, at the end of the day, they could be back where they were in the first instance. They could have their rights in writing, but they would still have nowhere to go with that.

I see the commissioner as being a key player. Existing advisory groups could assist them so that they would not be working on their own. The notes that I have taken say that we should ensure that such groups are fit for purpose and include the right people, including victims, survivors and those from other bodies, to enable that to happen. If we do not have such an approach, what else could we do? There is no process there just now. When our families want to complain, all we can do is write to the Cabinet Secretary for Justice and Home Affairs. We start at the top and let her direct the complaint downwards, because there is no focal point to start with that is reasonable and gets results.

Pauline McNeill: My questions are more for Kate Wallace and Ann Marie Cocozza, because their organisations support the proposal to have a commissioner. Kate Wallace, how would you see the interaction between Victim Support Scotland and a victims commissioner working?

Kate Wallace: We would work with the commissioner in the same way that children's organisations work alongside the children's commissioner and our sister organisations in England and Wales work alongside their commissioner. Interestingly, those organisations have just put out a public call to ensure that the post of the victims commissioner in England, which has been vacant for a year, is filled. We see such work as being part of a clear mechanism to help with accountability.

In answer to your earlier question, we see our role as facilitating victims in gaining direct access to the commissioner and ensuring that all victims who wanted to speak to them could do so. We see ourselves as working alongside the commissioner rather than as being in competition with them. I see our role not as taking anything away but as adding something. That is our perspective. We would do everything that we could to make the commissioner's role as effective as possible.

The Convener: We will quickly move on to questions from Sharon Dowey. I am sorry to rush you, Sharon.

Sharon Dowey (South Scotland) (Con): You have both spoken about accountability. We already have a cabinet secretary and a minister who are accountable to Parliament, and I see all our panellists' organisations as being the voices of victims and witnesses. I am trying to work out what the benefit would be of bringing in another layer of bureaucracy and whether your voices would end

up being diminished by having to go through one person. Rather than hearing from, say, the four of you, we would hear from one person, so we might end up missing some messages. I also wonder whether the cost of a victims commissioner, which would be nearly £640,000 for setting up in year 1 and £615,000 on an on-going basis, would not be better spent on your organisations. I ask Kate Wallace to respond to that first, and then Sandy Brindley.

Kate Wallace: On the first part of your question, which was about victims' voices, as I said earlier, things do not work that way with the children's commissioner. It is not the case that they are the sole voice and other children's organisations are not at the table. I would see the victims commissioner as working in the same way. They could have a seat at the tables that we are not currently at—for example, on the criminal justice board. No victims organisation is represented there, but it is clearly a key forum for making decisions all the way through the system. I do not see the victims commissioner's role as taking anything away from voices in the way that, perhaps, some others are concerned about.

As for money, we have always said that we are supportive of a victims commissioner's position as long as the finances for it do not take anything away from front-line services. We need clarity on that point first off. So far, I have not heard anything about where the budget for it has been identified. It might not be money that will be better spent, because it might not be money that would have come to victims front-line services anyway. However, having clarity on that is absolutely essential. We continue to champion the victims commissioner's role, which I see as being complementary to and not instead of those of existing services.

Sandy Brindley: On the point about funding, I think that Kate Wallace is right; it is not as straightforward as saying, "If you're spending this, it means you're taking away from that." A big part of our position—which is more ambivalent, as will be noticeable to you all—comes from our being informed that the Government has no funding for the 28 posts that we will lose but that it will have the funding for the victims commissioner. That makes it very difficult for us to support that provision.

10:45

The Convener: Thank you for that. We will move swiftly on to questions on part 2, on the embedding of trauma-informed practice. I ask members to direct questions to one witness, or two at the most.

Russell Findlay: We have a huge amount of ground to cover but, due to the time limits, I will just ask one question, which is specifically about floating trial diets for sexual offence cases. Rape Crisis Scotland's evidence says that the bill needs to include a specific

"commitment to dispense with floating trial diets in rape and sexual offence cases"

as they cause uncertainty, distress, disruption and trauma; they are not trauma-informed practice. Victim Support Scotland, similarly, says that it is "strongly opposed" to those floating trial diets.

In his review of that practice, Lord Bonomy recommended that such diets should not happen in rape cases. That was 21 years ago. I find it inexplicable that they are still happening 21 years later. Given that the bill is a victims bill, will it lead to those trial diets ending? If not, can it be amended to make that happen? The question relates to both organisations' evidence, so it is perhaps for Kate Wallace and Sandy Brindley.

Sandy Brindley: I agree—I, too, find that inexplicable. It was a clear recommendation from Lord Bonomy that there needed to be certainty, given how distressing a prospect it is to give evidence in a rape case, but we are so far away from that. There is a distinct lack of ambition in the proposal for a specialist sexual offences court. It seems to me that the basic thing if we are going to have a trauma-informed specialist court is to not have floating trial diets, which cause so much distress and are not the way to get the best evidence.

I appreciate that the specialist court—which I know the committee will come on to consider—has a default of evidence being given in advance of the trial. However, some people will still want to give evidence at a live trial. Even if some people give evidence in advance, they might still want to go and observe the proceedings to see what happens with their case. If we are serious about having trauma-informed practice, the most basic thing that we should be doing is to not use floating trial diets in rape cases.

Russell Findlay: I note that that does not need to be part of the sexual offences proposals. It can and should just be done with an amendment to the bill.

Kate Wallace: We agree that floating trial diets should not be used. The committee is well aware of the impact that Covid had on delay, which was already a big issue pre-Covid but is now a massive one. We are in danger of normalising delay, which is having an impact in relation to trauma. We are all seeing it; all the people whom we support are feeling it. Another layer on top of that is that adjournment deferment is happening at a level that I have never seen before, which leads

to uncertainty. People are cited to go on one day, but they are sent away. I routinely meet people to whom that has happened six or seven times. That leads to witness attrition and an overall lack of confidence in the justice system, which is compounding people's trauma.

From our perspective, it is necessary to have the touchstone of trauma-informed practice in the bill's provisions so that there is clarity around prioritisation. At the moment, the priority is ensuring that we have an efficient use of court space. The argument for floating trials is that we do not want empty courtrooms and we cannot have sheriffs sitting there when no case is coming forward. However, we need to have a better scheduling process in place that ensures, for example, that the cases that might be assigned floating trials do not have vulnerable witnesses in them. Having that touchstone of trauma-informed practice in the bill is really important because it will give us something to use that says what is and what is not a trauma-informed way of doing things.

John Swinney: The bill includes provisions that will amend the standards that various organisations have to put in place to ensure that trauma-informed practice is pursued. Looking at the Victims and Witnesses (Scotland) Act 2014, I see that it includes significant obligations to ensure that, for example,

"victims should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner".

That is just one of the principles in section 1A(2) of the 2014 act, but we all can see—or, at least, I offer my opinion—that that is not always being applied. If that is not always being applied and we are providing for trauma-informed practice in the bill, that raises a question for me. Does the bill have sufficient bite to ensure that we will genuinely embed trauma-informed practice in our legal system? I am all for it—I am 100 per cent behind it—but I want to be convinced that the provisions will be effective and emphatic.

I am interested in hearing your observations on my point about the obligations that are already in the system under the 2014 act and whether the provisions in the proposed 2024 act will be sufficiently obligatory.

Sandy Brindley: One of the most important questions that the committee faces in considering the bill is how to make it meaningful. I share that concern. The 2014 act sets out very positive statutory obligations on justice agencies, but they are simply not being met. I have provided to the committee a written submission on research that I am doing as part of a PhD at the University of Glasgow law school, in which I have interviewed complainers about how much they are able to participate effectively in the justice process, which is also a right that is set out in the 2014 act. The answer is that those rights are pretty meaningless on the ground.

I share the concern about adding another right to the list of obligations or principles in relation to trauma-informed practice without taking action to ensure that those rights are enforceable. If they are not enforceable, they are not meaningful rights. I return to my earlier point. In sexual offence cases, the most effective way to enforce those rights is to give sexual offence complainers access to legal representation. The feedback that we get is that advocacy support is life changing. It really helps sexual offence complainers to navigate the system. However, what complainers need in relation to accessing the rights that exist on paper is legal advice.

Kate Wallace: We share John Swinney's concern. We see the victims commissioner as having a key role in that regard. Those rights and the standards of service are only meaningful if they are effectively monitored and agencies are held accountable for complying with the standards. At the moment, that is a missing part of the puzzle. We see the victims commissioner as having a key role in that regard.

Dr Scott: I agree with everything that has been said. As we say in our written submission, we all agree that we want a system that is trauma informed, but it is essential to understand that the way in which trauma-informed practice is rolled out these days is not necessarily domestic abuse competent. We were involved in working with Dr Caroline Bruce on the development of the guidelines and skills framework for trauma-informed practice in justice. Even then, however, we were concerned about the lack of specificity on the behaviours that need to be changed and what good trauma-informed practice looks like.

We agree with the intent of the bill, but it needs to be much more specific. We need to have really explicit commitments. The bill will not say exactly what it should look like for each individual area, but we need a set of standards that can be applied in holding organisations accountable for identifying behaviour that is not appropriate. This is implementation science: it is about identifying the preferred behaviour and then supporting professionals and holding them accountable if they do not do it. That is the piece of work that has not happened since 2014.

John Swinney: I have one further question. In the 2014 act, the obligation to pursue the principles that I talked about is applied to

"(a) the Lord Advocate,

(b) the Scottish Ministers,

(c) the chief constable of the Police Service of Scotland,

(d) the Scottish Court Service"

and

"(e) the Parole Board for Scotland".

Does that cover sufficient organisations?

Kate Wallace: I do not think that it does. As we say in our written submission, housing is a big issue. In the context of domestic abuse or other types of crimes, victims often end up homeless or are left with massive coerced debt. Other statutory organisations and bodies should be included in the standards of service because their roles extend across victims, and trauma-informed decision making should be applied in respect of them.

The Convener: Before we move on, does Ann Marie Cocozza want to comment on any of that?

Ann Marie Cocozza: I agree—again—with Kate Wallace. The difference between the 2014 obligations and the current proposals is that we might have a victims and witnesses commissioner to ensure that other organisations are held accountable. I come back to the victim's point of view. As a survivor of childhood sex abuse, rape and all sorts of stuff, and having witnessed my family—my sister—go through the murder trial for her son, I know that trauma is trauma. I do not think that there are various stages of priority in trauma and victims; they should all be treated the same. The introduction of the commissioner will ensure that all rights are equal and that all victims get their voices heard.

John Swinney: Can I come back in on one point? The issue of accountability and the role for the victims commissioner, which Ann Marie Cocozza has properly set out, is at the heart of the proposals. The point about accountability on which we interacted earlier raises pretty significant issues about how our system operates. If the Lord Advocate was here, she would say, "I am independent"; if the chief constable of police services in Scotland was here, she would say, "I am independent"; and the Scottish Courts and Tribunals Service would say that it is independent. What I am getting at in my line of questioning is how we can fulfil the legitimate aspirations, which Ann Marie Cocozza has put on the record, about ensuring that the standards are properly applied and that people are properly treated. That is the big test that we all want to pass with the bill.

Sandy Brindley: There is something here about how victims and complainers are informed about the standards. At the moment, people need to go out of their way to find them; the document is not really that accessible. We need to be much better at informing victims of what their rights are and what they can do if those rights are not being upheld in practice.

Kate Wallace: Some of the postholders that you mentioned with regard to independence have a responsibility to ensure that their organisations are upholding the standards of service and are not being tokenistic in the way that they are at present. Part of that is about them being held to account for what the organisations are or are not delivering, in line with the standards of service. I have also been really clear that the standards of service themselves need a review. The list of organisations that they apply to needs to be widened in order to properly reflect the lives of victims and witnesses.

Some of the standards of service are joint standards—for example, on the right of victims to get support—but they do not filter down in each individual organisation. They sit in this vacuum at the top, and no one takes responsibility for properly informing victims about their rights, for example. In answer to your question, I note that there is a piece of work to be done with the heads of those organisations to make their roles and responsibilities in that respect absolutely clear.

Dr Scott: Can I comment really quickly, convener?

The Convener: We really have to move on. Apologies, Marsha. I will bring Rona Mackay in next.

Rona Mackay: I want to continue with that line of questioning, and then I have a question for Marsha Scott. I think that it is hugely positive that this provision has been written into the bill, but I completely agree with the views that were expressed in the conversation that we have just had. Should the standards of service—on, for example, reorganising courts so that victims do not meet perpetrators, communication with victims and the conduct of defence—be spelled out more in the bill? I take John Swinney's point about independence, but should we be more explicit about this instead of simply saying that practice should be trauma informed? If that is doable, should we do it?

11:00

Sandy Brindley: I am not sure. There is a limit to what you can put into a bill, and although I do not disagree with the point that trauma is trauma, I do not think that a one-size approach will fit all. Different victims have different needs and they will want to give their evidence in different ways. For me, what is more important than putting words about trauma into the bill is having mechanisms for informing victims of their rights and enabling them to access those rights. That is what we need more of in the bill; we need a recognition of those mechanisms of accountability instead of simply putting more words into the bill.

As Mr Swinney pointed out, if a lot more of what is in the 2014 act was happening, victims would be having a much better experience. There is a gulf between what that legislation says and what is happening in practice, and the challenge is how we bridge it. I do not think that the solution is to put into the bill more words about what we mean by trauma-informed practice. Instead, I think that it is about recognising those mechanisms.

Rona Mackay: I kind of disagree with you, because I feel that we should be spelling this out a bit more, but that is a point for conversation.

Dr Scott, you say in your submission that you would like to see more in the bill about the specialised nature of domestic abuse in respect of trauma-informed approaches. Will you expand on why that is important?

Dr Scott: One of the themes that came up when we reviewed the skills framework with Caroline Bruce for the justice directorate was that, with the recommendations for a trauma-informed approach, if you do not have a gendered domestic abuse lens, what you often see is a default position that what the victim experienced happened because they were vulnerable, not because a perpetrator was involved or because the system failed to keep them safe. In fact, we saw that all the way through; we saw it in the failure to recognize that something like 75 per cent of victims with post-traumatic stress disorder are women and children who have experienced domestic abuse and sexual assault, and we saw it in the fact that the responses of our system are gender blind.

The system assumes that, if you are a woman or a child, you are vulnerable, instead of acknowledging that it privileges other people. One might say that, with a trauma-informed approach that is not domestic abuse competent, people fail to look at the actions of the perpetrator and to understand that those actions provide constraints around the actions of victims. Unless you can see those constraints and the perpetrator's behaviours, you ascribe all the problems faced by the victim, who has been traumatised, to vulnerability rather than to the system's failure to hold the person accountable.

I, too, think that we need more specifics in the bill, but I do not think that it is an either/or. I agree with Sandy Brindley that a variety of things need to happen to make our system trauma informed. In that respect, I want to sneak in something that I did not manage to get in before, which is on the issue of data. Part of the difficulty that we have with holding people accountable relates to the system. For instance, when I ask the Crown Office for data on the percentage of domestic abuse cases that are carried forward to charge and wind up with a conviction that involve families with children, no one knows, because the data is not collected. As a result, I cannot tell you how many of those cases should have a child aggravation. Do you know what I mean? Unless we associate the standards that we would like to be implemented with data collection and, indeed, equalities data, it will be very difficult to hold the Lord Advocate, the chief constable or any of those people accountable.

Rona Mackay: Basically, you are saying that we should work together, that we should be much more transparent about information and data and that the data should be collected. After all, we all want the same thing.

Dr Scott: That is right.

Rona Mackay: Thank you.

The Convener: Finally, I call Fulton MacGregor, after which we will move to part 3 of the bill.

Fulton MacGregor: Following on from that conversation, I want to ask whether you think that the bill is about trying to make a culture shift in the justice agencies. After all, trauma-informed practice has been around for a long time; I think that most folk involved in the sector in one form or another are pretty clear about what it is, and the agencies sitting here today have been practising it with victims of crimes for many years now, and to a high standard.

Outside your agencies, though, the rest of the justice sector is predominantly concerned with the accused—or, ultimately, the offender, if the person is convicted. Indeed, I know that from my time as a justice social worker. Trauma-informed practice with offenders is a pretty important thing, as you can imagine, but even in justice social work, there has been only limited and minimal scope to carry out that kind of work with victims. How much is the bill trying to look at agencies across the board, not just justice social work, which I have already mentioned, but also the courts, to ensure that victims are taken more into account in a trauma-informed way?

Kate Wallace: I think that the trauma-informed approach is really important and that it is in the bill for exactly the reasons that you have highlighted. It would be helpful, though, if the bill had a bit more detail, because what we do not want is the whole system going through a half-day trauma-informed training course and then pretending that it is trauma informed.

Going back to the point about the 2014 act, I would say that this is about more than just individual behaviours or being polite; it is about processes, systems, policies and training approaches and about embedding a trauma-informed approach across the entire justice system. The bill is exactly the right starting point

for that, and I think that you need this provision in there to help with that. In that respect, I totally agree. However, if we made it clear that this is all about processes, policies and approaches instead of individual behaviours, it would help solidify the message with regard to culture change and the expectations around that. Likewise, that should also be made explicit in the standards of service for each organisation.

Sandy Brindley: I think that an example that a complainer gave me in the research that I am doing really sums up what you have just said about the focus on the accused. When you phone the victim information and advice service for information about a case, you have to give the accused's name, and when she did so, the Crown Office asked her, "And what are you to him?" That example, I think, distils just how accused focused the system is.

Moreover, when the justice system—and particularly court scheduling—is organised, the approach is system focused; in other words, it is all about the priorities of the system. That is really what the discussion on floating trials is about. However, the issue is not just floating trials; another complainer gave the example of being called to give evidence at a quarter to 4 on a Friday, having been told that if she was not taken by 3 o'clock, she would not be taken at all. She described feeling so destabilised that she could barely say her name when she was called to give evidence. Anyone will recognise that taking a rape complainer to give evidence at a quarter to 4 on a Friday, when a victim will not be able to talk about it all weekend and then will need to come back on the Monday to give their full evidence, is the opposite of a trauma-informed approach. That is because it is all about the needs of the system. The system's need to have courts running until 4 o'clock is more important than thinking about the impact on a vulnerable witness who is waiting to give evidence.

We therefore need a whole-scale shift in the system's focus to ensure that it incorporates the needs of complainers and enables complainers to give their best evidence. It is not about ensuring that the system always comes first.

Dr Scott: We, along with some of our colleagues, have been trying to push the system to implement virtual trials in domestic abuse cases, because we have overwhelming amounts of evidence that such an approach reduces trauma for victims, probably improves the evidence in the case and does not prejudice the experience of the accused in the eyes of the court. Virtual trials were opposed mostly by defence solicitors. It comes down to how we can get the system to respond to the needs of victims, because there has been almost no movement on implementing virtual trials. We have had a number of proposals that have been opposed in general by different elements of the legal community.

Instead of saying, "We hear your concerns, but there is no evidence beneath them"—despite the fact that this committee was offered a huge amount of evidence on how much the use of virtual trials would reduce trauma—the system has been very resistant. That is a good example of the focus on the accused in creating structures that make the system work rather than delivering justice for victims.

Ann Marie Cocozza: I agree with what Kate Wallace said, which is very true. It should not become a half-day tick-box exercise—it should be embedded from police training college. We go up there quite a lot and lecture, and we find that nothing at all is provided about trauma-informed practices.

We can talk about a trauma-informed approach, which ticks boxes because—as has been said—it has been around for a long time, but being trauma informed and being trauma skilled are two different things. We need the people who support vulnerable individuals to be trauma skilled in what they do.

What Rona Mackay said is helpful—if the provision is more detailed, it provides a better teaching framework.

The Convener: We move to part 3, which—you will be glad to hear—is the final part, focusing on special measures for civil cases. We will run up to 11.25.

I will open up the questioning. I direct my first question to Dr Marsha Scott.

Some organisations that have submitted responses, especially those that are supporting individuals with lived experience of the civil justice system, have suggested that the scope of those who are "deemed vulnerable"—in other words, automatically treated as vulnerable—should be broadened. Can you outline your view as to whether part 3 sufficiently strengthens the protection that is available to individuals who are involved in civil court cases?

Dr Scott: You will know from our response that we do not think that it does. I find it gobsmacking, to be frank, that a woman can be offered certain protections in a criminal case and then wind up with almost the same set of actors in a civil case and be confronted by her perpetrator or find herself in a whole variety of situations.

That is all currently exacerbated by the lack of access to solicitors. We have women dropping out of cases because they cannot get a solicitor, or they have to represent themselves and actually cross-examine the perpetrator. There are a variety

of circumstances that are ridiculously traumatic. I find it quite confusing to understand why courts are so resistant to what is really a set of very simple special measures. In fact, I would like to see much more significant measures required.

To come down to it, we would really like to see the same availability and requirements on courts for special measures. At the very least, for any victim who is involved in a domestic abuse case, access to those special measures should be automatic and should not rely on the decision of the sheriff.

The Convener: Kate Wallace, do you want to come in on that and add anything?

Kate Wallace: We agree. [*Laughter.*]

The Convener: Okay—thank you.

Kate Wallace: That makes it easy for you—it saves you time.

The Convener: That is the sort of answer that we like.

Sandy Brindley: I think that the committee will find that there is a general consensus among the panel. My reading of the bill is that a woman who is taking a civil damages action for rape will not be automatically covered by the bill. That seems nonsensical to me. We should be looking at the same approach to that offence as the 2014 act takes in respect of those who are "deemed vulnerable".

The Convener: Thank you for that. I open it up to members.

11:15

Russell Findlay: The written evidence on that issue is overwhelmingly powerful and clear, but I will ask another question in a similar vein. We know that some abusers weaponise the justice system to continue their abuse by launching costly—emotionally and financially—and often spurious civil proceedings in tandem with criminal cases, and then use those parallel processes to seek delays to one another, which adds to the distress.

In its written submission, Rape Crisis says that civil courts should

"stop their processes being used as a means of abuse."

There has been discussion about the proposal of a single sheriff dealing with cases where there are civil and criminal cases in tandem. The cabinet secretary, when we raised that with her last week, seemed reasonably receptive to the concept. I think that you agree with that model—we have heard that before. Could the bill be amended to make that happen, and if so, how? As Dr Scott has been most vocal on the issue, perhaps it is a question for her.

Dr Scott: As you know, I have proposed that we find a way to close the gap between criminal and civil cases. That is very important in domestic abuse cases, because one of the biggest reasons why women do not call the police is that they are worried about what will happen in a potential custody and visitation civil matter down the road.

I do not think that there is an easy or quick answer to this, but we have heard from judges in the United States that, when they have implemented a single judge or sheriff model, it has greatly improved information flow from the criminal cases, because, obviously, it is the same sheriff.

We recommend it, and I would love to have it in the bill. It would probably have to go in as a pilot, because we would need to test it at a small scale. Every sheriff I have spoken to thought it was a good idea. It might be a miracle if there was not a lot of opposition on the part of the system.

Russell Findlay: Anyone else can come in if they want, but I am mindful of time.

Sandy Brindley: You can have cases where the High Court and the sheriff court are involved—for example, where someone is waiting to give evidence against their ex-partner in a rape case and there are contact proceedings in the sheriff court. It is an extremely difficult situation for rape complainers, because there is protection in the criminal case—they could have a screen or evidence by commission—but they are expected to attend a contact hearing against the man who is being investigated for raping them. That is a slightly more complicated situation.

I am not sure how it would work between the High Court and sheriff court, but it seems to me completely inappropriate that you could have child contact proceedings in the sheriff court at the same time as you have such a serious criminal proceeding in the High Court. Perhaps the bill could address that.

Pauline McNeill: I have a couple of points of clarification, probably for Sandy Brindley. In the civil cases that you refer to, are you talking about where there has been a conviction?

Sandy Brindley: There have been three civil damages cases in relation to rape, but two where there has been a criminal prosecution that has resulted in a not proven verdict and the women have then taken forward successful civil damages actions. In such examples, it would make sense that anybody taking forward a civil damages action for rape should automatically be deemed to have the ability to access special measures, rather than have the uncertainty before they apply.

Pauline McNeill: I am trying to work out the range of civil proceedings that that might cover; would it cover contact cases?

Dr Scott: In the context of domestic abuse, it could be across a range of issues to do with divorce and access to marital assets. We know that 90-plus per cent of domestic abuse cases include financial abuse. Kate Wallace referenced coerced debt as an increasingly problematic issue. There are lots of proceedings, Pauline, and you know well that I am not a lawyer, so I cannot list everything that happens in civil cases, but an awful lot of it happens with criminal processes.

Pauline McNeill: Are you talking about changing the procedure for those cases where there has been a conviction and there is a civil case?

Dr Scott: I am sorry, I did not hear the beginning of that.

Pauline McNeill: For those cases where there has been a conviction and there is a civil case—a divorce case, for example, as you have said—are you talking about changing the procedure post-conviction?

Dr Scott: Yes.

Pauline McNeill: Would non-harassment orders be included in that list?

Dr Scott: If there is a conviction under a domestic abuse charge, then non-harassment orders are the default position, so a non-harassment order should be in place. I am afraid—but not surprised—to say that they are not applied as consistently as we would like and that they often do not cover children, because the sheriff who is involved might say, "We have to sort out child contact arrangements, so we're not going to protect this child from a dangerous perpetrator until we do that." Although I do not think that having a single sheriff would fix the situation, it would help.

We had a case recently in which a woman had 29 citations for contempt for not bringing her child to court-ordered visitation; meanwhile, the police were advising her that it was too dangerous to do so because of the information that they had about the perpetrator who was involved in the criminal case. That kind of case really demonstrates how dangerous it is to have this gap between criminal and civil cases.

Sandy Brindley: Special measures should not be restricted to cases where a conviction has taken place.

Pauline McNeill: Why not?

Sandy Brindley: I gave the example of civil damages cases when there has been a not proven verdict. We know that men who are guilty of rape regularly walk free from our criminal system. Making a conviction the basis for access to protection for seeking civil action is a significant barrier to justice.

Pauline McNeill: I understand that point, Sandy. However, given the range of cases that we are talking about, are you saying that special measures should be applied in every case, such as divorce proceedings or anything else, that has not been heard in the criminal courts and where no conviction has taken place? I am trying to get clarity on that.

Sandy Brindley: If somebody is seeking a non-harassment order, they should have access to special measures.

Dr Scott: From our perspective, one of the things is that women are often advised in a civil setting not to talk about the domestic abuse that happened in a marriage or in whatever the circumstances are. Then they wind up in a child contact hearing where they see that the perpetrator will be offered significant access despite lots of evidence that that is probably not a good idea; when they bring in the domestic abuse at that point, they are not believed because it was not brought in at the very beginning. Part of the reason why they will be reluctant to bring that in at the very beginning is that, if no conviction has taken place and there has not even been a criminal case, they are not offered any protection. What we are saying is that witnesses should be deemed vulnerable when there is any indication of domestic abuse—and there is always evidence that domestic abuse has taken place if it has.

The Convener: Would you like to add a final comment, Ann Marie?

Ann Marie Cocozza: That aspect is not our area of expertise and we are not involved in it, but I found it unbelievable to read that women who are victims of crime and who are attending a civil court should not get the same protection that they get in a criminal court.

The Convener: Would you like to add anything, Kate?

Kate Wallace: I agree that special measures should not be predicated on whether there is a conviction in a criminal case. We apply special measures to witnesses who are deemed vulnerable prior to proceedings in a criminal court; we should mirror the same process in civil cases for all the reasons that have been mentioned.

The Convener: Thank you very much indeed. We have to draw the session to a close. I thank everybody on our panel this morning. We will have a short suspension to let our witnesses leave.

11:24

Meeting suspended.

11:33

On resuming—

The Convener: We move to our second panel of witnesses, who are representatives of several organisations that represent various groups, including victims of crime or people who might be classed as vulnerable witnesses during court proceedings. I welcome Dr Louise Hill, who is head of policy, evidence and impact at Children 1st; Bill Scott, who is director of policy at Inclusion Scotland; and Graham O'Neill, who is a policy manager at the Scottish Refugee Council. A warm welcome to you all.

We will have around an hour for the evidence session. As with the previous session, I will open with a general question, which I will put first to Dr Hill and then to the other witnesses, working across the room.

Can you give us your views on the pros and cons of creating the post of a victims and witnesses commissioner?

Dr Louise Hill (Children 1st): Thank you for having us here today. Children 1st comes at the issue from a balanced point of view. We have seen the value of having a commissioner for children and young people, and we are strongly in favour of that, because we can see what a difference the Children and Young People's Commissioner Scotland has made. We are, therefore, positive about the opportunity of having a victims and witnesses commissioner. However, as the committee has probably already heard this morning, there are questions about how it is operationalised and what difference it makes.

Our big concern with the bill in general is that children are hidden. We feel that they are silent and unrepresented, so far. We say that from the point of view of running services across Scotland that support the, sadly, huge numbers of children who are impacted by the scale of violence and harm that they have experienced. We recognise that, despite the fact that, for example, 37 per cent of the sexual offences that were recorded in 2021-22 were against children, there was no real mention or consideration of children in the policy memorandum. As a children's charity, that is a big concern for us.

Our question on the role of a commissioner is about the extent to which they would recognise the scale of harm that children experience and the fact that, in their own right, children are victims.

There is much more that we can say on what provisions we think should be required for children through the process. It is a challenging position for us. We want to stress the importance of the relationship between a victims and witnesses commissioner and the children's commissioner, because how the two interact will be key.

We have other reflections about how far the bill is cognisant of other pieces of proposed legislation; namely, the Children (Care and Justice) (Scotland) Bill and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. There is a lot for us to take into account.

The Convener: That is a helpful opening commentary. We move to Bill Scott.

Bill Scott (Inclusion Scotland): I have a slight correction to make. My job title at the moment is senior policy adviser and not director of policy. There is a head of policy at Inclusion Scotland and I do not want to steal their job. I am now semi-retired, which is why I gave up the director of policy role.

We have not consulted our members, unlike the victim support organisations that you heard from earlier. However, if we did, I think that they would generally be in support of the creation of a commissioner. That is because disabled people—and, in particular, disabled women—are likely to be subjected to domestic violence and sexual abuse. Disabled women are twice as likely to experience that than non-disabled women, and disabled people in general are three times as likely to be victims of violent crime than non-disabled people. Disabled people are often the victims of crime, but their experience of the criminal justice system is that they are not treated seriously as victims. For example, disability hate crimes are very much underreported and underrecorded, as is sexual abuse of disabled people.

I take into account what Scottish Women's Aid said, because, if it were the case that a barrier was created that prevented sexual and domestic abuse support organisations' access to Government ministers, that would not be a step forward. However, with another hat on, I have experience of chairing a commission—the Poverty and Inequality Commission—and I hope that we worked alongside other poverty and inequality bodies and did not act as a barrier in such a way.

It will be important to maintain those contacts with domestic and sexual abuse organisations that represent victims, because we need to continue to be informed directly by their experience and not have it filtered through a commission. That is their role; those organisations are lobbyists on behalf of victims, so we should not prevent them from performing that role. In general, however, a commissioner could act, and the test will be whether they are effective in holding to account

the criminal justice system from the beat bobby to the Court of Session judge.

I come back to the question about accountability that was asked earlier. All of those organisations rightly stress their independence from the political process because they do not want there to be political interference in their roles. That is right, but they should not think that they are not accountable to anybody. At the end of the day, they are accountable to the society in which they operate and, if a victims and witnesses commissioner can hold them to account by exposing their failures to the public's gaze, it might help to amend future behaviour. We are therefore generally supportive of the creation of a commissioner.

The Convener: Thank you. I will bring in Graham O'Neill.

Graham O'Neill (Scottish Refugee Council): Thank you, convener, and thanks to the committee for inviting the Scottish Refugee Council to the meeting.

I start off by saying that we work with people who have experienced severe trauma, often to the complex psychological trauma level, through repeated episodes of serious crime. By its nature, sadly, that is the refugee experience—it involves suffering severe crime. That might not always be the case here in Scotland—I hope that it is not. I will have a few words to say about that in a second.

Like Inclusion Scotland, we have not consulted our members on the bill. I suspect that they and the organisation will be broadly supportive of the principle of having a commissioner for victims and witnesses of crime.

I also acknowledge that we did not submit written evidence to the committee, but we might be able to rectify that. It is, however, worth mentioning that we thought that Scottish Women's Aid's evidence was a genuine and substantive equality analysis that deals with structural issues. As such, we associate ourselves with it because we also work with a group that is, sadly, systemically marginalised in the most brutal way possible by the United Kingdom Government through its Nationality and Borders Act 2022 and the Illegal Migration Act 2023 systems.

There might or might not be time later on in the meeting for me to expand on that, but I will put it this way: refugees are put in the most grim position and made vulnerable as a result of those two pieces of legislation. They are at the point of being criminalised and systemically exploited by, among others, organised crime groups. Anybody who does not feel that needs to speak to senior officers within the criminal justice system, particularly in Police Scotland, and others.

We are supportive of the bill in principle. We also associate ourselves with the comments of Louise Hill from Children 1st. We have had a fantastic experience with the Children and Young People's Commissioner Scotland. As much as they can, within their competence, they have put the commission's weight behind refugee rights issues, such as asylum-seeking families being put into 37 box rooms in the south side of Glasgow through a so-called mother and baby unit. That happened two years ago, and the Children and Young People's Commissioner Scotland listened to and worked with those women and children to get them out of those box rooms, which were run by the Home Office and its asylum accommodation contractor, Mears. That was an example of a human rights intervention that stood by the people, even though the matter was reserved. People are not reserved; people are people within a country.

11:45

Louise Hill put it very well; I might not put this as well as she did, but there is a risk that creating too many commissioners without clearly defined roles could segment the scrutiny landscape, which is something that we would not want to do if we are aiming to deal with substantive social issues.

Except in relation to the Children and Young People's Commissioner, refugees in Scotland are completely hidden from inspectorates and from the regulatory community. We have consistently said to Police Scotland and the police inspectorate, and to a lesser extent to the Crown Office, that they should look at the experience of refugees within the criminal justice system. That has not happened in all the 24 years of devolution. There is a hidden world there, which informs our view, although we are in principle supportive of having a commissioner. I may be able to talk about a particular example later in the meeting.

The Convener: Thank you for that. You are right that we have a lot to cover, so I will open questions up to other members. Sharon Dowey would like to come in, followed by Pauline McNeill and Russell Findlay.

Sharon Dowey: My first question is to Dr Louise Hill. Your submission says:

> "Children 1st support the proposal to establish a Victims and Witnesses Commissioner ... However ... a Commissioner should not be brought in—at considerable expense—to act as a substitute for real action in improving the experiences of victims and witnesses."

Please say more about the action you would like to see happening and whether that would require legislation.

Dr Hill: Are you asking about the commissioner's actions?

Sharon Dowey: Yes.

Dr Hill: Thank you for that question. Our reflection is that a commissioner has to make a difference. That is our top line: we would want a role such as that to make a difference for children. What is essential for us is how much the commissioner raises the profile of victims, how much that role leads to the accountability that we have discussed and how far the commissioner is able to elevate, to a far greater extent, the voices of children who are victims. That is our perspective at Children 1st, but the needs of all victims would be relevant.

Our particular concern, as has been said already, is that there is a lot of legislation for victims but we are very concerned that much of the legislation that should make a difference for child victims remains unimplemented. So, one of the key things that I would like a commissioner to do would be to scrutinise the legislation, specifically the Children (Scotland) Act 2020 and the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019, to look at the use of pre-recorded evidence for children. That comes from Lady Dorrian's review of evidence and procedure and has already been discussed by Lord Carloway.

Research that we did with the University of Edinburgh in 2023—just this year—could not find any examples of children giving pre-recorded evidence. Even though that was in the report on the evidence and procedure review in 2015, it has still not been acted on. We carried out a study with two police divisions, four local authorities and one large sheriffdom in North Strathclyde, but did not find children giving pre-recorded evidence.

There is fantastic hope and aspiration in much of the legislation that has been passed by the Scottish Parliament, but the implementation gap is a huge challenge for us. There are good intentions and a huge amount of scrutiny work has been done as part of the parliamentary process, but is that making a difference to the day-to-day work with children and families? Sadly, in our experience of going along to court to support children and young people across Scotland, we are not seeing the use of pre-recorded evidence. There are also huge challenges with the implementation of special measures, and that is just in the criminal courts.

To go back to the question about key tasks for the commissioner, we would ask for scrutiny of current legislation and of the lack of implementation of legislation that has already been passed. The system should be held to account regarding why we have excellent intentions that do not deliver for children.

Sharon Dowey: Would it take a commissioner to carry out such a review? Should we continue with the bill, or should there be a halt in order to look at all the previous legislation that has not been implemented?

Dr Hill: That is a good question. I do not know whether I said that with hope and optimism. If the bill is another way to hold the processes to account and to provide the level of scrutiny that is required on current legislation, I have hopes that a commissioner could help us with that. The cabinet secretary was keen to say that the bill would not have any impact in terms of front-line services. That is a huge challenge for us as a charity, when it comes to the pressures that we face in delivering for children, but if it is one mechanism that can help us to look at why so much well-intentioned legislation has not been implemented, we are content, on balance, to say, "Let's explore this."

Pauline McNeill: What you are saying, Dr Hill, is quite concerning—that legislation that we have passed in the Parliament has not been implemented. Have you raised those concerns with the Scottish ministers?

Dr Hill: We have.

Pauline McNeill: What response did you get from them?

Dr Hill: We got an equal level of concern that the good intentions of legislation had not been implemented. Obviously, we understand the impact and consequences of the pandemic, but there is concern over the continuation of that gap.

The special measures that have been introduced are great in principle. That leads us on to part 2 of our suggested tasks for the commissioner, in terms of the need for what is in the vulnerable witness legislation to be implemented. There is a significant lag in the implementation of legislation to make a difference for children.

Pauline McNeill: Is that mainly about pre-recorded evidence, or have other special measures not been implemented?

Dr Hill: We have lots of examples of other special measures—for example, on how the taking of evidence on commission works in practice. It is in place but we have a huge challenge with it happening.

We have lots of practical examples. The other week, in the sheriff court, a young person asked about using a separate entrance. They were told, "Oh, sorry, it's the wrong time, so we can't unlock the door for you", so they had to walk past the accused. Children in waiting rooms have no access to refreshments or drinks. They are off school to be there—all day—and are told at the end of the day that the case is not going ahead.

Pauline McNeill: I really want to address the question of special measures, because I thought that we had had significant reform to that. That included screens. Do children give evidence behind screens?

The Convener: In the spirit of managing our session, Pauline, I ask you to come back in later with questions about special measures, so that we can focus on the victims and witnesses commissioner just now.

Pauline McNeill: Okay. I was just asking because of the evidence that was given. That is fine.

The Convener: Thank you. I will bring you in later.

Pauline McNeill: No, my interest has been covered.

Russell Findlay: I have a general question. Children 1st's written evidence states:

> "We are extremely concerned that large amounts of important legislation and policies are being introduced without any clear mechanisms, intention, or resources to implement in full."

Children 1st went on to say:

> "Attention and energy needs to be directed towards getting legislation that has already been passed implemented to make the intended difference."

You have touched on that already. Two specific acts were cited: the Children (Scotland) Act 2020, large parts of which are still not in force, and the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019, which would allow all children to give pre-recorded evidence. That is still only at the early stages of being phased in.

Do you have confidence that the bill, if passed, will be implemented in a timely manner, or is there a risk that it will join the others in the legislation limbo? If that is a risk, what can we do about it? Are there amendments that would make a practical difference?

Dr Hill: My honest reflection is that that is a concern, because this piece of legislation would extend parts of existing legislation—the Children (Scotland Act) 2020—that have not yet been implemented. We would be extending to civil courts provisions that there should be in criminal courts, but we do not yet see those provisions in criminal courts.

I probably share some of Dr Marsha Scott's views—I am trying not to do the academic take—on what the data and evidence tell us and what we know around implementation. Sadly, we know that legislation is only one tool for culture change, and it can be quite a blunt instrument for that change at times. One of the challenges is that a huge amount of energy goes into the legislative process and that, I would say, less resource and energy go into implementation.

The panel would probably agree that, because we have to attend to a raft of legislation, we are forced to move on to the next piece of legislation rather than being part of looking constructively at the key drivers and what is needed for culture change in the justice system, to ensure that we make the difference that we want to, that was intended, and that represents the ethos behind the legislation. We need to do a better job on that.

The Convener: If I may—

Dr Hill: I am sorry, convener.

The Convener: —I will pull our questions back to the victims commissioner.

Russell Findlay: I am sorry.

The Convener: I am keen that everybody has the opportunity to contribute on that specific issue.

Russell Findlay: That is fine. Thank you, convener. I have finished.

Rona Mackay: My questions are solely about the victims commissioner.

Dr Hill, you talked about your good relationship with the Children and Young People's Commissioner Scotland and how you work well with them, and you then spoke about problems with existing legislation. How do you see that role with regard to children who are victims? Should the children's commissioner take that role on, or should it be the victims commissioner? Do you see a clash in that regard?

Dr Hill: It is not that we see a clash; we see an issue with regard to clear roles and responsibilities. We would not want child victims to fall between two stools, because that can happen when there are different roles. They are children and they are also victims. There would need to be real clarity about what the victims commissioner would cover.

As I said in my opening address, the concern is that children need to be recognised. We have huge numbers of children who are victims, so we would not want the victims commissioner to say, "Children are not my part of the house. That can be dealt with by the children's commissioner." There would have to be collaboration.

Rona Mackay: You are looking for more clarity on that.

Dr Hill: Yes.

Rona Mackay: That is fine.

You will probably mention this later, but I want to mention the bairns' hoose. You spoke earlier

about nothing being done for children, but I think that the bairns' hoose is fairly significant.

Bill Scott, is there enough in the bill about disability and inclusion, and are those issues addressed sufficiently with regard to the role of the victims commissioner?

Bill Scott: No, there is not enough in the bill. I have to give credit to a sister organisation, People First (Scotland), which has done a lot of work in the criminal justice space to identify the needs of disabled people—particularly learning disabled people, but it also affects others.

I will go back to the point about vulnerable witnesses. Learning disabled people and people with mental health issues can be deemed to be vulnerable witnesses, but someone in the system needs to identify them as such before an application can be made. As People First (Scotland) found when it undertook research with learning disabled people, the problem is that there is no system to identify whether someone has learning difficulties for use by the police or the Procurator Fiscal Service. If the system cannot identify that someone has learning difficulties, they are not likely to apply for vulnerable witness status. That means that people who are vulnerable are being exposed to quite traumatic situations. They have been victims of, or witnesses to, crime, but they are not being afforded the protection that they should be afforded. More needs to be done in that space.

12:00

Research that was carried out by the Equality and Human Rights Commission in 2017 found that, in the majority of cases in which learning disabled people were interviewed under caution, they were not afforded the presence of an appropriate adult. If that is happening to accused people, what is happening to witnesses and victims?

Rona Mackay: I am sorry to interrupt but, in your opinion, is it the responsibility of their legal representative to make it clear that they are vulnerable and need special measures?

Bill Scott: Yes, but that goes back to asking how they can identify that, what procedures are in place, and what systems are in place. That is where a victims and witnesses commissioner could make a difference by beginning to ask the police, the Procurator Fiscal Service and so on what they are doing to identify whether a witness or a victim is a vulnerable person. The commissioner could issue reports saying that it cannot be correct that appropriate adults are not in place when interviews are conducted. They could begin to address those problems but, at the end of the day, it comes down to whether they will make a difference and whether they will take up the cudgels on behalf of victims and witnesses. If they do, they could make a difference over time.

Rona Mackay: How much clout would they have?

Bill Scott: Exactly.

Rona Mackay: Thank you. I will put a similar question to Graham O'Neill. Do you think that there is enough recognition of refugees?

Graham O'Neill: No, I do not think so. The treatment of refugees in legislation is a difficult issue. People who speak to refugees can see that there are quite strong reasons. We do not always want to put the treatment of refugees in primary legislation, with the exception of world-leading and life-saving international instruments such as the refugee convention from which the current UK Government is severing us.

Putting that to one side, if the victims and witnesses commissioner were to take up the cudgels of exercising scrutiny, as Bill Scott described, and then had the teeth or a mechanism for enforcement to ensure compliance by the responsible criminal justice bodies, we would be supportive of that.

In my opening remarks, I spoke about the regulatory gap that exists in practice among our regulators and inspectorates in Scotland on the refugee experience, including in the criminal justice system. The more often people are punted by the UK Government, as is happening, given its criminalisation agenda, the greater the number of people who will be subjected to it. Police Scotland and the Crown Office will not want that—and we are with them on that—but more people will be liable for criminal offences, such as irregular arrival in the UK, including in Scotland.

There will therefore be more people in police cells. In the past seven years, about 4,000 people have been in them in Scotland. We estimate that around 66 per cent of irregular arrivals are people from trafficking survivors' countries, and more than 70 per cent are from refugee-producing countries such as Afghanistan and Eritrea. If the commissioner could take up the cudgels and exercise genuine and meaningful scrutiny that effects change, we will be for that.

There are a couple of clear areas in which we would want a victims and witnesses commissioner to push for and exercise such scrutiny. One is the underreporting and underrecording of hate crimes suffered by refugees. We see a lot of those in our service's work, and we have done so for decades. In the past, we have told the Crown Office that we would like it to do serious research into that, which we hope it will do. The committee might consider making a recommendation to that effect.

I have a further example. The non-punishment principle is a cornerstone of international anti-trafficking law that concerns acutely vulnerable groups of people who have been trafficked into forced criminality and criminal acts. For example, an adult, a young person or a child might have been forced into cannabis cultivation. Organised crime is always behind that.

The current Lord Advocate's instructions, which we support as a prevention mechanism under the Human Trafficking and Exploitation (Scotland) Act 2015, are not an effective safeguard against the injustice of such individuals being subject to criminal justice processes. There is currently complete reliance on the delay-ridden Home Office national referral mechanism, in that the Lord Advocate and the Solicitor General for Scotland wait for the Home Office's decision. On average, it takes 450 to 550 days to issue what, in the jargon, is called a conclusive grounds decision on whether someone is recognised by the UK state through its Home Office as a trafficking survivor, including individuals who have been forced into criminality.

The Lord Advocate has been put in a completely invidious position by the delay-ridden Home Office national referral mechanism. In practice, over the past six or seven years, hundreds of survivors of forced, trafficked exploitation and forced criminal acts have been left in criminal justice limbo. In our view, that is unacceptable from a human rights perspective. Those figures are really worrying—

The Convener: I would like to come in there. Obviously, you want to make an extensive contribution, but I am thinking about the time. If we have time, we will come back to some of that.

Graham O'Neill: That is absolutely fine, convener.

I will conclude by saying that, over the past seven years, 384 people have been through the Lord Advocate's instructions about whether they are trafficking survivors or not, and only 10 per cent—that is, 40—of those people have had their case stopped by the national lead prosecutor. The result for those who have not had their case stopped is most likely that they are left in criminal justice processes. We hope and expect that they will not be convicted of offences.

The reason why I raise that is that, if the victim and witnesses commissioner were able to take up the cudgels, that is precisely the type of issue on which they could make a profound difference. We know about and respect the independence of the Lord Advocate. We respect their dedication to the work, and we have met the Solicitor General for Scotland in that respect. However, the reason why I raise the issue is that, at the moment, as a national refugee rights organisation, we have no way to get a grip on the issue in Scotland—I am sure that the anti-trafficking sector would concur with that. There is a regulatory gap in practice, and we need to try to address that. That is why we think the issue is relevant.

Thank you for your patience, convener.

The Convener: Thank you for your forbearance. I know that you are very passionate about that.

John Swinney: Dr Hill, I am interested in the opening part of your written statement, which Sharon Dowey referred to. You said:

> "a Commissioner should not be brought in—at considerable expense—to act as a substitute for real action in improving the experiences of victims and witnesses, such as consistently scaling up the Bairns Hoose model",

following the recent very welcome opening of the first bairns' hoose, which was the subject of my colleague Rona Mackay's debate in Parliament. We all know that money is tight, so what is the priority?

Dr Hill: Thank you for the recognition. Obviously, we are delighted to have opened Scotland's first bairns' hoose. It is a phenomenal time for us, but there is a recognition that that funding did not come through the Scottish Government. We went through other sources.

We have always said that we not only want to describe the problem for child victims, but we think that we have a solution. For us, the bairns' hoose is a solution. However, we recognise and are thankful for the political support that we have, and we hope for extended roll-out. We always ask whether that will make a difference for children. Fundamentally, for us, the provision of the barnahus model will make a huge difference to children and their families.

I do not know whether it is difficult to say that there is an either/or. In some ways, the commissioner's role is in collective advocacy. We would want them to be a huge champion for the barnahus model.

On costings and money being tight, the purpose of barnahus is to have a child-friendly space or house that means that children do not have to go to multiple settings and their evidence is taken at the earliest opportunity. That has quite considerable implications for not going through lengthy, drawn-out court processes that have considerable costs associated with them.

We want barnahus because it is the right thing to do for children. We are not saying that from a cost perspective, but it is critical for us that we want to make a difference on the ground.

John Swinney: Would it be fair to conclude from what you have said that, if you had a choice over the same pot of money, you would put it into

a bairns' hoose rather than a victims commissioner?

Dr Hill: I think that, fairly, given our position at Children 1st and from listening to children, our decision would be that we would put that money into a bairns' hoose.

John Swinney: Thank you for that.

I hear what you say about the lack of references to the perspectives of children in the policy memorandum and documentation. What do you think the victims commissioner could do that the children's commissioner currently cannot do in asserting the interests and protecting the rights of children?

Dr Hill: The victims commissioner could play a key, critical role in response to the scale of the criminal justice reform that we are undertaking. We think that the victims commissioner could have an important and loud voice in that process. There are various pieces of legislation, and the victims commissioner could apply the pressure, scrutiny and accountability that is required from a victim's perspective, ideally—in our view—in collaboration or in tandem with issues being raised from the children's commissioner's perspective.

I do not wish to do any disrespect to an excellent children's commissioner's office, but child victims have not been one of its areas of particular scrutiny or concern. The office has not looked at strategic litigation around child victims or had a strategic focus on that particular group, partly because its remit for all children—there are more than 1 million children in Scotland—is quite big. We understand that.

In our experience at Children 1st, we are often invited to meetings in which we are the only voice raising the issues for children. One of us is often the only person at the meeting advocating for children, and there are many people advocating for adult victims. We would want the victims commissioner to recognise the scale of harm and victimisation of children in Scotland, and how their role can hold up some scrutiny and accountability on that matter.

The Convener: Katy Clark is online. Katy, do you want to come in? Your microphone seems to be showing as on—can you hear us?

Katy Clark (West Scotland) (Lab): I can now—sorry, convener. My screen said that the host was not allowing me to unmute myself. Apologies for that.

Graham O'Neill spoke powerfully about the need to strengthen the powers of the commissioner, and Louise Hill spoke about the implementation gap. That is a powerful criticism not just of the Scottish Government and the justice system but of Parliament itself in its scrutiny role.

I am interested in why we would believe that another voice of criticism, perhaps focusing on some of the failures of the system, is unlikely to be effective unless it has the power to intervene in cases. The panel may all have a view on that. Graham O'Neill has already said that that power should be there. Is that the view of everyone on the panel?

The Convener: Dr Hill, do you want to start? We will then bring in Bill Scott.

Dr Hill: Thank you for the question. I am not a legal expert—I am just trying to make sense of the range of evidence that has already been provided to the committee regarding potential complications arising from the individual investigative powers that could be put in place. A very basic perspective is that it seems that there is a strong view among the panels that have provided evidence so far that the commissioner would have a role in that respect. I think that it would need to be thought through carefully, but, if that would make a difference, we would be supportive of it.

Bill Scott: We would as well. We would support the commissioner, in exceptional cases, having that investigatory power.

12:15

Katy Clark: That is helpful. Do all members of the panel agree that the commissioner having not only an investigatory ability but the ability to directly intervene in cases is necessary for the role to be effective? Is that a fair reflection of what you are saying?

Graham O'Neill: I think that the issue would need to be handled really carefully, given that we are talking about criminal matters and people's liberty is at stake. In Scotland, we have the principle of the independence of the Lord Advocate. In our view, if we were to give the commissioner such a power, that would be a bigger deal and it would need to be worked through quite carefully.

I gave the example that I gave to make the point that we think that there is a big problem there. We have done a lot of inside track work, to use the jargon. We are not just saying this today; we have spoken to the Crown Office and Police Scotland about the issue for three years, and that work tells us that there is a regulatory gap. The victims and witnesses commissioner could fill that gap. To answer Katy Clark's question, for the commissioner to fill that gap, they would need to have teeth and a way to make things happen through enforcement. At the moment, I do not think that the bill makes adequate provision for that.

The commissioner having the ability to make things happen might or might not involve their having the ability to intervene in individual cases, but I think that there are wider things that it would, I hope, be in the gift of the Parliament and the Scottish Government to do around strengthening the investigative powers in relation to the criminal justice system and how it treats victims and witnesses.

Katy Clark: An example that was used by Louise Hill was the fact that children are not being allowed to give evidence remotely or virtually. Should there be a legal mechanism to allow the commissioner to be involved in such a case, so that there could be intervention? Would that kind of area need to be explored to make the commissioner's role effective?

Dr Hill: Potentially—

Katy Clark: I do not expect you to give a legal answer.

Dr Hill: I am sorry—I am just thinking about how that would work. Some of our work in supporting children in live criminal proceedings is already extremely complicated. The ethos that underpins our whole approach to supporting children through the justice system is that they should not have to retell their story and involve lots of different professionals in their lives unnecessarily. That is a key principle. I am thinking about various potential unintended consequences of bringing in another body. We would have to be incredibly careful about involving another person in live cases. If I am honest, part of me thinks, "Gosh, it's complicated enough."

Katy Clark: I am grateful for those answers. Thank you.

Dr Hill: That is okay.

The Convener: I am watching the time. We must move on to look at parts 2 and 3 of the bill. I invite members to ask questions on part 2, which is on embedding trauma-informed practice.

Fulton MacGregor: Good afternoon. I want to ask about trauma-informed practice. I think that all of you were in the room for our discussions with the previous panel, so you will have heard what was said. What difference do you expect or hope that the provisions in part 2 of the bill will make in practice?

I would also like to hear your answers to a question that I asked the previous panel. Like the organisations represented on the previous panel, your organisations all already use trauma-informed practice with victims and other people you work with. If part of the intention of the bill is to create a cultural shift, how can that be spread across the whole justice system? What role can the bill play in delivering that?

I ask Dr Hill to start.

Dr Hill: My opening statement would be that our whole system is not trauma informed and does not work for children. Our perspective is that the current system is highly traumatising for children, and we know that from years of experience of working alongside children directly on trauma. It should be deeply worrying—I know that it is to the committee—that, as some have said, the experience of court itself is more traumatic for children than the experience of abuse and harm. That, in itself, is a worrying view to put out.

Reflecting on that, I suppose that we would say that there is a clear solution: we do not want any child in Scotland, as a victim or witness, to go to court. We think that we have a pathway and a route in that respect from the words of Lord Carloway and from Lady Dorrian's work on the evidence and procedure review. We have also had legal opinion from an eminent King's counsel on the possibility of taking the barnahus approach.

We feel that there is, in some respects, a very simple way of taking out the trauma in our justice system for child victims and witnesses, and our suggestion is that we stop making children go to court. That is a basic point for us. I could talk about what it might mean for us to run trauma-informed training for judges and sheriffs—I am fully supportive of that—but my very strong preference, and the preference of my colleagues across Children 1st, is for the much easier route of stopping making children go to court.

Our deep worry, I suppose, is that, despite the fact that, since 2013, there have been statements saying that we should not be doing it and cross-political support for that, and despite the fact that we know, certainly from a research perspective, how retraumatising the experience of going to court is for children, we continue to be in a position where it is happening—and happening daily for the children.

Fulton MacGregor: So, where is the stumbling block in the system? You are absolutely right to say that there is complete cross-party support for children not being in court as an ordinary occurrence. I sat on the previous session's Justice Committee—as did Rona Mackay—when it dealt with the vulnerable witnesses legislation that you mentioned, as well as a number of other such bills. Where is the stumbling block in the justice system that means that kids are still getting taken to court, and how can the bill help to address the situation?

Dr Hill: Mr MacGregor, I heard you talk earlier about culture change, and what we face, I suppose, is huge resistance to changing a very traditional, adversarial system. Despite what the research evidence tells us and despite the international learning that we have, we continue to

have an on-the-ground challenge—almost a wish—with regard to seeing children in court. We have lots of examples of children still being cross-examined in a court setting, even though we said that that would not happen any more. In fact, we regularly get awful examples of that happening.

We also have examples of children going not to court but to a vulnerable witness suite where the experience is still very traumatic for them. For example, one of the girls involved in our changemakers and our sharing stories for change work told us that her mum had to give evidence on the same day as she did. As a result, her mum—her comfort blanket, you might say, or her rock throughout all that had happened to her—had to go. We, at Children 1st, were supporting her, but we were going along to a vulnerable witness suite. When the girl talked about what that experience was like, it sounded better, perhaps, than going to court, but it is still in no way a trauma-informed response to children.

What can the bill do? As it is currently framed, part 2 still tinkers at the edges for us. It kind of says, "Let's make sure we have trauma-informed practice." Obviously, we are huge advocates of and support such approaches, but we do not want the bill just to make people in the traditional court system a little nicer and a little bit more understanding of child development while they still put children and families through something that we know is a source of trauma in itself.

Bill Scott: I read some of the written evidence that the committee has received. The Faculty of Advocates says that it

"remains of the view that legal professionals within the justice system already possess the necessary skills and experience required to recognise and adapt practices for the benefit of persons who may have experienced trauma."

I beg to differ. In 2020, on behalf of the EHRC, Professor Sharon Cowan carried out research that looked at the use of section 275 applications in rape cases. She said that there is very little data available. The last available data was produced by the then Cabinet Secretary for Justice, back in 2016, and it showed that 90 per cent of section 275 applications went through unopposed by the Crown. That was almost exactly the same statistic as in 2003, which is the last occasion before 2016 that those statistics were revealed to the public. They are not routinely collected, so we do not know what the current situation is.

That is where a victims commissioner could step in. I go back to my point about why that provision would be of particular importance to disabled women, who are twice as likely to be subjected to sexual abuse and rape. Victims are not being protected by the system. Prosecutors do not routinely object to the defence exposing the sexual history of women in court, despite the fact that the law says that that should be the exception rather than the rule. Instead, it is the rule, because 90 per cent of section 275 applications go through unopposed. Therefore, we need somebody to say to the Faculty of Advocates, "Look into this mirror and tell us what you see, because you need this training. You need to adopt trauma-informed practice, because you are not doing it at the moment. You are subjecting the victims of crime to additional trauma and putting them on trial when they are the victims."

Fulton MacGregor: Bill, it sounds as though you are saying that we need part 1 of the bill, which contains the provisions on a victims commissioner, to enforce part 2 of the bill on trauma-informed practice.

Bill Scott: That is where the accompanying regulatory functions would come in. We would like to see a victims commissioner with teeth.

Fulton MacGregor: I am conscious of the time. Dr Hill, I know that you want to come back in, but I will leave that decision to the convener. However, I want to ask whether Graham O'Neill can come in on that question from a refugee perspective.

Graham O'Neill: I concur with what Louise Hill and, in particular, Bill Scott have said. If they were to look in the mirror, the Faculty of Advocates and others would see people like me: white, with a middle-class lifestyle, conservative—with quite a small "c"—schooled and trained. That is understandable with regard to quite conventional legal procedure and ways of doing things. The setting—court—is also inherently adversarial.

On the second part of your question, Fulton, if one is trying to make cultural change in the criminal justice system, a structural change is needed. I do not yet see a structural change in this legislation. It needs to be about serious investment that supports everybody—victims, witnesses and the staff who work in the system—to deal with the trauma that they are experiencing and hearing about. There is a lack of holistic investment.

As I said in my opening remarks, refugees are a highly traumatised population with significant additional vulnerabilities around, in this context, language support needs. Putting those people into an adversarial situation is inherently traumatising. It will also be bamboozling for people, and we imagine that they would experience significant access-to-justice issues. As a result of some of the examples that we have seen over the years in our services, we are not confident that criminal defence lawyers in Scotland do adequate representation work for people from a refugee background in relation to their rights in criminal justice settings.

The Convener: John Swinney and Rona Mackay have follow-up questions. Please be succinct.

John Swinney: I want to follow up on the exchange between Mr Scott and Fulton MacGregor. I think that Mr Scott was making the point that, with regard to those who should carry the obligation to be trauma informed, the bill needs to have a wider scope. I put to Mr Scott the question that I put to the previous panel, as to whether the list of persons to which those obligations should apply needs to be expanded. Again, for the record, the 2014 act lists:

"the Lord Advocate ... the Scottish Ministers ... the chief constable ... the Scottish Court Service"

and

"the Parole Board".

If he believes that that list should be expanded, does he have anyone else in mind?

12:30

Bill Scott: Some of the other agencies that were mentioned earlier, such as social work and housing, definitely need to be trauma informed. As I said, there is sometimes quite a lot of support for accused people in the system, but for victims and witnesses, there is not as much, certainly in terms of social work support.

I am thinking of vulnerable witnesses such as learning disabled people. Many of them are known to local authorities, but they are not automatically deemed to be vulnerable in a court setting, so they still have to make an application. If they are known to local authorities, why are they not automatically deemed vulnerable?

In civil cases too—I know that we are not going to get on to that—there are grounds for treating as automatically vulnerable some witnesses who are not currently treated as such.

John Swinney: What about the legal profession?

Bill Scott: The legal profession should be able to do that.

As I said, there is a difference between independence and accountability, and the legal profession should recognise that.

The Convener: I bring in Rona Mackay.

Rona Mackay: I have a brief question for Graham O'Neill. Just for clarity, I will ask you a question that I should probably know the answer to. Do refugees currently have the right to language support and interpreters when they go to court?

Graham O'Neill: Yes, they do, in criminal justice settings. The deeper issue to emphasise here is that there is a lack of interpreters. One thing that is definitely in the gift of the Scottish ministers is to introduce regulations to ensure that there are serious standards across the board for the training and regulation of interpreters, and through that, to address the capacity and the number of interpreters. There is a huge interpreter gap.

Rona Mackay: Is that the case on the civil side?

Graham O'Neill: For the record, I confess that I am not certain of that, but I can certainly get that information to the committee afterwards.

The Convener: It is the back of half 12, so we will move on to part 3, which covers special measures in civil cases. I interrupted Pauline McNeill in her questioning earlier. Would you like to come back in, Pauline?

Pauline McNeill: Thank you, convener. Dr Louise Hill said that a lot of the legislation that we had passed here had not been implemented. I was trying to establish what measures are currently being used in court.

Dr Hill: I do not want to use the words "postcode lottery", but we find that there is a real mix, even on the day, with regard to what children experience and which special measures might be in place.

That might be about whether they are a vulnerable witness and go into a vulnerable witness suite, or whether screens are used when they go to court. Separate entrances might be used, or consideration might be given to a safe space for the child and their family. The challenge that we often face is that it is really difficult for children when they are taken to courts and vulnerable witness suite spaces.

Pauline McNeill: Sometimes special measures for a child will have to be applied for. Is that not being done?

Dr Hill: It is being done, but often the decision—

Pauline McNeill: Is it refused, then?

Dr Hill: The decision is not being made, or is not communicated in time. Alternatively, it is done, and that is supposed to happen, but often we turn up on the day and no screen has been put in place. It is funny that something that is so fundamental is often, in our experience, not being provided.

I am not saying that that happens all the time—we have some good examples as well, but in many circumstances, it happen only through having our own project workers there alongside the family, who can say, "This needs to be in place." We have to be—

Pauline McNeill: Just to be clear, you have had cases in which special measures have been applied for but not implemented by the court.

Dr Hill: Yes.

The Convener: Since no one else wants to come in on special measures, I will open the questioning more generally, to get the views of Graham O'Neill and Bill Scott on the provisions. Does part 3 of the bill sufficiently strengthen the protections that are available to vulnerable witnesses in the civil court space?

Graham O'Neill: I will be honest and straightforward: we will write to the committee with our more considered views on the bill.

Bill Scott: I echo some of the concerns that Victim Support Scotland and Rape Crisis Scotland have raised. A conviction should not be needed in order for special measures to be adopted. If those can be adopted in the criminal court before anybody has been convicted, I do not see the need for a conviction to be in place in the civil court.

As I argued earlier, there are other types of vulnerable witness. In other words, we would not dispute the right of women who have suffered domestic or sexual abuse or rape to be afforded automatic protection and to be treated as vulnerable witnesses, but other people in the system, including children and other vulnerable adults, should probably also get that protection in the civil court system.

Dr Hill: I agree with the concerns of the previous panel and about the bar for access being far too high. In children's justice journey, there is not such a separation between what is criminal and what is civil; it is about how their whole journey is experienced. It is very confusing for children and families to go to different spaces and different buildings. Some of those have things in place for them, some provide things at the last minute—on the day—and some have nothing at all. Obviously, we support those families and are alongside them, but just put yourselves in the shoes of those children: things are incredibly difficult for them. Given the huge safety concerns that we often have, the idea of not having special measures in civil cases is highly questionable.

The Convener: Thank you for that. Russell Findlay, do you want to come in with a final question?

Russell Findlay: Yes, I will come in very quickly on the trauma-informed issue.

The written evidence from Children 1st talks about the limited number of agencies that will have to

"have regard to ... trauma-informed practice".

The bill does not include in that the judiciary and the children's hearings system, which is going to be expanded. Not only do you want that provision to be expanded to include them, but you want to change the wording "have regard", in order to tighten or strengthen it in some way. Is that an easy fix for the legislation?

Dr Hill: Changing the wording to "have due regard" would be our preference, as that would make it more powerful.

Russell Findlay: Do you want the provision to encompass those two other things that you have identified?

Dr Hill: Definitely. That goes back to the original point about how we have different pieces of moving legislation and how we have to be cognisant of the involvement of different parts of the system that children will come up against—in particular, the children's hearings system, which is fundamental.

Russell Findlay: Yes, one would have thought so. Thank you.

Dr Hill: No problem.

The Convener: I bring the session to a close. I thank our panel for their contributions this morning. That completes this agenda item, and I suspend the meeting very briefly, to allow our witnesses to leave.

12:38

Meeting suspended.

12:39

On resuming—

Subordinate Legislation

Police Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/239)

Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242)

The Convener: Our next agenda item is consideration of two negative instruments. I refer members to paper 4.

Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force. Those instruments breached that requirement as they were laid on 30 August and came into force on 1 October 2023. The Scottish Public Pensions Agency has explained the reasons for the breach in a letter to the Presiding Officer, which is among the committee's papers. Those explanations seem reasonable to me.

No members have any questions. Are we content with both instruments?

Members *indicated agreement.*

The Convener: That concludes our business in public.

The committee's next meeting will be on 25 October, when we will continue with evidence taking on the Victims, Witnesses, and Justice Reform (Scotland) Bill. We will hear from organisations representing the legal profession and a former Victims' Commissioner for England and Wales. The session will again focus on parts 1 to 3 of the bill, and we will come back to the views of the legal profession and others on parts 4 to 6 later in the year.

12:41

Meeting continued in private until 13:01.

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