



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 1 November 2023

Session 6



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CRIMINAL JUSTICE COMMITTEE

27th 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:

Sue Brookes (Scottish Prison Service)

Dr Caroline Bruce (NHS Education for Scotland)

Laura Buchan (Crown Office and Procurator Fiscal Service)

Bill Fitzpatrick (Community Justice Scotland)

David Fraser (Scottish Courts and Tribunals Service)

Chief Superintendent Derek Frew (Police Scotland)

Professor Thanos Karatzias (Rivers Centre for Traumatic Stress)

Karyn McCluskey (Community Justice Scotland)

Chris McCully (Community Justice Scotland)

John Watt (Parole Board for Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 1 November 2023

[The Convener opened the meeting at 09:30]

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

The Convener (Audrey Nicoll): Good morning, and welcome to the 27th meeting in 2023 of the Criminal Justice Committee. We have received no apologies this morning. Pauline McNeill is running a little late and will join us soon.

Our first item of business today is the continuation of evidence taking on the Victims, Witnesses, and Justice Reform (Scotland) Bill. As a reminder, we are still at phase 1 of our scrutiny of the bill. Today's evidence will focus on part 2 of the bill, which is on embedding trauma-informed practice in the justice system.

We are joined by two witnesses with expertise in the area of trauma-informed practice. I welcome Dr Caroline Bruce, the head of the programme for transforming psychological trauma at NHS Education for Scotland, and Professor Thanos Karatzias, who is a professor of mental health at Edinburgh Napier University and a clinical and health psychologist at the Rivers centre for traumatic stress. Welcome to you both.

I refer members to papers 1 and 2. I intend to allow up to 45 minutes for this session. Before we get under way, I will as usual ask members to be succinct in their questions and panel members to be succinct in their responses.

I will begin with a very general open question. I will come to Caroline Bruce first, then Thanos Karatzias. What do we understand by trauma-informed practice and why is it important in the justice sector?

Dr Caroline Bruce (NHS Education for Scotland): As an education and training organisation, NHS Education for Scotland has been a key partner in the national trauma training programme. As part of that, we have been working with a number of different partners in the implementation of trauma-informed practice. We have done a lot of work looking at international evidence and literature about what we actually mean by trauma-informed practice. It is a very good question because the term can be bandied around quite a lot. The national trauma training programme offers the same definition as the one that is used around the world. It is about recognising the prevalence of trauma, realising its

impact and the different ways that it impacts on people, responding in ways that support recovery and adapt so that people can do their jobs better, and resisting retraumatisation.

The final two can take a little bit more definition. Resisting retraumatisation can be interpreted in some places as meaning being a bit nicer or reducing distress, whereas I think that it is specifically about the ways in which processes, practices and elements of any kind of process can mirror traumatic events. We know that trauma most often happens in relationships that lack choice and control, that are disempowering, that are unsafe and which breach trust. Trauma-informed principles in resisting retraumatisation are about embedding those things, but on top of that we also have the third R, which is responding in ways that support recovery and, in a justice setting, that help people to do the job better. Doing the job better is about supporting witnesses to participate effectively in the process. That is a relatively brief definition.

On why we need trauma-informed practice, coming from the national trauma training programme, and the broader overarching—I was about to say “mothership”—principles that we use there, we know that trauma affects people in many and varied ways that can affect how they access basic life chances such education or dentistry. Trauma can create barriers to accessing anything that you can imagine and lead to the avoidance of systems and services because of the potential for retraumatisation. We need trauma-informed systems to make sure that trauma does not create a barrier to people accessing those universal life chances.

In a justice setting, it partly means making sure that we adapt principles and practices so that people who have been affected by trauma can access and participate effectively in the processes that are involved in the prosecution of offences that might have been committed against them. We also take trauma-informed approaches for the accused, who often have their own experiences of trauma, so that they can also participate effectively.

The Convener: Thank you very much. I will bring in Thanos Karatzias and then ask a couple of supplementary questions.

Professor Thanos Karatzias (Rivers Centre for Traumatic Stress): Thank you very much. I agree with everything that has been said already. Trauma-informed practice describes a set of principles, including safety, choice, collaboration, trustworthiness and empowerment. It was introduced in the literature more than 20 years ago and is a framework that is applied effectively and does everything that Caroline Bruce has said already. Most importantly, understanding the

impact of trauma on people's behaviour allows us to understand when they are behaving in certain ways in a certain context, such as in court or in prison. That is why it is incredibly important. Everything else has been covered by Caroline Bruce.

The Convener: That is a helpful overview. One of the things that I think we grapple with is how, in any legislature, there are different sub-sectors within the justice system—courts, police, prisons. If we are looking at improving trauma-informed or trauma-responsive practice, how important is it that that happens across the whole system rather than just in individual organisations?

Professor Karatzias: That is an excellent question. That is what I had in mind when I was preparing for this meeting. The current criminal justice system comprises different components—the prisons, police and so on—and all those different organisations may have a different remit.

The principles of trauma-informed care are quite general, which can be a positive thing as well as a negative thing. It is a positive thing from the point of view that it can be interpreted in different ways, depending on the needs of individual organisations. For example, for courts or the police, certain principles such as safety, choice or collaboration may be more important, whereas in the prison service the principle of recovery and more focus on recovery, for example, might be more important. We need to look at those principles and how they apply separately in all the different parts of the criminal justice system. Sometimes the interpretation might be slightly different.

The Convener: Caroline Bruce, do you want to come in on that?

Dr Bruce: To answer your question from a victim and witness perspective, when NES was researching the knowledge and skills framework, we interviewed 12 victims and witnesses and looked at a wide range of the literature. They told us clearly that predictability is very important. There was a lovely quote from somebody, who said:

"Sometimes I don't know whether it's a policeman or a member of the Crown Office or another organisation in front of me. I just know what they're doing with me and what they're asking of me."

It is key that everybody sings from the same hymn sheet and understands the same things, that there is a sense of predictability, and that this person at this part of the process can tell a witness what will happen at that part of the process because they know from working together and having a joint understanding of what a trauma-informed system looks like with all of the other justice organisations.

There is another point to make. One part of this framework talks about leadership and leadership of systems. There are many things that cannot be resolved without multiple different organisations working together to resolve them. It is not about individual practices; it is about the system as a whole. That is another reason for thinking about it not individually but as a system, as Thanos Karatzias says, and individualising it where it needs to be done, where there are different things going on.

In the framework we have resolved that by asking what everybody needs to know in scaled levels, and then asking at the enhanced level, "What do people who are providing advocacy and support need to know and do? What do people who are collecting evidence need to know and do separate from that? What do people who are in courts overseeing the evidence presentation need to know and do? What do leaders of systems need to know and do?" There are similarities. There are the generic things that everybody needs to know and do, and then there are specific things that those in different settings need to know.

The Convener: You mentioned the framework and I am sure that members will have some questions about that. I will open the meeting up to members now, if anybody would like to come in.

John Swinney (Perthshire North) (SNP): I am interested in Dr Bruce's comment about everybody in all the different elements of the system needing to know what to do. That feels to me easier said than done. I am wholly supportive of the focus on trauma-informed practice, but I am not naive about the scale of the challenge in turning that into a practical experience that individuals will face. Can our witnesses help us with how we might see good practice turned into effects? It is all very well for Parliament to legislate for this, but it then has to happen in practical reality if it is to have any particular effect. Can our witnesses help us on that point?

Dr Bruce: That is a helpful question and I could give many different answers to it. I absolutely agree that we need to be clear about what good looks like and how we know when we are there. As an education and training provider, NES's approach is that it is not good enough to say that we have delivered training; that is an output, not an outcome. We need to look at the impact we are trying to achieve and whether we are achieving it. That necessarily involves feedback loops back from victims and witnesses.

In the leadership section, we talk about feedback loops being a very intrinsic part of the framework: what are our victims and witnesses saying about their experience, not in a tokenistic way but when they are routinely and regularly

given the choice to give feedback on their experience?

The other end of that picture is training in and of itself. As an education and training provider, this is an odd thing for me to say, but training in and of itself is nearly useless at bringing about systemic change in practice. We need training and then we need support for implementation. We need to be able to support people, or, in other words, to be able to take what they have been training in and implement and demonstrate it in practice, then give them feedback on it. It is not as simple as delivering training. I hope, with 210 pages, that we have given some detail about what it could and should look like and a bit of a road map to get there.

Professor Karatzias: I agree 100 per cent. Training is quite important in general but not just for those who are working on the ground. We need to think of training at all different levels of the organisation, from the people who are working directly with survivors or victims up to the leadership. If the leadership understands the importance of that, it can cascade all the way down, taking a bottom-up approach.

John Swinney: Do I understand correctly from that point that the organisation's culture is fundamental?

Professor Karatzias: It is, 100 per cent. The cultural changes are incredibly important. It is not just about someone who is doing work on the ground understanding the importance of that and trying to implement the principles of trauma-informed practice. The overall culture—the organisation aspiring to become a trauma-informed organisation—is incredibly important for everybody who is involved in the process and who delivers action for those principles.

John Swinney: Dr Bruce said earlier that we have to be clear about what good looks like. Does "good" exist anywhere today?

Dr Bruce: That is a very difficult question for an education and training provider and it is probably not my job to respond to it. If you look through the research for the knowledge and skills framework, you will see quotes from many victims and witnesses saying what "good" looked like for them and that they received it. You will also see many saying what "good" did not look like and the impact that had, but there is certainly evidence of pockets of good practice.

Professor Karatzias: A narrative review of 17 studies was published in Ireland in 2021. I am happy to send you the reference if it would be helpful. The quality of the evidence is not that great and unfortunately there is very little from the United Kingdom. Most of the studies are international and they come from the US. The

other important caveat is that most of the work was conducted with women and young people, whereas work on men has been neglected so far. Nevertheless, I think that this review is quite important.

It made two important findings that I want to mention for the purposes of this meeting. It found that recognising trauma in the criminal justice system can prevent retraumatisation, and that gender-responsive programmes can also prevent reoffending.

09:45

Going back to John Swinney's question, there is some evidence. We are just starting to know what good looks like. There is not much evidence, but there is some evidence to suggest that trauma-informed practice can deliver in the criminal justice system. Trauma-informed care can be a positive thing overall.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, panellists. Dr Bruce, I want to come back to something that you said that I totally agree with. You talked about trauma-informed practice being important for those who are accused of offences or later convicted of offences. I have been following up on this in previous sessions, but of course this bill is about victims and witnesses. Do you feel or observe that there is already a difference in how trauma-informed practice is implemented within the criminal justice system between those who are accused and convicted—quite rightly so—and the victims and witnesses? Do you feel that this bill is perhaps trying to level up that playing field, for want of a better expression?

Dr Bruce: That is a very difficult question for an education and training provider to answer. The role of NES is to provide education and training to the organisations that have invited us thus far, so it is very hard to comment on that, other than—

Fulton MacGregor: I apologise. The minute you started to answer that I realised it was probably an unfair question. I will reframe it. Do the organisations that get you in to do training tend to focus on those who have been convicted or victims and witnesses? What sort of practitioners do you tend to get?

Dr Bruce: I can answer that, but it will not necessarily clarify what I think you are looking for. We have been commissioned specifically to do work with victims and witnesses. No implication comes with that; it just happens to be what NES is doing a particular piece of work on. I am aware that there are colleagues elsewhere in criminal justice and social work who are doing lots of very good training on working with offenders. It is very hard to answer that because our shop window is

victims and witnesses, by nature of the framework of which we are the authors. It is too hard for me to answer that—apologies.

Fulton MacGregor: That is no problem. Professor Karatzias, do you want to come in on that?

Professor Karatzias: We have certainly seen that things have moved on significantly in the last few years and people are becoming more aware of trauma-informed practice in care across different organisations in Scotland, but I do not know to what level that has been evaluated as yet.

Fulton MacGregor: Do either of you believe that there are any points or places within the justice system where there is conflict between trauma-informed practice and desired goals or outcomes, such as efficient running of court business, ensuring the defence can effectively challenge the prosecution and those sorts of things? Does trauma-informed practice need to be more integrated and embedded? I will bring in Professor Karatzias first.

Professor Karatzias: It is a challenge. I do not think that there is a conflict, but I can see that it can be a challenge to apply the principles of trauma-informed care in certain aspects of the system. For example, I am a clinical psychologist and I am working clinically with people who have experienced trauma, and it is quite common for us to see people who have experienced trauma and find it incredibly hard to narrate or tell the stories of what happened to them, which might be required in certain aspects of the system. People find that incredibly difficult.

That can be misinterpreted as that they might be lying, not telling the truth or trying to hide things. That can be an issue, but understanding that can perhaps allow for more appropriate content and tone of questioning, so that you could get the information that you need from people.

Fulton MacGregor: Dr Bruce, do you want to come in on that?

Dr Bruce: I absolutely do. There are many things that I could say about that, but with reference to the framework—this backs up what Thanos Karatzias has just said—we had witnesses absolutely telling us that. One of them said:

“Your mind gets muddled, and you can’t always give a black and white answer and that’s why it’s difficult when you give a statement for something like”

that sort of offence

“coming out of abuse, I mean, I must have got attacked well over a hundred times, I think 5 of which he got charged with. But they do blend into one ... they need to really give you time and space and not be forceful to get this done quick.”

The reason why I used that quote is that we might think there is a contrast between, on the one hand, making sure that the right to a fair trial is upheld and, on the other, making sure that a person can give their evidence in such a way that allows them to tell their story. Sometimes those two things conflict, and that was one of the things that we had to resolve within this knowledge and skills framework. I was very clear at the outset that that is why we need a justice-specific framework to bring those two things together.

The other part of your question was on some of the bigger systemic issues. Again, I come back to the leadership section of the framework and the trauma-informed principles about predictability, knowing what will happen and when, a sense of safety and a sense of choice. If leaders know how to be adaptable to help victims and witnesses have that sense of predictability—when they are scheduling court dates, for example—that will help to achieve the end of a wider trauma-informed system.

However, there are balances to be struck. Having a trauma-informed approach does not trump absolutely everything. It does not trump the right to a fair trial—and nor should it. A level of sophistication and nuance is needed when balancing a trauma-informed approach with those other competing demands.

Fulton MacGregor: Thanks for sharing that powerful quote. It is good to have that on the record.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, panel. Dr Bruce, I want to go back to something that you said about the whole system and all the agencies working together generically but also working individually. Can that work? How far away are we from that happening? Is that a long-term aspiration?

Dr Bruce: I cannot answer your second question from the justice system perspective, because I am an education and training provider. I can answer it from the perspective of the national trauma training programme. Part of my job is working with victims and witnesses and part of it is operationally leading the national trauma training programme, where we are doing exactly what you asked about. We are thinking about leadership systemically and we have a number of education and training resources, one of which is about to be published—I am just trying to work out what the date is; it will get published in the next few days—which is about exactly that. I am an author of both that and the framework, and I have aligned them together. The leadership table is very much about culture, leadership and organisational wellbeing. If you bring those three things together, the next thing is about education and training, feedback loops, participation and power sharing with people

with lived experience, and processes and systems.

That kind of work is possible and I have seen it happen, but it takes top-down leadership as well as bottom-up leadership. Through the national trauma training programme, we found three key things that have to be in place to a certain degree before everything else follows: the culture of the organisation, the leadership buy-in and the basic wellbeing of its workforce. Those three are critical before we start trying to make changes elsewhere.

Rona Mackay: That is interesting. In your submission you say that the definition in the bill of trauma-informed practice should be amended to include supporting recovery and minimising barriers to effective participation. Could you explain what “minimising barriers” means?

Dr Bruce: I am hoping that we said “aligned with”, not “amended”, but if we did, I apologise, because it is not for us to say how that might come about. Can you repeat the last part of your question?

Rona Mackay: What do you mean by “minimising barriers” to effective participation?

Dr Bruce: It comes back to something that Thanos Karatzias said earlier. For example, there are multiple ways in which trauma can affect effective participation. One small but significant one is that trauma affects people’s memory for traumatic events and their ability to tell people about them. If we interview them in certain ways, we will get more evidence; if we interview them in other ways, we will get less evidence. That is a very crude, simple, black and white example, and there are multiple other ones. I think that resisting retraumatisation will get us halfway there, but you can do an interview or a process in a very warm, empathic and non-retraumatising way but still not ask questions in a way that gets the best evidence that you possibly could.

There is another part to that, which I think that Thanos referred to and we referred to in the framework: the ways in which different people respond to traumatic events behaviourally and in terms of emotion regulation and their sense of self. Those are all kind of high-falutin’ psychological terms that we tend to use, but that means that people can come across as less credible unless our system understands the ways that trauma is impacting on them. We have written that into the framework as well.

Everybody will respond to traumatic events in different ways; some people will not be affected at all and some people will be very strongly affected. That complexity is what makes for the subtle nuances. It is not a one-size-fits-all situation.

Professor Karatzias: This is an incredibly important point about what trauma is. When we say “trauma”, we expect to see certain things, for example conditions such as post-traumatic stress disorder or complex PTSD, but trauma goes beyond all those mental health conditions. In fact, from a mental health perspective, depression is the most common condition associated with psychological trauma. We should move away from the traditional notion of how someone will display their distress if they are traumatised. We need to start appreciating that traumatic responses are quite idiosyncratic. There is plenty in the framework to explain that.

Rona Mackay also asked about recovery in her question to Caroline Bruce. Recovery from trauma is incredibly important but is not formally one of the key principles of trauma-informed care—it is an additional one. I was very pleased to see that NES has mentioned that in the framework. I appreciate that the framework cannot apply to all the different parts of the system. However, in certain parts, such as the Scottish Prison Service, it provides an opportunity for people to receive the help that they need in order to move on from their difficulties. I am aware that there are programmes in many of our prisons in Scotland where people receive that help, but perhaps we need to pay more attention to that and formalise it a little more through legislation. It is an opportunity to help people to move on with their lives.

Rona Mackay: Thank you for mentioning legislation, because that is the bit that we are most interested in—how the bill will change things.

The Convener: I want to pick up on that and ask a question. The intention of the bill, as Rona Mackay said, is effectively to make trauma-informed practice a statutory duty. I am interested in your commentary on where legislation has perhaps been used previously as a way of embedding trauma-informed practice. Do you consider that setting out trauma-informed practice as a statutory obligation is important?

Dr Bruce: I feel like I am saying this an awful lot today, but I have to caveat what I am saying: as an education and training provider, it is very hard to comment on that. I am not naive and I suspected that that would probably be a question.

I can comment from an education and training perspective on what leads to effective implementation and what does not. Mandatory training does not necessarily lead to the most effective implementation, so however one uses a tool to make training mandatory, we would not necessarily see that as being the most effective way of making change. I refer back to my earlier comments that where we see effective change, it is because there is training in combination with culture, implementation supports—with regard to

observation, coaching and practice—and feedback loops. All of those things, however they may be brought into play, are critical in bringing about changes in practice. It goes from training, to practice, to systems change.

10:00

The Convener: That is really interesting. Professor Karatzias, do you want to come in?

Professor Karatzias: Yes, absolutely. I am delighted personally that we are talking about trauma-informed care in that context, because I prepared some stats from my work that perhaps I can share with you on how widespread trauma is. Do you want me to give you that information, very quickly?

The Convener: Yes, please.

Professor Karatzias: In some work that we did in 2018, we found that more than 90 per cent of females in prisons in Scotland had experienced trauma in adulthood or in childhood. We also found that multiple traumatisation in childhood and adulthood, which seems to be the norm, is associated with the seriousness of offence. We measured seriousness of offences by the number of years in prison; that was a simple way of measuring the seriousness of an offence. That told us that the more traumatic life events someone has experienced, the more likely they are to commit a very serious offence, which makes trauma-informed care quite important.

We also found, from some recent work in 2022 in a prison in England, that 7.7 per cent of males presented with PTSD and nearly 17 per cent with complex PTSD. Finally, in another piece of work completed in 2019 in Scotland, we found that 80 per cent of forensic in-patients had experienced childhood adversity in multiple forms and presence of childhood adversity in that group was associated with an increased number of convictions.

That possibly answers your question indirectly. It highlights how important it is for trauma-informed care to be embedded across all the different parts of the system.

The Convener: That is really helpful and an interesting overview.

Katy Clark (West Scotland) (Lab): My question is probably for Dr Bruce. Trauma-informed care is obviously an issue across the justice system, but I know that Dr Bruce has said that more of her work is associated with victims and witnesses. You have already said that the way that the prosecution takes evidence from a witness can have a big impact on the quality of the evidence that is given. Could you expand on that? What implications does that have for cross-

examination by the defence? Witness preparation is not a major feature of our justice system. From the work that you have done with people who work with victims and witnesses, do you have any comments on issues that arise?

Dr Bruce: That is a great question. I will probably base my answer on the knowledge and skills framework, because it delineates what would be the key elements of that work, if we were to be doing it—which, in some places, we are. The framework is based on interviews with victims and witnesses, 16 justice leaders and a huge amount of international literature review. We found that there was some consistency around the way in which people are able to talk about and give a narrative around dramatic events—as clinicians, we know that. For example, asking someone, “Where would you like to begin?” instead of “Can you start at the beginning and take me all the way through?” is likely to get more information because of the effect of trauma on memory. It can scramble the narrative, leaving clear details around some parts and vague details around others. Further, the order of events in the narrative can change over time, as the memory is processed. All of those things mean that there are definitely evidence-based guidelines around how to get best evidence.

We have seen that approach implemented in, for example, the new Scottish child interview model for bairn’s hoose, which involves interviewing children in a joint investigative interview. I have been involved in delivery of that training and have seen some of the outcomes of the research from that, which intimate that understanding the way that trauma affects children has changed. Interviewers tell us it has changed the way that they interview children and they can help children stay within what they call the window of tolerance, which enables them to give better evidence, as well as do it in such a way that takes the evidence from a child in the way that they wish to give it. There is a lot in the framework about that. There is an entire section on taking evidence, and it applies to police as equally as it does to prosecutors. What was the second part of your question?

Katy Clark: I am interested in the issue of cross-examination, and not just the Crown taking evidence from a witness. It is a major issue for the complainers and for witnesses. What issues arise from your work in relation to how the courts deal with that?

Dr Bruce: The trauma-informed approach is one small part of that. There is an awful lot of legislation and common law out there covering what good practice looks like. I think that, assuming that we are meeting that good practice with regard to resisting retraumatisation and

getting evidence in a trauma-informed way, the same principles apply whether you are cross-examining or examining in chief: you understand the way that trauma can impact on someone's memory and responses after a traumatic event and you ask questions in a way that is likely to get better and more coherent evidence. I was talking earlier about the balance between the right to a fair trial and trauma-informed practice. This is where the subtle nuance comes into play.

Katy Clark: Is an adversarial system able to deliver on some of the principles that you are setting out?

Dr Bruce: As an education and training provider, that is hugely difficult for me to answer, not having had huge amounts of experience observing cross-examination. I am very much a scientist-practitioner, and I do not like to comment on anything that I do not have significant experience of. I do not think that that is one that I can answer explicitly.

Professor Karatzias: Can I go into that?

Katy Clark: Yes, please.

Professor Karatzias: Perhaps the ability to give accurate evidence would be strongly determined by the level of recovery that someone is in. For example, some people who have experienced a number of things in their lives and have had treatment in the past are accustomed to talking about what happened to them, and they would be in a good position to give evidence; it would not be very problematic for them. However, there are others who did not have any help and have not had a chance to process what happened to them. I think that, if that group of people found themselves in that adversarial setting that you just described, they would react quite negatively and the quality of evidence that they give would clearly be compromised because of that.

Katy Clark: You are saying that it is not just what happens in court, but what has happened all the way leading up to that.

Professor Karatzias: Exactly—and whether people have had the chance to recover and have had any help for what happened to them. Again, there is a great deal of variation there: there are people who have had some help and support and others who have undergone events quite recently and have not yet had the chance to seek any help. In general, as a rule of thumb, if you had some help in the past and have had a chance to process what happened to you, you are more likely to be able to give accurate evidence, although, as we said earlier, one size does not fit all.

Dr Bruce: Katy Clark raises a good point. One of the key trauma-informed principles is predictability. The framework says that, if we have

an adversarial system, someone needs to know what will happen and how it will happen. One of the witnesses told us, "The clerk sat down with me and he said, 'I'll be sitting there. You won't see my face, you'll see the back of my head, but if you get distressed, just look at my head. That'll be me there. A person will be there, that person will be there. We'll go to that person, then we'll go to that person.'" That meant that she knew what was going to happen and was absolutely prepared for it. That contrasts with a situation where someone just does not know what is going on in the room, on top of everything else. Predictability is really key.

Sharon Dowey (South Scotland) (Con): Dr Bruce, in your submission, you suggest that the definition of trauma-informed practice in the bill should be more fully aligned with the agreed consensus definition that is contained in the framework. Do you think that there are risks if we do not get the definition of "trauma-informed" right in the bill?

Dr Bruce: We put a lot of work into thinking about the definition in the knowledge and skills framework. It is incredibly helpful that retraumatisation is part of the definition, and that takes us part of the way. If we were not going to implement some of the framework, particularly the bits around supporting recovery or not getting in the way of recovery and supporting effective participation, there is a risk that people would drop out of the system earlier and that we would affect people's recovery negatively in ways that are not necessary. The reason why certain things are written into the framework is partly that they are what victims and witnesses told us they needed and wanted, as well as what the wider evidence base suggested were the integral parts of a trauma-informed justice system.

However, we must bear in mind that the framework is groundbreaking, and there are advantages and disadvantages to that. There is nothing like it anywhere else in the world. Every bit of it is taken from pieces of evidence that exist, so all of it is evidence-based—you will see that from the bibliography—but it is new in terms of the fact that it is an attempt to deliver an entirely trauma-informed justice system for victims and witnesses.

Professor Karatzias: It is quite important to say that there is not just one trauma-informed care or practice model. There are quite a few out there, and they each describe a slightly different set of principles. I was not involved in developing this framework, so I can speak more freely. I think that it is a fantastic and very well thought-through piece of work. It considered the literature and the evidence out there quite widely. In my view, NES got it right.

Sharon Dowey: My concern is that some organisations might just stick to the definition within the bill, which is a problem if it is not a good enough definition. You have also made comments about adapting processes and practices in an ongoing way but, if organisations just stick exactly to what is in the bill, it might stop them continuing that progress.

Dr Bruce: There is a huge amount that the definition in the bill will achieve. Resisting retraumatisation is not a simple thing to do but it is a huge step forward, and there is an awful lot in the framework that talks about that. It applies across a range of different settings. There are additional elements that we would like to see aligned, given that the knowledge and skills framework is here.

Sharon Dowey: What changes have followed in trauma-informed practice since NES published its guidance on it? What changes have you seen?

Dr Bruce: Do you mean this knowledge and skills framework or the previous one, from 2017?

Sharon Dowey: This one.

Dr Bruce: That is a hard question to answer, given that it was only published in May of this year and also because we are not tasked with observing the changes in practice. I can speak to the fact that the training that we have been involved in has been primarily in partnership with the Judicial Institute for Scotland and judges across the Judicial Institute. In fact, the Judicial Institute was working on this issue before the knowledge and skills framework came out because it was keen to be ahead of it. In order to answer your question, I would have to have been sitting in court watching what is happening in practice, so, as an education and training provider, it is hard to answer that question.

Sharon Dowey: You said you are not tasked with monitoring that. Is anyone?

Dr Bruce: It is incredibly early doors for this knowledge and skills framework. Although I would not try to answer that question, in the final section of the framework on leadership, we talk about effective evaluation. That comes back to the point that Mr Swinney made earlier, about how we know when we have got to good and how we know what successful looks like. Each of the organisations should be tasked with asking, "What does 'good' look like?" and "What are our feedback loops telling us about whether we are there?" I do not think that that can sit necessarily with any one setting or organisation. The framework would say that everybody has to be involved in that process.

Sharon Dowey: I have one last question. You mentioned earlier that you interviewed 12 people, and you obviously have a lot of different examples.

Do you think that the bill addresses the issues that were raised by the people you interviewed? There are a lot of practices and procedures. We have heard before that there has been a lot of change in other organisations, and they have managed to do that without legislation. Will the bill address the examples that you have, or could the other organisations do things through changes to their practices?

10:15

Dr Bruce: That is almost impossible for me to answer. Partly, that is linked to something that Thanos Karatzias said earlier. There were many and very different trauma-informed elements that everybody brought up. We wrote the trauma-related bits of the knowledge and skills framework to align with what people told us, but you must bear in mind that, when you are interviewing somebody about trauma-informed practice, they will also tell you about all sorts of other things that are not relevant to trauma-informed practice, and which we did not include in our analyses, so it is almost impossible for me to answer your question. However, avoiding retraumatisation, which is in the bill definition, would absolutely align with what many of the victims and witnesses told us they would like to see.

Pauline McNeill (Glasgow) (Lab): Good morning; I apologise for being late.

This question follows on from Katy Clark's line of questioning. I am trying to apply this to an adversarial court system. What you said about preparation of witnesses and victims makes perfect sense, because we need to have a system that brings out what they have to say. We hear all the time from victims that they did not feel that they had a voice. However, I am interested in applying what you are saying to the court situation, where there are practitioners—the prosecution, the defence and the judge—who should be trauma informed. Is it your expectation that everyone should treat every witness who comes to court in the same way? A prosecutor will not know whether the person had adverse childhood experiences, and some people will not have. Is it your view that a trauma-informed approach should be applied regardless of the circumstances?

Dr Bruce: The universal principle of trauma-informed practice is a universal protective mechanism whereby, whether in justice or elsewhere, you absolutely assume—given the high prevalences that Thanos Karatzias has talked about—that the people in front of you may well have experienced significant amounts of trauma and adversity in their lives, and you go from there.

So, there are the basic principles of trauma-informed practice—choice, control, collaboration,

trust and safety—and you then move up. If you understand the ways in which trauma affects people and you observe different things that tell you that a person may well be affected by trauma, there are additional things that you may put in place. For example, if you are examining or cross-examining, you should think about the ways in which memory might have been affected by trauma. It is a universal principle. That is why I use the word “witness” throughout the framework. We do not use the words “victim” or “complainer”; we use the word “witness”, because many people affected by trauma might be witnesses in court cases as well. That trauma might not be from the offence that the court case that they are in court for relates to; it might be from earlier offences that have been committed against them.

Professor Karatzias: These are principles of good practice across the board, so it would make sense to apply them across all parts of the system and for all witnesses in the courts. I agree 100 per cent with Caroline Bruce.

Pauline McNeill: Anyone who has ever appeared in court as a witness will probably have found it quite a traumatic experience. From what you have described, nothing is black and white, and questions can be confusing. Is there a way of drawing a distinction? To me as a layperson, there are people who have had trauma in their lives, there is the trauma of someone who is the victim in the case—the trauma that that person experienced that has to come out—and there is the court experience, which can itself be traumatic. Would you agree that there are different elements to be considered?

Professor Karatzias: That is an incredibly tricky question to answer. Courts and the whole justice system have been organised in such a way that the purpose is to try to elicit the truth. The questioning, the style and everything else is geared towards that. I think that applying the principles of trauma-informed care will make the practices of the people who do the questioning and the way in which they try to elicit answers more humane. Therefore, I think that it will help.

However, I am not sure that it will completely resolve the issue for many people. For example, many people who go to give evidence eventually will find the experience unpleasant by its very nature, but trauma-informed care will certainly make things better in that respect. It will not resolve the problem entirely, but it will make things better.

Pauline McNeill: This has just crossed my mind and you will probably not be able to answer it, but up until now, a trauma-informed approach has not been embedded in the system. However, juries—in cases in which there is a jury—have to make a determination based on what they see in court. Is

there any evidence at all that you have come across in relation to juries and trauma? You will probably not have spoken to jurors, but do you agree that it is important to establish what the situation is in that regard? Ordinary people in juries watch the proceedings, and I would have thought that they would be able to read a person’s body language. Would people really need to be trained or could they see for themselves? Have you considered the reaction of juries?

Professor Karatzias: Off the top of my head, I am not aware of any such evidence, but I imagine that some of the stories that are described in court, and the way in which evidence is presented, can be difficult or traumatising for people. I am not quite sure about that. There is some preparation in the courts about what might be coming, and that can be helpful.

Dr Bruce: I do not necessarily want to answer a question about juries. We have a table in here that talks about people who make decisions. It has been pointed out to me that, in effect, that includes juries. We did not consider them, for lots of obvious reasons. It is incredibly important that we talk in the framework about the counterintuitive ways in which trauma can impact on victims and witnesses, and how we ensure that, in the courtroom, there is an understanding that means that the impact of trauma is not misinterpreted. That is peppered throughout the framework.

Ultimately, however, the issue boils down to how we create a courtroom that does what it sets out to do, which is to get the evidence in front of the decision makers in the most effective way for them to be able to make the most effective decision. That involves a combination of making sure that we examine and cross-examine, that we have all the good evidence that we need and that we get that evidence in such a way that keeps a witness within what we call their window of tolerance, which means keeping their brain in a place that enables them to actively give evidence in the best possible way. The trauma-informed principles that are written in the framework are designed to do that and with that in mind. They are designed to prevent retraumatisation, keep it a humane process and get the best evidence.

Pauline McNeill: Do you see there being a contradiction? In the court system, there are thousands and thousands of witnesses, so there will be a bit of diversity there. The court system is, as Katy Clark said, adversarial, but the stories of all witnesses have to be tested in court. If they contradict themselves or if, to be controversial, it does not sound as though they are telling the truth, you would have to accept, whether we like the court system or not, that there must be a way of balancing trauma-informed training with—I think you said this yourself—the need to not interfere

with the natural course of justice, to make sure that any contradictions in evidence are also picked up.

Dr Bruce: The framework is really clear about the fact that trauma-informed practice does not and should not interfere with all those fundamental rights.

The Convener: Thank you very much. I will have to draw a line under the session. I thank our witnesses for coming along today.

We will have a short suspension to allow for a changeover of panel members.

10:24

Meeting suspended.

10:29

On resuming—

The Convener: We move on to our second panel, whose members represent the five justice agencies that, under the bill, will be required to have regard to trauma-informed practice. I welcome Laura Buchan, who is procurator fiscal policy and engagement at the Crown Office and Procurator Fiscal Service; Sue Brookes, who is interim director of strategy and stakeholder engagement at the Scottish Prison Service; Chief Superintendent Derek Frew, who is from Police Scotland; John Watt, who is chairperson of the Parole Board for Scotland; and David Fraser, who is executive director of court operations at the Scottish Courts and Tribunals Service. A warm welcome to you all. Thank you very much for your written submissions.

I intend to allow 90 minutes for this session. Given the size of the panel, I request that members and panel members keep their questions and responses as focused and succinct as possible. I also request that we keep our discussion focused on the specific provisions in the bill, since that is the purpose of our scrutiny today. I expect that the bulk of our questions will focus on part 2 of the bill. I appreciate that members may also have questions on parts 1 and 3. If so, could they please keep those until the end of the session?

As usual, I will start with a general opening question. We will work our way across, from Mr Fraser on my left, to Ms Buchan. In broad terms, are you supportive of the provisions in the bill that are aimed at encouraging the use of trauma-informed practice, why, and what difference to your current practice will the bill make?

10:30

David Fraser (Scottish Courts and Tribunals Service): Good morning, everyone. The Scottish Courts and Tribunals Service is very supportive of this part of the bill. The proposals originated from me as part of Lady Dorrian's review. It was intended that a trauma-informed approach would be very much part of the new court that is part of the legislation. The use of trauma-informed practice has become wider, which I think is a good thing. The preparations that we are making are geared towards changing the culture within our organisation. As Dr Bruce indicated, a lot of work has already been done with judicial members, and the work that we are doing with staff who will interact with witnesses in court or in evidence by commission suites will ensure that they have the best experience that they can possibly have. Therefore, we are very supportive of the provisions in question.

We are putting in place a three-stage implementation process that is designed to come from the leaders down, which will involve people being trauma informed, trauma skilled or trauma enhanced, depending on the level of interaction that they have with witnesses. About 67 per cent of members of the Scottish Courts and Tribunals Service are front-line staff who may at some point interact with witnesses, so we have a big programme to install, which I think will be positive.

John Watt (Parole Board for Scotland): The Parole Board is very supportive of the provisions. In parole hearings, our witnesses tend to be professional witnesses, such as psychologists, psychiatrists, social workers and prison officers. Victims come into the scheme of things when they observe and when they submit written submissions. In the absence of any change to any of that, we will be more alert to the position of victims who observe the conduct of the process.

One question that we are asking ourselves now is where prisoners fit into the scheme of things. Does trauma-informed practice also apply to prisoners, depending on a range of things, including their background, age and the offence that they committed? We have not come up with an answer yet, but we will have to at some point.

We are supportive. There are a number of points of detail that take us away from the courts service, for example, because our proceedings are not adversarial. If anything, they are inquisitorial. However, we are supportive of victims whenever we interact with them. Our team works very closely with the Parole Board for Scotland victims team, and they have all had trauma-informed practice training, as have the staff generally in the Parole Board for Scotland. The members have not yet had that training, but it is under preparation

and we are looking at having a whole-day session on that, probably in March.

Chief Superintendent Derek Frew (Police Scotland): Likewise, Police Scotland is totally supportive of the principles of trauma-informed practice. It is already embedded in some aspects of the work that we do, and we are working with Dr Bruce's team to get training on how to develop that. The Scottish child-interview model, which was referenced in the discussion with the first panel, is an example of how we are taking that forward.

I completely agree that, when it comes to how we deliver trauma-informed practice, we need to look at culture, leadership and wellbeing in our workforce. An internal working group will take forward work to see how we can embed trauma-informed practice. It is a question of getting it into the corporate muscle memory and mainstreaming it. That is what is important, as has been said. Having a trauma-informed approach is okay, but we need to ask how we take it to the next stage of having advanced skills and being able to make a difference to the people we engage with.

The nature of the business is such that the people we deal with are often in crisis or experiencing trauma when we engage with them, so we need to make sure that trauma-informed practice gets embedded in our training of probationers. We are looking at how we develop the probationary training portfolio and how we can embed trauma-informed practice through repeated training and reinforcement. Doing such training once in a 30-plus-years police career is not enough. We need to get trauma-informed practice embedded, which will require investment. We need to get the balance right, which involves not simply getting this right for victims and witnesses but working out what it means practically for Police Scotland.

The Convener: Thank you. I am interested in your comment on wellbeing in the workforce and how important that is for the delivery of good trauma-informed practice.

Sue Brookes (Scottish Prison Service): We are absolutely committed to trauma-informed practice. We are very keen to make sure that it is properly embedded. I hope that the written submission that we gave demonstrates that, because we are starting with our senior leadership group. We now look after nearly 8,000 people in custody, many of whom are men who have suffered trauma in their lives. As well as being perpetrators, they are often victims of crime in various ways. Our view is that, if they are in a context such as parole where they are witnesses, the same principles should apply.

We take the view that we need to apply trauma-informed practice at a corporate level as well as at an individual level in working with people in our care. It ought to impact on everything that we do, our senior leadership style, the executive group and the values that we put in place. You will have seen the statement of purpose in the corporate plan about being person centred and trauma informed. That is everything from how we design our buildings to where we invest our money, the training that we offer our staff and the wellbeing supports that we provide. All those things are impacted, and it is important to look at the practice not just in relation to the interventions that are applied but in relation to organisational style, and to base that on the best possible evidence.

The Convener: Part of what you have spoken about perhaps speaks to trauma-informed environments as well as practice, which has come up in previous evidence sessions, so it is interesting to hear your comments on that.

Laura Buchan (Crown Office and Procurator Fiscal Service): Much like my fellow panel members, we are absolutely supportive and committed as an organisation to embedding trauma-informed practice. The Lord Advocate and COPFS worked with Dr Bruce and are committed to implementing the recently launched framework. In 2022, we developed trauma-informed training for our staff. That has now been undertaken by 2,000 employees of COPFS and 70 advocate deposes.

Why is that important? Much of what we already do is based on a trauma-informed approach. However, almost 70 per cent of business in our High Court is to do with sexual offences and that there was a 7 per cent increase in domestic aggravators from 2021 to 2022, so we know that the vast majority of cases that we will deal with in the future will be about violence against women and children, sexual offences and domestic abuse cases.

Our staff recognise trauma, and we know how important it is that we identify trauma. We understand what impact trauma may have on a victim and witness in a case. How do we respond to that trauma in terms of mitigating or minimising any potential retraumatisation? That applies not just in the court process, as we do a whole breadth of work with investigation of deaths or cases that ultimately do not come to court. Therefore, it is about embedding trauma-informed practice across all that work.

We are absolutely committed to the practice, and we will continue to work with our partner agencies. In terms of the question, it is about being a justice system and having a system-led approach across the whole justice system.

The Convener: We certainly brought the challenges of a whole-system approach in trauma-informed practice into the discussion with the first panel.

Thank you for your opening comments. I will now open it up and bring in John Swinney.

John Swinney: I will start with Ms Buchan and raise one point in relation to part 1 of the bill. I am interested in COPFS's concerns about the proposed provisions that are set out in sections 16 and 17 and the potential that they

"may unintentionally impact on the Lord Advocate's retained functions".

The committee has looked at issues to do with the scope and role of the victims and witnesses commissioner for Scotland. We would benefit from hearing the concerns of the Crown about the role of the commissioner and how those issues might well have an impact on the statutory functions that are specified in section 48(5) of the Scotland Act 1998, which protects the independence of the Lord Advocate.

Laura Buchan: It may be best if I respond to some of those questions in writing, but I will do my utmost to answer them today.

COPFS is supportive of the aims of the legislation to improve the experience of victims and witnesses and of the establishment of a victims and witnesses commissioner. We would, of course, engage and collaborate with the commissioner if the role is established.

To clarify points that we have made—we can follow this up in writing—we are clear that the commissioner would not have the power to interfere with the Lord Advocate's independence on prosecution decisions. However, it is about having that clarity in the bill, and we are working with our Scottish Government colleagues on that.

We do not consider that the bill is incompatible with the Lord Advocate's independence, but we are in discussions with our Scottish Government colleagues to ensure that that clarity is there for all about the Lord Advocate's independence and her role in prosecutorial decisions and other areas of policy and guidance.

John Swinney: That is very helpful. The committee might benefit from seeing some further correspondence to help us to formulate a view on that point. I certainly do not want to see legislation emerging that is not effective for its purpose. If we do not get the foundations of it correct, we are better to hear that now rather than later on.

Laura Buchan: Thank you, Mr Swinney. We will follow up those submissions in a more eloquent and informed way, I hope. It is absolutely not the case that we want to avoid having a

commissioner; we just want clarity. We hope that that will also provide clarity to any commissioner in post in relation to recommendations and required responses.

John Swinney: That would be helpful. Thank you for that.

I will move on to the issue of trauma-informed practice. The way in which Mr Fraser articulated his personal commitment to embedding that practice has, in a sense, answered one of the questions that I put to Dr Bruce earlier about where culture is in all this. Will you develop some of the points about what is necessary to ensure that an organisational culture is able to accommodate and deliver a trauma-informed approach in all its practice?

David Fraser: I will try. When the matter first came before our executive team in the Scottish Courts and Tribunals Service, one approach might have been to say, "Right. We need to ensure that all staff have trauma-informed training, and that will tick the box and we can move on." However, it became clear, especially with the work that has been done in collaboration and with the team that has developed this with Dr Bruce, that it is much deeper than that. It is about embedding the senior team in the change and being party to how the organisation now works. It is a fundamental change in the thinking of the senior management team in leading how the organisation will operate in the future through a trauma-informed lens.

10:45

It is about having that approach instilled at the top and working its way right down through the organisation to the staff at the coalface, so that everyone has that knowledge and skill set no matter where you are in the organisation. It is about moving to a place in which the experience that people have when interacting with our organisation is the best that it possibly can be under the circumstances.

John Swinney: How long has it taken you to get from that starting point to where you are today?

David Fraser: We are still very much at the early stages. Changing the culture in an organisation—

John Swinney: I will come on to that in a second. How long has it taken you from the recognition of the point that you started off with that there must be a big cultural change in the Scottish Courts and Tribunals Service and that you have to own and lead it to get to where you are today?

David Fraser: I am not sure that I understand where you are coming from, Mr Swinney.

John Swinney: I am trying to understand how long it has taken you to get from realising and accepting that the organisation has to change to where we are today. How long has that been? Is it a year, two years or three years?

David Fraser: Okay. I will comment on that from a personal perspective. I was the senior executive who supported Lady Dorrian on her review of sexual offending. That is when trauma-informed practice first came on to my radar. Listening and being part of that process convinced me of the need for that at that point. Therefore, the point at which I recognised that the practice is important and that it needs to be part of what we do was a number of years back.

One of the review's recommendations was that the new specialist court should have trauma-informed procedures. It has gone beyond that now. We have recognised that it is not just the specialist court that requires the trauma-informed training but the whole justice system, which is why we are here today, I think.

It has been a number of years from the point of recognition that this is something that we need to get to where we are today.

John Swinney: Is that process resulting in changes to operational practice and procedure within the SCTS of a tangible, practical nature?

David Fraser: It is starting to. We have always tried to ensure that the experience of witnesses and complainers who come into court is as good as it can be. For example, it has been recognised for a long time that the last thing that you want is for them to see the accused and we do everything that we possibly can to avoid that situation.

I suppose that it is about having an understanding of what being trauma informed means and the principles behind that, which makes you begin to look at things through a slightly different lens, such as at our policies in the organisation and how consistent they are with a trauma-informed interaction.

We are looking at our buildings and at how we interact with people in our buildings. We have limitations, I have to be honest. The court estate is historic and protected in some areas, but that does not mean that we cannot look at any dimension to improve the experience for witnesses and complainers.

John Swinney: An element of this will be about project planning and all that stuff, but there is a deeper element of cultural and attitudinal change. How do you manage and drive those two distinct elements of the practical project plan and the cultural and attitudinal change?

David Fraser: We are absolutely invested in this. We have invested in specialist members of

staff specifically for the trauma-informed training and embedding the culture in the organisation. We have an implementation officer, who is additional to our complement. We also have support. They are there specifically to take us from where we are now to a point where we are a trauma-informed organisation and the practice is embedded in our culture. We also have an implementation team that is supporting and looking at the Lady Dorrian review implementation, and, indeed, at how we would implement this bill. We already have in place dedicated resources to ensure that we have the mechanics to get us to where we need to be.

To answer the second point, a cultural change has to be driven from the top. It has to be at chief executive and executive team level. It has to be embedded, believed and lived at that level for it then to go down to our senior managers and throughout the organisation.

A culture change does not happen overnight. In my experience, in the different things that we have tried, you sometimes find that you get a little bit of resistance or that some parts might be slow to change. You just have to work with it and continue to work with it. It will take time for us to move to a position where I can come back to you and say that the Scottish Courts and Tribunals Service is a truly trauma-informed organisation and that practice is embedded in our culture. We are making a journey.

John Swinney: My last question is on resistance. I imagine that there are 101 practical reasons why some of this is difficult. Is that what you are encountering, or are you encountering almost philosophical resistance to the type of approach that is being taken?

David Fraser: Let me clarify: we are not encountering any resistance at this point. I am just making the observation that, in any culture change that I have been part of or which I have experienced, things have occasionally come up that you did not expect and which you have to deal with. There will be challenges—perhaps “resistance” is the wrong word—and one of those challenges is the buildings that we have. How can you truly change the physical buildings? That does become a challenge. However, when you look at what else is involved, you see the interaction that our staff have with people and the things that we can change to make that experience better.

Acknowledging the limitation of the buildings, I would say that, for me, one of the key things is evidence on commission, by which we manage to get evidence at a much earlier stage in a much better environment, with total separation. It is a much better longer-term solution, and one that is probably up for discussion in other parts of this bill.

John Swinney: You have just made a very interesting observation about other very practical procedural approaches that can be taken. I was also interested in Mr Watt's point about the nature of the Parole Board hearings being more inquisitorial, which relates to some of the questions that the committee has considered—indeed, my colleague Katy Clark has led this very line of questioning—whether trauma-informed practice is almost incompatible with an adversarial court system. I do not take that view, because of solutions such as evidence by commission, but it opens up the necessity to think about the process of interrogation and scrutiny that goes on within the court system.

David Fraser: I agree 100 per cent. It is important that, whoever we interact with as an organisation, we do so through a trauma-informed lens and that we ensure that we have a fair justice system in Scotland. I honestly believe that there are improvements that we can make and that what we are talking about here will indeed make those improvements. I do not see it as removing anything from the justice process that we already have. That is a personal observation.

John Swinney: My last question is for other members of the panel, and it follows on from Mr Fraser's last point. Trauma-informed practice has been around for quite a while; it has been part of the thinking in the system, and a lot of good work has been undertaken on it. However, it just seems to be slow in getting embedded. Is it accepted that a level of priority has to be attached to this in order to change culture and attitude and turn legislation into practice to ensure that this can be realised? That question is perhaps for Sue Brookes.

Sue Brookes: That is an interesting question. Although the legislation provides fresh impetus for the Prison Service to continue to be motivated to make progress in this direction, that was not why we started this work. We have always worked with very traumatised and vulnerable people; indeed, you know my own experience in Polmont. We have been on this journey for many years now, and it is good that this is now becoming part of the corporate entity.

I was listening to David Fraser's earlier comments about how you implement this in an organisation. For me, it is about taking the principles of trauma-informed practice such as choice, control, empowerment, safety and trust and implementing them in an organisational setting. At the minute, we are running out quite detailed training with our senior leadership group to promote changes in practice and thinking, but we do not know at any given time in those sessions how many of our senior leaders will have experienced trauma themselves. Indeed, we do not know how many people in this room have their

own experience of trauma. Therefore, you have to be sensitive in the way in which these things are implemented.

We have already made changes in practice. For example, the implementation of non-pain-inducing restraint is very much trauma-informed, as is a policy that we looked at this week for a refreshed recovery-based approach to alcohol and drugs. One of the things that we are thinking about is whether we need to change the rules on disciplinary procedures to reflect changes in trauma-informed practice to support a recovery model. All of our policy areas are now starting to be impacted.

However, we also need major shifts in, for example, how we deploy our staff group, because one thing that is critical to trauma-informed practice is appropriate staff supervision and support. That means that staff have to have time when they are not directly looking after the folk in our care so that they can reflect on practice. That is a major shift.

It is very much a journey. It is about getting your senior leadership team on board and starting to make changes in practice, but also recognising that you need some quite big operational shifts that take time to embed.

John Swinney: Thank you.

The Convener: I will bring in Pauline McNeill in a moment, but I wonder whether I can come back to John Watt. In the Parole Board submission, you question the categorisation of the board as a "criminal justice agency". Why is that? How should trauma-informed practice be applied to the Parole Board?

John Watt: I do more than question the characterisation—I challenge it. The Parole Board for Scotland's status is fundamentally misunderstood, and widely so. It exists as a judicial body; its only function is to make judicial decisions on release and recall of prisoners. It is not an agency, and it has no executive functions. It has no budget, no staff, no premises, no hierarchy, no management structure, no employment structure, no governance structure—none of these things. It sits in a peculiar, unique position, and all it does is make judicial decisions.

I have no management authority over members of the board. Indeed, the only way in which they can be taken to task, if you like, is for Scottish ministers to refer them to a judicial disciplinary tribunal that has been specially assembled for the purpose. The board also sits in a bit of a vacuum. It is as I have explained it; it is not an agency in any sense of the word. It might be a court—well, it is a court; we know that—but it is a unique court, because it is inquisitorial, not adversarial.

It is a key part of the system, but in the present context, we know that victims are traumatised before we ever see them. That is usually because a letter drops on to their doormat, saying, "The person who murdered your husband is due to be up for parole soon." By the time that we get to talk to them, they are in bits. It is, therefore, a question of fitting all these bits of the jigsaw into a system that works from the point of prosecution through conviction to sentence and of keeping victims informed throughout the process so that nothing comes as a surprise.

People come to us and we have to try to stabilise the position. The victim team—I was going to call it "our victim team", but the Parole Board for Scotland, which provides administrative support to the board, comes under the auspices of Scottish ministers, not the board—is not answerable to us in any way, shape or form. It is they who have to talk to and deal with the witnesses and undo the damage that has inadvertently been done already.

At the other end of the system, when prisoners are released, for example, and are recalled, victims will tell us that they have been retraumatised by the fact that they get no support in the community. They say, "This man is out getting all the support he can get and I am sitting there in my house terrified, just waiting for him to come and get me."

11:00

The board makes judicial decisions and judicial decisions only. It has to do so on the grounds of fairness, and if that means some revisiting of trauma, that is just the way that it has to be. There is no way around that, because we have to be fair to everybody. Any court appearance will be traumatic, and you can try to minimise that trauma with the best will in the world. I have taken and given evidence—and taking it is a lot easier than giving it. It really is.

I do not quite know what you do. For my part, I am not unconvinced of the need for a complete review of the system from the ground right up and to look at questions such as: how do we work with each other? How do we—to echo the Crown Office's position—deal with victims as a system? I do not know the answer to that question, except that we have to. There has to be some continuum for victims, as far as the board is concerned, from conviction, without there being a long gap of, say, 20 years while a prisoner serves his punishment. We cannot get 20 years down the line, and somebody who is 20 years older—and perhaps frail—gets the shock of her life.

That is what is necessary, but as I have said, the board is not an agency. It has nothing in

common with the Lord Advocate, Scottish ministers, the chief constable or the Scottish Courts and Tribunals Service. If any part of the parole system should go into the bill, it should be the Parole Board, but as it comes under the auspices of Scottish ministers, that is probably not necessary.

Just to finalise my argument, I note that there is no reference to sheriffs or senators in the bill. The Parole Board consists of judges—they are there for the very narrow purpose of parole, but they are judges nonetheless. If the Parole Board is in there, sheriffs, court sheriffs and senators of the College of Justice should be in there, too.

I rest my case, convener. Thank you.

The Convener: It was very well made. Thank you very much.

I call Pauline McNeill, to be followed by Russell Findlay.

Pauline McNeill: You certainly convinced me. You answered a lot of practical questions for me. That is where my line of questioning comes from—trying to apply all this to a system that, as John Watt said, is not the same, in that you all do different things.

My first question is to Laura Buchan from the Crown Office. David Fraser said that we have a court system with limited capacity to prevent what victims always complain about, which is the trauma of bumping into the person they have accused. I have had this conversation with the Lord Advocate at least once: the trauma of victims trying to find out where their cases are is a significant factor. I support all that has been said, but I am a bit concerned that we do not fix the things that are causing lots of trauma. As I said to the earlier panel, I am a layperson trying to understand that there is the trauma that people have had in their lives before they were offended against, there is the trauma of people who have been offended against and there is the trauma of what the system is doing to them. Can anything be done to make the information from the Crown easier to access?

Laura Buchan: I will try to take that question in parts. We know from the work that we do, and the work that our victim information and advice team and our specialist prosecutors do, that the way to get best evidence from witnesses is effective engagement and, as Dr Bruce referred to earlier, effective participation. We know that the key to that is more regular meaningful engagement, allowing victims and witnesses to make informed decisions about how they wish to give their evidence, and setting out, as was elegantly put this morning, who is in the courtroom, what a court looks like and what the system looks like.

We do that with our victims information and advice service. We have a service that provides information to victims in certain categories of offences. We want to do more of that, including ensuring that victims always meet a prosecutor in advance of a sexual offences case. Perhaps we would like such meetings to take place more than once. That requires investment. Referring to Sue Brookes's point, we can deploy our staff in a certain way. At the moment, we require to deploy our staff conducting courts, managing witness information and dealing with witnesses in serious, significant cases. We know, therefore, that we have improvements to make more widely. We are looking at that. There is a VIA modernisation programme in which we are looking to improve the information and the way we communicate with children specifically. We are looking at the way we write to children and provide information to them. That work is under way.

The Lord Advocate instructed the sexual offences review, which is near completion, so we are awaiting the report and recommendations from that. There is significant investment from the Scottish Government in our information technology solutions and we are looking at a witness gateway where victims and witnesses will have more ready access to the information.

As you quite rightly raise, it is often frustrating for witnesses in relation to things that would appear to be straightforward—"What is happening to my case? When will my case call? How long might I be in court?" There are lots of things that we are looking to do already to improve the service that we offer to victims and witnesses. I hope that that will continue to improve with the embedding of the legislation and trauma-informed practice across the system.

Pauline McNeill: What do you mean by "gateway"? In simple terms, if you are a victim of crime, or even a witness who has been called, should you not be able to call someone easily, get through and ask where your case is likely to be in the pipeline? Is that fair?

Laura Buchan: That is absolutely fair; you should be able to do that. If you are a victim or a witness who falls into the category of the victim information and advice service, information will be provided more proactively, but that does not prevent anybody who is a victim or a witness in a case from simply phoning the COPFS.

Pauline McNeill: However, that is the problem. Ask anyone how easy it is to get through—it is not easy. That is the problem.

Laura Buchan: In my role on policy and engagement, I have responsibility for a national inquiry point team, and that is something that we can take away. I appreciate that you have raised it

with the Lord Advocate. We understand the frustrations and the improvements that we are required to make.

Pauline McNeill: Thank you.

We heard from the previous panel of experts that trauma-informed practice is a universal application. I am trying to think about that for procurators fiscal in court. Is it practical to treat every single victim or witness as if they had a trauma? What trauma are we looking at? Is it the trauma of being in court? How will you train and advise your procurators fiscal and advocate deputes on court practices? I know that you cannot answer that question today, but it is what I would like an answer to in the long run. How are we going to balance this with fair justice to ask robust questions in court of all witnesses?

Laura Buchan: The important point is that it is not about treating every victim and witness in the same way. It is about having the skill set to identify trauma and how that might have impacted. It is more difficult, because trauma affects and impacts different people in different ways at different times. Quite properly, and as we set out in our submission, as prosecutors we work within the rules of evidence and the prosecutorial legal system. That enshrines the right to a fair trial. As part of that, in proving the case, we require to take evidence and the defence requires to cross-examine a witness. They are entitled to do that. Inevitably, the taking of evidence and re-examination will often lead to people having to recount trauma. That sits within the adversarial system.

However, we are doing many things already. David Fraser spoke about evidence by commission. We are really trying. The starting point is to avoid people having to come to court at all. We can talk about earlier resolution of cases to prevent that from ever happening, evidence by commission and special measures.

There are already rules of evidence that should protect complainers from inappropriate questioning. We hope that the bill should go some way to enhancing those powers and enhancing the protection of complainers in those situations.

We agree that there is probably a better understanding required for courtroom advocacy but, again, we hope that, with the trauma-informed training that we have already rolled out across a huge number of staff in our organisation, including High Court prosecutors, we are embedding that further. We need to continue to refresh that training and we need to ensure that our core values—being professional and showing respect—are reflected in everybody who sits in the COPFS.

Russell Findlay (West Scotland) (Con): I intend to ask only one question, but it feels

important to provide some details about a specific case with trauma-informed practice. I have been working with Leslie Jones—

The Convener: Can I stop you there? Is this a live case?

Russell Findlay: No.

The Convener: Can you make sure that this is relevant to the provisions of the bill?

Russell Findlay: Absolutely, yes. I have been working with Leslie Jones, whose brother Tony was murdered. She attended the killer's parole hearing and she was told to sit in silence. She objected to his release in writing, fearing for the safety of others. He was subsequently released. She was required to sign a gagging order not to discuss the hearing. Her brother's killer was then recalled to prison, but Leslie was not told that nor allowed to know why. She found out only because he has another parole hearing. She is consumed by concern, not knowing whether he has harmed somebody else. She has had letters calling her brother "Anthony", but that is not his name. She has had letters addressed to her dead father. She describes the parole process as secretive and she says that she is

"climbing the walls; the process is tormenting me".

Leslie's experiences are quite shocking but all too typical in some respects and they seriously call into question the issue of trauma-informed practice.

Are you confident that the bill will result in victims and their families being treated with dignity, compassion and respect or perhaps, as John Watt already suggested, a ground-up review of practices across the criminal justice agencies would be a better starting point?

John Watt: I have to differ with you on one point. That is an atypical case; it is not typical at all. Last week or the week before in the *Daily Record*, there was a very positive article about how the victims team works. That is a unique case and a very difficult one. I responded to you in writing if I remember rightly, so you have the answers to most of these questions already, I think. I am not going to go back over it again.

Can I be confident that this bill will change any of that? The answer to that is no, because we have limited control over how matters work around the Parole Board. Some of the issues that you raised were not directly raised at the Parole Board, I do not think. Part of the problem, if I remember rightly, arose from a series of adjournments or deferrals, did it not?

Russell Findlay: In response to the first point, after a Scottish National Party MSP and I wrote to various agencies on behalf of Leslie, the Parole

Board sought a meeting with her and asked why she had not made representation to it first. Her response to that was that she had. In respect of this being atypical, it may be extreme in its longevity and complexity, but I do not think that it is that unusual in some respects.

John Watt: We will have to agree to differ on that. I am not sure that I can answer that question here and now, because it relates to a specific case and I cannot remember the details now. I would have to go back and look at that case. To describe the form that she signed as a "gagging order" is, I have to say, a bit extreme. It is not a gagging order; it is simply a reflection of the legal position on disclosure of information under the rules. She cannot disclose information unless the chair of the hearing allows it. That is basically what that form says; it says, "Understand this, because if you go out and do it, there could be consequences for you."

Russell Findlay: Can I interject? Is that slightly at odds with the principle of open justice and transparency?

11:15

John Watt: Those are the rules, Mr Findlay. I did not make the rules. Parliament made the rules and I apply them.

The Convener: Can I bring this back to the provisions of the bill? Is there anything further that you would like to add?

John Watt: If Mr Findlay wants to write to me requesting more detail, I am very happy to provide it for him.

Russell Findlay: The only reason why I went into detail was to illustrate how difficult it is for many victims and families. However, the more general point was whether the legislation in the bill will materially or practically fix a lot of these problems. Families like this one have their doubts.

John Watt: I can understand that and I accept that. It may be that some aspects of the rules will have to be revisited. However, if you do that, it can lead to further unintended consequences, which is why it is my view that we need to look at the linkages between the various bodies involved in the process that leads up to a parole hearing, and potentially after that. A ground-up review? Yes, I would go for that. We need to start talking to each other more effectively and to look at the powers that the board has and the duties that are imposed on it by Parliament. If Parliament wishes to change those, I will do my level best to do what Parliament wants me to do.

Russell Findlay: Does anyone else have a view on that?

Chief Superintendent Frew: From a local policing context and working in the community planning partnership structure with community justice partners and criminal justice managers, I do not think that what I have read in the bill—and I am not an expert on the bill by any means—will solve the systemic issues. I have seen it myself. I will not go into any specifics, but when people are getting out, there is trauma on the victim's family and miscommunication and there is probably not the joined-upness and the support mechanism for victims that there should be. My experience is that that disconnect will not be fixed by what is in the bill. That is my observation.

Russell Findlay: Does anyone else have a view on that general question? If not, thank you.

John Swinney: Would you allow me to ask one question of Chief Superintendent Frew in the light of what has just been said there? I was struck by how you articulated that point about somebody being released through the parole system. However much you engage with people, it will be a traumatic event. A lot of what we are talking about is trying to reduce the effect of that trauma. Is that a fair representation of the point that you have just made?

Chief Superintendent Frew: Yes, that is a fair representation. Individual victims, witnesses or complainers may not ever be able to rationalise the outcome of the Parole Board hearing. Regardless of how much support they get, it will create an issue for them in revisiting that trauma. However, it is about what support there is from services, whether it is Victim Support Scotland, Rape Crisis Scotland or whatever the necessary bodies are that wrap around it. The support will be from the third sector on many occasions. What is the support mechanism that is in place? There is probably a bit of a gap.

Rona Mackay: Good morning, panel members. I am not sure whether this question is for David Fraser or Laura Buchan. For context, how much evidence by commission is being done at the moment? What is the percentage?

Laura Buchan: I can follow that up. I do not have them with me now, but I can send to the committee the figures for the amount of evidence by commission that is currently on-going.

David Fraser: I can give you a bit more today. In the first year, we did about 74, and since then it has almost doubled year on year. From memory—I can give you the exact figures—last year we dealt with about 600. This year, we are on track to do slightly more than that. It is a significant number.

Rona Mackay: It is going to grow.

David Fraser: Yes. It has grown since we introduced it after the bill that allowed us to do that.

Rona Mackay: Thank you. That is useful to know.

This question is for Laura Buchan. My colleague Fulton MacGregor and I were members of the Justice Committee in the previous session. One of the first things that we did in 2016 was an inquiry into the Crown Office. To go back to the line of questioning from my colleague Pauline McNeill, the lack of communication to victims and witnesses was the key point that came out of that inquiry. That was a long time ago, and it seems to me that that communication has not improved that much. From what you are saying, you are now addressing that issue and taking it very seriously. Will improvement happen sooner than within eight years? People being left in the dark was a key point that came out of the inquiry, and that caused great trauma.

Laura Buchan: I can understand that, but I would disagree with you on there having been no improvement in that. Like any organisation, we are always looking to improve. I think that the Lord Advocate in particular will speak about the importance of effective engagement, compassion and listening. I understand your point.

I think that we have made significant improvements in the way that we communicate and work with victims and witnesses since the time of your review. I hope that some of the work that I outlined to Ms McNeill will support what we are doing on an on-going basis.

In all solemn cases now, we have victim strategies in relation to contact and engagement with victims. Where children and vulnerable witnesses are involved, we have plans in place for engagement with those victims. Previously, there were not the same things.

We know that that is a frustration, but I note, as I indicated earlier, that the type of business that we deal with now has changed—it has changed since you carried out that review. We deal with significant serious sexual offences, which make up a large part of our business. That involves more effective communication and more meaningful engagement.

Rona Mackay: I take your point. However, we as a committee will be able to judge that, because we speak to victims and victims organisations, and they are not telling us that a lot has improved. Obviously, we will be able to monitor how effective all of that is.

Chief Superintendent Frew, you said in your submission that the training required for trauma-informed practice “will require significant

investment”, and the submission raises significant concerns. Everyone has said that they are well down the road of doing that, so why is significant investment required? Can you give me an idea of why that was raised?

Chief Superintendent Frew: I hope that I did not give the impression that Police Scotland is well down the road. We are on the journey, but I would not say that we are well down the road.

I can give an example. In 2018, I was part of the first division in Police Scotland that was trauma informed. That was in Ayrshire. It might be remembered that Paul Main was the commander at that time. That was an investment in face-to-face training and a resilience video. Trauma-informed training was really impactful. That was five years ago.

There was the opportunity cost of doing that and the ability to abstract that to maintain that level just to get to being trauma informed. At that point, the training did not go across Scotland because the ability to do that was really challenging. To take that forward, with the landscape that we are now operating in, the legislative changes that are coming, and the resource challenges that we have, and go from trauma informed to trauma skilled and trauma enhanced, we will probably have to take a tiered view and work out how we can deliver that.

Going forward, that will involve a Moodle package of some description, working with Dr Bruce’s team. Two packages are available for public sector organisations to take people to being trauma informed—I hope that Dr Bruce will keep me right on this after the meeting if I am wrong.

To take us to being trauma skilled, which is where we really want to be to make impactful change, we will have to develop further training packages. There are the issues of the resource development of training packages and getting them on to our Moodle system. That sounds simple for me to say, but we want the training to be linked to a system in Police Scotland in which it is accredited and we get an auditable position of the number of officers who have completed it so that they are skilled and, from an evidence base, I could come back to the committee in however many months’ time and say, “We have X operational officers, and these are the ones who have completed the training.” Putting in place, embedding and developing that training is expensive.

To get to trauma enhanced, it is clear that bespoke training will be needed for certain roles. We need to take things to that next level. Whether we are talking about sexual offence liaison officers, family liaison officers or senior investigating officers, there will be a whole list of

people who work with the most vulnerable victims and witnesses, so we have to develop that bespoke work. Work has started on that, but we do not have a finished product. The issue is the time, the cost and what those packages look like within the myriad other demands.

Where Police Scotland feels it is with its budget and where we will be going into the next financial year is a well-rehearsed position. That budget seems to be getting tighter for us all the time. That is not to say, “Woe is us, and we’re not doing it.” We are committed to doing that, but it is a matter of cultural leadership and embedding it. I have given an example of my personal experience in my journey from 2018. After five years, we are still on the journey. That is the challenge that I see.

Rona Mackay: Laura Buchan, your submission said a similar thing, but it sounds like you are well down the road to trauma-informed practice. Therefore, why would that need lots more investment?

Laura Buchan: There is exactly the same situation in respect of training, the input and the culture. We are working towards that. We are on a journey but, on the spectrum of what that might look like, we have spoken about more regular engagement with victims and witnesses. That requires investment, refresher training, development of other training, and changes to our policy and guidance. Those are all things that require additional resource, and they cannot simply be absorbed by the budget that we already have.

We can make small changes. We can continue to develop the training and continue to train our staff, but we cannot at this time absorb big significant changes, particularly in relation to engagement with victims and witnesses.

Rona Mackay: I go back to points that were made earlier about culture change coming from leadership. I do not understand why that would be expensive.

Laura Buchan: No—that is not the expensive part. We have already undertaken that training. We have undertaken leadership training. That is not the part that would require resource. It is about the much bigger issue relating to our caseload and individual contact with victims and witnesses requiring resource. I think that our submissions included the cost of one-day training for all our staff, but that is the only really quantifiable expense and cost that we could put in the submissions at that time.

The Convener: I want to stay on the theme of resource implications and bring in other panel members for any comments that they wish to make on that.

David Fraser: We identified costs in the memorandum. Part of those costs is for the development of the training to be delivered. There is an on-going annual cost to train new staff, as attrition happens and we get new staff in. Therefore, there is an element built into that.

I think that I said earlier that the training that we intend to do is on a much larger scale than we would normally do. For example, in leaders training, there are up to about five different separate sessions to get full understanding. There is not simply a day's training that is spread about the whole organisation; the training is very targeted.

There are costs relating to our ability to do that. One way in which we could do it is by closing the courts for a day or six days. I am sorry—the costs are for a single day, not for the six days that we do. I suppose that it could be said that we absorb a number of the costs, but it is about getting the 67 per cent of the organisation who are at the front line away from doing their day job and getting knowledge transfer to get to the skill level that we need them to be at.

The Convener: Thank you. Is there anything that John Watt wants to comment on?

11:30

John Watt: I have no specific figures, but any new area of work will bring a cost with it—actually, it is not a new area of work; it is an area of work that we are looking at more closely now. There will be other costs. For example, the whole system should avoid churn. If a victim is teed up to come along and give evidence or view a hearing, that is a demoralising and traumatising experience if it goes off. We are looking at trying to improve the quality of the material that we get—improving the dossier quality—and training is involved in that, sometimes outwith the Parole Board for Scotland, or Parole Scotland. Equally, there is a whole area of training that we will have to consider in relation to how members look at granting deferrals. I cannot tell them what to do, but I can advise, persuade and train. I cannot direct.

Trauma-informed practice is not looked at in isolation. A whole range of other things will, if we do not get them right, create a set of circumstances in which we will end up with trauma that could have been avoided further down the line if we had put the effort in and got our quality control in at the start of the process rather than at the end. It is not simply about Parole Board for Scotland training; it is about other aspects in other parts of the system, as well.

The Convener: Is there anything that you want to add, Chief Superintendent Frew?

Chief Superintendent Frew: Our vision and our aspiration are to get all front-line officers to the trauma-skilled level. That is where the investment comes in. There will be the opportunity cost and the cost of the development of IT. It would probably be meaningless if I gave you a indicative figure for those things today, but it will be in the low millions of pounds. We have a restricted budget just now and people even talk about spending thousands, but I know that the cost of delivering that will be in the millions.

The Convener: Sue, do you want to comment?

Sue Brookes: There are a number of dimensions to the resource issue. As I explained, we are starting with our leadership cohort across prisons, which is a relatively small group. Even that is causing difficulties at the moment, because we are very limited in our internal forensic psychology resource. However, we are working in partnership with the health boards and the clinical psychologists that are associated with prisons to try to support that roll-out. There are things that we can do to use our existing resources more wisely, but also to work in partnership across different agencies to try to make that happen.

On the wider issue of rolling out training to our staff group, in a way, there is an idea that we could throw lots of money at that and it would all happen much more quickly, but that would not necessarily be a wise way to go. We started on our journey by engaging with a number of experts in the Scottish Government and NES, and their clear advice was to take it slowly and gradually and work carefully with the staff group. Quite a lot of training has been rolled out in prisons down south, but some research reports have suggested that it has not been very successful and that that can actually be quite damaging if the right infrastructure is not in place. That is particularly about staff supervision, which is critical.

We have been advised to start with the basic information level for our staff group, which is why we are putting e-learning packages from NES on our e-learning system, and we will probably target specific members of staff who are in key roles in establishments who can then act as a kind of coach or facilitator for a broader staff group. We have the leadership group engaging in problem solving and system change across the organisation. At the same time, we are starting to get that bubbling up of general awareness, but we do not want to put our staff in a position where they are asked to engage in trauma-informed practice without the right supports being in place.

As I explained earlier, there are opportunities. The Government is also asking us to reduce the working week and look at our staff deployment structures. If we can make significant changes in that regard, we will be able to move our resources

around to deploy them more wisely and—we hope—achieve those objectives, as well as reallocating resources to do the work that we are discussing this morning.

My last point—I apologise for going on—is that we are in many respects in a unique position as system leaders because we are at the tail end of a process whereby people who have been severely traumatised in childhood have ended up with us because they have inflicted damage on others. There has been some talk about the evidence and research base, but it is really important that, as we go through our individual and system or organisational journeys, we get the right research and evaluation so that we can reflect in a preventative sense on how we would have prevented people from getting into that position in the first place. I hear people talking about domestic abuse and sexual offending. We have 8,000 men in custody. For me, there is a real issue about boys' experience in childhood, particularly in houses where there is domestic or sexual abuse, and what our experience of dealing with trauma is telling us about what we need to do up front to reduce system costs, in both personal terms and resourcing terms.

The Convener: Thank you for that comprehensive answer. I do not know whether Laura Buchan wants to add anything. My question was more about the broad resource implications. Training is an aspect of that, but are there other areas where you see particular resource implications? I am sure that there are.

Laura Buchan: I have nothing to add to what I said about engagement with victims and witnesses. David Fraser made some important points about how we deploy our staff and how regularly training takes place.

The Convener: Thank you. We move on to questions from Fulton MacGregor.

Fulton MacGregor: Good morning, panel. I have enjoyed your evidence so far. As the committee closes in on parts 1 to 3 of the bill, I feel that we remain a wee bit unclear on the need for part 2 and what it will do. I say that with some surprise given that, as everyone has said and as I know from my experience as a justice social worker, trauma-informed practice has been around for a long time. It seems to me—I am not speaking for anybody else—that what we are grappling with is not the principle or our understanding of it, but the different evidence that we are getting from organisations, including the five that are represented on today's panel, on where they are with it. It seems that there are examples of good practice across the board, but also places where things could improve.

Chief Superintendent Frew, you spoke about interviews of children, which will include joint investigative interviews. That is a clear and robust example of good trauma-informed practice. Joint investigative interviews have been going on for well over 20 years, so they are well established. Are the police looking at taking that practice into other areas? Perhaps I can play devil's advocate here and ask: why do we not use a similar model for almost all interviews?

Chief Superintendent Frew: The joint investigative interview model has been in place for a while, and the new Scottish child interview model takes it a step further. As you will be aware, it is a multi-agency model that also involves social workers. It involves looking at the whole trauma around the child to make sure that everything is done properly. It has not been fully rolled out across Scotland yet. My understanding is that it will probably be June 2024 before the SCIM, as it is known, is fully in place. I hope that I have got that date correct.

You are right—that is one element. Another is the relationships that we have under corporate parenting. We work with children's homes on the not at home policy so that the children in those homes can treat them like homes and not be reported missing just because they have not returned at 4 o'clock when they might come in at 6 o'clock that night. It is about that compassionate understanding and working with partners.

On how we do investigations more widely, an investigation strategy was put in place for the most significant serious investigations, particularly where there will be significant trauma. How and where we deal with witnesses, the preparation, the notification and what support they will get are all parts of that.

As I said, we are some way down the line. I do not mean to be twee but, taking a step back, I note that Police Scotland's values of fairness, integrity, respect and human rights are the lens that we see everything through, including the practicalities of our journey on trauma-informed practice. I think that we probably agree with you. As we proceed on that journey, trauma-informed practice is applied to more things even if we do not use that label or description.

Fulton MacGregor: I will put my next question to the rest of the panel, but not everybody needs to answer, given the time. You have given some specific examples of practice but, given my previous question, is there anything that you are doing now that is a really good example of trauma-informed practice? Are you considering widening out such practice and using it in the areas—which you have all mentioned—where you need to improve?

David Fraser: You are absolutely right: there are certain areas in the justice system where we are more trauma-informed in how we deal with people than we are in others. I would say that it is scratching around the edges. An example—I touched on it earlier—is evidence on commission. I think that I said that there were about 608 such cases last year. That will not necessarily be the number of witnesses that we dealt with, because there can be multiple witnesses. We have a strategy for expanding that. We have four bespoke sites, but we have plans to expand it in Dundee and beyond, depending on how much and how quickly we can expand that environment. I offer that as an example. That approach deals with only a very small proportion of what comes through the criminal justice system, but there is a need for everyone else—those who do not go through that—to also be treated in a way that will allow them to get their best evidence out.

Laura Buchan: I agree with that point about evidence on commission. A significant amount of preparatory work is still required in relation to evidence on commission. We are also doing work in relation to summary case management pilots, where prosecutors are engaging directly with victims of domestic abuse at a very early stage. With Police Scotland and the SCTS, we are trying to front load disclosure in order to ensure early resolution and prevent witnesses and victims from ever having to come to court. Those pilots are running and we are looking to expand them.

David Fraser: I will add another point that I think is relevant. We are probably in a unique situation because we are all working around the same framework. We are looking at introducing domestic abuse courts in Grampian and the Highlands and Islands, and we recognise that those who are involved in designing them and moving that work forward need to be able to work through a trauma-informed lens. The issue is not just one for the Scottish Courts and Tribunals Service; it is for everyone who is involved in the design process. We have used that lens from the start of the process. Traditionally, people like me have said, “This is what we need”. It is about removing ourselves from that and saying, “Looking through a trauma-informed lens, what should the end product look like?”

The Convener: John Swinney, do you want to come in very quickly?

John Swinney: I have a brief follow-up question on the point that Mr MacGregor has raised. It is possibly for Laura Buchan and perhaps David Fraser as well. Have we exhausted all opportunities for reforms such as evidence by commission as alternatives to what I will call existing practice? Have we exhausted all opportunities, or is there more that could be done

in the style of evidence by commission that would be consistent with delivering the aspirations of trauma-informed practice?

Laura Buchan: Evidence on commission has come on and is really significant. There is work ongoing, specifically with children and with bairn’s hoose, which takes that concept even further with the hope that evidence being given in the SCIM or the JII could be recorded and used in place of evidence by commission. That is the only thing that comes to mind at this time.

11:45

I am wondering if I can think of anything else about how much further we can go. I suppose from a Crown perspective there is evidence on commission, but the important point is about victims being properly informed about all the different means by which they can give evidence, and that they have a choice as to which means of giving evidence they feel will support them, through that trauma-informed lens. We have heard from some victims who said, “I wanted to have given evidence in court”, so we have to ensure that there is the ability for them to have that choice. I think that evidence on commission has done a significant amount in taking children and victims out of court processes, and there is certainly more that we can look to do and look to work on to expand.

John Swinney: In trying to work out what the Crown contributes towards the delivery of trauma-informed practice, is it part of the Crown’s thinking that it must be constantly looking for ways in which it can adapt or reform the whole process of preparing for prosecution, to try to minimise that effect?

Laura Buchan: I suppose that it is about taking our role and ensuring that we are conducting ourselves in the appropriate professional manner, acting in the public interest and having consideration of and engagement with the victims and witnesses. Those things do not always align, but the important part is having the engagement and discussion and knowing what the victims’ views are before taking any decisions.

The Convener: A number of members are still looking to come in, and we have about 15 minutes left, so I request succinct questions and answers. We go to Sharon Dowey, followed by Katy Clark.

Sharon Dowey: A lot of my points have already been covered. I am looking more at the financial side of things. If you do not get the finances to implement the bill, is there a risk that you will not be able to implement it properly? I put that to Laura Buchan first.

Laura Buchan: I will probably simply repeat what I said earlier, which is that we are committed to trauma-informed practice. We will continue to roll out the training and do the work that we want to do with regard to compassion, choice and all those elements. More widely, to enable us to do more of what we do—with witness engagement, victims' visits to court and more time for victims and witnesses—it would require investment and more resource that cannot be absorbed. We are committed to it. However, how far we can go with it is dependent on resource.

Sharon Dowey: So, it is about timescales and managing to implement it. If you were given the correct resources, would you be able to do some of the work now rather than having to wait for legislation?

Laura Buchan: We are already on a journey with the work, which we have begun without the extra resource. I think that we will continue to do that work, but how far we can go with expanding it will be dependent on what resource is provided.

Sharon Dowey: I will give a specific example, which is just for the Crown Office. The Crown Office's victim information and advice service still does not always, in some instances, inform victims of the outcomes of their case, which leaves them feeling as though the justice system has let them down. As an example, it was found in an analysis of the victims' right to review scheme that some victims who wished to review prosecution decisions were not told of the case outcome in time to ask for a review. Is that not just a case of changing your processes? It does not seem to me that it would cost any money to go and implement that. If you listen to the victims organisations, do you find that there are some things that we could implement straight away?

Laura Buchan: Absolutely. As I have said, the Lord Advocate chairs the victims task force, and we have regular meetings with the third sector and good positive relationships with victims groups.

I think that that example is perhaps from a report by His Majesty's Inspectorate of Prosecution in Scotland. That is already part of our VIA modernisation project as one of the programme strands to ensure that decisions are provided to victims and witnesses when VRR might be appropriate. There is already work ongoing and it absolutely does not require additional resource. It is work that we should be doing already.

Sharon Dowey: What are the barriers to implementing something like that now?

Laura Buchan: I will try to be succinct. It is about identifying cases within our vast case load, identifying those that might be subject to victim right to review and ensuring that contact is made.

Currently, the resource that we have relates to only certain categories of victims who will be given proactive information. VIA does not cover all victims and witnesses; we are only funded for the sections of victims and witnesses that currently sit within VIA. The issue is about identifying other victims and witnesses who might not sit within the criteria but who have a case for which they might also want to have a victim right to review. We are looking into how we can improve that and looking at system changes that will allow us to identify such cases.

Sharon Dowey: I have one final question. Listening to the opening remarks, I noted that everybody is supportive of change. The comments were totally supportive and the organisations are absolutely committed. John Watt mentioned a complete review of the system, which I am totally in favour of. I agreed with his comments. He also talked about keeping victims informed so that nothing comes as a surprise, which seems to be one of the main things that causes trauma. Again, it seems to be more about processes and procedures than new legislation. Will bringing in the legislation hinder a review of the system, or will it help it?

John Watt: It should not hinder it at all. I was going to say that it is not complicated, but it is amazing how reviews can grow arms and legs and end up like three or four octopuses in one place. Everyone has a complication that they want to bring into it.

We need to keep it tight, view it primarily through the lens of trauma-informed practice, ensure that everybody who needs to know knows in good time and reduce the amount of human error, which is inevitable. For example, I was listening to the comments about people not being informed, which will happen if you have a tight budget and you run on a minimum level of staff. If you do not want that to happen, add a few more bodies and you will reduce the amount of human error. You could also introduce an effective IT system—something like what Shell, BP or ICI have—that will work for you, do things for you, produce programs, throw up information and prompt people to do things, or might even do those things itself.

I do not want to be unduly critical of Government IT, but I am about to be critical of Government IT. It has been cut back and cut back, and the support is not there. I get breakdowns all the time, and I phone the helpdesk and I get a call back three or four days later. In that time, a victim might not have been informed of something.

Therefore, we must look at our information systems and our people and eliminate the waste. I can give you loads of examples—this is my hobby-horse. If, for example, parole dossiers were better

in the first place, we would not have all the additional work to do. We would have a predictable flow of work, predictably informed victims and a predictable time when a case would be heard—and it would be heard at the first time of asking much more often than it is now. If you cannot get the appropriate level of quality, you end up with a disjointed system, in the sense that you have to constantly ask for information, it comes back in, you ask for more and it is not quite what you wanted. It is about getting the quality right in the first place.

You can spend a bit of money at the start of the process to save it at the end of the process, but I get the impression that that is not an argument that finds much favour at the moment. If you said, for example, “We would like to invest £50,000 in getting it ready at the start to save £100,000 at the end”, it would be a bit like the British Leyland parts department. Mr Swinney might remember that but nobody else here will.

John Swinney: That has not endeared you to me. *[Laughter.]*

John Watt: If you went to them, they would say, “The answer is no. What is the question?”

It is complex, but you have to get all the bits on track so that they interact with one another and you do not have the delays and the bumps in the road that cause problems of the sort that Mr Findlay has spoken of.

Sharon Dowey: I agree with your comments: get it right at the beginning so that you get the right result at the end.

The Convener: I will bring in Katy Clark and then we will have to look to wind things up. Please be as brief and succinct as possible in your questions and answers.

Katy Clark: I will try to be as brief as possible. I have two questions about trauma-informed training for key players in the courts.

My first question is to Laura Buchan and it relates to defence agents. I understand that, although trauma-informed training is available from organisations such as the Law Society of Scotland—and no doubt lots of other organisations, as well—it is not mandatory. A voluntary course is available as an option for continuous professional development. Would it be helpful if there was mandatory training for defence agents who appear in the criminal courts?

My second question is more to David Fraser and relates to judges, whether that is sheriffs or judges in the High Court. What quality of trauma-informed training is available to judges—whatever type of judge they are and whichever criminal court they are in? Does that need significant enhancement? Do more judges have a better

understanding of trauma-informed practice than other people? How do we improve the overall standard? They must be the gatekeeper in the court. They are in charge of the court and are the only people who are able to insist on how courts are conducted.

Laura Buchan: It is difficult for me to answer on behalf of my colleagues in bar associations. I saw the evidence from the Law Society of Scotland and the Edinburgh Bar Association last week.

I can tell you that trauma-informed training is mandatory for all COPFS staff because we feel that it is important that every single member of our staff receives that training. On how that impacts the court, I know that the same will be said in relation—

Katy Clark: We are short of time, and it is a question about defence agents. You have explained in great detail what your organisation does, but the other side of it is the defence agents. If you do not feel that you can respond or it is not politic for you to respond—

Laura Buchan: It is not politic for me to respond. My second point is that ensuring that our staff have training ensures that, when in court, if there is an inappropriate line of questioning by any officer of the court, our staff are suitably skilled from training to know when they should interject and when they should seek assistance from the court to ensure that anything that is not trauma informed is halted.

David Fraser: I can pick up on that question. Lady Dorrian originally envisioned that everyone in the courtroom would be trauma informed, including defence agents. What we are currently talking about here has expanded beyond the specialist sexual offences court, but that was the original vision.

Katy Clark: That is a specialist court. We are not just talking about that today.

David Fraser: I understand that.

Katy Clark: We are talking about all criminal cases. Would you look at that in the context of all criminal cases and your extensive experience?

David Fraser: This is a personal view. I agreed with and was part of that work. Why would we trauma inform some parts of the system but not the whole system? The question whether that should be in legislation for all of us, including the defence, is not for me to answer. Why would you do it with some parts but not all? On the impact from one part of the system, if we were to do it with—

Katy Clark: Is there trauma-informed training now for all those who sit in judgment in criminal courts, whether that is a justice of the peace court

or any other? Could you provide a brief answer on that?

David Fraser: I am sorry. You might find this unhelpful, but I cannot speak for the judiciary.

Katy Clark: I know that, yes, but we do not have them here and you might be the nearest person who has an understanding. *[Laughter.]*

David Fraser: I certainly have an understanding. On the quality of the training, it is the best that we could have. Dr Caroline Bruce has been highly involved in working with people in the Judicial Institute to develop the training and to roll it out to the judiciary.

I agree with you that the person sitting on the bench has control of what happens in a courtroom. It is absolutely essential—again, this is my view—that they have empathy and can understand what is happening, detect when a situation is developing and anticipate that that is creating trauma. It is then up to them how the court is managed. I have probably overstepped what I should have done there, but you asked for a view and so I have given you one.

Katy Clark: Thank you very much.

The Convener: We are coming to the end of the session. I have a question for David Fraser on part 3 of the bill—on special measures in civil cases—which we have not touched on this morning. What are the resource implications of implementing part 3? I note that you set that out in your submission, but what are the implications of implementing it as currently drafted and the implications if it were to include more ambitious proposals, which some victims organisations have indicated that they would like the Scottish Government to consider?

12:00

David Fraser: It is not a massive sea change if you are already doing that in the criminal dimension and just moving it to the civil dimension. We have a lot of staff who work in both areas, so once they are upskilled, that is fine. The issue in relation to the cost is that we have about 26 remote sites and we often have witnesses who link in from those. It is about getting our technology in our civil courts up to the same level as the technology in our criminal courts to allow us to have a uniform approach irrespective of whether it is civil or criminal business.

The Convener: In the context of the proposals potentially being a little bit more ambitious, is that feasible?

David Fraser: I am sorry, convener—you will have to help me with that.

The Convener: In part 3, there is a proposal to extend special measures to civil cases, and you have just outlined the implications for IT systems from that. Should the proposals be expanded from what they are at the moment in the bill? Would that have any impact?

David Fraser: Provided that we have the technology upgraded in those courts, we can do that. You could argue that you should not separate the different jurisdictions. If you have trauma in one sphere, why not deal with it in every sphere?

The Convener: Thank you for that response. Just to clarify, I should have said that the organisations that highlighted that are Scottish Women's Aid, Rape Crisis Scotland and Victim Support Scotland. They probably did so when they were giving evidence to the committee.

There is one final question—the shortest question today—from Russell Findlay.

Russell Findlay: It is the shortest question ever—I promise. It is for Mr Fraser. The SCTS submission warns that the possible costs of the bill could be “substantially” higher than stated in the financial memorandum, so much so that you have written to the Finance and Public Administration Committee. Did your letter include any projected likely cost? Can the letter be shared with this committee?

David Fraser: I will give you a short answer, which is that I will come back to you on that one.

Russell Findlay: That is great.

David Fraser: I do not have the details of that particular letter, but I will take the question away and respond later.

Russell Findlay: Perhaps the clerks can pass on the answer to us.

The Convener: It has been a comprehensive session, and I thank all the panel members for their time this morning. We will have a short suspension to allow for a changeover of panel members.

12:03

Meeting suspended.

12:06

On resuming—

Pre-budget Scrutiny 2024-25

The Convener: Under our next item of business, we will continue our pre-budget scrutiny of the Scottish Government's 2024-25 budget. I am pleased to give a warm welcome to Karyn McCluskey, who is the chief executive of Community Justice Scotland, and to Chris McCully and Bill Fitzpatrick, who are also from Community Justice Scotland. Thank you for your comprehensive written submission.

We have about 45 minutes for this session. Given the range of questions and responses that we had this morning, time has slightly caught up with us, so I propose that we drop items 3 and 4 from our agenda, which are our private discussions following the public session? Are members content with that?

Members *indicated agreement.*

The Convener: As usual, I will open the questioning with a general question. Can you outline the main spending challenges relating to either Community Justice Scotland's budget or the sums that are allocated for community justice more generally?

Karyn McCluskey (Community Justice Scotland): Most of what I will say will be self-evident to committee members, who will have heard this from almost every person who has presented evidence.

Community justice is a broad church. We are still experiencing huge difficulties following the pandemic. You will be aware of the challenges relating to remand, the number of people getting released into the community and high costs.

We rely hugely on people in the third sector, who are often the lowest paid. They also work on year-to-year funding so, every January, people get notice that they might lose their jobs, yet we rely on them for the delivery of community justice—they are essential. They are the unsung heroes in lots of the work that we do in every community in Scotland. There have been real-terms cuts to those organisations' funding. Members will be aware of recent media reports about the 218 service. For the whole of Scotland, we have only 68 bail accommodation places in the community.

The situation is vastly challenging. You would expect me to say that, but the community justice services that we provide are some of the solutions to what we experience right now in the prison service in relation to the custodial sentences that women get. Such services can achieve, and have

achieved, a great deal with limited resources, but we will have to fund them differently.

Bill Fitzpatrick (Community Justice Scotland): The core CJS budget that funds our activities currently sits at a shade under £3.4 million. In the current environment, we have been encouraged—in fact, we have been directed—to realise efficiencies. Our total budget is a shade over £4 million, because the activities that we carry out with the Caledonian system central team in restorative justice are funded from other parts of the Scottish Government. It is really difficult to drive efficiencies across an organisation when its budget sits in three separate parts, and there were more parts than that recently.

Consolidating the budget and making it simpler would assist us in driving cash efficiencies, because efficiencies could be driven across the line. That would help because the activities that our organisation takes care of in the sector are those for which there is maximum demand. Training is one such area for which demand is almost endless, and it is proving to be increasingly difficult to meet that demand and to fully satisfy the sector's requirements.

The efficiency measures to which we have committed include further collaboration with other organisations. We talk to other sector partners including the Risk Management Authority. The Scottish Government and child services organisations are involved in those conversations to see whether we can establish the quantum for the training resources among and across the organisations. However, it is difficult for us to fully contribute to that effort and to do what the Government asks us to do without having full control and sight of the total budget that we have available. That is quite a minor thing, but it is important in enabling us to play our part in driving efficiencies through the system, particularly in the bit of the system for which we are responsible.

Chris McCully (Community Justice Scotland): What I will say will be in line with Bill Fitzpatrick's comments. The opportunities that could be provided through additional resources for Community Justice Scotland would support us to do a range of activities. As a result of having to find efficiencies and being so close to capacity, we have not been able to make progress over recent years in, for example, changing the diversity of the training offer and broadening the training outputs and the number of courses that we offer. For example, training is required for those who work with people who have sexual offences convictions, and there has been considerable growth in that area in relation to court business and sentences, so new work in that regard would be beneficial. We highlight in our submission how justice could be done better through different interventions,

disposals and ways of working in the justice system, so additional funding to support the pilot approaches, innovation and development work that would be required could be very beneficial.

The Convener: Thank you. Your submission sets out the impact of reduced resources, particularly due to the increase in your statutory functions. For example, you highlight the expansion of arrest referral services, increases in the number of diversion from prosecution cases and a number of other areas. If that is the case—I am sure that it is—that will be at one end of the system, so what are your concerns about the impact that that will have on the preventative work that we want to be developed? That contemporary effective work is well set out in “The Vision for Justice in Scotland”.

Karyn McCluskey: I am concerned that we will retreat to our statutory functions—what we are required to do statutorily—and will not work on preventative aspects such as arrest referral. Some spectacular work is going on in that regard. We have talked about the work relating to diversion from prosecution and the expansion of electronic monitoring, and the Bail and Release from Custody (Scotland) Bill will require additional resources. None of the options involve low costs or no costs.

The third sector is involved in some of the work to address homelessness. About 55 per cent of people who are released from prison do not have plans on their release—they are often released with no place to stay, without a liberation grant and even without some of the medication that they might require, so they land in our homelessness services. There is almost a cliff edge. Those cases are urgent, but the capacity of organisations to deal with them as an emergency is severely restricted. The whole area is under real pressure right now.

12:15

The Convener: Okay. I will open this up to members and bring in Russell Findlay to kick off.

Russell Findlay: The submission is extremely helpful and detailed. The most striking and, perhaps, shocking statistic in it relates to funding of criminal justice social work. The Government appears to have decided not to increase the budget by a single penny for three consecutive years, which of course means a substantial real-terms cut. The money dictates everything that you might want to do, as you have already told us. We have the new Bail and Release from Custody (Scotland) Act 2023 coming into force quite soon.

The Scottish Government places a great deal of emphasis on greater use of community disposals and moving away from imprisonment and so on,

which seems to be at odds with that statistic. Are you confident that that will change? What can you do to persuade the Government to put its money where its mouth is?

Karyn McCluskey: That is a big question. You are right. If it matters to us, it will need to matter when the budgets are set. We are, in a way, not visible: you cannot see and touch us, as you can a prison service. Sometimes we lose out by being quite hidden.

Work can be long term. The Caledonian system, for example, is delivered by justice social work, and provides complicated skilled services. It takes two years to get each person through that programme. That needs to be funded so that those people do not have other cases coming in that bring them to their knees. It is a stressed service, as are our third sector services.

There will never be enough money; I understand that. I am a realist, but we need to look at what is happening. I looked earlier: of the overall justice budget, 2.5 per cent goes to social work and 1.47 per cent goes to community justice. Those amounts are minuscule, in the overall scheme of things. We are on a burning platform at present in terms of the Scottish Prison Service and the number of people who are going into prison. If we want something different, we will need to fund it.

Russell Findlay: Going back to the Caledonian system, I note that 19 of the 32 local authorities are able to provide that training but 13 are not, purely because of money. What difference would it make if all local authorities could do it?

Karyn McCluskey: I am slightly in love with the Caledonian service. I could go on for the rest of the hour about it. It is the only programme in Scotland that is accredited by the Scottish advisory panel on offender rehabilitation. It is detailed and it needs skilled women’s workers and skilled children’s workers because domestic abuse affects whole families and communities. Extra social workers are needed if we are to be able to do it.

The Scottish Government provides £4.1 million a year to fund Caledonian in 19 local authorities. Other local authorities have brought in their own programmes and six local authorities have nothing. That is not to say that they do not do anything with people who are convicted of domestic abuse, but they do not have full-time programmes, and nor do they get anything extra. In some of those local authorities, domestic abuse is incredibly prevalent and there are big challenges.

Russell Findlay: Is it a matter of public record which six local authorities they are? Do they have large populations, for example?

Karyn McCluskey: Some of them are large. Would you like me to read them out?

Russell Findlay: If you have them, yes.

Karyn McCluskey: They are Argyll and Bute Council, Comhairle nan Eilean Siar, East Renfrewshire Council, Inverclyde Council and Orkney Islands Council. We also had West Dunbartonshire Council, but it is funding the process itself and we are in the process of training right now.

Fulton MacGregor: The question will follow up from what Russell Findlay was asking. The submissions that we had from the Convention of Scottish Local Authorities and Social Work Scotland expressed concern about there having been no increase in funding, and talked about how there would have to be an

“increased focus on ‘core’ functions at the expense of more targeted, preventative services.”

What do you understand that to mean?

Karyn McCluskey: It refers to what they need to deliver. You will understand that lots of the functions of social work go beyond what is statutory, which includes community payback orders, supervision orders and so on. They provide a huge amount of other services, such as some bail support services, and they extend into diversionary work, but their priority will be to focus on CPOs and other statutory work. Bail supervision is provided by almost every local authority in the country, but such things are hugely resource intensive. I cannot speak solely for justice social work because I represent broader community justice, but we have increasingly to deal with complex people: 41,000 people who came into police custody last year had designated mental health issues, which translates into the groups whom we look at. Many of the people whom we work with require huge amounts of additional services; justice social work will not be able to provide them all.

Fulton MacGregor: The reason why I asked the question was that I am not sure about your quite stark statement. When I saw it, I thought that it was a cry for help to the committee in some respects, but I am not sure how that would pan out. I am considering my experience: part of the work would still carry on—people would not hang up the phone or not go out and do the work. I know that this is not for you fully to answer; I understand that, so this is to get your view. Would it have been better if the submission had looked more at how much extra money you could do with and where you would put it to support all those functions?

Chris McCully: In practice, we already see that the statutory throughcare and voluntary

throughcare that are provided by justice social work services have decreased over recent years to where they are now, which is, according to the most recent figures, 1,800 cases a year down from the maximum.

On the statutory functions that we refer to, in that context social work legislation gives justice social work a general duty to provide advice and assistance, but there is no statutory definition of throughcare. There is also no strict statutory definition of their duties in relation to diversion and supervised bail. You will see the biggest impact on and reduction in those services if other workloads increase but resources do not increase commensurately. We can see already what things are resource intensive—good things to have that have a positive effect, but cannot be prioritised.

We see that being passed on to the voluntary sector. COSLA and Social Work Scotland’s submission mentions, and you will hear this from the criminal justice voluntary sector forum, that the section 27 money for justice social work budgets is frequently used to fund the voluntary sector to provide externally commissioned services across the various areas. Those services now have to be cut consistently because councils have to prioritise in-house delivery because of their statutory responsibilities. Such effects are happening and are of concern now, and not just for the future.

Justice social work is having to reduce the focus of its work. We saw that in the submission from COSLA and Social Work Scotland. Recent research from Social Work Scotland, in the “Setting the Bar for Social Work in Scotland” report and various follow-ups, has shown that social workers have to focus on the core functions and move away from some of the more in-depth rehabilitative person-centred work that, in their opinion, might make more of a difference in people’s lives.

I cannot comment on the COSLA and Social Work Scotland position and what they should have written, but their experiences and what they say about the difficulties in delivering services in the current financial environment are certainly backed up by what we hear from local community justice partnerships.

This is a challenging environment in which to deliver justice services, partly because justice is, if you like, the final funnel. If you look at research like the “Hard Edges: Mapping Severe and Multiple Disadvantage in Scotland” report, you can see that all the failures in other systems—health, housing and employability—bring people into the justice system. The people whom we work with in community justice face a wide range of issues that compound and multiply; they frequently need a lot of help and support. There is a lack of resources that would allow that to be done in a flexible and

long-term way, so instead we have to focus on delivering CPOs or certain amounts of hours, or doing court reports, which is bound to have an impact.

John Swinney: I tend, for obvious historical reasons, to steer clear of an awful lot of budget discussions, but I am struck by two things about the submission and what you have said.

First, your slice of the pie is small—even your share of the justice pie is small—but what you do has the potential to avoid much greater cost. In the previous panel, Sue Brookes from the Scottish Prison Service made the point that the Scottish Prison Service is, ultimately, the destination for all failure, but it is an expensive destination for all failure. You offer a much cheaper alternative to that. That is my first observation.

My second observation is that money is incredibly tight everywhere. Nowhere in the Scottish public finances is doing fine, and everywhere is under pressure.

That takes me to the challenge for reform. I accept that you have a small part of the pie, but others have big resources and they would also say that they are under pressure. Within the justice family, is a reform conversation going on about shifting the balance in favour of preventative and—forgive my crudeness—lower-cost interventions, and are there conversations with the wider public sector? You made the point a moment ago that a large proportion of the prison population has mental health challenges. Where is the health service in all this? Given how tough things are for everybody in the public sector, are conversations happening that would enable some tilting of the balance, which might—I contend that it would—end up with better outcomes being achieved for everybody?

Karyn McCluskey: You do not have to persuade me about the importance of prevention. I absolutely agree with you.

Are such conversations happening? Yes, they are. Is there enough space for them to be translated into action plans? No, there is not. People are so busy now. There is no capacity to give people space and thinking time to consider what else things could look like.

You are right that we get only a small slice of the pie, but the people whom we support touch the national health service, family support services, education services and everything else—the whole gamut of public services.

We have said that we would like to do some human and economic costing. That was done within the Promise. Less than 1 per cent of young people go into care, yet those people are 30 per cent to 40 per cent of the prison population. We

should not be proud of that statistic because it tells us that we need to think about more prevention. How do we stop people getting into the system and how do we get people into sustainable jobs, paying tax and looking after their families with family support? We could do much more on that.

12:30

John Swinney: You say that the conversations happen, but people do not have the thinking space to think differently. I have to say that I am not persuaded by that argument—people will always be busy. I am trying to probe whether serious heavy thinking is going on about changing the model. This is not just about you. I am a huge admirer of what you do and the emphasis and focus on prevention, but I accept that, without tilting the balance more in favour of prevention, we will not get more prevention. I will not sit here and say that there is a pot of money somewhere else, because I know full well that there ain't.

I am interested in how that focused and hard discussion can happen to realign budgets and approaches to shift the focus of our system away from picking up the pieces—which we do in a lot of cases—and towards avoiding the person being broken in the first place.

Karyn McCluskey: My personal view is that we need a long-term policy and plan; not something that is delivered within four years, because that does not work and has not worked anywhere, even internationally. We need a long-term plan about how we will reduce the prison population and shift money into prevention. We do not have that yet. I do not have a clear idea of the direction of travel. How many people is too many in our Prison Service? What do we want for the people who enter the justice system? What does that look like for Scotland?

The Christie commission started this off many years ago, and we have had iterative reports that have told us about the direction of travel. James Heckman, a Nobel laureate economist, came here and said that for every £1 that you invest in the early years, you have to invest £15 to £16 in a different way to get the same outcome. He talked about dollars and not pounds, but I am sure that it is equivalent.

We have not managed to do that in any meaningful way that will stop people coming into the system, although, on a positive note, if you look at what has happened to the number of people in the youth justice system, there has been an amazing transformation. In 2009, we had 921 16 and 17-year-olds in the prison system. In 2019-20, we had 149 and, this year, it is even lower. That will eventually translate through the system, as we prevent more people coming in, but we

need to do much more and we need a coherent long-term plan.

John Swinney: I will stop speaking after this, because I am going to end up sounding defensive. I do not think that the situation is due to a lack of policy focus or attention from ministers. I was one of them, so I sound super-defensive here. The experience that you have recounted about youth justice gives me hope, as that is an incredible transformation in performance that is long overdue. I am interested in why we have not been able to get a necessary focus on shifting the balance across the wider public sector. Is it because there are too many players involved? Are we too stuck in the groove of what we have aye done.

Karyn McCluskey: It is all of the above, perhaps, Mr Swinney.

Bill Fitzpatrick: I will give you my perspective. Your question asked whether there is any serious discussion about effectively rewiring the justice budget. There is not—that is not happening in any substantial sense. The police get funded with just over £1.4 billion. We are on the criminal justice board with the police and other bodies, and is there any indication that they would be willing to surrender some of that to community justice? No. If I was the chief constable, I would not do that, either.

John Swinney: Let me stop you there, Mr Fitzpatrick, because that is an interesting observation. You sit on the justice board with all these players and there is no serious discussion of that point. That makes my point that, somewhere, there has to be an impetus and a priority to realise that the model has to change. I appreciate that others will say that the police budget cannot possibly ever be less than a certain amount plus some more. This committee hears those representations but, ultimately, there has to be some conversation if we are to shift that balance.

Bill Fitzpatrick: I agree, not only with your direct question but with the implications that flow from it. At some point, there has to be a discussion about what we want the justice budget to do. An uninformed reader of “The Vision for Justice in Scotland”, which was published last year, and the national strategy for community justice would think, “My goodness, the Government is putting full strength behind community justice.” Then you look at the budget. The whole community justice element of the justice and veterans budget—not just the bit that we control—is 4 per cent, and 96 per cent is spent on preventing crime, patrolling the streets, prosecuting people and locking them up in jail. The famous Joe Biden once said, “Show me your budget and I’ll tell you what your values are.” That is where we are at the moment.

I do not say that with any animus. I was a police officer for 30 years, and I was a senior police officer, so I know the pressures that the police are under, but my sense is—you have alluded to this—that everybody in the justice sector is holding the line. That is the reason why we get a retreat to statutory duties—that holds the line. People think, “I have to do that, so that’s what I’m going to prioritise and do.” We are not moving forward. Karyn McCluskey might disagree with me—she will probably give me a row after this—but the serious discussions that you think might be happening are not.

John Swinney: That is helpful—thank you.

Katy Clark: My questions were going to be similar to John Swinney’s, so I will take forward that point about the disconnect between stated policy and reality on the ground. According to the Scottish Parliament information centre, the community justice budget is flat in real terms. You will know that this committee spent a considerable amount of the past year looking at the bail legislation that is coming through. It is clear from Angela Constance that the Scottish Government’s long-term strategy is to shift towards more community justice disposals as an attempt to reduce prison numbers or even keep prison numbers where they are, because the direction of travel is up, as we know.

Surely it is the politicians and the Government who drive change. Who else can possibly drive change if not the politicians who are put there to do it? Who else in the system is in a position to do that? What discussions have you as an organisation had with ministers about what they expect from you? If the money that the sector gets does not increase, are you being asked to do more? Is that being made explicit to you? Surely the courts will use community justice disposals only if they are there. Is that not the major factor that determines that our prison numbers continue to go up and, from what you say, that the sector is shrinking rather than expanding? Is that fair?

Karyn McCluskey: It is fair. Last year, the Scottish Sentencing Council stated:

“one of the greatest challenges to judicial confidence in community-based disposals concerns limitations of resources to support their management and delivery. A more consistent approach to the development and funding of these disposals to support their more consistent provision, robust management and successful completion would enhance judicial confidence and might be expected to support an increase in the use of community-based disposals”.

I have been involved in judicial training over the past weeks, and I must have spoken to around 100 sheriffs. We still have about 5,100 short-term sentences. I know that we hear about really difficult people. I say to sheriffs, “Why are you still

using those sentences?" I cannot speak for them, but I will paraphrase. Some 20 per cent of people will not comply with community sentences, and we all know who they are—I dealt with them when I was in the police and the violence reduction unit. However, 80 per cent of those people cannot comply. You tell them that they have to be at drug services at 2 o'clock, that they have to be at homelessness services, and that then they have to be somewhere else. They do not have diaries—they are chaotic. We need something different.

In our written submission, we said that we need to look at other types of community sentences, because things have changed. People are more complicated, and we need to think about how we manage them in communities. This is primarily about reducing victimisation.

Katy Clark: Are you saying that sheriffs and others do not make community-based disposals because they think that the offender will not comply with them?

Karyn McCluskey: Or that they are not available. It is not that they will not comply because, in the majority of cases, we get compliance.

Katy Clark: Are you saying that the Scottish Government needs to put its money where its mouth is?

Karyn McCluskey: We need to have consistent provision. In fact, the community justice plan that we have says that we need to have consistent provision across Scotland. We mentioned the Caledonian system, which is available only in certain places. It is not right that someone might get one sentence in Inverness and a different sentence in East Dunbartonshire. There should be parity of services, although what is there already is good, and 74 per cent of people complete their orders.

Katy Clark: If those alternatives were available in every part of the country, would they be used by the courts?

Karyn McCluskey: Yes, I think that they would be used by the courts.

Bill Fitzpatrick: Underlying that question is the fact that it is easy to point the finger at the Government or nod your head, but we have a role in this. We are an advisory body. We are meant to advise ministers and to contribute to the conversation. We need to be better at that.

Our submission is one of the first times that we have produced a detailed analysis on this level, but we need to convert that, because part of our mission is to not only advise ministers but inform the public. We need to make sure that that sort of compelling information is in the public and political discourse. Part of the problem is that we still have

a way to go to be convincing about that. As things stand, we know what decisions policy makers think are their priorities, and most of them may be right, but we need to be a better and more active part of that conversation.

The Convener: It is no surprise that John Swinney would like to come back in.

John Swinney: At the risk of appearing as the spokesman for the Government, the important point here is about the political discourse. It is not all about the Government. Colleagues know that I am not in any way personalising this, but there is a limit on the amount of money available. In that context, how do we try to reshape outcomes by the better use of money? For simplicity's sake, let us say it that the split is 96 per cent to 4 per cent. If we keep on with 96:4 for ever, the chances are that we will get roughly the same outcomes or perhaps, as Katy Clark has rightly said, worse outcomes, because the numbers incarcerated are rising exponentially. The 96:4 might inevitably become 97:3 or 98:2, because we will get worse outcomes.

Karyn McCluskey: I have worked in the Scottish Prison Service, and my colleagues in the Prison Service work incredibly hard. There would still be a need for prison places in Scotland—

John Swinney: Of course.

Karyn McCluskey: —but we would need fewer places. The prison staff and the people who work there need the latitude and ability to intervene with people, get them on programmes and work to rehabilitate them. They cannot do that if there are 8,000 people in prison. We have to be the solution for the problems in Scotland. We have to have some hard conversations with everybody, including members of the committee, around what we want and how we will pay for it in the future.

Bill Fitzpatrick: Obviously, we are part of the community justice sector—we are the only national body for community justice, although we do not have line authority. However, if I was the Government, I would not give us a penny more until we justified spending that penny on community justice and why it will deliver the benefits that we think it will deliver. We need to be much more convincing about what the change that needs to happen will deliver for Scotland. Will it make it a safer place? Will people rehabilitate? Will people stop reoffending? Why would that be good? In the absence of that convincing case, I would keep spending money on the police, the courts and the Prison Service, because I would have no alternative.

Sharon Dowey: Bill Fitzpatrick has touched on my point about outcomes. Going back to John Swinney's last question, he mentioned figures for youth justice and the lower number of youths in

custody, but I certainly get a lot more complaints in my inbox about the rise in antisocial behaviour and crime on the streets. It seems that the police say that their hands are tied in the action that they can take. What role would community justice have there? What action needs to be taken? Where are we failing in that respect? We say we have good measurements because we have fewer youths in custody, but crime out on the street seems to be on the rise. As far as outcomes go, that is not a good outcome.

12:45

Karyn McCluskey: If you look at the stats, you will see that crime is coming down.

Sharon Dowey: I argue that that is because it is not reported.

Karyn McCluskey: Absolutely. I have family who have been affected by online crime and they probably did not report it, but generally recorded crime is coming down. I do not have anything to do with antisocial behaviour on the streets. That is a question for the chief constable.

The majority of people do not commit crime while they are on bail, but some need support. The challenge for us right now—and in fact for the whole of the justice system—is that court cases take much longer to be arranged, so people are on bail for substantial amounts of time, which increases the risk that they might reoffend or breach their bail conditions. That is what we are dealing with right now.

On delivering a change, the reconviction rate for people on CPOs is 25 per cent generally, but if they are sentenced to less than three months, the reconviction rate is 61 per cent. For six months it is 54 per cent, and for six months to a year it is 41 per cent. It is not working. Every year 10,500 people go to jail and 8,600 come back within a year. We are much more effective at preventing reoffending than short-term sentences. If some of the work that is done in communities was enhanced, we could drive that even lower. That has not quite answered your question.

Sharon Dowey: No, but it was about focusing the resources that you have on the right areas.

Karyn McCluskey: Absolutely, and people need wraparound services. We often deal with complicated people who have committed numerous low-level crimes, and they are often enslaved by substances. We need to get them into substance misuse services and recovery. That takes a long time, and it is technical work.

Sharon Dowey: Okay. I go back to Bill Fitzpatrick's point. Some of the organisations need to give us more evidence on the outcomes.

Karyn McCluskey: I trained as an intelligence analyst, and data is everything. When I have been in front of the committee previously, it has said that it lacks some of the data around community justice. I agree. I would have a data hub in my organisation in a heartbeat. I would try to get the stats that show what is happening and where improvement is being made because you cannot take my word for it that things are getting better. I can give you some broad stats, but I need to give the detail underneath that to the committee and the Scottish Government. We do not have that detail right now because we have prioritised other data sources.

I heard the previous panel talking about some of the data needed for the Victims, Witnesses, and Justice Reform (Scotland) Bill. That is probably one of our biggest data gaps. If we want to look at some criminal issues as public health issues, the first part of that is surveillance. What do we know about the issue and how do we know whether we are getting better and not worse? We do not have that, Ms Dowey.

Bill Fitzpatrick: On the point about outcomes, my comment will sound flippant, but it is not meant to be. It is real and from experience. Folk always complain about weans, as they have done for the whole of history. Every generation of weans has been a problem. They are running riot, they are uncontrollable and they are not like us. However, the serious point is that the vast majority of that is not about criminal justice. It is about children feeling secure and supported, being under the positive influence of education and being in family or carer groups. It is about that.

It recurs all the time. When I was a divisional commander a million years ago, the most letters I ever received were not about murders or rapes, but about weans causing bother and gang fights. It was not to be ignored.

The direction of youth justice in the country is the best example that we have. Take children out of the criminal justice system, except the extreme cases, which are obvious, and treat them in the care system. Make sure that they are supported and that support is available for them.

Community Justice Scotland is tangentially involved in youth justice issues as a particular specific responsibility: we are on the youth justice board. I am the representative on it and have been for the past five years. A rights-based approach to youth justice is the right way to go, and it will help, but it is a typical wicked problem. Children will always present everybody with an issue.

The Convener: Thank you. A few more members would like to come in and then we will have to call the session to a close. Rona Mackay and then Pauline McNeill.

Rona Mackay: I will be brief. We are having an interesting discussion and it has been an interesting session. We are learning that if we keep doing the same thing budget-wise, things will not get better. In fact, they will get worse. It goes back to the points that John Swinney and Bill Fitzpatrick made about the sector getting together to discuss how we can do things differently. You know that if we cut the Scottish Prison Service budget in the next budget, there would be an outcry, because the preparatory work for that has not been done.

Is it possible for you and the Government to effect change in the way that is needed? As Bill Fitzpatrick said, quite rightly, it has not happened, and people are protecting their own areas. That needs to change. Being a bit simplistic about it, if we put fewer people in prison, which we aim to do, prison should not need such a huge budget and that money could be put into community justice. I am certainly no economist but until we start having the conversation about change, nothing will happen. Am I right?

Karyn McCluskey: You are absolutely right. It is not about simply taking money from the Prison Service and putting it into community justice.

Rona Mackay: I get that.

Karyn McCluskey: Health, homelessness and so on are all impacted.

Rona Mackay: It is all interlinked.

Karyn McCluskey: It is a broader Government cake. I know that we have a lot of people in prison right now, but there are not that many in community justice. If we are talking about 15,000 or 20,000 people, we can almost imagine them and we can start to think about who are in the most need and who need extra services, or who have come in once but will not come back in. We could start to cost that out. We need to look at costing outcomes and how much it will cost us to deliver. Then we need to look at it a bit like a start-up company; we need start-up money to effect that change.

We can absolutely do it. I am incredibly optimistic about it. I bang on all the time about preventative services and about preventing people coming in. We need to set the direction of travel and that is about long-term change. Politicians will need to do that. I cannot make up the strategy or the policy. We need to set the direction of travel and then go forward relentlessly to try to achieve it.

Chris McCully: It has been done in other countries, so it is possible. In the 1960s and 1970s, Finland, a lot of other Scandinavian countries, Belgium and the Netherlands decided to fundamentally shift how they approached justice,

and focus more on community interventions, keeping people out of prison and supporting their reintegration. They did it, and we can also do it through these discussions.

In some senses, the discussion about different justice partners' budgets being cut is not necessarily right, because part of the issue is about how the resources that are deployed to the police, the prison service, the courts and the Crown Office are used differently, and there are levers for shifting that. The Community Justice (Scotland) Act 2016 puts a duty of collaboration on the part of those national partners to engage in community justice and think about how they can do it differently, but we have a complex system with lots of different levers for change and lots of different bits that interact with one another to produce all kinds of different outcomes. The evidence on how to shift a system like that says that you first agree a clear direction of travel and get a sense of partners' shared values, and then try to drive that.

That is happening to a degree. There are discussions. There are clear ideas in the Government's vision for justice and national strategy for community justice, but how they translate into practice is the big gap. Implementation is the challenge. Additional money will help that if you can target it at specific things, but it is more about how we use the resources we have to do what we know makes a difference.

Karyn McCluskey: My colleagues in Police Scotland—and I will give a shout out to Police Scotland here—have been hugely thoughtful about diversion and trying to get people in the custody cells to support people when they are brought into custody. I always used to say to my policing colleagues that the most important Peelian principle is number 9, which is the absence of crime and disorder. It is the litmus test of great policing. That principle fundamentally moves into the preventative space. We always focus on detection and how quickly we can get people to court, but it is about prevention. We seem to have slightly forgotten that as things have become more challenging, but it is completely possible.

Bill Fitzpatrick: There is a cost of change but there is also a time lag for effect to take place, and we need to be patient about that. It is not a competitive sport. We do not have to be first across a line and have people lose. We probably have the best police force, the best prison service and the best prosecution service in the world. If they are not the best, they will be in the top echelon. That is a hard place to be in and say, "We need more money to do what we do". We should not cut those budgets because those are excellent services. We need to make space for

something else to happen and we need to be patient enough to let it have the effect that we think it will have.

Pauline McNeill: It has struck me that, if we are being honest, successive Governments and Parliaments have tried to get a shift into community justice. That is my view.

We do not have time for you to answer my question, so perhaps you could follow it up with the committee. It would be helpful for our report, given the good evidence that we have had from you. First, what exact numbers are you dealing with? We do not have any sense of that. Secondly, and to wrap up, what I am hearing is that if you had even £250,000 or £500,000 more, you could do something with that. To quote Bill Fitzpatrick, you should not be given a penny more until you can justify it. I agree with that because public and judiciary confidence are essential to move it forward.

Could you follow up with the committee on the numbers and also give us some indication of whether, if you had the additional budget, you could hit the ground running with the things that would give the public and judiciary confidence that, instead of sentencing people to prison, they can sentence them to community services?

Karyn McCluskey: I am happy to do that. I have lots of numbers here. We could be here for the next hour if I started to go through them all and what that looks like.

However, it is not just about £250,000. We are talking about services all over Scotland, so the figure would be a bit more significant than that. At the moment, we commission throughcare in Scotland, and the budget for that has been about £3.8 million for the past five years. Yet we have many more people coming through and we have to support them. If we adjust that for inflation, it is probably around £5 million. We have not adjusted it for inflation, so we are trying to do more with less.

We need to look at and fund whole areas of that justice journey where community justice services are involved. Part of our evidence submission talks about some of the economic costings and where we should perhaps put our money for greater effect. We will get back to you on the numbers.

Pauline McNeill: Thank you.

The Convener: Thank you. I have to bring the session to a close. I am sure that we could spend at least another hour on this. Thank you very much to our panel members for your time this morning.

At our next meeting, next week on 8 November, we will continue our pre-budget scrutiny when we

hear from the Scottish Prison Service and then the Cabinet Secretary for Justice and Home Affairs. That concludes our meeting. Thank you.

Meeting closed at 12:59.

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