OFFICIAL REPORT
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Criminal Justice Committee

Wednesday 22 January 2025

Session 6

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Pàrlamaid na h-Alba

Wednesday 22 January 2025

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CRIMINAL JUSTICE COMMITTEE

3rd Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Liam Kerr (North East 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)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Simon Brown (Scottish Solicitors Bar Association)
Angela Constance (Cabinet Secretary for Justice and Home Affairs)
Stuart Munro (Law Society of Scotland)
Paul Smith (Edinburgh Bar Association)
Adam Stachura (Age Scotland)
Kate Wallace (Victim Support Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 22 January 2025

[The Convener opened the meeting at 09:30]

Subordinate Legislation

International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2025 [Draft]

The Convener (Audrey Nicoll): Good morning, and welcome to the third meeting in 2025 of the Criminal Justice Committee. We have no apologies this morning.

Our first item of business is an oral evidence-taking session on an affirmative Scottish statutory instrument. We are joined by the Cabinet Secretary for Justice and Home Affairs, Angela Constance, and Scottish Government officials Susan Black, who is a senior policy officer in the civil law and legal systems division, and Emma Thomson, who is a solicitor in the legal directorate. I welcome you all to the meeting.

I refer members to paper 1. I intend to allow up to 15 minutes for this evidence session. I invite the cabinet secretary to make some opening remarks on the instrument.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning. The draft International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2025 is an order in council made by His Majesty under powers in the International Organisations Act 1968. The nature of the reserved/devolved divide means that, where privileges and immunities relate to devolved matters in Scotland, the function of advising His Majesty in relation to the order is devolved. As such, the order deals only with matters that are within the legislative competence of the Scottish Parliament.

The purpose of the order is primarily to ensure that the relevant privileges and immunities are in place for two international organisations: the European Forest Institute and the Global Combat Air Programme International Government Organisation, which is otherwise known as GIGO.

Committee members might recall that we committed to correct a drafting error in the previous immunities and privileges order, and the order fulfils that commitment, too.

To assist the committee, I will say a little more about the background to the order. The European Forest Institute—EFI—and the United Kingdom Government have signed a host country agreement to formally establish an EFI office in London, which requires certain privileges and immunities to function and operate effectively. The EFI is an international organisation that was set up to conduct research and provide policy advice on forest-related issues.

The global combat air programme—GCAP—is a multinational initiative that is led by the UK, Japan and Italy to jointly develop next-generation fighter aircraft by 2035. GIGO will function as the executive body of GCAP, with the legal capacity to place contracts with industrial partners. Defence manufacturing in Scotland is fundamental to our national engineering and manufacturing sector, and the global combat air programme is an important opportunity for Scotland that will drive future investment. The order in council forms part of the secondary legislation that is needed to establish GIGO.

As is common in recent privileges and immunities orders, the order provides for exceptions to immunity in respect of road traffic offences and accidents. Approving the order will correct a historical error and, importantly, ensure that we are able to meet our international obligations. As a good global citizen, it is the responsibility of the Scottish Government to bring the order to the Parliament for consideration. I commend it to the committee.

The Convener: As members have no questions, we will move to our second item of business, which is consideration of the motion to recommend approval of the draft affirmative SSI on which we have just taken oral evidence.

Motion moved,

That the Criminal Justice Committee recommends that the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2025 [draft] be approved.—[*Angela Constance*]

Motion agreed to.

The Convener: Are members content to delegate responsibility to me and the clerks to approve a short factual report to the Parliament on the affirmative instrument?

Members *indicated agreement.*

The Convener: The report will be published shortly.

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment (No 2) Regulations 2024 (SSI 2024/377)

The Convener: Our third item of business is consideration of a negative instrument. As members do not wish to make any

recommendations in relation to the negative instrument, are we content with it?

Members *indicated agreement.*

The Convener: I thank the cabinet secretary and her officials for joining us. I suspend the meeting for a few minutes to allow for a changeover of witnesses.

09:36

Meeting suspended.

09:44

On resuming—

Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill: Stage 1

The Convener: Our next item is stage 1 scrutiny of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill. We are joined by Simon Brown, president of the Scottish Solicitors Bar Association; Stuart Munro, convener of the criminal law committee at the Law Society of Scotland; and Paul Smith, president of the Edinburgh Bar Association. Thank you for taking the time to attend today's meeting and for your written submissions, which were helpful for committee members.

I will bring in Ben Macpherson.

09:45

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I remind members of my entry in the register of members' interests, which shows that I am registered on the roll of Scottish solicitors at the Law Society of Scotland.

The Convener: Thank you.

I refer members to papers 3 and 4. I intend to allow around 75 minutes for this evidence session. I will start with my usual general opening question. I will come to Stuart Munro first, and then bring in Simon Brown and Paul Smith.

Part 1 of the bill makes changes in relation to procedures in criminal courts. The committee found your submissions very helpful in getting a sense of your organisations' overall views on the proposals. Will you outline any issues or areas of concern that you have with the provisions in part 1?

Stuart Munro (Law Society of Scotland): Good morning. Members will see that where there most obviously appears to be disagreement between me and my colleagues on the panel is on the single national custody court but, in reality, there is not that much difference when one boils down to the detail.

We at the Law Society support the notion that there should be flexibility in the system. If an individual person is arrested at one end of the country and has warrants outstanding in various courts, it makes abundant practical sense for that person to appear before a single court and for the system to permit that.

We are also open to the idea of investigating the possibility of remote participation in the custody courts. We had examples of that during the

pandemic in certain locations, although those were obviously in situations where there was not much alternative, and the experience was mixed, to say the least.

The committee will be aware that Sheriff Principal Marysia Lewis prepared a review of the pilot that was in place in Tayside, central and Fife. In short, she found the process to be wanting. It did not really save any time—if anything, it caused more time to be wasted. Her ultimate conclusion was that the process could conceivably work, provided that there was investment in the courts, the police and the legal profession.

At the moment, a working group that is convened by Sheriff Principal Aisha Anwar is looking at the development of a virtual custody process that would meet the concerns that were expressed at the time of the pilots during the pandemic, and that work is on-going. The Law Society is open to the notion that that could work, but we are of the view that it is likely to involve quite a bit of work and investment. It must guarantee that accused persons have an open ability to communicate with lawyers and take legal advice during the process, and it must guarantee that there is effective participation by the accused person in the process.

There are other considerations that would affect people who are the victims of crime or people who have an interest in criminal proceedings as they take place, and we must also consider the extent to which the public ought to be given access to that and how that might be managed and organised. However, we are, in principle, open to the idea. The views expressed by the SSBA and the EBA effectively highlight some of the concerns that we share, and those would require to be worked through before that idea could be applied in a more wide-ranging way.

The Convener: I am very interested to hear about that working group, as I was not aware of that. I am sure that members will have questions about its work in due course.

Simon Brown (Scottish Solicitors Bar Association): I echo everything that Stuart Munro said. There is little issue taken with the bulk of part 1. The proposals all seem sensible and reasonable. Equally, in general terms, a national custody court has some merit, but there are significant practical difficulties. There was also a pilot scheme in Kilmarnock sheriff court, which I was part of, and it was a singular failure. Courts took four or five times as long, regularly running until 8 o'clock in the evening, and the communication with clients was very poor.

We have to realise that we can talk about systems, times and targets but, to echo a phrase that has been used for other things, we are dealing with people. Not only that, but they are vulnerable people, some with drug and alcohol difficulties and very often mental health issues, and they are at a very stressful time in their life. It is important that we communicate with them properly. Eye contact, body language and empathy are important, and you cannot do that over a videolink; you have to meet those people.

At a much more practical level, in Kilmarnock sheriff court—to use my court as an example again—there are three interview rooms, whereas, in Kilmarnock police station, there is one videoconferencing suite, which cuts the capacity of the court by two thirds. It takes three times as long to get everything done.

In theory, it is a great system, but it will require millions of pounds spent on it to make it work properly, and, without banging on a drum that I have banged on before, millions of pounds would be better spent in other areas of the legal system.

Paul Smith (Edinburgh Bar Association): The convener asked about areas of concern, and the main area of concern for me is the virtual custody proposal, largely for the reasons that Simon Brown and Stuart Munro have set out.

There is a principled objection and a practical objection. The principled objection, which Simon laid out, is that it would limit solicitors' contact with clients, which is a particular issue when it is a client's first point of contact, as I set out in my written submission. There will be many clients who have been through the system many times before and who can be dealt with adequately by a virtual custody process. However, for clients who have not been through the system before and do not know a solicitor, and for whom this is their first point of contact, virtual custody makes it much more difficult for the solicitor to form an impression and, in effect, a personal bond with the client.

There is also the issue that, if someone is released from the police station, they might have no contact details for the solicitor and they might have incorrectly stated their own contact details or not made them known to the solicitor, which would restrict communication. That is the principled objection.

I think that better use could be made of virtual facilities later in the proceedings—for first diets or full committals—because clients who are still in custody at that stage will generally have been through the system before and might not be so vulnerable.

As Simon said, the practical objection is the amount of money that would be needed to make this work. In Edinburgh sheriff court, there are six interview cells, so six clients can be seen at any particular time while the court is running. However, on the occasions when virtual custodies have

been tried in Edinburgh, one room in St Leonard's police station has been used for both seeing clients and putting clients through court. That means that, when a client is being put through court, nobody else can be seen, which significantly increases the time that it takes for custodies to be put through.

That situation could be addressed. As I said in my written submission, there has been a major refit at St Leonard's recently—it was closed for about 12 weeks just before Christmas. However, I do not know whether the refit included facilities to enable more virtual custodies to be put through.

That is my main objection to part 1 of the bill.

The Convener: The practical issues of timing and availability of solicitors and facilities were certainly highlighted in both Paul Smith's and Simon Brown's submissions.

I have a follow-up question for Stuart Munro. You made an interesting point in your written submission—it is just at the bottom of page 7 in our paper 3—about proposed new section 303K of the Criminal Procedure (Scotland) Act 1995, which indicates that the court must issue directions for appearing by electronic means. You said:

> "We consider it essential that those directions contain measures that ensure that witnesses are not susceptible to any undue influence and the effective participation of the accused is guaranteed. For achieving this, an appropriate connection network and suitable electronic devices are critical."

Do you want to add to that? It was an interesting point.

Stuart Munro: Any attempt to take justice out of a courtroom brings with it challenges. We entirely support the idea of looking at these things and trying to find ways of doing the system better, as it were. However, if, for instance, a witness gives evidence in a trial remotely—that happens already, including in the civil courts—one thing that has to be considered is where the witness participates from. If the witness is a police officer, they might participate from a police office, which would probably be fine. You would expect the police officer to be aware of the need to give evidence in a suitably private and appropriate location. If the witness is a member of the public, they may need further guidance, and greater care may have to be taken to ensure that they are not being overheard or put under pressure.

I entirely support what Paul Smith said about the idea of remote hearings being used later in the process if little is likely to be achieved at that hearing. For procedural hearings such as intermediate diets, it now seems remarkable that we still require people to travel across town to attend a hearing that might last for two or three minutes.

However, if an accused person has to participate remotely, there is the issue of what they use to connect to the court. If they do not have access to a suitable tablet, iPad or computer to allow them to connect, should they participate from their solicitor's office? What would that then mean for the solicitor in terms of resources? In terms of physical space, a room would have to be reserved, and there would need to be a computer with appropriate internet access and all the rest of it. Those practical things have to be thought through when this sort of policy is being embarked on.

The Convener: That is helpful. I will now open questions up to members.

Liam Kerr (North East Scotland) (Con): I will stick with the issue of virtual attendance, with a first question for Stuart Munro on that point. In your response to the convener, you set out the things that should be thought through when creating policy, but this is not a policy; it is a bill. Given the concerns that you have highlighted, what amendments to this particular area of the bill—section 2—should the committee consider in order to address those concerns? Or should that be done outside the legislative process?

Stuart Munro: I suspect the answer is a bit of both. Please bear with me as I look at section 2.

I may come back to this, but my immediate impression is that that is a practical issue rather than a legislative one. The legislation provides for the court to give directions about an accused person or a witness participating remotely. Ordinarily, the court will regulate its own procedure, so one would expect the court to have appropriate practice statements in place, and practitioners would be required to follow those. However, the court has to know what the options are.

If the accused person is participating remotely in an intermediate diet and will be beside their solicitor when participating, it might make sense for them to do so from their lawyer's office, but that would create challenges for the lawyers who have to support that. As things stand, there is no provision in the legal aid system for that sort of support. The Government should therefore liaise with the Legal Aid Board to consider what measures can be put in place to facilitate that, instead of simply creating a power in the bill and expecting the courts to apply that power only for things to run into the sand because the processes have not been carefully thought through.

Liam Kerr: You raise an interesting point.

Simon Brown, the SSBA submission is supportive of virtual attendance but says that you generally favour in-person attendance at trials, which is the default position. Are your concerns

the same as those articulated by the Law Society, and is your general favouring of in-person attendance an observation or a suggestion that the bill should be amended?

Simon Brown: There are many types of virtual appearance, as others have said. I see no reason why things such as first or intermediate diets could not be dealt with virtually, although I will come back to a caveat regarding solicitor numbers. My view is that, if there is to be a finding of guilt or a question over somebody's liberty—whether somebody gets bail—in all those cases, the person should be present in court.

As Stuart Munro said, the difficulties are practical ones. It is difficult to get to speak to somebody in detail via a videolink. There are not enough independent rooms in police stations, and, as we have mentioned, our time is limited. In the pilot scheme in Kilmarnock, we found that, if an issue arose following an initial meeting with the client—for example, if a bail address had to be checked—it was very difficult to get a second meeting, because my colleagues are thereafter in the system with their time slots.

10:00

On the example of a client giving evidence from a solicitor's office, that could work provided that you have the office space to allow it. Some of us do, but some of us do not. It also raises a difficulty with the number of solicitors. The committee will be aware that I have banged on about that on a number of occasions in the past. The fact is that there is an ever-decreasing number of criminal solicitors in Scotland. For example, I am the only criminal solicitor in my firm, and that is quite common. If I am at court for a trial, I cannot be in my office for an intermediate diet. If hearings are held in court, there is flexibility. We can say, for example, that we will deal with this case in court 1 at 10 o'clock and that case in court 2 at 11 o'clock. The virtual system takes that flexibility out of the system. It sounds like an oxymoron—the virtual system seems designed to put in more flexibility, but in fact it does not.

Liam Kerr: You raise the point that you are a practising solicitor. As Ben Macpherson declared his interest earlier, I remind the committee that I am a practising solicitor, although I do not practise criminal law and have not done so for 20 years.

Paul Smith, let us stick with the issue of virtual attendance. The Edinburgh Bar Association tells us, in its submission, that it does not support virtual attendance at the custody court.

Paul Smith: No, it does not.

Liam Kerr: You earlier set out some practical issues—for example, the cost. You said that it would need millions of pounds. You also highlighted concerns about the need for effective communication between the person who is held in custody and the defence lawyer. Would you elaborate on that for the committee? Are there specific amendments to the bill that the committee needs to consider to address those concerns?

Paul Smith: It was not me who said that it needs millions of pounds—someone else may have said that. I indicated that there is a resourcing implication.

At the moment, I go down to the cells to see a client and I tell them my name. There is no provision in Edinburgh for me to pass them a business card, because all the cells are sealed. I cannot pass anything to anybody in the cells. I cannot even pass someone a pen to sign a form. When a client appears in the dock, I can give them my business card. I will have taken all their details. Sometimes, clients can give me their mobile phone number; sometimes, they cannot. Sometimes, they give me it wrongly. Sometimes, they can give me their full postal address; sometimes, they cannot. However, on any view, they have my details.

If a client is put through by the duty solicitor and the same client then appears, three or four days later, for a breach of bail, it is very common that the duty lawyer has changed and the client cannot remember the name of the lawyer who put them through the first time round. There are issues with clients remembering anything that a solicitor tells them when they are in a custody situation. All they want to know is whether they are getting out. If they are told that they are getting out, they tend not to pay much attention to what you say after that.

I am concerned that, if I am unable to give a client my personal details because I cannot give them a business card, because they are in a police station, they will leave the police station with no way of contacting me and I may have limited means of contacting them unless they have given me their details accurately. As the case progresses, by the time we get to the intermediate diet, the client may not have given me the information that I need to apply for legal aid, and I may not have been able to discuss witness statements with them. They will have been told virtually, at court, the date on which they have to attend again but, if they have not received my letter telling them the date, they might not remember it, which could cause problems later down the line.

That is my concern about having a virtual custody system. If your clients have been through the system before and are existing clients of the firm, that is not so much of a problem. The main issue is with clients who have not been through

the system before or who do not know how the system works. They are the ones whom a virtual system would serve least well, and they are the ones whom the custody system should serve better, because they have not been through the system before. That is my principal concern about how a virtual custody system would work.

I am all for such a system later down the line—at intermediate diets, first diets and full committals. As I said in my written submission, we do not have that in Edinburgh at the moment. The Scottish Courts and Tribunals Service took that decision because it thinks that more is achieved by having everybody in the same room. It took the conscious decision not to conduct first diets virtually because it thinks that having everybody together helps to manage business and get it done. That reflects Simon Brown's point that, if everybody is in the same room, there is more chance of some form of resolution happening and that, if people are remote, that is less likely.

On your question about trials and the practical objections to virtual attendance, if a client was in my office, I would need to be in my office with him to conduct the trial. At the moment, I would be in court. I think that, if the client was in custody, it would be fine to conduct the trial remotely, but, if the client was at liberty, they would have to be in my office on some sort of link that I had set up, and I would have to be with them. The whole trial would then have to become virtual, because I would also have to question witnesses virtually from my office.

That is more of a practical objection, and, to go back to your original question, I am not sure whether the bill could be amended to assist with the process. However, that is the type of objection that I have. I think that, if a client was in custody at a trial, the system could cope reasonably effectively at the moment with only the client appearing virtually; however, if the client was at liberty, that would be more problematic.

Liam Kerr: I understand.

Stuart Munro: I would like to come back on a couple of Paul Smith's points. What he said about his experience of dealing with clients in the cells, or clients who are represented by duty lawyers, illustrates neatly the practical considerations that would need to be worked through before such a system could work. The examples given were of a client who was represented by Paul but did not get his business card, a client who was represented by a duty lawyer but had no idea who appeared for him, and a client who was not physically in the court building—for whom there is the question of how they would remember that it was Paul who appeared for them.

One practical solution for somebody who had participated in a trial remotely would be to give them, before their release from the police station, a document that had the relevant details on it: their court dates, the name of the lawyer who appeared for them, his mobile number and email address, and so on. To some extent, that would meet Paul Smith's concerns. It would require people working together to come up with sensible solutions to such difficulties, and I hope that those would come from the working group with Sheriff Principal Anwar, which I mentioned earlier.

The other general point to make is that the criminal courts work with an enormous amount of good will, particularly on the part of defence lawyers. If you go to the custody court in Glasgow or Edinburgh on pretty much any day of the week, you will see lots of people running around. As Simon Brown said, if we had perfect communications—if we knew at 9 o'clock in the morning what charges an individual was going to appear on, what the Crown's attitude to bail was and what the possible options for resolution might be—it would be very easy to take proper instructions from a client early on and deal with the case effectively. However, very often, that is not what happens. Instead, the complaint is not served until 3 o'clock, the procurator fiscal is not available on the phone, you do not know what the bail position is until shortly before the court appearance—or you are suddenly hit with a bit of information that you had not anticipated—and you require to go back and take instructions.

As Simon said, the trouble is that the virtual systems that we have had so far have tended to be pretty inflexible. You have an appointment to see your client before the court and it is nigh-on impossible to get another one. We must find ways of addressing those problems. To go back to Mr Kerr's point, that is not really something for the bill, but it must inform the decisions that are made around the bill.

Liam Kerr: Out of interest, Stuart, on whom does the onus lie to make the changes to which you have just referred? Who could change the system?

Stuart Munro: It would require everybody to work together. In the example that I gave of a solution to address Paul Smith's concern, ultimately it would be—I presume—somebody in a police office who would have to press a button to generate a bit of paper to give to the accused person. However, they would not necessarily know Paul Smith's details, so we would have to find a way to ensure that they had those details. There must be proper engagement between the court and the police, between the Crown and the police, and between the defence and the police. It requires joined-up working, in effect.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. You have clearly outlined your concerns about virtual custody courts, and I understand them. Is there scope for the use of virtual custody courts in particular cases? If each case were considered on its merits, would that be possible? I am thinking particularly of domestic abuse cases, because I know that third sector organisations, for example, very much favour virtual courts for those. Could a pilot be run to see whether that would work at all stages of a domestic abuse case?

Stuart Munro: The sheriff principal of Grampian, Highland and Islands—Sheriff Principal Pyle—is leading a working group that is looking at just that. What is envisaged is a start-to-finish, trauma-informed virtual domestic abuse court model. The idea is that perhaps a couple of sheriffs would be trained and would be based in Aberdeen or Inverness. Ultimately, any time that there was an appearance from custody in that whole area—the whole of the north—on a domestic abuse charge, it would go to one of those particular sheriffs, and they would try thereafter to have hearings conducted remotely.

There would be a particular advantage to that. I stress that there would be some disadvantages and concerns that would have to be overcome, but the advantage would be around geography. For instance, if you are on an island in Shetland, your local court at Lerwick may be an hour, or perhaps longer, from where you live, and the sheriff in such a jurisdiction, who would deal with every type of case, would not have particular training and experience in domestic abuse cases. There could, therefore, be an advantage in having a specialist sheriff elsewhere hearing the case.

Issues of geography in particularly rural areas can often be overcome by such a model. You would still have the problem of how to ensure effective participation. How would you ensure that a trial that was conducted remotely was fair—that all the necessary checks and balances were in the system? Our view is that that is not impossible but that there are challenges to be overcome.

Another difficulty that has arisen is funding—again, for the defence. There is money for the Crown and for the court service for remote participation, but, as yet, there is no money for the defence, although it would require a different way of working and additional resource from the defence.

I am sorry to be so long-winded. In answer to the question, there are models whereby that can be done. It is actively being looked at, and it may yet come to pass.

Rona Mackay: That is really helpful. Thank you. In other words, if the current pilot is successful, there may be ways of overcoming the difficulties that you described, to roll it out to other areas.

Stuart Munro: Possibly. The purpose of the pilot is to see how it works in practice and to identify the sorts of problems that Paul Smith described—the things that people do not think about but that may affect one particular part of the system.

I should make it clear that this is not just a defence lawyer's complaint. There are issues for the Crown in how it supports and facilitates the process. There are issues for victim support—for those who have an interest in respect of complainers and others who are affected by domestic violence. How can they ensure that their clients are properly supported through the process? Everybody is trying to work together in a positive way to come up with solutions.

Rona Mackay: Simon Brown, do you have any thoughts on the matter?

Simon Brown: There is obviously some sense in helping vulnerable witnesses, in particular, to give their evidence. If that results in their giving evidence either on commission or remotely, that is a good thing, although that takes nothing away from the problems earlier in the system around custody appearances.

Again, however, there are practical difficulties. At the moment, if a vulnerable witness gives evidence on commission—if their evidence is pre-recorded—solicitors and clerks are in the room when that evidence is given. If they give evidence via a remote link from another room in the court, a bar officer will be in the room with them. If, under the system that is being talked about, witnesses were giving evidence from their kitchen table, you would not know what was sitting on that kitchen table in front of them. You would not know whether there was a big handwritten sheet saying, "Make sure you say that he did this and that." A safeguard is missing. You could overcome that, but it would probably involve, at the very least, people having to go to a dedicated centre, whether a police station or a local court, and that would need investment—it would need money.

Rona Mackay: Thank you.

Sharon Dowey (South Scotland) (Con): Good morning. My first question is for Stuart Munro. The Law Society mentions that it is

"essential that ... directions contain measures that ensure that witnesses are not susceptible to any undue influence and the effective participation of the accused is guaranteed"

and, to ensure that, that

"an appropriate connection network and suitable electronic devices"

are necessary. Will you provide more detail about the Law Society's concerns about undue influence on effective participation if virtual appearances are made permanent, and its concerns about the stability and reliability of network connections and electronic devices?

10:15

Stuart Munro: Certainly. The first point about witnesses and safeguards is really the point that Simon Brown makes. It is perfectly possible for witnesses to give evidence remotely, and there is nothing necessarily wrong with them doing that from their kitchen table. However, as Simon says, the concern is about ensuring that they do so in a way that properly reflects the importance of proceedings and that the court can be sure that they are not being compromised in some way by somebody off camera pointing at them and telling them what to say, or by them having access to documents that they should not or would not have access to if they were giving evidence in court.

It might be that, in many cases, that can be dealt with by the simple expedient of the sheriff having a word with them to make it clear and satisfying him or herself that that is the position. However, that issue must be thought about and must be at the forefront of everybody's mind.

Effective participation goes back to a basic principle in the European convention on human rights for any trial process. Any criminal process has to be fair, including ensuring that an accused person can participate effectively. The point is simply that, when somebody is not in the room with you, it can be harder to ensure that they are effectively participating.

We are not saying that it is impossible—far from it—but we have to think about how it can be best achieved. I will give a simple example. At the beginning of the pandemic, a virtual custody model was tried in Glasgow that involved a videoconferencing system that was, frankly, hopeless. The accused person was a small dot on a screen and you could rarely hear anything that they said. It was very much a box-ticking exercise: they are on the screen; therefore, they are here. That is not the same as being able to listen to what is going on, to put your hand up if there is a problem and to contribute information back to the lawyer. We have to ensure that those things are not just given lip service; they must be properly reflected.

The final point is about connections and so forth. Again, this is just the reality of life. I am sure that the three of us have all been in courts many times where a witness is joining remotely and the quality of the connection is very poor. That used to happen all the time, even with live links, when the witness was giving evidence from another room in the same building. The newer systems, such as Webex, tend to be much better. However, if a witness is giving evidence from home and they have very poor-quality broadband, what happens if you cannot see or hear them or if the link keeps dropping? That can knock the whole thing out of sequence.

We have to think about ways of ensuring that those links are appropriate. Does it mean that we have to test them beforehand? If so, who is going to do that and who is going to pay for it? To borrow Simon Brown's approach, should there be a series of places where people can participate? For example, could local libraries have a couple of dedicated rooms where people can have a private communication? Perhaps that would deal with your concerns about influence and the connection. Again, those are all things that have to be worked out.

Sharon Dowey: I have a question for Paul Smith on initial custody attendances held virtually. Should custody appearances be an explicit exception in the bill to the court's discretion on virtual attendance? If so, should any other type of hearing be an exception to virtual attendance?

Paul Smith: To answer the last part first, no. Intermediate diets, first diets, full committals and procedural hearings have been done virtually and have been done well virtually. Whether certain exceptions should be made to virtual custodies goes back to Ms Mackay's point about picking and choosing which cases are done. In principle, that is possible, but the issue is that that decision is likely to be taken by the procurator fiscal who marks the papers. The first point of contact in the custody system is the procurator fiscal looking at a police report and deciding how to mark it. One view is that it would make sense for them to take a decision about whether an accused person should be brought in or whether it could be done virtually. The difficulty with that is that the fiscal is unlikely to have any experience as a defence lawyer or to have any direct knowledge of the client other than the information that the police have given them, so they might not be in the best position to decide who should and should not be brought in.

When the arrangements were piloted a while ago in Edinburgh—during the Covid pandemic, I think—the default position was that everything would be done virtually, unless the solicitor wanted the client to be brought in. If the solicitor said, at 2 o'clock, that they wanted the client brought in, that would cause enormous practical difficulties with resources and getting the client there.

In principle, some exceptions could be made. I do not know whether that would be done by record or on the basis of whether somebody had previously served a custodial sentence, which

would be a reasonable indication that they had been through the system a few times before. It would have to be set out what could and should be done. If it was left to Crown Office policy, that might be wanting in that situation.

I will pick up on something that you asked Stuart Munro about, on the practical difficulties of a witness giving evidence remotely. There is an issue with witnesses getting access to their statements and with how that is monitored if the witness is not physically in court. The general default position at a trial when everybody is physically there is that a witness is not allowed to be in court before they give evidence, when any other witness is giving evidence. The notion behind that is that they might be tempted to change their position to either fit in with or contradict what somebody else has said. The best way to ensure that a witness comes in and tells the truth is for them not to know what anybody else has said.

A witness is entitled, however, to view their own statement before they give evidence. There have been significant issues with that in the past. In Edinburgh recently—within the past 12 months—witnesses have been going together, each being given a copy of their own statement. They have been sitting together and reading their statements together, with an obvious opportunity to compare what they have each said, as they were not supervised. Provisions have now been put in place to stop that. When a witness asks to see their own statement, they are put into a room, given their own statement and allowed to read it—and nobody else has access to it. How do we monitor that if the witness is remote?

The Crown is going to pilot something called the victims gateway or witness gateway, whereby a witness can log in, view their own statement and sign their own witness citation. If that is all done remotely and the witness is never in court, there is a possibility of witnesses comparing what they have each said, thereby contaminating their evidence. That is a practical difficulty with witnesses being remote. If a witness is remote within the court and is monitored by court officials or bar officers, that is less likely to happen, but that danger exists if a witness is entirely remote, particularly when they have digital access to their own statement.

Sharon Dowey: So, is there a case for custody appearances to be virtual? I thought that there were concerns about that.

Paul Smith: My concerns are primarily about people who have not been through the system before or who are not familiar with the justice system. Taking the example of domestic abuse cases, anybody can commit a domestic offence, and domestic offenders are often first offenders with no previous convictions. Although it would be tempting to say that we can deal with domestic cases virtually, the issues that I have highlighted, particularly in relation to custody appearances, are to the fore when it comes to domestic cases. Somebody with no previous convictions who has not been through the system before might get put through with a duty solicitor as they have never consulted a lawyer before, because they are a first offender. There might be issues with their address, because their only address is the family home, which they will not be allowed to return to because of bail conditions. Domestic abuse custody appearances can be reasonably complicated.

Domestic abuse trials tend to be quite straightforward, however: they are some of the most straightforward summary trials that we do. It might be a matter of focusing things or picking and choosing on the basis of the accused who is going through, rather than on the basis of what they are charged with. That is a better way of doing it, I would say.

The Convener: Do you want to come in with a supplementary question, Ben Macpherson, or not quite yet?

Ben Macpherson: I will come in later on a specific point.

The Convener: I will therefore bring in Pauline McNeill now, followed by Ben Macpherson.

Pauline McNeill (Glasgow) (Lab): Good morning. I wonder if witnesses could help me to understand some of the technical subsections. There is a lot more to the provisions than I first appreciated.

First, am I right in saying that what we have been discussing is the possibility of virtual attendance? The default position is that someone is expected to attend, but it is a matter of allowing for virtual attendance. Is that right?

Simon Brown: That is what the bill says. When pilot schemes for virtual custodies were tried in the past, the default was that the appearance was virtual, and it was the exception to bring someone to court. I think that that should be switched around.

Pauline McNeill: Aye. Do you feel that some refining is needed as to what the criteria would be for virtual attendance?

Simon Brown: We all have misgivings about the default position being a virtual custody appearance.

Pauline McNeill: My reading of it is that there is a separate proposal for national jurisdiction, which gives me a wee bit of cause for concern. The way that you have been answering the committee's questions suggests that, if the bill were passed

and we had national jurisdiction for custody matters, for example, it would be as if it were assumed that, by dint of the provision, they would be dealt with virtually. However, that is not the case in the bill, as it removes the geographical limitations. Is that right?

Simon Brown: That is correct. Practically, to make a national custody court work, it would have to be done virtually.

Pauline McNeill: Yes, but the bill does not say that. I have been ploughing through the explanatory notes and I am more confused than ever. I cannot see where the bill sets that out. The bill treats them as though they are separate provisions. I want to ask about national jurisdiction in a bit more detail, but am I right in saying that?

Paul Smith: I agree with that. At the moment, there is an all-of-Scotland sheriffs principal practice note. Previously, if someone had warrants for, say, three cases in Dumfries, Dundee and Aberdeen, the person concerned would appear in Dumfries, then Dundee and then Aberdeen, so that person would be in custody for three days while they appeared in those courts. However, the sheriffs principal practice note allows the first court that the person appears in to deal with all the cases. I think that the bill is trying to put that principle into the national jurisdiction for custody courts. I agree with you that virtual appearances are separate.

Pauline McNeill: I am thinking that there is good reason both for national jurisdiction, if it was qualified, and for virtual attendances, if the provision was refined to reflect some of your concerns. Would it be fair to say that?

Paul Smith: Yes.

Pauline McNeill: According to the explanatory notes, the Lord Advocate will decide the sheriffdom. Is that not quite a big departure from the principles of jurisdiction under which we currently operate?

Paul Smith: At the moment, it could be competent to raise a complaint in two jurisdictions. For example, if I had a client in Edinburgh who sent messages to an ex-partner who is in the catchment area of the Dundee sheriff court, the Lord Advocate or the procurator fiscal could raise proceedings either in Dundee or in Edinburgh, as they chose. Normally, they would raise the matter where the victim made the complaint. In my example, they would raise proceedings in Dundee. The Crown has that choice—if there is a choice—of jurisdiction.

Pauline McNeill: That makes sense. Does the bill extend the Lord Advocate's discretion to go beyond that?

Paul Smith: Yes. The Lord Advocate could choose to raise proceedings anywhere, but my reading of it is that the first court that a person happened to appear in would deal with all their cases.

Pauline McNeill: Again, I will reflect on some of the issues. It is quite clear to me that, under the bill, the Lord Advocate would have complete discretion to decide sheriffdom. If the bill is passed, those powers will be in place.

Paul Smith: Yes.

Simon Brown: In practice, Ms McNeill, if all your witnesses live in Edinburgh, you would have a trial in Edinburgh. That would be the practical way forward—you would hold your trial where it is most convenient for the witnesses to get to court.

Pauline McNeill: Except that the law will not say that.

Witnesses might not be able to help me with this now, but you might be able to clarify it at a further date. I am reading through the bill's explanatory notes in relation to proposed new section 5B(5) of the Criminal Procedure (Scotland) Act 1995. The subsection would provide the

"sheriff court that has heard the initial calling of case with continuing jurisdiction over the proceedings (and that sheriff court can be presided over by a sheriff of any sheriffdom)",

so sheriffs could also go into the sheriffdom.

The explanatory notes continue:

"Subsection (6) confirms that this continuing jurisdiction can continue until the conclusion of the proceedings, unless the proceedings come to an early end".

I can see that there is some sense in that, so far—where there is a guilty plea and for simple matters, that would give some flexibility. However, I am unclear about what it means in relation to petition cases, because of the way in which the explanatory notes are written, although I might need to read until the end. It says:

"proceedings on indictment that follow from proceedings on petition are to be treated as the same proceedings"

and that

"Subsection (7) means that a court which began dealing with a case at the petition stage can continue dealing with it".

I am not sure whether that is different. It goes on:

"In practice, because jurisdiction under subsection (5) ends with an accused being fully committed for trial ... subsection (7) is likely to be relevant only where an accused makes an early guilty plea".

I do not know whether you can help me with this, but, unless I have misunderstood the situation, I think that there is cause for concern. We are trying to get some flexibility in the process through virtual attendance with rules and national

jurisdiction, for good, commonsense reasons. However, in petition cases, I do not know what that actually means.

10:30

Paul Smith: I think that there is an issue with that, too. If an accused in an Edinburgh case goes to Glasgow sheriff court and is remanded in custody to be committed, those hearings would be in Glasgow. However, once he is fully committed, the case would go back to Edinburgh. If a person at the first appearance on petition is released on bail, they are not fully committed. In that situation, jurisdiction stays with the court of first appearance. In the case in my example, that would be Glasgow, and we would then have a first diet in Glasgow, in which the accused might plead not guilty. If he pleads not guilty, the case must be transferred back to Edinburgh. However, if he wants to plead guilty, it can stay in Glasgow. So, at a practical level, who do I sort out a plea with? Do I contact the fiscals office in Glasgow, because that is the court of first appearance, or do I contact the fiscals office in Edinburgh? I have identified this issue in my written submission. I do not understand the position, and I think that it needs to be dealt with.

It could be left to Crown Office policy. In the example that I have used, the difference between Glasgow and Edinburgh is not a big deal. However, say someone first appears in Lerwick, do I have to go up to Lerwick for the first diet in order to transfer the case back down to Edinburgh? That would seem not to be compatible with the aims of the bill. That needs to be addressed.

It does not particularly matter which solution is chosen, but, at the moment, as you say, with regard to someone in the case that I mentioned concerning events in Edinburgh and Dundee who appears on a summary complaint, if I represent them in Edinburgh on a Dundee warrant and it gets deferred for a background report, it must go back to Dundee. The bill would allow the case to stay in Edinburgh, which I think is sensible. However, with regard to petition cases, there needs to be greater clarity. A decision must be made about what happens after the first appearance. There must be a set rule that states whether the case stays in the court of first appearance or goes back to the court of origin.

At the moment, it is difficult to transfer a case between sheriffdoms—we can transfer it within the sheriffdom easily enough, but transferring it between sheriffdoms is difficult. The proposal is an attempt to make things easier, but, in my opinion, the approach is not very clear.

Pauline McNeill: Yes, that is what I thought.

Between us, we have raised several areas where the approach needs to be refined. Given what I have suggested about the fact that the Lord Advocate has much greater discretion with regard to the issue of national jurisdiction and what you have described in relation to petition cases, it seems to me that the bill wants to go beyond the commonsense initial procedures to give the court system a bit more freedom to decide where substantial trials would take place. Does it concern you that there is a bit more behind some of this modernisation than just a desire to make things practical?

Paul Smith: Yes. I think that it comes back to Simon Brown's point about resourcing. There are issues at the moment with cases being transferred within a sheriffdom. I am based in Edinburgh, so this does not really happen so much, because most of the jury trials happen in Edinburgh, but there might be a situation in which, say, Simon Brown has a case in Kilmarnock that gets transferred to Hamilton or somewhere else to start the next day, or in which a case in Perth is transferred to Aberdeen, and the solicitor is just expected to go to wherever the case is being dealt with. The bill would allow those problems to be amplified. If a person happens to first appear in Aberdeen, the jury trial could be there but, if the accused is based in, say, Glasgow, they might have a lawyer from there, so that might create practical issues. Therefore, your suggestion that creating what would effectively be a national jurisdiction would create problems is fair, because, even if a person appears in Kilmarnock sheriff court for their first appearance, the case could then be indicted in Hamilton or Dumfries or anywhere within that jurisdiction of the sheriffdom of first appearance.

Simon Brown: We always talk about unintended consequences. Could there be a situation in which, because it would take 11 months before a sheriff and jury trial could be held in Glasgow for a Glasgow case, the Crown Office decided to move the trial to Perth or Dundee, because that would allow the trial to be held in four months' time, regardless of the inconvenience that that might cause to the solicitor, the accused or the witnesses?

I think that I have made this point before, but there is a distinct difference between faster and cheaper on one hand and better on the other.

Pauline McNeill: I do not want to get into any more complexity here but, based on what you have said, Paul Smith, would it make sense for the committee to separate out the issues in relation to virtual attendance from the issue of national jurisdiction? You are marrying the issues up in what you have said about the only way in which a national jurisdiction could work. However, given

what you have said, it would make sense for the committee to scrutinise the full extent of the powers that are being asked for under the national jurisdiction provisions and to look separately at the rules around virtual attendance. Would that be your view?

Paul Smith: Yes. Also, I think that we would all agree that the first appearance from custody being able to take place in any sheriff court in Scotland is a good idea. The issues that you have identified with what happens jurisdictionally afterwards are separate, and I think that those could be further scrutinised, because there are issues there.

Stuart Munro: I would like to make one point on the issue of the transfer of trials. That happens at the moment in the High Court, which has a national jurisdiction. It is probably less common than it once was, but there are still occasions when an issue that emanates from Glasgow ends up being called in Aberdeen simply because of court availability. That has huge implications not just for the practitioners but for the accused person, who suddenly has to decamp and go to Aberdeen for a period of time, and for witnesses.

At a round-table discussion some time ago, somebody who worked for one of the victim services expressed a concern about that kind of case, because, when a case is transferred from one location to another, the witnesses are supported to go and give evidence, but the complainer who wants to go and see the sentencing hearing at the end of the process, which takes place in that faraway jurisdiction, receives no funding or support, even from victim services, to get there. That is an example of the unforeseen consequences of decisions, which must be thought through where possible.

The Convener: Simon Brown, in response to Pauline McNeill, you said that the proposal was going for faster and, I think, more efficient justice rather than for quality—

Simon Brown: Faster and cheaper rather than better.

The Convener: Yes; I might be paraphrasing. However, might the main reason why cases would be transferred be to do with trying to get more throughput and a speedier or more efficient service? Is that the case in the example that Stuart Munro gave of the High Court?

Stuart Munro: In High Court cases, it tends to simply be about accommodation availability—there is a gap in the schedule somewhere that needs to be filled, and it will be filled by something that is the highest priority elsewhere.

On what might underlie the intention in the bill, I am not so sure. With all of these things, there are positives and negatives, and we can well understand why there might be situations in which it makes more sense for somebody to appear in one location as opposed to another. There might well be good reasons for a trial to take place in one town or city as opposed to another—perhaps it would make sense to have the trial in a town where an accused person or witnesses are all located, for instance—and there might be other cases in which the location does not matter very much.

At the same time, we cannot lose sight of the principles of local justice. That is why we have sheriff courts in the first place—we place importance on the idea of local sheriffs being able to respond to local concerns and perhaps having some knowledge of people who are frequent attenders before the courts. There is a danger of losing that benefit in the rush to try to have a more efficient system.

Ben Macpherson: From your answers thus far and from your written submissions, it seems that there is not an opposition to the principle of moving to the use of digital technology when it is appropriate and the modernisation of the systems that you operate within every day, but that due consideration needs to be given to the practicalities and the resourcing. Mr Brown made a good point about a faster and cheaper approach versus a better one.

That makes me think about what the estimates for timelines should be in respect of any change or reform. You will note that section 28, on commencement, states that some parts of the bill will come into effect on royal assent or on 1 December this year, whichever is earlier.

It would be helpful for us to understand—whether in a verbal response now, or by following up with the committee in writing—what you think would be a fair and reasonable timeframe if Parliament was to pass the bill and the Government was to resource it appropriately. My first reaction is that the timeline is quite ambitious, but I am interested in hearing practical insights from you and your members on the ground, so to speak.

Simon Brown: If you are talking about practical matters, the most obvious one concerns the videoconferencing suites from which prisoners will appear. There needs to be a sufficient number of suites in a set of geographical locations. I do not know how long it will take, or how much money it will cost, to put that in place, but that is the bottom line: they have to be there in the right numbers.

To make the system work effectively, the absolute minimum has to be two. There has to be one for consultation with clients and one that is used for the court. As I have said, on a practical level, you are significantly cutting your capacity in

comparison with what is available in the sheriff court system—that is the basic point. You are then talking about investment in courts so that videoconferencing facilities will be available. At the minute, in Kilmarnock, there is one room—again, that can be used for a virtual court or a consultation, but not both.

As an aside, I go back to a question that has been touched on a couple of times. Everyone else—the courts, the police and the Crown Office and Procurator Fiscal Service—will all have their hardware provided for them, whereas we will have to provide our own. That is another resourcing issue that will have to be discussed.

Ben Macpherson: So the issue is about both the suitability and the establishment of appropriate suites, to use your word, whether in defence firm offices or in a public sector setting such as—to use Mr Munro's example—local libraries. There needs to be clear agreement and understanding, and then facilitation and resourcing of those facilities.

Simon Brown: There will have to be places with a secure internet connection, and that are themselves secure, so that people can go in and give their evidence and be free from interference. They will have to be in convenient locations, and there will have to be enough of them to make the system work. All that, as I have said, requires significant investment.

Stuart Munro: I would like to come back on that. The Law Society's position is that it wholly supports the use of digital technology in the criminal justice system. There have been some huge and very welcome improvements, which were brought about because of the pandemic and the response to it. We can now email the court in a way that we generally could not before; documents generally do not have to be lodged in paper form in the way that they always did. Now, if you go to the High Court of Justiciary, you will see trials being done almost exclusively electronically, in the sense that nobody has paper files with them, and documents are shown on electronic systems.

All those changes are really positive, and there are, no doubt, many more improvements that could be made to make the system work more efficiently, such as much more sharing of information, better communication between the participants in the process and the basing of the rules on a more digital structure, rather than still requiring traditional ways of approaching things. However, there are all the concerns that we have expressed, and that will require people to work together to find solutions.

There is a chicken-and-egg issue with regard to whether Parliament should facilitate certain changes now to allow those practices to be developed and piloted and then, in due course, implemented, or whether it is appropriate to try to figure out how those things will be done before Parliament facilitates them.

I am inclined to take up Ben Macpherson's invitation to come back to the committee with specific comments on commencement dates. Nevertheless, I stress the point that, while there are many measures in the bill that are potentially capable of delivering improvements for all users of the criminal justice system, they will require work and commitment from all parties involved in the process, and they simply cannot be rushed.

We are perfectly happy to engage in any way in developing those processes, but it must be done properly before those procedures are put in place, because, as was said earlier, we are talking about real cases involving real people, real accused, real witnesses and real complainers, and we owe it to them to do this properly.

10:45

Ben Macpherson: On the general issues that we have been discussing, part 1 of the bill sets out two new provisions that aim to support digital innovation in the criminal justice system. The first of those concerns the use of digital productions in criminal proceedings. Would you like to say anything further about those provisions? For example, are there any issues that you have not already raised that need to be resolved to ensure that processes work fairly and efficiently?

Stuart Munro: A huge amount of time is wasted in the process of criminal investigations in complying with outmoded, analogue ways of dealing with documents—for example, if the police are doing a financial crime investigation and they secure a warrant to recover bank statements from a bank, officers have to go to the bank to physically collect the statements. That is absurd in this day and age, but it did not happen during the pandemic because of certain emergency provisions that then disappeared.

Likewise, in a financial crime investigation, officers have to go around getting things called schedule 8 certificates signed for absolutely everything. That is a simple document that says, for example, "I certify that this thing is the thing I said it was," or, "This thing is a copy of a document that we hold." Again, that is absurd in the modern day and age. We should be far slicker in the way that we approach such things, and we should not be wasting officers' time with that kind of process.

By the same token, we must keep our eyes open to the potential for making assumptions that might turn out not to be true, and it must be

recognised that, in certain cases, you will have to go and get the original document. Our system as a whole could be much slicker than it currently is in the processing of evidence in that way.

Ben Macpherson: The second area that is covered by the new provisions in part 1 relates to the authentication of electronic documents. I presume that you think that those provisions are helpful, but are there any problems with the drafting that need to be resolved?

Stuart Munro: They are helpful, and I do not have an issue with the drafting as such, but I am mindful of one point. The English provisions on the presumptions that should be applied to material that comes from computer systems, which we do not have in Scotland, are under scrutiny in the Post Office Horizon IT inquiry, and it is likely that comment will be made by the chair of the inquiry when he comes to report in the early part of this year. We all need to keep an eye on that issue.

The English provisions go a bit further than the Scottish provisions have ever done or do in the bill, but I know that the potential implications of assuming the accuracy of computer output will be the subject of comment.

Ben Macpherson: Thank you for flagging that. We can consider that as we move on to stages 2 and 3 of the bill.

Paul Smith: I agree entirely with Stuart Munro that we are in a digital age and that we should have digital productions. My one concern, which I highlighted in my written submission, is about section 4(4) of the bill, which is about images of physical evidence. It says that a photograph of a piece of evidence is as good as the original piece of evidence—in other words, that a photograph of evidence is evidence—and the example that is used in the explanatory notes is of a knife.

At the moment, if someone is charged with possession of a knife, that knife needs to be retained and physically produced in court. Section 4(4) will allow the police to take a photograph of the knife and that photograph to become the evidence, so they will not need to produce the knife. That might lead to the original knife being lost or destroyed and not available for the defence to inspect. My concern is that, if the police know that a photograph is as good as the real thing, they will take a photograph and dispose of the real thing, and thereafter it will be lost. That is not to say that the police would do anything improper in respect of that, but that is my concern about section 4(4).

Ben Macpherson: So, in such a situation, although the use of a photo would be appropriate in proceedings, you would want the original to be kept available until the conclusion of the trial.

Paul Smith: Yes, because an accused person might say, "I want to have that DNA tested. I want to have that fingerprinted. I want to have that analysed on my own." That will not happen in many cases, but when it happens, keeping the original will be important, so I would be concerned about the provision resulting in principal or examinable evidence being lost, because a photograph is good enough.

Stuart Munro: I entirely share Paul Smith's concern about that, but that is more of a culture and practice issue than an issue with the provisions of the bill, because the bill makes it clear that the court can "otherwise direct". As I said, there are bound to be instances in which the individual entity or thing that is a piece of evidence requires to be seen. A classic example of such an instance is when it is suggested that a document has been forged—that it is not the signature of the individual in question on the form—and a photocopy does not make it clear enough. There are bound to be cases in which the provenance of the original thing is an issue, and everybody needs to know that there must be a mechanism for challenging that.

Ben Macpherson: As the bill progresses, we could consider whether retention of the original thing, to use your phrase, should be a requirement until the conclusion of the trial process.

Stuart Munro: Indeed.

Ben Macpherson: And perhaps for some time thereafter, in case of an appeal.

Convener, do I have time to ask one more question?

The Convener: Yes, if you are very quick.

Ben Macpherson: Moving slightly off that topic, the bill does not seek to make permanent the temporary provisions that currently extend some time limits in solemn cases. Do you have any views on whether the system is on track to be able to cope with pre-Covid time limits by November this year, when the temporary provisions are due to expire?

Simon Brown: Categorically not.

Ben Macpherson: Will you say that again, Mr Brown, as your microphone was off?

Simon Brown: Categorically not. The time limits are being extended on a daily basis. They are nowhere near pre-pandemic time limits. Time bars are being extended in just about every solemn case that I deal with.

Stuart Munro: Can I qualify that? There are essentially two time limits in the legislation. One relates to the time that the Crown has to bring a case to court—in other words, for the service of an indictment—and the other relates to the

commencement of a trial. Bringing the case to court is in the hands of the Crown, and the commencement of the trial is in the hands of the court.

I entirely agree with Simon Brown with regard to the second time limit: once a case has been indicted, an accused person has appeared in court and a trial has to be fixed, it is not only sometimes that the trial time limit is breached; it is never complied with. The courts routinely, and as a matter of course, extend trial time limits all the time. That is a matter of concern, because we have gone from a position in which those time limits were often breached to one in which they are always breached. It could be argued that that nullifies the purpose of having them. It is very difficult to see the courts getting back on track to the point where we will have trials within, for example, the 12-month time limit that applies in a bail case.

However, it is harder to see any continuing justification for the other time limit—that is, the one for the Crown to bring a case to court by service of an indictment. The courts cannot accommodate trials because of the backlog. The Crown does not have the same justification. We are long past the pandemic. It should be possible for a case that is reported to the Crown today to be investigated and turned around within the time limits that were applicable pre-pandemic.

To go back to your question, Mr Macpherson, I would be interested to hear the Crown's justification for keeping that first time limit at the extended level. It is more difficult to see us getting back to a point where the second of the time limits—that is, the one for the trial—is complied with in the majority of cases, although that should absolutely be the intention. Frankly, it is a scandal that there are people who have been held in custody for years on the basis of unproven allegations. Remand is a fact of life, and it is unavoidable in certain cases, but we have a duty to keep periods of remand to a minimum. We should not be in the situation that we are in at the moment.

Katy Clark (West Scotland) (Lab): The evidence that you have just given on time limits is highly concerning. The committee would very much appreciate it if you wished to provide more information on that. As you say, it would be interesting to get the Crown's perspective on those issues.

On the bill that we have before us today, you have given very clear evidence that you can see many scenarios in which national jurisdiction might be helpful and appropriate, but you also expressed considerable concern. The provision would apply to a range of different types of cases. It would apply to solemn and summary cases, and to cases that are at different stages, perhaps where there has already been a lengthy trial, where someone is appearing from custody or where a particular sheriff or judge has a great deal of knowledge of a case or an accused.

Could there be more detail in the bill on the kind of criteria that would need to be used in relation to national jurisdiction, or should there be a requirement for more detail in, for example, a practice note or in the rules of court? Is that something that you have given any consideration to or that you could assist the committee with? If we agree to the principle of national jurisdiction, do the criteria, safeguards and protections need to be fleshed out more?

Simon Brown: There would be difficulties involved in trying to do that in the bill, as the bill would need to be far too detailed and that would inevitably lead to a loophole. The converse of that is that there would have to be practice notes on a detailed level about what was to be done, and those would have to involve input from all the relevant parties.

To use Stuart's good example of giving a contact sheet to an accused, that involves the police giving it to them, the SCTS getting all the appropriate information and a solicitor providing up-to-date contact details. So, there are three different agencies that have to co-ordinate with each other.

There will undoubtedly have to be a practice note, because a large number of issues will arise.

Stuart Munro: I agree with that entirely. It is a difficult thing to provide for in legislation, but we would all benefit from having a clearer idea of the circumstances in which it would be applied and how courts are meant to respond to it.

Paul Smith: I also agree entirely with that.

Katy Clark: Thank you.

I will ask a question on part 2 of the bill, which sets out a framework for a system of domestic homicide and suicide reviews. Have you looked at those provisions? Do you have any views that you would be able to share with the committee?

Simon Brown: I take the view that I am here to give an input on practical things in relation to the day-to-day running of the court, so I do not have a particular view on that.

Paul Smith: I have looked at the provisions but I did not think that there was anything that I could helpfully assist the committee with. The objectives seem to be fairly straightforward and I do not think that anybody could disagree with them. There were no practical things that I felt the need to raise with the committee at this stage.

Stuart Munro: Likewise, I think that the Law Society entirely supports the principle and the manner in which the process has been set out. There have been cases—sadly, all too often—in which individuals or families feel that matters have not been properly looked at or investigated by the police, or that the dots have not been joined properly by the authorities when dealing with those cases. Any effort that can be made to try to address those concerns is to be welcomed.

Katy Clark: Thank you.

Pauline McNeill: I come back to the answer to Katy Clark's question on the practice note. As you know, when we revised the time limits on solemn cases in law—I will need to be reminded what year that would have been, but I think that it was 2004 or 2005—we changed the test to make it on cause shown.

In good faith, the Parliament did not think that there would be much change, but, as I am sure that you would agree, there was significant change. In the context of the bill's national jurisdiction provisions, is it fair to say that, if we dealt with those concerns with only a practice note, the same thing will happen as happened in 2004? If we do not put something on the face of the bill that provides some framework for what the limitations would be, a practice note could be completely ignored.

Simon Brown: I suppose that, in theory, a practice note can be ignored if justification can be found for ignoring it. I suppose that it depends on the wording of the legislation. To use the example of when the time limits were changed, I do not think that anyone envisaged the stage that we have got to just now. A huge number of factors have led to that, such as issues with physical accommodation, a lack of advocates, a lack of defence solicitors and an increase in historical offences.

11:00

Pauline McNeill: Is there a middle ground? Is there something other than a practice note?

Stuart Munro: The middle ground might be for it to be in an act of adjournal. The courts and practitioners refer to secondary legislation that is made under the criminal procedure legislation all the time to see how certain things should be dealt with, so that might be an answer. It could specify the considerations and the criteria that might ordinarily be thought to justify treating something as a national case.

The Convener: We are coming up to time, but members want to ask one or two more questions. If our witnesses are prepared and able to bear with us, we will run for an extra 10 minutes or so. With that, I bring in Fulton MacGregor.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I apologise that I missed the first part of the meeting. I was at the Citizen Participation and Public Petitions Committee, which was discussing a petition in which I have had a long-running interest. I mention that because I am running the risk that you have already answered or touched on the question that I am going to ask. If that is the case, please just tell me.

I go back to the provisions that are temporary and that the Government is looking to be made permanent. One third of those relate to higher fiscal fines, with a maximum of £500, rather than the pre-Covid £300 maximum. In principle, is the offering of fiscal fines an appropriate option? If so, in what types of cases should they be used? Are there are cases in which they should not be used at all? I am quite happy with whoever wants to answer that.

Simon Brown: At a practical level—this has been picked up in the press—we see the effective decriminalisation of shoplifting. Shoplifting becomes an offence that is viewed as a low-level crime and is dealt with by fiscal fines. However, in many cases they are not paid because drug addicts are involved, and they do not have the funds to pay. They simply continue to shoplift and get fiscal fines, which rack up to the extent that when it comes to a court hearing six or seven months down the line, there are complaints with 20 charges on them. We have to be careful about that. The obvious answer is that fiscal fines are appropriate for low-level offences, but who decides what is a low-level offence?

Fulton MacGregor: My follow-up question probably goes where you were going with that. Have you seen any examples of fiscal fines of up to £500 being used inappropriately? Have you come across that in your practice and can you comment on it?

Simon Brown: I can comment in general terms, because it happened to me just last week, when somebody appeared in court charged with an assault. On looking at their previous convictions, I saw that they had received four fiscal fines for assault in the past 12 months. You would think that somebody would have been looking at that and thinking that there is clearly issue and that the person should perhaps be looked at a bit more closely.

I am speaking about shoplifting an item that costs less than £50 or an assault where there is no injury. Yes, that is automatically a fiscal fine, but we have to be careful about generalising that

all such cases will result in a fiscal fine, because we might miss patterns.

Fulton MacGregor: Thank you; that is helpful. Stuart Munro or Paul Smith, do you have anything to add?

Paul Smith: The issue might be how the Crown interprets the bill and uses it to influence its decision about whether to issue a fiscal fine. If the Crown looks at a case and thinks that, if it brings it to court, the offender will not get a fine of more than £500, so it might as well issue a fiscal fine—if that is the logic and if cases continue to be looked at individually—what Simon Brown described will continue to happen. It might be better for the Crown to answer that question on the basis of how the bill will affect whether and how it issues fiscal fines in the first place.

We tend not to see fiscal fines unless they appear on somebody's record after they have appeared in court, because the client decides that they are going to pay the fine, or ignore it. We do not deal with that directly; it would come up only—as Simon Brown said—if we see from someone's record that they have been issued with a number of fiscal fines.

Stuart Munro: There are a couple of issues with fiscal fines. I am sure that most people would support the idea of not criminalising people unnecessarily. If there is a way of dealing with a case that does not require the engagement of the criminal justice system, and if that is not going to cause any problems, that can be a good thing, and consistent with policy.

The flipside is that it is not just about what the penalty is going to be, although Paul Smith is entirely right; I suspect that that is part of the consideration—"This charge probably isn't going to result in anything more than a fine of 500 quid, so let's give a fiscal fine."

The problem with that approach is that it fails—or might be seen by the complainer, or by the public at large, as failing—to take things seriously. If Tesco is fed up with the number of shoplifting incidents that are taking place at its branch on Sauchiehall Street, and says that, every single time that somebody is arrested, they get a fiscal fine and it makes no difference to the company's practical experience, it may not be happy.

A resident may be concerned about antisocial behaviour by young people—vandalism, threatening behaviour or things of that nature—and contact the police because they really need help. If all that ultimately happens is that the offender gets a fiscal fine and the behaviour keeps happening, they might feel that the criminal justice system is not supporting them. If an accused person faces an allegation that they think is untrue, but they have received a fiscal fine and think that it will be easier simply to fill in the form and pay the money, that is, again, not very satisfactory.

The fiscal fine is a measure that has a place, but there is a danger in its overuse. How that overuse is policed is another matter altogether.

Simon Brown: I will come back on that last point, because I had an example of that last week. There is also a danger in that members of the public do not have the necessary legal expertise. Somebody came in to see me with a road traffic fixed-penalty notice, and their first line was, "I'm happy with the fine and I've paid that, but I don't accept the points." I had to explain to them that they had paid the fine and accepted the fixed penalty—that is it done. They did not realise that. There is a danger with fixed penalties that people do not perhaps know what they are, or are not, accepting.

Fulton MacGregor: I will just come right out and ask the question: in your view, should the current temporary measure be made permanent?

Stuart Munro: I personally think that the increase is not a problem, because it reflects inflation over a number of years. There is, ultimately, a much wider issue around how we expect the criminal justice system to work. Parliament can pass laws and criminalise behaviours, but if the police do not investigate, or if the Crown does not then prosecute, what impact is the legislation actually having?

There is a question that would be usefully considered, perhaps by this committee or by Parliament more generally, as to what we expect to happen when conduct is criminalised. What types of conduct do we think justify a fiscal fine as opposed to a prosecution? In which situations would we expect there to be a prosecution? For example, there is Simon Brown's client with his four previous fiscal fines.

I am not sure that anybody really knows the answer to that.

Fulton MacGregor: That is interesting—thank you.

The Convener: I bring in Sharon Dowey for a very brief supplementary, and then I will bring in Liam Kerr for a final question.

Sharon Dowey: Thank you, convener—it is a very quick question to Simon Brown.

You mentioned a pilot in Kilmarnock, which you described as "a singular failure". You said that "communication with clients was ... poor" and that courts were on till 8 pm.

Have all the learnings from that pilot been put into the bill? Is there a copy of the report on the

findings from the pilot that could be made available to the committee?

Simon Brown: There should be one—it was finished off by Sheriff Principal Anwar, who is now doing the report on the wider virtual pilot. The failings in the pilot were practical rather than procedural. The main one was the lack of capacity, which I have touched on already. There was only one room in the police station, and that was what slowed things down.

There is also a bigger issue. Everyone talks about how the virtual approach will work—we say, for example, that the papers will be available. As an aside, we are coming into what is called summary case management, in which there is even more of an onus on the Crown to provide even more disclosure at an early stage. There were 11 custodies in the custody court in Kilmarnock on Monday. The custody court starts at 12 o'clock, and at that time, there was one set of papers available. I do not see how that is going to change just because we make proceedings virtual and not in person.

The Convener: Finally, I call Liam Kerr.

Liam Kerr: Simon Brown, I want to take you back to something that you said earlier, just to ensure that we air this point. You talked about the need for legal aid provision for solicitors when they are dealing with virtual attendance. We already know that, in a context in which there is a significant decline in such solicitors doing legal aid work, many will feel that the provision is less than ideal already. Can you help the committee to understand what legal aid is currently available, if it is available at all for virtual attendance, and what the issues are around legal aid in general?

Simon Brown: Legal aid for a virtual attendance would be the same as for an in-person attendance. There are two different types of legal aid. There is what is commonly summarised as ABWOR, which is assistance by way of representation; that is for a plea of guilty or for continuing without plea. Alternatively, if someone pleads not guilty, they can apply for legal aid.

There is already an issue in that regard, because there are different tests for the two, and it is easier to get legal aid than it is to get ABWOR, which has in the past tended to lead to a preference, in borderline cases, for pleading not guilty rather than guilty. That issue was addressed in the case management programme, but it needs further work.

The bigger issue, however, is not so much the types of legal aid that are available, but the levels of legal aid and the impact that that has had on the profession. There are now fewer than 450 criminal solicitors doing regular work in the whole of Scotland, and of that 450, about 150 are doing roughly 50 per cent of the work. We cannot attract new solicitors into this branch of the profession—the wages that are available in commercial work are quite often twice what can be paid in criminal work, and more and more people are leaving the profession every week.

The schemes that you are talking about involve investment in bringing in more fiscals; those fiscals inevitably come from the private sector and take more away. Without significant investment, we will not have the numbers of criminal solicitors to deal with the cases. I gave the example earlier that I am the only criminal solicitor in my firm. If I am at court doing a trial, I cannot be in my office doing a virtual custody. If we were properly resourced and I could bring in another solicitor, that might work more smoothly.

The Convener: That is us just a little bit over time, but it has been a very helpful session. I thank everyone for joining us today—it is most appreciated. We will have a short suspension to allow for a changeover of witnesses.

11:12

Meeting suspended.

11:18

On resuming—

The Convener: We are now joined by our second panel of witnesses. I welcome Kate Wallace, chief executive officer of Victim Support Scotland, and Adam Stachura, associate director of policy, communications and external affairs at Age Scotland. Welcome to you both, and thank you for your written submissions, which were circulated ahead of today's meeting. I intend to allow around 60 minutes for this evidence session.

As always, I will open up with a general question, and it concerns the provisions in parts 1 and 2 of the bill. I appreciate that each of you probably has a stronger interest in different parts of the bill. Kate Wallace will be interested in part 2, while Adam Stachura is probably more interested in part 1.

The committee has an overall sense of your views on the provisions in the bill, but I specifically want to ask about any areas of concern. I will bring in Adam Stachura first, and then Kate Wallace. You can refer to whichever part of the bill you are interested in.

Adam Stachura (Age Scotland): As you have said, our take at Age Scotland concerns part 1 of the bill; I do not think that we have anything of value to add regarding part 2, given the area of our expertise and insight. I am sure that Victim

Support Scotland will have a lot more to say about that part.

You have said that there is a lot for us to talk about regarding elements of part 1 but, broadly speaking, it feels like the provisions in it could do a good job. That is the starting position—but you are asking the question about where the concerns are.

The first thing is not so much a concern about what will happen because of the bill itself, but about where there might be some kind of mission creep in terms of access to criminal justice services. If there is a considerable digital transformation in the service, that has got to be welcome behind the scenes—I am sure that all public services need to evolve through a digital transformation. However, for us, it is a matter of ensuring that, when older people are interacting with services, they do not face a situation where they can only access those services, or only primarily access them, through a digital front door, as we are seeing in some other places, such as the national health service—although there might be some provisions there.

It is not so much about what will happen with the bill right now. Down the line, more and more people will be digitally native and digitally comfortable. When we speed up to the next phase—in our own administration, in how we get information in and in how we interact with witnesses or the accused—will the service be primarily digital? The options for in-person, face-to-face and translated services and everything else that people require are really hard to access. To summarise that, it is about what happens next.

There is a lot in this: you can see how you could make the system more effective, faster and more understandable for the public. That is the focus of our contribution today and our written submission.

The Convener: There is some helpful information in your submission on the extent to which some older people are still excluded from the digital space. It was helpful of you to set that scene.

I am interested in the experience of the pandemic. Do you have any comments on the impact of the pandemic on older people and on whether or not there was a kind of positive outcome in so far as it brought older people into the digital space, where they might not have been otherwise? I am interested in whether a little bit of that shift happened.

Adam Stachura: Without a doubt. Before the pandemic, if I had been sitting giving evidence at a variety of committees in the Parliament, I would have been talking about the 500,000 pension-age people in Scotland who did not use the internet; now we are at 500,000 over-50s. There has been a change. There are still 500,000 people—older people—not using the internet, but there has definitely been a change in those who are digitally connected.

However, there is a caveat from a lot of fairly recent research. There is a question for parliamentarians here in thinking about digital access. Just because you are online, that does not mean that you are very good at using the internet. Just over a third of older people who are online are really not good at using the internet and, quite frankly, it is unsafe for them to do so, judging by tests that Lloyds and others have done through their digital inclusion work. Tests include asking, “Can you change your password?” “Can you open a browser?” and “Do you know where to access or save a file?” We might take all those things for granted if we do them on a routine basis, but we get a different story if we get a quick figure for those who have access to the internet, rather than being able to navigate and use it. There is a wide variety of expertise.

The last point, which we must always remember, is that there will be a generational shift. More people will be using the internet and digital devices, but those who are primarily not doing so will not change, for lots of reasons. Those who are on a low income or living in poverty are further behind in their inclusion through digital experiences; equally so for those who have disabilities or are disabled.

As we will see in the future, there will be a growth in the number of people on low incomes and in financial insecurity in later life. Indeed, we will have a rising older population—the fastest in the UK in terms of increasing population. More people will have disabilities and will be disabled. Just because there is a generational shift, that does not necessarily mean that the numbers of people will change vastly. Critically, however, there will be people who really need access to types of support who are digitally excluded.

Those are my caveats and various points for a little bit of extra information.

The Convener: Thank you. That was very clearly set out. I will bring in Kate Wallace. Just as a reminder, my original question was about issues and areas of concern that you might have about the bill.

Kate Wallace (Victim Support Scotland): We welcome the bill and the aims and intentions in part 1. We particularly welcome the establishment in part 2 of a statutory review function for murders and suicides in the context of domestic abuse.

We want to potentially pick up on a couple of concerns in sections 2 and 7, which are in part 1. In part 2, would like clarification on a couple of points about the membership of the oversight

committee and the publication of reports and involvement of families in the process.

The Convener: Okay. I will bring in members.

Liam Kerr: Good morning to the witnesses. Kate Wallace, you mentioned sections 2 and 7, but you did not mention section 6, which is about fiscal fines. In effect, section 6 makes permanent a temporary Covid measure that raised fiscal fines to a maximum of £500. Victim Support Scotland supported that in your submission. However, you may have heard Simon Brown saying in the earlier evidence session that fiscal fines could, in effect, decriminalise shoplifting, and Stuart Munro went on to say that a fiscal fine could lead to a suggestion that an offence is not taken seriously by victims and in general. What is your view on the principle of a fiscal fine, and do you have any concerns about permanently raising the limit to £500?

Kate Wallace: Our main point about fiscal fines is about communicating to victims that that is the outcome—being clear with victims that that is what has happened. We have not asked victims about the topic, and it has not particularly cropped up for us from victims unprompted, so we do not have a view on fiscal fines that is based on a view from victims. I heard some of the evidence in the previous session, and we will take that topic away and speak to victims about it specifically.

Liam Kerr: I am grateful. You are right. In your written submission, you say that you

"seek assurance that communication for victims whose cases are settled with a fiscal fine will be a priority."

Can you help the committee understand what the current situation is? What happens at the moment and what do you want to change?

Kate Wallace: We should do dig into that in a bit more detail, do more work on it and bring it back to the committee. We have not looked at it hugely, as I said, because it has not particularly come up to us from victims. We would be best to gather some more information to answer your question properly.

Liam Kerr: I would be grateful if you would do so, because you have said in your submission that you "seek assurance" and it will help the committee to understand exactly what you mean by that.

The Convener: I will stick with part 1. Kate Wallace, I was interested in the comments in your submission about the proposals on digital productions. Rightly, you highlighted the issues that victims of sexual crime potentially have to face when it comes to personal effects such as clothing being taken possession of for forensic examination and production. I am interested in hearing a bit more about why you think that the provision is a positive step forward, if you like, with particular reference to sexual offences.

Kate Wallace: Are you talking about the digital evidence-sharing capability?

The Convener: Yes.

11:30

Kate Wallace: We have had feedback that the traumatising nature of physical evidence productions in court may be lessened by it being possible to view those types of evidence digitally. There is a huge efficiency benefit to the system from having a digital evidence-sharing capability. We see digital evidence as positive, because not having productions passed about in court, especially in sexual offence cases, has the potential to reduce traumatisation.

The Convener: More broadly, one of the things that came out of your submission was the importance of choice being made available to victims, which means that some of the proposed provisions may be relevant down the line if the bill is passed. How important is that with regard to the services that you provide?

Kate Wallace: It is really important, and that ties into Adam Stachura's earlier point. I have spoken to the committee before about the Coronavirus (Recovery and Reform) (Scotland) Bill's emergency provisions, particularly in relation to remote evidence. We know from experience that some people do not have to physically go to court. At the moment, there are closed-circuit television rooms in courts, so sometimes, when people are giving evidence remotely, they must still travel to a court and be in the building, which is hugely traumatising for a lot of them. There is a lot of concern that they will bump into the accused or the accused's family. The way that courts are organised means that that happens often, so there is a huge amount of anxiety.

Then there are the issues, as we have previously discussed a lot of times in the committee, about adjournments, delays and deferments, and how all of that builds up victims' anxiety. They hold on to remembering in detail what happened to them, because that is what they are going to be asked about. They want to give their best evidence and keep it at the forefront of their mind, and then they have another layer of anxiety about the physical court structure.

We are very much in favour of victims and complainers being given a choice about how to give their evidence. There will be some people who choose to go to court, so they should still be given the choice to do that. However, certainly in our experience, giving evidence remotely takes a huge amount of the anxiety out of the process. We

also think that it will mean that more people are likely to turn up to give their evidence and that it will reduce attrition in the system, which has to be beneficial given the on-going delays, adjournments and all the rest of it. As I have said, choice is absolutely crucial.

Legislation is already in place to allow vulnerable witnesses to give their evidence remotely. They are supported to do that; they are not being asked to provide evidence on their own without any support. That is all helpful, but to provide that support, we need there to be as much choice as we can give, and a range of locations need to be made available.

We have been developing our own system to enhance the choices that are available to victims. If we are serious about reducing the retraumatisation of victims when they take part in the criminal justice process, we have to be serious about offering them the choice of providing evidence remotely. What we worry about is that the retraumatisation of the system puts people off from reporting in the first place. That is a big concern, so remote evidence is helpful.

The Convener: Thank you very much.

Rona Mackay: I have a brief supplementary question. You have kind of answered what I was going to ask, but my question links to the issues that Adam Stachura raised about older people now having access to digital criminal justice services but perhaps not being confident in using them. You talked about the support that is in place for people who maybe wanted to use those services, but is there support in place for older people who do not have the confidence to use them?

Kate Wallace: Those in the older age group are automatically included in the vulnerable witnesses category. There are special measures available that the Crown can apply for, which include providing the witness with a supporter and the option to provide evidence remotely. A combination of measures can be applied for. If you are providing evidence remotely, you can have a supporter. A big part of Victim Support Scotland is about providing support to vulnerable witnesses either in court or in a remote or pre-recorded setting. There is a mechanism for the Crown to refer vulnerable witnesses to us, and an older age group would be included in that.

Rona Mackay: That is reassuring. Thank you.

Fulton MacGregor: Good morning. My question is very much on the subject that Rona and Audrey have been covering, so you have already started to answer it, Kate.

I will ask about a couple of the temporary provisions. From what you have said about virtual attendance, I assume that you are supportive of the measures in the bill and that you feel that the temporary provisions should be made permanent.

Kate Wallace: Yes. It was quite a while ago now, but I have talked to the committee about the importance of putting something in legislation. We need a cultural shift. We are not seeing virtual attendance being used as much as we should be, especially given the amount of support that can be put in place. It is important that it is in the bill, because that will help to cement the cultural shift that is required. It will also help with the consistency across Scotland that we really need.

Fulton MacGregor: Before I move on to ask Adam Stachura about that, do you support the development of fully virtual trial courts to deal with some of the types of case that people who have come to you might have been involved in?

Kate Wallace: Are you asking that question of me? I thought it was for Adam.

Fulton MacGregor: I am sorry; that was my fault. I am asking you before I go to Adam.

Kate Wallace: When you say “fully virtual”, do you mean that every single part of the proceedings would be virtual, or do you mean all the parties in the trial providing their evidence remotely?

Fulton MacGregor: I mean every part of the proceedings.

Kate Wallace: As Victim Support Scotland, we are most interested in the bits of proceedings that involve victims and complainers having the option of being virtual. As I say, having choice about that is important, because some people will want to go to court.

Others will be better placed to answer the question about different parts of the proceedings—evidence was given earlier about custody hearings and that kind of thing. From a Victim Support Scotland point of view, we think that it is important that the option of giving evidence remotely is available, and that victims are given the choice, so that they can participate without being retraumatised by the system.

Fulton MacGregor: Adam, on the same point, I take it that you are supportive of the measures. Do you likewise believe that they should be made permanent, as the bill proposes?

Adam Stachura: Yes. Broadly speaking, as Kate said, having that provision and the option available to people to use it is very important. When it is required, it should be able to be supported en masse.

We find that victims of crime, as well as people who are accused, have feelings and attitudes towards the criminal justice system that depend on whether they have been heard properly and

whether they understand the process. We have all been on video calls at times. You are sort of beamed into something, then it ends and you are left wondering, “Is that it?” Some people might want to make sure that they have been more of a part of things. If they are seeking justice, a video call on its own might not be enough for them. To what degree are they communicated with? Do they fully understand the process and are they supported to give good evidence? However, making sure that, in this circumstance, older people are able to and can be supported to give virtual evidence on a regular and consistent basis is hugely important.

To go back to Kate’s other point—we are ping-ponging in agreement with each other—there are challenges in having to travel to court and that can be a trauma for some people, especially when cases are not seen on that day. People might change their mind and say that they want to give virtual evidence the next time, so how do they do that?

People need to be brought along with a lot of these system changes. We have gone through the mill with the Hate Crime and Public Order (Scotland) Act 2021 in that respect, as some people who are victims of hate crime feel that they are not taken seriously. They do not want to keep reporting things, and they feel that the system does not work for them.

The bill is a great opportunity, in terms of not only the actual provisions but how we give the public confidence that the system also works for them and is not just about the inner-sanctum processes.

Kate Wallace: Adam makes an important point. With regard to the point about accessibility and inclusion, we need to be honest: in general, our court buildings in Scotland are not that accessible. It is often not the case that the experience of physically going to court is more accessible than attending online. The acoustics in court rooms can be challenging, as we all know, so it can be difficult for people to hear what is going on. Physical access is often not great either, and the traumatising impact is layered over and above those things. We need to be honest with ourselves about the accessibility of the current court estate, as there are definitely issues there.

Fulton MacGregor: I think that you are both saying that it is important that people have a choice—an informed choice—about which option is best for them.

I have one further question, on the first area in which the bill proposes to move from temporary to permanent provisions: the electronic signing and transmission of legal documents in criminal cases. Do you regard those provisions as helpful, or are there situations in which it might be more helpful for the people with whom you work to do that using the old-fashioned paper method?

Adam Stachura: I go back to the point about choice, and what people are able to do. Kate and I, and other colleagues, were chatting earlier about digital signatures. If I can sign a mortgage application digitally and that has some legal grounding, being able to do that in other circumstances would be good. As politicians, you have probably all had to sign nomination papers at times with wet signatures, but what effect does that really have, other than to say that you have undertaken the process and signed that thing?

It is definitely important that those who are simply not able to do that digitally—they may not feel comfortable doing so, or they may have a medical condition that could preclude them from signing the document, depending on how it is signed—are able and supported to quickly and effectively provide a wet signature, which might be digitised later on by the service.

Kate Wallace: We see the big benefit from the measures being in relation to the work that goes on behind the scenes, with bundles of documents getting sent from court to court—that type of thing. We see it as hugely beneficial in taking out the inefficiency that currently exists in that regard.

However, I totally agree with Adam Stachura’s point that, where there is a requirement for a complainer or a witness to sign documentation or whatever, there should be an option for those who want to, to do that electronically. Again, it is important that, where that has to be done and should be done, the process for paper documentation is just as accessible as online.

An example is witness statements. We now have a portal—the witness gateway—that puts witness statements online where people can access them. However, it is important that that is not the only way in which people can access their witness statement, and that if they want to be able to see and read the paper copy, they can do so. There should be no barriers to that process, and it should be as easy as possible.

Ben Macpherson: I empathise with what has been said so far and the witnesses make compelling points. I want to return to some of the points that came up in answer to my colleagues’ questions, and to the points that the previous witnesses made about practicalities.

Do you have views on what facilities should be available for people to give evidence in? Where should those be? Does there have to be agreement with local authorities? For some people, giving evidence will need to be facilitated by the Crown, but do you see people giving evidence from their homes? Presumably not, from

what you have said so far. It would be good for us to hear your thoughts on the practicalities, particularly given what we heard from the previous witnesses.

11:45

Kate Wallace: The SCTS is expanding the number of remote evidence suites that it is providing and we in Victim Support Scotland have been running a programme alongside and in anticipation of the provisions. We have a facility in Glasgow and we will soon have facilities in Edinburgh, Aberdeen and Inverness. Those will have secure internet connections and highly soundproofed rooms, so that, outside, you cannot hear what is being said. It is important to keep the element of confidentiality. Our facilities are highly specced.

Our view is that we should run in parallel with the SCTS and be as supportive as we possibly can be in providing the facilities and the resources to help make the changes happen. Some of the challenges come when remote proceedings are running in parallel with proceedings in physical court. There is no doubt that, for some organisations, that adds to the amount of resource needed. For example, in Victim Support Scotland, we will need to overcome a logistical challenge. Some witnesses will probably still give evidence in court and we will be the in-court supporter for them. So, we will need to have people in court at the same time as we need to help people in either our offices or the SCTS remote evidence suites. That adds to the volume of work.

We are running that alongside the summary case management approach that is going on in the sheriff courts, which is reducing the number of trials that are being scheduled but do not go ahead. There is a trade-off for us, because, at the moment—you have heard me speak about this before—we put a huge amount of resources into court to support vulnerable witnesses who are then not called to give evidence. The system is inefficient just now. Our view is that, because of the benefits that there will be in reducing trauma, we will work through the capacity and resource challenges.

Ben Macpherson: How much time do you need to work through the challenges?

Kate Wallace: We support virtual attendance just now; it is in the protocol, we are ready and available, and we are working alongside the SCTS and the Crown Office and Procurator Fiscal Service. This is an on-going, dynamic planning situation. We hope that there will be a lot more virtual attendance than there is at the moment, but I appreciate the challenge that some other organisations may have in supporting that. We see virtual attendance as a positive and a benefit, and that is what we are working on. Also, because the summary case management approach is reducing the number of people that we need to put in court, we are moving them to other places.

Ben Macpherson: I do not doubt that it can be done. I am just trying to get a sense, if the Parliament were to pass the bill, of a realistic time frame that will enable the practical delivery of something that, from everything that you have said, I am convinced would make a difference.

Kate Wallace: We already have a remote evidence suite in Glasgow and we are working on the basis that suites in Edinburgh, Inverness and Aberdeen will be ready in this calendar year. We are well on the way with that work. After that, we will take a view and work on plans with the SCTS. As for resources, if we are needed, then we need to do this now—you will remember that vulnerable witnesses can already give evidence remotely.

Ben Macpherson: I appreciate that. That was really helpful, particularly with regard to our discussion with the earlier witnesses. Thank you for providing a bit more detail.

Pauline McNeill: Good morning. I have a follow-on from Ben Macpherson's questions on virtual attendance. I had the opportunity of visiting Victim Support Scotland's offices to see the impressive facilities there for giving evidence remotely. Kate, as you said, the bill allows virtual attendance for non-vulnerable witnesses where that is in "the interests of justice"; it is not an automatic right, or anything of that sort. I know that your facilities are top quality, and that it will be important to develop them, given your answers to Ben Macpherson. I imagine that the court will be interested in such factors, because it will have to balance them when making decisions about witnesses giving evidence virtually. The facilities that you have, and are developing, will be important in considering that test.

Kate Wallace: Yes. That is interesting. We would prefer that the decision and the choice lie with victims, as we will discuss in the context of possible amendments to the Victims, Witnesses, and Justice Reform (Scotland) Bill.

Our experience is that such an approach is not used enough. It could be used much more often, even with vulnerable witnesses. I understand the pressures, particularly on police officers' time and their ability to give evidence remotely, but I do not want us to lose sight of the fact that vulnerable witnesses already have that ability. We should be using it a lot more in that context and giving people choices. I go back to my earlier comment about cultural shift.

Ms McNeill is right that there needs to be reassurance about the type of facility and about

demonstrating that it works. For example, our facility has been signed off by the judiciary, the SCTS and COPFS. However, various barriers still need to be worked through if using such facilities is to become the norm.

Pauline McNeill: I take your point. However, there is still a test, which is not applied automatically.

I think that you have answered my question, and I hear your position on choice. However, the bill does not give people that choice; it simply says that virtual attendance can happen when that is in the interests of justice.

You are answering yes to my question, in that the facilities that you are developing will give reassurance to the court system. It is still important that witnesses give evidence in certain conditions. Even if the bill is passed without amendment, it would perhaps meet the test that the court will have to apply, which is that giving evidence remotely can be done if that is in the interests of justice.

Adam, did you want to respond?

Adam Stachura: I will jump in on your point, Ms McNeill, as well as Mr Macpherson's. As you said, the language in the bill gives quite a lot of wriggle room for us not to do something that could add tremendous value. That needs to be considered. We talk about inconsistencies and how the measures that are already in place can be applied because a judge or sheriff feels that what they want to get is important, but we must also consider how to get the best-quality evidence from witnesses.

I go back to Mr Macpherson's point, which I think fits with yours. If the aim of the bill is to modernise and digitise administration of the system, would that free up people's time? If we think about where resources go to support witnesses, some people probably could, and should, give evidence from their own homes. However, they should not simply be sent a joining link and then expected to sort themselves out. Should there be, for example, a liaison officer who could go to their home with the right technology? It is simple stuff to ensure that it is the right kind of evidence. In the courtroom, you will want to have high-quality communication. If a judge or sheriff does not think that the results are of good quality they will not be minded to use the system in future. If someone joins via a device that is not functioning—for example, if the microphone sound is not working properly—could a standard kit be used in those circumstances?

Facilities are being set up around the country to support that. Could those things be set up as standard in current courts, if they have not been already, so that someone could go virtually to that public building in another city or town?

The point about the language providing wriggle room is important. If the aspiration is for high-quality evidence and if people feel that they will be supported, that they could get good access to justice and that the system would work for them, but they cannot then access that provision because somebody has said no, there has been a missed opportunity to standardise people's experiences, wherever they are in the country.

Pauline McNeill: We can only guess what is meant by something being in "the interests of justice" here. We do not know whether it means someone being able to give evidence in their own home. Supposing that the proposed measures allow for that, I would have thought—and what you are saying is—that there will then be an imperative to develop systems, notwithstanding the points that you make in your written submission about a person who may struggle with technology. Would you accept that it is not just a question of that, and that it is also about the quality of the evidence? I suppose that those two things marry up.

Adam Stachura: They definitely do.

Pauline McNeill: I found your submission really helpful. It is a bugbear for a lot of politicians that, although we like to see modernisation and change for the better, and digital platforms give that, we do not want to throw away the opportunities for people to do things in the way that they prefer—for example, being able to phone rather than having to email, or being able to see a hard copy. Some people will have that preference. To me, that is what your submission speaks to, and I found it really helpful.

Adam Stachura: I will stop in a second, but the question of how people interact with services is hugely important, as I said. We might consider how a system can just assume that people can do something digitally. People might be told in a throwaway comment, "Can you get someone else to help you do that?" We have seen that in other public services. A document might be emailed to someone's family member, but the person might not want them to see it, particularly if it concerns a court case.

How a person accesses private information is really important. They might end up giving up some of their independence. We see that with issues of elder abuse, for example. Where relationships are challenging, the system or the state can almost accidentally support someone losing their independence if they are told, "Someone else could do that for you." It may be possible for a person to access a document that way, but that human being is being cast aside, and it is important to avoid that. Let us digitise a

system in terms of process and admin, but interaction points must be high quality.

Pauline McNeill: To be fair, you will see that we are all still using paper here. There is a certain insurance policy in our having paper in front of us.

The Convener: I have a question for Kate Wallace. A significant part of your submission details your views about broadening the scope of part 2 to include child homicides and suicides. I am interested to hear a bit more about the thinking behind that and why you feel it important to include that.

Kate Wallace: On part 2, we are happy to see a statutory review process being set up for homicide and suicide in the context of domestic abuse. The collaborative approach that has been taken to develop that has been really helpful, as has learning from other countries that have similar provision.

I totally understand the rationale of having a tight scope to start off with and then potentially expanding that later, for instance to include honour killings. We would see that as beneficial.

We are really pleased about the inclusion of connected deaths, including those involving children. All of this is important from the perspective of learning about and understanding the full impact of domestic abuse and being able to make changes that might prevent horrendous and tragic situations.

12:00

The ability to have a conversation around child protection and the types of reviews that might be done is important with regard to, for example, the decisions about whether to include a given connected death as part of a review, or whether to pick it up elsewhere. From my perspective, we need to ensure that nobody falls through any gaps. For example, a child who is on a sleepover at a house and is killed in the context of domestic abuse in that house might not have had any child protection proceedings going on around them—they just got caught up in that situation.

It is important that children who are killed in the context of domestic abuse are included within the scope of the reviews. Connected deaths must be looked at, because that is one of the areas where there could potentially be a gap, and you will miss one of the impacts of domestic abuse if you do not include those deaths.

I think that the bill strikes the right balance with regard to linking in with other types of review processes to see which is the best option and expecting that joint conversation to take place. Does that answer your question?

The Convener: It does. I was just slightly unclear about what you set out in your written submission, so your answer has been helpful in clarifying what you understand by and mean by connected death.

On the review process, another thing that I picked up from your submission concerned membership of the review oversight committee. You also set out some thoughts on access to reports that are produced by the committee and said that you believe that it is pertinent to allow families to access a full copy of a report if they wish. Can you share any more detail on those two points?

Kate Wallace: I will address the membership of the oversight committee first. I assume that the provision in the bill that excludes people who have been involved in an organisation that supports victims of domestic abuse is there in order to avoid any conflict of interest. However, if that is the intention, there would seem to be a need for a similar provision that excludes people who have been involved with organisations that work with perpetrators of domestic abuse. Surely there is a potential for a conflict of interest to arise there, too. I wanted to explore that issue, because the bill feels uneven and unbalanced in that regard.

On the issue of access to the reports, more work needs to be done on the involvement of families. Sometimes, families will be a rich source of information for the review, particularly in situations where other agencies have not been involved. If you are looking for learning about opportunities that have been missed and so on, families could have an important role to play in the review process.

We totally understand the rationale for having anonymised reports. My understanding is that the approach that is being looked at is to have a high-level and anonymised summary report, which will be in the public domain, and a much more detailed report that will go to the organisations that are involved.

Victim Support Scotland is a fairly unique organisation in that we have a service that supports families who are bereaved by murder and culpable homicide. It needs to be made absolutely clear to families when reports are going to be released. Copies of the full report need to be shared with them and with organisations that support those people. That is important so that we can support people. Families will be interested in understanding the learning points and what will be taken forward as a result. As you know, and as I have said before, what most people want is to ensure that nobody else experiences what they have experienced. That process will be important, and we will be able to provide that support only if a copy of the full report is shared with us.

I have shared with the task force my views about the need to be careful about timing, have conversations with families and be really clear about the types of information that will be in the public domain. A point that we are picking up elsewhere is around the impact of the potential for surviving children to be identified, which might trigger media attention and all the rest of it.

You have heard me say this before, but it is really important to note that any official documentation that goes into the public domain tends to trigger media and social media responses, including from true crime bloggers, vloggers and people doing that kind of thing. We are not that big a country, so we need to support people and try to avoid intrusion into their lives as far as we can. We need to be mindful of that aspect.

The Convener: You mentioned forced marriage and honour killings, or one of the two—I cannot remember which. I am surprised that those issues are not included in the bill's provisions. What is your comment on that type of violence not being included in the review process?

Kate Wallace: It was honour killings that I mentioned. There will be others who will talk to you about that in later committee sessions, but my understanding is that there is a desire to include honour killings in the process. However, the Government is super-aware that this is a new process to be set up. The scope includes suicide in the context of domestic abuse, so it is quite large. The explanation that has been given to me is that the desire is not to run before we can walk but to get the review process up and running. There is provision in the bill that allows the scope to be expanded, and the expectation is that that will be done to include, for example, honour killings.

The Convener: I have a couple of other questions, which are again for you, Kate. One proposal in part 2 is for reviews to be carried out in parallel with other proceedings, such as criminal proceedings. However, the Lord Advocate would have discretion to end a review in the spirit of preventing prejudice to other proceedings. What are your views on that provision? Is it an appropriate arrangement?

Kate Wallace: We can completely see the rationale behind trying to capture information and experiences early while they are fresh in people's minds. That applies especially to solemn cases, considering how long they are taking at the moment. However, we want to explore that in more detail, because we want assurances that it will not prejudice criminal proceedings.

We want to find out a wee bit more about the approach that will be taken to involve families, how formal that mechanism will be, and how people will be supported to take part in the review process. We have questions on those aspects that we will pick up with the team.

Rona Mackay: I think that I know the answer to this question, but I will ask it anyway. From the family's perspective, how important is it that a review is established quickly? What are your views on that?

Kate Wallace: Again, there will potentially be some exceptions but, for the most part, yes, it is important. People understand that it is crucial to capture information at an early stage, while it is still fresh in people's minds. There is a lot of support for that but, understandably, there are questions about what that means for criminal proceedings. It is about making sure that the process is managed properly.

Rona Mackay: Thank you.

The Convener: I have a final question, which is for Adam Stachura and is about something that just came into my mind. The question concerns part 1 of the bill and is about capacity. You have outlined some of your views on choice, particularly for older people. When an older person finds themselves in the criminal justice system, or even in the civil justice system, and where there may be issues around capacity, what needs to be considered so that the provisions in part 1 remain relevant and accessible for them? For example, I am thinking of cases where there might be power of attorney or guardianship.

Adam Stachura: That is a really good question and I am glad that you asked it. One thing that we need to mention about capacity is that a perception about people's capacity is sometimes built into the system. For instance, a person might have a dementia diagnosis, but that does not mean that they are not fully independent or that they do not have their own capacity. We often see that with the POA system, as some solicitors do not want to get involved in dealing with POA for people who have a dementia diagnosis, because their capacity is not fixed. On one day, it will be different from another, and it will also be different throughout a day.

However, you are right. I do not have much to say about how you would do that well if power of attorney is in place, because there are a lot of legal responsibilities around that, so the question is probably for the real experts on the matter. However, where there is a perception of limited capacity—for instance, where somebody has a dementia diagnosis and is at an early stage of the disease—how the system or the state treats and interacts with them is really important.

Those people should not be dismissed at all, and the state should not speak to somebody other

than them about their circumstances. That is incredibly important. There is not anywhere near enough training and awareness in the public sector and service about how to properly interact with people who have dementia—I am using that as one example.

It is important to capture evidence early at a time that suits the person. Some evidence might also be recorded to ensure that it is as fresh as possible. That will not change but, at another stage, an environment that is not too comfortable or that is unusual might affect how the person articulates and what they say.

There is definitely an issue about the perception of older people. As we know at Age Scotland from years of discussions about access to criminal justice, people are sometimes not taken seriously and are not seen as reliable witnesses because they might just not be able to articulate something. It might not really be about capacity, but police officers, for instance, might not feel that they get what they need and, therefore, the case will not proceed. I have had good conversations with deputy fiscals about that over the years.

I am sorry to ramble on a little, but there is definitely a lot to consider about how people with perceived capacity issues are treated. We should definitely get in early at the right time and support people to give good evidence. That should be treated as being as valuable when it is taken as it might be in a live court setting, so that cases do not fail because a person is not able to articulate something properly on the day.

12:15

The Convener: That is very helpful.

Kate, do you want to add anything?

Kate Wallace: I will, although I am aware that we are finishing up.

You talked about the involvement of families in the review process under part 2 of the bill. One thing that we picked up was that there is no provision in the bill to ensure that the family is notified that a review will take place. We have a concern about that, given the feedback that we get from families about how the lack of information can retraumatise them. That should be addressed by notification.

One of the questions that I thought I might be asked but have not been asked yet is whether anything is missing from part 1. We have a concern about some of the temporary Covid measures that were in place and that are not in the bill.

I know that there are views about time bars. As the committee has heard before, there are 2,000 solemn cases waiting in the High Court that will hit a time bar in November this year. I have real concerns about the impact of the amount of administration, resource and capacity that those cases will take up in the system if we do not do something about that cohort, which has had a different journey through the criminal justice system because of Covid, and extensions have to be applied for in every individual case. As I have said to the committee before, I am also concerned about the risk of cases timing out and victims not getting justice.

I am disappointed that there is nothing in the bill about that, because it is a big problem. I know that the committee has had conversations about it and there are different views on it, but I wanted to put my concerns on the record.

The Convener: That is helpful. I was going to finish up by asking whether the witnesses wanted to comment on anything else that we had not picked up on in our questions. I do not know whether you heard the evidence of the previous panel with regard to time limits. Organisations and stakeholders are obviously well sighted on that issue, so I appreciate your comments.

Adam, would you like to bring up anything else that we have not covered?

Adam Stachura: I have nothing to add.

Kate Wallace: We have not talked about the provision in part 1 on the location of courts and where cases will be heard. For example, one point that we want to make about the national jurisdiction for call-ins from custody is that we need to be really careful that, if it becomes about where the accused is held, that does not result in victims having to travel big distances to go to court. Sheriffs and judges should take into consideration where victims and witnesses live before the decision is made about the court that will be used.

The Convener: That came up in the evidence from our first panel of witnesses. We will have the Crown Office and the Scottish Courts and Tribunals Service before us next week. We will have plenty to ask about the logistics of court processes. Thank you both very much. That has been helpful.

We now move into private.

12:19

Meeting continued in private until 13:01.

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