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Criminal Justice Committee

Wednesday 26 February 2025

Session 6

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CRIMINAL JUSTICE COMMITTEE
7th 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:

Angela Constance (Cabinet Secretary for Justice and Home Affairs)
Lisa McCloy (Scottish Government)
Heather Reece Wells (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 26 February 2025

[The Convener opened the meeting at 10:02]

Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 2

The Convener (Audrey Nicoll): A very good morning, and welcome to the seventh meeting in 2025 of the Criminal Justice Committee. We have received no apologies.

Our first item of business is evidence from the Scottish Government on its plans to amend the Victims, Witnesses, and Justice Reform (Scotland) Bill before we begin consideration of amendments to the bill at stage 2 on 12 March.

I am pleased that we are joined this morning by Angela Constance, the Cabinet Secretary for Justice and Home Affairs, and Scottish Government officials, including Heather Reece Wells and Lisa McCloy from the criminal justice reform unit and Nicola Guild from the legal directorate. Welcome to you all. Throughout the morning, as our discussion moves between different parts of the bill, the officials supporting the cabinet secretary will change, so we might need to have a couple of brief suspensions to allow that to happen. Thank you all for taking the time to attend the meeting.

I refer members to papers 1 and 2. I intend to allow about 90 minutes for the session. I will structure questioning by focusing on part 4 of the bill first, then parts 5 and 6 and, finally, parts 1 to 3. I invite the cabinet secretary to make some opening remarks.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning, and thank you, convener.

I wrote to the committee last autumn to update members on my approach to stage 2 of the bill. I remind members of the significance of the proposed legislation. You have all heard compelling evidence that the justice system does not provide a satisfactory experience for many victims and witnesses; for many, it can be actively harmful, particularly for those who have experienced sexual crimes.

Incremental changes over the years have delivered improvements, and I am grateful to all who have worked to drive such change. However, as the committee has heard from the Lord Advocate and Lady Dorrian, the former Lord Justice Clerk, the dial has not shifted enough and the scale of reform that is needed cannot be delivered through existing structures and processes.

The bill sets out a package of reforms that have the potential, if agreed to, to transform the operation of the justice system to the benefit of victims, particularly women, while protecting the rights of the accused. I am heartened that there is significant support for much of the bill. I am, of course, disappointed—although I accept—that that does not extend to the full package of measures that are included in the bill as introduced.

As I hope that my letter makes clear, I want to work across the chamber and reform by consensus. I have set out key areas in which the bill will be amended in response to the committee's stage 1 report. The most significant of those is the pilot of single-judge rape trials, which I have confirmed that I will no longer pursue. Although that is regrettable, I have to recognise that there is insufficient cross-party support for that.

However, I do not accept that the long-standing issue of access to justice for rape victims has somehow disappeared. The low conviction rates for that type of crime are a stark symptom of a system that does not operate effectively for some of the most serious and gendered crimes. Therefore, I will lodge amendments at stage 2 to remove the barriers to conducting research on jury deliberations, to help us to better understand the impact of rape myths on decision making.

I will also lodge a significant package of amendments to address matters relating to the creation of a sexual offences court. The amendments have been developed in collaboration with justice stakeholders and include changes to address concerns about the legal representation that accused prosecuted are entitled to in court. Amendments will be lodged on appointment and removal of judges to the court and on enhancing choice for complainers in how they give their evidence. I am confident that the amendments will address concerns about the model of the court that were raised by the committee at stage 1.

The former Lord Justice Clerk, the Lord Advocate, the senators of the College of Justice and the Scottish Courts and Tribunals Service, as well as victims, have told the committee that a stand-alone court is necessary to improve the experience of sexual offence complainers. They have made it clear that tinkering around the edges will simply be insufficient. Therefore, I urge committee members to grasp the nettle and embrace wholesale reform to the management of sexual offence cases by supporting the creation of a stand-alone court.

I am pleased that there is cross-party support for the removal of the archaic not proven verdict. You have heard much evidence on the need for consequential changes to the jury system: some from people arguing that we should retain a simple majority, some from those favouring a qualified majority and some from people who would like to move to a supermajority or unanimity. The evidence that we have supports the view that moving to two verdicts could lead to an increase in convictions for all crimes. My assessment is that we cannot abolish not proven in isolation without impacting the balance of fairness in our system. Stand-alone reform would risk miscarriages of justice; equally, setting too high a threshold for conviction would mean that we fail to hold perpetrators to account. To maintain the integrity of our criminal justice system and confidence in that system, the most prudent approach is a model with two verdicts, 15 jurors and a two-thirds majority requirement for a conviction.

Thank you, convener. I look forward to working with the committee over the coming several weeks as we navigate our way through to stage 2.

The Convener: Thank you very much, indeed, cabinet secretary. I want to pick up on your final point, which was in relation to the proposals around jury size and the jury majority requirement. In your helpful and detailed correspondence, you stated that, as you set out in your opening remarks, you will

"seek support for a model with two verdicts, fifteen jurors, and a two thirds majority requirement for conviction."

Can you give more detail on why you are looking at that particular model and on what has been raised by stakeholders and other interested parties that has led to it being the preferred model?

Angela Constance: My approach starts from the position that, although there is not unanimity, there are still people opposed to the abolition of the not proven verdict. However, even among those who oppose the abolition of the not proven verdict, there is acceptance that it is likely to happen if the Parliament approves the bill.

My reasons for amending the bill are partly to reflect the Government's position in response to the committee's stage 1 report. In particular, I will amend the bill to retain a jury size of 15. Although there was an argument to reduce the size of juries, I do not want to lose focus on where the debate now is and where it should be.

The debate now needs to focus on what the jury majority—that is, the threshold for conviction—should be. I recognise that there are different views on that, although, based on the amendments and a range of discussions with stakeholders, it appears that most people would have concerns about the threshold being a simple majority. There are strong, respected voices in favour of the simple majority. However, we need to make a careful judgment, based on the research—from Scotland and elsewhere—and meta-analysis, which tell us that moving from three possible verdicts to two has an impact on other parts of our verdict and jury system.

Going forward, we need to have absolute confidence that verdicts are returned on a sound, rational basis that ensures balance and fairness to all parties. Part 4 of the bill, on criminal juries and verdicts, is the cornerstone of the bill and a fundamental part of our system. It is also a stand-alone reform.

The Convener: There is a lot of interest in that part of the bill, which is no surprise. Rather than follow up with a supplementary, I will bring in some other members.

Liam Kerr (North East Scotland) (Con): My questions are in the same area.

Cabinet secretary, in your letter from October, you suggested that, moving to having two verdicts—that is, removing not proven—would require a change to

"the majority required for conviction",

in order to avoid miscarriages of justice. Notably—for something that I will ask about later—you also said:

"Scotland would be the only jurisdiction that considered the simple majority to be appropriate."

You are proposing a two-thirds majority requirement for conviction. What is the evidential basis that led you to conclude that two thirds is the right and safe figure to ensure that there are no miscarriages of justice?

10:15

Angela Constance: That is the nub of the issue. Mr Kerr is right to point out that there is no other similar jurisdiction with a two-verdict system that convicts on a simple majority. That should give us pause for careful reflection as we proceed with the bill.

The research that I mentioned—not only the Scottish research but the meta-analysis—was important. The Scottish research tells us that, if we move from our current unique Scottish system—it is unique in all its aspects: the size of the jury, having three verdicts and using a simple majority—to two-verdicts, that will increase convictions, particularly in finely balanced cases. The broad meta-analysis shows that convictions in the Scottish three-verdict system are lower than in what is described as the Anglo-Saxon two-verdict system.

Where I have landed on the matter is the view to which the senators of the College of Justice have also come. The committee will remember the evidence from Lord Matthews that the not proven verdict has

"been seen as the counterbalance to the simple majority."—[*Official Report*, *Criminal Justice Committee*, 31 January 2024; c 36.]

He also said that the simple majority would

"possibly be conducive to miscarriages of justice in"—[*Official Report*, *Criminal Justice Committee*, 31 January 2024; c 38.]

the reformed system that we propose.

In essence, the simple majority is too low and the other alternative of near unanimity is too high for fairness, because we still have the safeguard of corroboration in our system, although it has been refined and updated and has evolved in terms of the successful references that the Lord Advocate recently made. I think that we have landed in the right place. The Government's position, like that of the senators, is that, in a reformed system, it should be a two-thirds majority.

Liam Kerr: As you rightly pointed out, some people would say that unanimity, near unanimity or a supermajority is the better way to go. However, it is not currently where you are. The argument would go that a supermajority, let us say, would align more with the other jurisdictions that you say that you are considering when making the reforms. However, if we say that the burden of proof is "beyond reasonable doubt", some people might suggest that there is reasonable doubt with a two-thirds majority.

If that is right, why do you prefer a two-thirds majority? Do you reject outright the proposal for a supermajority or are you minded to consider the idea?

Angela Constance: There are a number of layers to my concern about a supermajority. When we consulted on the bill—I appreciate that that was some time ago—there was low support for near unanimity in a reformed system. It was something like 13 per cent. It also feels disproportionate to go from a system that requires a little bit more than 50 per cent to convict to one that, in the context of a majority of 13 out of 15, would require 87 per cent.

The standard of proof is the standard of proof—there are no changes to that. It is worth bearing in mind that juries in Scotland are not told to strive for unanimity. The process is considered to involve an aggregate of individual votes as opposed to being a collective endeavour.

Another difference between Scotland and other systems with two verdicts is that Scotland does not have hung juries or retrials. Such options, should we proceed with reform to a two-verdict system, were not popular in our consultations. In short—forgive me, convener—in relation to near unanimity, there are still some differences in the Scottish system. Corroboration still exists, and there are no retrials in our system.

Liam Kerr: My final question is about juries. The committee's stage 1 report included evidence from Professor Leverick, who expressed the view that, if we are to move to a system that is similar to those in other jurisdictions, we should consider whether a majority of eight out of 12 jurors—in other words, a two-thirds majority with a reduced jury size—is appropriate. There is a proposal to retain the jury size at 15. I am not aware of any other system that has 15 jurors, so Scotland is potentially an outlier already, but that makes sense if, as the cabinet secretary acknowledged, we have a balanced system involving the not proven verdict and corroboration.

In relation to moving to a two-verdict system, changes to corroboration, which the cabinet secretary mentioned, and closer alignment with other jurisdictions on majorities, what does the cabinet secretary say to those who say that it is better to move to a 12-juror system to ensure that the whole system is more closely aligned with those in other jurisdictions where things have been tried and tested?

Angela Constance: I will make two points on that. One is that reducing the jury size from 15 to 12 was the Government's position at the start of the bill process. That position was based on the substantial independent research on Scottish juries that had been done, which was much more about deliberation. According to that research, a jury of 12 was marginally more effective for deliberation, whereas, with 15 jurors, slightly more people overparticipated and slightly more underparticipated. These are my words, not those of the researchers, but the argument was more about group dynamics and how people in a group work together when deliberating. The view was that, on balance, a slightly smaller jury would lead to a better process of deliberation.

I met the researchers as part of my stakeholder engagement, and the committee heard evidence on the matter. As we progressed, it became apparent to me that, although all parts of the system are connected, the size of the jury is much less connected with other parts. My original position was that I very much thought of jury size, majority and verdict as the three legs of the stool, but my judgment by the end of the stage 1 process was that jury size was a much shakier leg of the stool and far less interconnected.

As I said in my opening remarks, I want to focus on the more fundamental issues that are front and

centre in relation to fairness—those that are in the interests of justice—which relate to the majority in a reformed system. To be blunt, convener, it is about focusing on the bigger issues, as opposed to having arguments about less consequential ones, although Mr Kerr has clearly given serious deliberation to the size of the jury.

Liam Kerr: Indeed.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. My questions were about part 4 as well, but Liam Kerr and the convener have covered many of my points, and you have already given quite a good overview, cabinet secretary. I understand that the purpose of this meeting is to explore some of the amendments, so I will not ask questions just for the sake of it.

However, I would like to ask whether any thought was given to having a trial period—I may be using the wrong phrase—because it is likely that we will agree to the removal of the not proven verdict, which will be a massive change. Further, during the scrutiny of the bill, the changes to corroboration also came in, as you have already said.

Given that those are massive changes and that we are getting different views from different people about the changes to jury size and majorities, when you were drafting the amendments, was any consideration given to having some sort of trial period to see how the new changes bed in, or having what I suppose you could call a sunset clause for the new changes?

Angela Constance: My worry about that, Mr MacGregor—and I will be direct and forthright, so forgive me—is that it sounds like a cop-out. We have substantial evidence from the meta-analysis and the Scottish research. We do not have unanimity among all the stakeholders, but in my experience, unanimity among all parliamentarians, including at this committee, is somewhat of a rarity. You can build consensus, but consensus is different from absolute unanimity across the board, and we have a great range of evidence.

I hope that I have outlined that near unanimity, in the context of our existing system and in the context of reforms, is just too high a standard. However, based on the evidence, it is also my reading of the position that the majority of stakeholders recognise that a simple majority would be too low a standard. Therefore, the Government and the senators of the College of Justice have come to a balanced and proportionate view.

Fulton MacGregor: I asked whether there had been any discussions within the Government about a review, given the other changes. It is clear from your answer that you decided early on that you did not want to do that and that you wanted to take more direct action, which I appreciate, but was there any discussion about how the changes might be reviewed in the future? Given the changes to corroboration and the likely change to the not proven verdict, was there any discussion about how we—both the Government and the Parliament—might review the legislation?

We are obviously all hoping that the sky will not fall down, and we all think that it will not happen. However, given the range of views that we are hearing, what thought has been given to how we might look at reviewing the legislation if it does not bring about the results that we are hoping for?

10:30

Angela Constance: It might be helpful if I remind the committee that the purpose of part 4 is to modernise the system. The jury-and-verdict system is not engineered to increase convictions—or, that is, increase convictions in particular offences. It has to be absolutely fair to all parties: victims and complainers, and the accused. That is the balance that we have to strike.

Therefore, my position, and the position of the Government, is that we need to look very closely, as we have done, at the evidence that we have, comparing our unique Scottish system with other two-verdict systems, and make decisions on that basis. The abolition of not proven necessitates—in my view, and, I believe, in the view of the majority of stakeholders—a change in the majority itself, notwithstanding the debate about what the qualified majority should be. I imagine that that debate will continue through stages 2 and 3.

I do not have any plans for sunset clauses, but I would suggest that, in general terms, the committee has always been very focused on ensuring that the right reporting mechanisms are built into primary legislation. I am also very conscious of the comments of Elish Angiolini, who, when she gave evidence way back at the start of this process, talked about how the law is not static and how it constantly evolves. Indeed, you see that with High Court judgments on points of law and the outcomes of references made to that court. The law does not stand still. However, as far as this primary legislation is concerned, we have enough evidence for us to come to the decision that, in my view and in the view of other stakeholders, this is a credible and fair move that will give, and maintain, confidence in our system.

Fulton MacGregor: Thank you.

The Convener: Ben Macpherson, did you want to come in here? I will then bring in Katy Clark and Pauline McNeill.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Thank you, cabinet secretary, for agreeing to have this evidence session between stages 1 and 2. It has been really helpful, particularly given the other sessions that we have had at this juncture. This is a very significant bill, and we want to get it right for many decades to come. Before I ask my questions, I remind members that I am registered on the roll of Scottish solicitors.

When the Law Society of Scotland and the Faculty of Advocates gave evidence to us on 4 December, they said that

"the removal of ... not proven ... is a fundamental change"—[*Official Report, Criminal Justice Committee,* 4 December 2024; c 27.]

but the strong indication seems to be that the not proven verdict will be removed, which is something that I support. Of course, corroboration will be a part of this, although we had the Lord Advocate's reference last autumn. In the interests of balance, I note that the Law Society and the faculty stated to us that, although the Scottish system has differences compared with other systems across the world, no other common-law jurisdiction works in the way that is being proposed for stage 2, with the change to the jury of 15 and a two-thirds majority. The view of the Law Society of Scotland was that

"every other common-law jurisdiction has 12-person juries and requires unanimity or something very close to it",—[*Official Report*, *Criminal Justice Committee*, 4 December 2024; c 27.]

while the Faculty of Advocates said:

"The view that the faculty endorses and has expressed is that modern thinking is that one should have either unanimity or a majority of 10 out of 12." —[*Official Report, Criminal Justice Committee,* 4 December 2024; c 28.]

I am not against our being unique, but it is something that we need to consider collectively when we seek to do something that is quite different from other common-law jurisdictions across the world. I know that you have already commented on that in response to colleagues, but perhaps you have something further that you wish to say. I have one other question to follow, too.

Angela Constance: With regard to my position, and the Government's position, on the abolition of the not proven verdict, I am, in essence, making a case for its abolition for reasons with which we are all well acquainted. Jurors do not understand it, and it is seen as the compromise, or cop-out, verdict. It leaves a lingering stigma on the accused, and the committee will have heard a lot of evidence that victims find it traumatic. In that sense, I am actually arguing that, with the abolition of the not proven verdict and moving from three verdicts to two, Scotland would become less unique in that regard.

The reality is, however, that there are other parts of our system that remain unique. Parliament will come to a view on whether the jury size should be 15 or 12. I do not have an ideological position on that. I have stated the reasons why I have shown some flexibility in response to the committee's stage 1 report but, ultimately, Parliament will come to a view on that.

Even if we move from three verdicts to two, there are other parts of the system that would remain particular and unique to Scotland. Corroboration is one of those—it still exists. It has been refined and, just as many aspects of the law evolve and change over time, it is evolving in the light of various judgments. Nonetheless, we need to be clear that corroboration remains with us, and it is a part of our system that is unique in comparison with others.

The other part of our system that is different is that many other two-verdict systems have unanimity or near unanimity, and some of those also have hung juries and retrials. There are still differences in our system that have to be accommodated, and that has to influence our thinking with regard to the decision that we make on the jury majority.

I remain of the view that, when we compare that with what a reformed system in Scotland would look like and look at the Scottish research and meta-analysis, we see that a two-thirds majority is the most balanced and proportionate position.

Ben Macpherson: My next question follows on quite nicely from that. In your letter to Parliament of 31 October, you stated that

"the majority of Senators preferred if Scotland changes to a two verdict system"

with

"a two thirds majority requirement for conviction."

It was interesting that the senators, in their submission on the bill, suggested

"a conviction of at least 10 in favour of such a verdict".

Was there consideration of 11 or 12? Is that something that we collectively, as a Parliament, can or should probe? The senators' position was "at least 10". Is that something that we can discuss further today, or think about in the weeks ahead?

Angela Constance: I will ask Lisa McCloy to come in on that. The process has, from beginning to end, been one of deliberation. I think that there has been good visibility of the consideration that would be required to amend the jury majority if the not proven verdict were to be abolished, but there have been numerous discussions with numerous stakeholders, and those will continue.

I do not know whether Lisa can add anything further.

Lisa McCloy (Scottish Government): I can perhaps build briefly on what you have said, cabinet secretary.

Historically, a two-thirds threshold has been considered when the jury majority in place in Scotland has been looked at previously. That dates back to the Thomson committee on criminal procedure in Scotland; it looked at a huge range of issues, one of which was whether the simple majority should be maintained or adjusted. There was certainly some support on that committee for an adjusted majority of two thirds.

That was also the suggestion in the legislation that came before the Parliament in 2013, both that associated with the abolition of corroboration and the member's bill that proposed abolition of the not proven verdict. More recently, in the large programme of engagement that the Scottish Government undertook after the jury research was published in 2019 or 2020—the outcomes of that engagement have been published, and we can point the committee to them—a common suggestion with regard to the majority issue was that, should the not proven verdict be abolished, the majority should be two thirds rather than unanimity or a simple majority.

Ben Macpherson: I am conscious that the senators mention the phrase "at least 10" in their written submission. I just wonder whether we require to go back to them on that specific point at this juncture, given the changes that have been proposed between stages 1 and 2 and as we move towards stage 3.

Perhaps I will just leave that hanging. Thank you very much.

The Convener: We still have three more members who want to come in on part 4, so I will bring in Katy Clark and then Pauline McNeill.

Katy Clark (West Scotland) (Lab): Cabinet secretary, I appreciate that you said that you are not trying to engineer higher conviction rates; instead, you are trying to modernise the system. However, what is the risk of our having lower conviction rates in rape cases as a result of these changes and the move to two verdicts and a two-thirds majority?

Angela Constance: I think that I said that part 4 of the bill is very specific about this being a stand-alone reform more aligned to modernisation and transparency of decision making. Of course, the bill as a whole contains a number of measures on improving access to justice. We have collectively been focused on more access to justice for more women in the context of sexual offences and rape, given the really low conviction rate, particularly for some of the evidentially more difficult cases. This reform is about ensuring our system's integrity and maintaining balance. All the evidence points to the fact that, if we move from a three-verdict system to a two-verdict system, convictions will increase, hence the concern about miscarriages of justice and the interconnected discussion and debate around the jury majority.

Katy Clark: From what you are saying, then, you have come to the conclusion that, if there were to be a change in conviction rates—particularly in rape cases, given, as you have said, the concern about those rates being low—it would be an increase rather than a reduction. I appreciate that that is not necessarily the intent, but it is quite understandable that people will be worried about the risk of the conviction rate being lowered. Are you satisfied that the risk is low in that respect?

Angela Constance: Yes, because this is about balance. I understand the appropriateness of scrutiny, and I am utterly sympathetic to the voices of those who represent, advocate for and support victims of sexual violence and who have concerns about how the system protects those victims and complainers. However, at the end of the day, my concern is that, if we maintain a simple majority in the context of two verdicts, as articulated by the senators and others, we will see an increase in miscarriages of justice. That is an issue not just for the accused across all alleged crimes but for victims.

Katy Clark: Miscarriage of justice is a different concept to conviction rates. I am particularly focused on conviction rates in rape cases. Clearly, you have spent a huge amount of time considering those issues, so have you concluded that you do not believe that there will be a risk of lower conviction rates in rape cases if part 4 proceeds as you are proposing?

Angela Constance: That is my view, Ms Clark.

Katy Clark: Thank you.

10:45

The Convener: I will bring in Pauline McNeill, and then Rona Mackay, and then we will move on to parts 5 and 6.

Pauline McNeill (Glasgow) (Lab): Good morning. I echo what Ben Macpherson has said: it is important that Parliament gets this right, and we appreciate your attendance at this morning's meeting.

The current proposal in the bill is for a jury of 12, with eight required for a conviction. You have told the committee that your focus is on fairness, and I agree with that. Why do you think that a majority of 10 to five on a jury of 15 is fairer than what is in the bill?

Angela Constance: It just reflects the fact that the Government is taking on board the critique that we heard at stage 1 about jury size. Our position on jury majority and a two-verdict system is the same as it was when the bill was established—we are still, in the context of a two-verdict system, in favour of a two-thirds majority to convict. The 10 out of 15 majority versus eight out of 12 aligns with our position on a two-thirds majority. It is just a change in what we are proposing with regard to jury size.

I hope that I have understood you correctly, Ms McNeill.

Pauline McNeill: I was just trying to ascertain the Government's position on why that is a fairer approach. It was a two-thirds majority before, and it is a two-thirds majority now. The Government received representations from the senators before it drafted the bill, but it has now changed it because, as you have said, it has to be fair for everyone. Presumably, that is your rationale. If you are saying that you are changing it, because many people support such a change, that is surely not a rationale for doing so, because it does not really matter who supports what if you are trying to achieve fairness.

Angela Constance: For clarity, we have not changed our position on the not proven verdict, and we have not changed our position on a two-thirds majority either. We have changed our position on the size of the jury.

Pauline McNeill: Why is that fairer than what you had?

Angela Constance: As I said earlier, Ms McNeill, the size of the jury is less interconnected with and less consequential to other parts of the jury system. I have shared some reflections on the research, because it led us to support a jury size of 12 in the first place. We listened to the committee and others at stage 1. I am not punting any strong line about the size of the jury being fairer or otherwise, but I do think that jury majority is fundamental to fairness.

Pauline McNeill: We do not have any data to rely on to know whether a majority of 10 to five would achieve, as you have set out, fairness to victims and the accused. It is a bit of a shot in the dark.

Angela Constance: No, it is absolutely not. One of the biggest pieces of jury research that was undertaken in the United Kingdom looked specifically at Scotland and involved 900-odd participants. It was carried out over two years, and Lord Bonomy was involved as the presiding judge in the mock trials that were part of it. We also have the meta-analysis, which was shared with the committee further to one of my appearances. There is lots of data to show the consequences of having three verdicts rather than two.

Pauline McNeill: You referred to the mock trials. Was it that data that made you conclude that 12 was the number of jurors to go with?

Angela Constance: It was.

Pauline McNeill: However, the same data would be used to determine whether 15 was fairer, too. Do you see where I am going with that?

Angela Constance: The research ran various scenarios on the three components of the jury and verdict system; it ran various mock trials, keeping some of the variables while changing others; and it tested various things. As the committee has heard, the research also looked at how a reduction in jury size improved deliberations, because participation was better; indeed, some of it—dare I say it—made commonsense arguments about a slightly smaller group leading to better group decision making. However, I have also said, particularly in response to the views that were given at stage 1 and to the committee, that jury size is less interconnected with other aspects.

Pauline McNeill: Can you tell the committee—the stakeholder, so to speak—who is supportive of this, apart from the senators? Are there others?

Angela Constance: You will know that as well as I do, given that the committee has taken evidence on this.

Pauline McNeill: We know who does not support it, but I just wanted to give you a chance to say who does.

Angela Constance: There is the view of the senators. We also know the views of victim support organisations such as Scottish Women's Aid and Rape Crisis Scotland, which are advocating for a simple majority. The Law Society of Scotland and the Faculty of Advocates are advocating for a supermajority, as it has been labelled by Mr Kerr.

I would point out that stakeholders, as a whole, have to come to a careful judgment, and, at the end of the day, it will be the committee and the Parliament that will vote on this. However, it appears to me that there is more rather than less acceptance that, if we move to a two-verdict system, you need to address issues around the—[*Interruption*.] I am sorry—I cannot read what my official is showing me. They will have to print it.

Pauline McNeill: I am just trying to illustrate exactly what you said there, cabinet secretary—we all have to use our judgment. It is hard to decide whether to support the new option on the table; I find it confusing that some support it, but not the two-thirds majority. The senators support it, and you have gone with that, but some still

support the 12-juror approach, and others want unanimity. It is really difficult to see a way through all that.

Where we agree—and I think that the committee agrees with this, too—is that, given all the options, if we think that the system, with corroboration and the three verdicts, was reasonably balanced, we will need to find out how we ensure fairness for everyone in a new system. I welcome what you have done with juries, but I just wanted to illustrate that view.

Angela Constance: I will just add that the consultation responses, which I know were published a long time ago, came from a range of individuals, victims organisations, legal representatives and so on and more than 50 per cent accepted that, if we moved from three verdicts to two, we would need to move to a qualified majority. As for what that qualified majority should look like, the majority—not everybody, but the majority—pitched two thirds.

Pauline McNeill: Thank you.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Convener, is it okay if I go on to part 5?

The Convener: We need to change officials, so just bear with me.

Rona Mackay: I beg your pardon. I just wanted to move on.

The Convener: That is no problem.

As there are no more questions on part 4, we will have a short suspension to allow for a changeover of officials.

10:55

Meeting suspended.

10:57

On resuming—

The Convener: I am pleased to say that we have a new group of officials. We still have Nicola Guild and Heather Reece Wells with us, and we are now joined by Andrew Baird and Carole Robinson—welcome to you.

We will pick up where we left off and move on to parts 5 and 6.

Rona Mackay: Good morning, cabinet secretary and officials. Can you update us on your thinking on amendments in relation to the sexual offences court? Your letter that we received in the autumn suggested that you were thinking of amending the bill to ensure that any case involving a charge of murder is still prosecuted in the High Court. Are you still open to doing that, or is there new thinking on that issue?

Angela Constance: I will answer Ms Mackay's question in two parts. With regard to the Scottish Government's planned amendments, we will lodge an amendment on the process for appointing and removing judges of the sexual offences court. The committee will be alive to the debate that was held on that. Originally, we proposed in the bill that removal, for example, would be for the Lord Justice General to do. However, after reflection on representations from stakeholders and the committee, we will instead link that process with the current process around fitness for judicial office tribunals.

Again, that was to reduce the number of issues on which there were debate and discourse, so that we could focus on the bill's primary purpose, which is to establish a sexual offences court that will implement fundamental change to the effectiveness and efficiency of the system and the experience that people have as complainers in sexual offences cases.

11:00

I know that there has been engagement with colleagues on the issue of legal representation. We will lodge amendments on that because, as we have indicated, we want to replicate rights of audience and ensure that the accused are not disadvantaged in terms of their access to counsel.

There will also be amendments on pre-recorded evidence, which, again, will pick up on the committee's representations. We are not moving away from the presumption in favour of pre-recorded evidence, but I note the evidence that was given on the issue of personal agency. Some complainers and victims might well not want to give pre-recorded evidence, but will want to appear in court instead. There is also an amendment that seeks to extend to the sexual offences court the existing exception to the rule that applies in the High Court.

Ms Mackay is right: I am not, at this stage, seeking to lodge an amendment to include murder in the jurisdiction of the sexual offences court. I want to be clear about that. The bill proposes that the court would be able to hear a murder case only where it appeared on the same indictment as a qualifying sexual offence. Of course, it will remain the case that the Crown will make decisions about which court a case should go to—there will be no alteration to that—but I was very mindful of the Lord Advocate's evidence with regard to the Crown's prosecution of cases involving serious sexual offending against multiple victims, where the accused was alleged to have killed one of them. In my mind, there is an argument that, for all those potential witnesses, there would be benefit in enabling the case to go to the sexual offences court.

We have not yet lodged an amendment on that, but we will continue to reflect on and consider matters. I know that it is a matter to which the committee has paid close attention.

Rona Mackay: Thank you for that.

Moving on, you mentioned vulnerable witnesses and said that you are exploring amendments to embed choice—which I think is a really good thing—and that that will remain a fundamental bedrock of the new court. However, Scottish Women's Aid has concerns about the need for qualification for some women and the fact that

"the court can still order, or decline, special measures"

in certain circumstances, which

"means that women face uncertainty as to whether they will ... have to face the abuser in court"

et cetera.

The organisation is concerned about the amendment relating to the test for deemed vulnerability. Although it welcomes the fact that that approach will be embedded in the civil and criminal courts, it says that it is unacceptable that people would have to provide evidence for eligibility for special measures—it could be from a health practitioner—and that someone who has been a victim of domestic abuse or sexual assault would need to have that qualification applied to them. Scottish Women's Aid thinks that that is "unacceptable as a test" for women, as they might have to undergo "intrusive" questions and examinations.

Is that coming into your thinking in the amendments that you will lodge on the issue?

Angela Constance: For clarity, the amendments that you refer to relate not to part 5, which deals with the sexual offences court, but to part 3, which deals with special measures.

Rona Mackay: I am sorry for confusing the two parts.

Angela Constance: You are not confusing them. It is fine.

On the issues that Ms Mackay raises in relation to part 3, as I said in my letter in October, I was planning to lodge an amendment

"to extend who is deemed vulnerable",

which would have covered

"persons who provide evidence from a reputable source",

such as a health practitioner or someone from a domestic abuse or sexual assault support service.

However, I am cognisant of the major concerns that Scottish Women's Aid has raised in and around the planned amendment. We will no longer lodge that amendment, and I will continue to have discussions with Scottish Women's Aid. In fact, I think that I will meet Dr Scott at the beginning of next month.

As our plans stand, we intend to lodge the other amendment that you mentioned, Ms Mackay, which would mean that

"persons applying for a civil protection order against domestic abuse or for damages following a sexual assault"

are deemed vulnerable.

I am conscious of the correspondence that Scottish Women's Aid submitted to the committee and which I saw this morning at 9.30. The organisation is concerned that the amendment does not go far enough. As best as we can, we will work through concerns at stages 2 and 3.

I am always open to turning up the dial, but I recognise that, if we are getting into the area of entirely removing the court's discretion, that is problematic. However, there is a willingness on my part always to see where we can do more.

Rona Mackay: That is very reassuring.

The Convener: We will have an opportunity for more questions on part 3 later.

Pauline McNeill: I will continue Rona Mackay's line of questioning on whether murder should be included in the sexual offences court. Of course, the Crown does not make a decision—it is not required to make a decision, because it is a requirement of law that a plea of the Crown must be heard in the High Court.

As Ms Constance said, the Crown could make a decision on which court a case should go to. Is there not also an argument that, since murder is such a serious offence and is already tried in the High Court, notwithstanding that there might be sexual offences to prove, murder cases should go to the highest court, because the High Court will still be the High Court? Would that not make sense?

Angela Constance: I understand that argument. All that I was trying to portray is that, in the context of a sexual offences court, where, on the same indictment, there is a murder and sexual offences, there would still be the opportunity for that to go to the High Court or the sexual offences court.

Of course, the sexual offences court has unlimited sentencing power, so it can sentence people for up to life and make an order for lifelong restriction and all of that. I understand the point that is being made. What I am wrestling with is the experience of victims and complainers. Right now, we know that the system overall is not doing enough to support people to give their best evidence. I contend that that relates to issues of the fairness of justice. The whole raison d'être of

the sexual offences court is to improve the efficiency of the process and procedures to deliver quicker decision making and improved judicial case management so that cases can be dealt with more quickly.

The evidence from elsewhere in the world shows that specialism assists with that. However, embedding specialism will improve the experience of everybody in the court. If we are concerned about the experience of victims and complainers in the court process, there is an issue with having a sexual offences court that has embedded specialism and then also having a cohort of victims and complainers who have to go to the High Court. I think that the issue involves quite a fine judgment, but that is why I have not brought forward an amendment at stage 2. However, I know that it is a live issue.

Pauline McNeill: I turn to rights of audience. I thank your team for all the work that they have done in responding to the committee's concerns on that, but it might be helpful to put some of this on the record.

My understanding is that you have tried to address the question of rights of audience because, if a case is prosecuted in the High Court, it will attract not only an advocate depute on behalf of the Crown but counsel on behalf of the defence. You have tried to replicate the current position as best you can and to get the right approach in relation to anything that is likely to attract a sentence of more than five years. However, I do not think that you have said anything about who would prosecute those cases. As you know, in the sheriff court, it is procurators fiscal who prosecute cases, but advocate deputes prosecute in the High Court. Is there still a gap in relation to who appears in the sexual offences court?

If you solve the question of rights of audience to ensure that the accused is represented by counsel in the same way that they would have been had the case gone to the High Court, correspondingly, you need to ensure that there is an advocate depute prosecuting the cases that were previously prosecuted in the High Court. We are talking, for example, about non-rape cases involving serious sexual offences that would attract sentences of more than five years.

I do not know whether you have said anything about that, but it has occurred to me that that needs to be resolved as well.

Angela Constance: We have borne in mind the issues that the committee raised at stage 1 on rights of audience and have given careful consideration to the committee's recommendations. We will lodge stage 2 amendments to address those concerns. We have been quite explicit about the reasons for doing that.

There are three routes to counsel in the sexual offences court. I am happy to answer any questions about that, but I know that members have been briefed on it.

On who prosecutes, I am quite sure that, as it stands right now, that is a matter for the Lord Advocate. I have not brought forward any propositions to change that, as you would expect.

Pauline McNeill: I have to say that I find it difficult to get my head round the issue. My understanding is that, in non-rape cases that are prosecuted in the High Court, there will still be advocate deputes and counsel. In the shift to a new court, you are trying to make sure that accused people have the same representation, but surely you need to make sure that there is the same level of prosecutor. There must be parity, as it were.

Angela Constance: You are arguing for equality of arms.

Pauline McNeill: At the moment, the Lord Advocate would appoint advocate deputes, but, with sheriff court cases, there is no requirement for that, and procurators fiscal would prosecute those cases. If you do not prescribe for the prosecution, you could have a disparity. Does that make sense to you?

11:15

Angela Constance: If it would be acceptable to Ms McNeill, I could raise the issue with the Lord Advocate and the Crown and ask them to reply to the committee. I am not in any way trying to be obtuse. I am conscious that, in the context of the bill, or with any legislation, I cannot modify the Lord Advocate's discretion, because that gets us into issues of legislative competence.

Pauline McNeill: I am not asking for that. You know my position on the sexual offences court, which is that the issue could be resolved by making the sexual offences court a division of the High Court and of the sheriff court. We would then not need to go into the mechanics of who represents whom. However, as you are creating a new court, I would have thought that we would all be interested in making sure that the representation aspect is not diluted by the new court. It would be helpful if you could clarify that point.

Angela Constance: I am more than happy to do that, and I understand and respect Ms McNeill's position. My position remains that continuing to try to make piecemeal reforms will not be quick or fundamental enough. That is based on the experience in New Zealand, in the

state of Victoria in Australia and in South Africa, from which we have learned that, if you want consistency, a national approach is required.

There are significant benefits to embedding specialism in the courts, not only in relation to having the experience that is needed to support victims and complainers to give their best evidence, but in terms of efficiency, because there is a growing demand on the High Court from rape and attempted rape cases.

Sharon Dowey (South Scotland) (Con): Good morning. I will come back to the sexual offences court, as I want to ask about training. You mentioned the specialism that will be in the sexual offences court, but we know that the court will exist in the same court system that we have now. Will you tell us a bit more about who will be trained? Will it only be the people who work in the sexual offences court or will we train everybody who works in the court system? How are we going to embed trauma-informed practice? Which agencies would be responsible for supplying and carrying out the training? What training will be received? Is it going to be a one-time course? Will there be refresher training?

I am just trying to work out how courts will get the training if we are using the court system that already exists. When I first read the bill, I understood that everybody in the court system would get the trauma-informed training. However, we then hear about the specialism that will exist in the sexual offences court. Will you elaborate on your intentions in that regard?

The Convener: I want to make sure that our time is used to focus specifically on amendments. I completely understand where you come from with your question, but I remind members that the focus is on amendments.

Sharon Dowey: Okay.

Angela Constance: I will try to focus on amendments. Part 5 specifically relates to the sexual offences court. All the participants and parties in that court have to be trained to be trauma informed. In relation to amending the bill, I have to bear in mind that the training of the judiciary is a matter for the Lord President. However, I assure Ms Dowey that I know from my engagement with the Judicial Institute for Scotland and with victims, who have also engaged with the Judicial Institute on training, that there has been a wealth of work and input on training, including on refresher training and expanding the training input for induction courses for the judiciary. That obviously includes sheriffs.

The Convener: Thank you, I will bring in Rona Mackay before we move on.

Rona Mackay: The provisions on the rape trials pilot are to be removed from the bill. You have outlined the reasons for that and said that you are working on a range of legislative and non-legislative measures to explore and address the underlying issues that the pilot would have sought to address. Will you expand on what those measures might be and what research might be carried out?

Angela Constance: In the light of the removal of the pilot of juryless trials from part 6 of the bill, our approach will be twofold. Preparatory work is under way on setting up a working group to pursue a package of non-legislative actions. In relation to the bill, we intend to amend section 8 of the Contempt of Court Act 1981 to allow research into real jury deliberations with appropriate safeguards, which will be important and pave the way for the gathering of more valuable insights that are not possible under the current legislative framework.

Rona Mackay: Has the working group been set up? Do you have a deadline for gathering information on that?

Angela Constance: It is still at the preparatory stages. Heather Reece Wells has been closely involved in that work with stakeholders.

Heather Reece Wells (Scottish Government): Initially, we have been speaking to a range of stakeholders in Scotland and to people in other jurisdictions about their work in the area to get a flavour of perspectives. On timescales, we hope to have something set up for the summer.

Rona Mackay: That is great.

The Convener: As there are no more questions on parts 4, 5 and 6, we will move on to parts 1 to 3.

I am aware of the time. Cabinet secretary, can you confirm that you can stay on for a little bit longer to answer questions on parts 1 to 3?

Angela Constance: Of course.

The Convener: That is most appreciated. We will have a short suspension to allow for a changeover of officials.

11:23

Meeting suspended.

11:25

On resuming—

The Convener: Thank you very much for your forbearance. For the record, we are now joined by Simon Stockwell, Heather Reece Wells and Sarah Crawford, who are the Government officials

accompanying the cabinet secretary. We will go straight to parts 1, 2 and 3 of the bill.

Sharon Dowey: Good morning, again, cabinet secretary. Your letter of 31 October outlines several proposed areas of amendment relating to the victims commissioner. Can you expand on the thinking behind them?

Angela Constance: There are four or five potential amendments in that area. The first—and I will talk a bit more about this—is to provide for enforcement powers for the commissioner and also to extend the definition of "victim", which, in essence, is to enable the commissioner to engage with a broader spectrum of victims and witnesses. Given the changes in the victim notification scheme, I am minded to lodge the proposed amendment on the definition of "victim" at stage 3, just to ensure that the definition for the victims and witnesses commissioner aligns with the work on the victim notification scheme. I want to do a wee bit more work on that.

There will be another amendment to ensure that the commissioner shares reports with any criminal justice agencies and organisations that are referred to in the commissioner's recommendations, as part of the annual report.

I anticipate—members might have other views—that the most significant amendment will be that which seeks to improve the enforcement powers of the victims and witnesses commissioner. That is very much in response to some of the debate and dialogue that we had at committee. It is about strengthening powers and also having better clarity of the statutory role that the commissioner will have. We will weave into the legislation powers for the commissioner to act if someone or an agency is not complying with requests to provide information to the commissioner; we will also restate, in this legislation, relevant parts of other legislation. That is about ensuring that we have the strongest possible basis for the victims and witnesses commissioner.

Sharon Dowey: Some stakeholders support the new commissioner and some are against the position. Concerns have also been raised about the cost. The Finance and Public Administration Committee's report on the commissioner landscape concluded:

> "We also believe that the funding for new supported bodies would be better spent on improving the delivery of public services 'on the ground', where greater impact can be made."

How will the introduction of the victims and witnesses commissioner affect the current commissioner landscape, which the Finance and Public Administration Committee highlighted as no longer fit for purpose?

Angela Constance: To be clear, the Parliament also agreed that it could consider existing proposals—including for the victims and witnesses commissioner and the member's bill for another commissioner—while the review takes place. There was an acknowledgement that lead committees and the Parliament still have a role to consider the merits of, in this case, the victims and witnesses commissioner in its own right. I appreciate that the Finance and Public Administration Committee has been looking at the roles and the proliferation of commissioners over many years, as is its right. It is, of course, imperative that we scrutinise every penny and every pound.

11:30

The Government's position is that we remain committed to the victims and witness commissioner. Notwithstanding the difference of views that Ms Dowey has articulated, there is a clear appetite for it among victims and victims organisations. I believe that having that independent voice and independent champion is imperative. It will fill a gap in the mechanisms for accountability, which we are seeking to strengthen. The commissioner will have a key role, crucially, in monitoring compliance with the victims code and the standards of service, including the requirements to demonstrate trauma-informed practice; I know that Ms Dowey has been a big champion of that. The commissioner's role will be to raise awareness of the rights of victims and witnesses and also to monitor those rights and how they have been met.

Sharon Dowey: I think that everybody realises the benefits that could come from having a commissioner, but, as you said, budgets are tight. It has already been said that some of that remit would overlap with the remit of one of the other commissioners. Would it not be as well to put a pause on the post until the full review has been done, or should we carry on?

Angela Constance: I think that we should carry on. A pause is not my position—my position remains the same.

Sharon Dowey: Thank you.

Liam Kerr: I have a small point, but it is based on the same line of questioning. As someone who is coming to this issue later than many of my colleagues, it has struck me that the stage 1 report raised concerns about creating the commissioner, suggesting that it would lead to extra bureaucracy, financial issues and opportunity costs. In your response to Sharon Dowey, cabinet secretary, you noted that there are voices in support—and, of course, there are—but this morning the committee

received representations from Scottish Women's Aid reiterating those exact concerns and saying:

"We maintain our opposition to the creation of this Commissioner".

I believe that other colleagues have submitted amendments to remove the concept of the commissioner completely. Throughout this process, you have shown a commendable willingness to change position based on committee recommendations or representations from groups. How do you respond specifically to the stage 1 concerns and, perhaps more importantly at this stage, the Scottish Women's Aid representations?

Angela Constance: I am well aware of the views of Scottish Women's Aid. It has been consistent in its views, as has Rape Crisis Scotland. On the other hand, Victim Support Scotland and some of the other organisations that are involved in the victims task force, which I chair, along with the Lord Advocate, have been campaigning for a commissioner a long time. I have to be respectful to all voices.

It has been put to me that there is a gap, bearing it in mind that a victims and witnesses commissioner exists south of the border. Victim Support Scotland has, on a number of occasions, challenged me about that gap in Scotland. I am also mindful that action is being taken to strengthen the role of the Victims' Commissioner south of the border. That is in line with what we are attempting to legislate for by bringing in a commissioner who has a particular responsibility around holding people to account. Our commissioner would, of course, be accountable to the Parliament.

Katy Clark: I have a question about part 2 of the bill, if that is acceptable, convener.

Cabinet secretary, you will be aware of a concern that the concept of trauma-informed practice might be seen as simply a slogan and words that are used, rather than practice that is embedded in the system. I am sure that you are concerned about that. Can you outline the work that is being done—or that you are thinking would be done if the legislation were passed—to ensure that trauma-informed practice is embedded in the procedures and rules of court? How do you envisage that work being taken forward?

Angela Constance: That is a good point. I am not remotely interested in slogans and I think that we all want to see a difference in people's day-to-day experience of the justice system on the ground.

In this instance, legislation has an important role to play in changing culture and practice, although it is not the only solution that we should bring to bear. We are working on a planned amendment that would extend the definition of trauma-informed practice. I am sure that members are alive to the debate that we had in committee. We brought forward a definition that was designed to fit into legislation, because legislation is about defining duties, responsibilities and legal obligations. However, there was a far broader definition in the trauma-informed justice skills framework, which is about how we train and support staff in the justice system to embed trauma-informed approaches in their day-to-day work.

I am pleased to say that we are progressing well with drafting that planned amendment. Our proposition to the Parliament will be to add two further aims, taken from that knowledge and skills framework. One is about enabling people to participate effectively and the other is to avoid interfering with a person's individual recovery. That work is still under development. We are engaging with justice agencies because legislation must be able to work in practice, at operational level. We are getting enthusiastic support from Dr Caroline Bruce of NHS Education Scotland, whose work on the justice and skills framework has been pivotal.

Ben Macpherson: I will go back to the discussion about the proposed commissioner. For completeness, the SPCB Supported Bodies Landscape Review Committee was established following an inquiry into the commissioner landscape by the Finance and Public Administration Committee. I convene that new short-term committee and place on record that if the cabinet secretary and the Government wanted to write to that committee to set out the arguments and evidence for the importance of the commissioner that the bill proposes, that would be helpful and welcome.

Angela Constance: I would be happy to do that. At a basic level, I am more than happy to lay out the case for the commissioner in detail, but I also have a manifesto commitment to deliver for victims and witnesses. I utterly appreciate the Parliament's role in making final decisions but I will continue advocating as best I can for a victims and witnesses commissioner until the Parliament decides otherwise.

Ben Macpherson: For clarity, I was not disputing that.

Angela Constance: I know, and I was giving my position for clarity. I meant no disrespect, convener, to you or to Mr Macpherson.

The Convener: It is helpful to confirm that point.

I am aware of the time and will finish up with a couple of questions. The first is about part 3 of the bill, which deals with special measures. I know

that we touched on those earlier. My second question relates to a separate but interconnected issue that was raised during the stage 1 evidence and on which I would welcome the cabinet secretary's response, which is the pilot of free court transcripts.

First, I come back to the special measures in civil cases. Will you give us a broad commentary on the thinking behind the proposed amendments to those provisions?

Angela Constance: I will not repeat in its entirety what I said to Ms Mackay earlier, but I will briefly reiterate that I am not going to pursue the amendment that I intended to lodge to extend the definition of who is deemed vulnerable, given the strong views and representations that have been made by violence against women and girls organisations.

I will have further engagement with Scottish Women's Aid and other organisations on the amendment that I still intend to lodge, which will allow persons who apply for a civil protection order against domestic abuse or for damages following a sexual assault to be deemed to be vulnerable. However, I have heard the representations that say that that does not go far enough and that it is still piecemeal. We will engage and have a further look at that.

My letter in October spoke to other amendments. I mentioned that we plan to lodge an amendment on what the courts should do when a person is deemed vulnerable. The aim would be to provide that, when a person is deemed vulnerable, special measures must be applied at the person's option, so that there would be no discretion for the court. On reflection, I have some concerns that that might remove the ability of a judge or sheriff to take decisions based on the particular circumstances of an individual case. In addition, removing that discretion might raise concerns about the right to a fair hearing. That is a particularly complex area.

In broad terms, I very much want to turn up the dial. The whole purpose of section 3 is to recognise that people feel far less protected in civil courts than in criminal courts. However, there are some challenges in getting direct alignment, because the systems are, of course, different.

As I said earlier, getting into the terrain of removing the court's discretion in all cases can get us into difficulties, but I am willing to explore what more we can do in that area.

The Convener: I will take the liberty of asking a final question that perhaps relates to trauma-informed practice. As I said earlier, one of the issues that was raised during stage 1 was about access to court transcripts for complainers. You helpfully wrote to the committee recently to say that the pilot for providing free transcripts for complainers in High Court sexual offences cases is to be extended for a further 12 months, which is welcome. We are aware that some campaigners have suggested that the bill might be an opportunity to make the pilot permanent. What are your views on that suggestion?

Angela Constance: I am cognisant of that point, and I am pleased that the committee has championed the issue. I have met victims who have benefited greatly from having access to information that is essentially about them, their person and their being and I know how important that has been to their recovery, and to other matters such as making complaints or pursuing justice for the treatment that victims have received.

I was pleased to extend the pilot, which was done in recognition of the volume of cases. We want to be able to get through all the cases in the pilot so that it can be properly evaluated.

I am not in a position to answer any questions about scope, but I am sure that all members, as is their right, will test the scope of the legislation by lodging amendments on this and, no doubt, other topics.

I, of course, support the pilot and am sympathetic to it. However, I want to check operability, so I want to liaise closely with the Scottish Courts and Tribunals Service about any potential amendment that might be lodged.

Cost is, of course, a particular issue but there is also an issue with technology. Part of the reason for extending the pilot was to see what other technology could be applied that would be more effective and efficient. I have an open mind, notwithstanding the fact that there are always things in stage 2 and stage 3 that give us the opportunity to bottom out details or be sighted on any unintended consequences.

The Convener: Super. Thank you for that positive response.

Angela Constance: That is now on my radar.

The Convener: We will draw this session to a close. Thank you, cabinet secretary, and your officials, for joining us.

The next meeting of the committee is on 5 March and that will be our second consideration of our stage 1 report on the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill.

We look forward to seeing the cabinet secretary again, along with the Minister for Victims and Community Safety when we start our stage 2 consideration of amendments to the Victims,

Witnesses, and Justice Reform (Scotland) Bill on 12 March. Thank you again.

11:46

Meeting continued in private until 12:44.

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