

Criminal Justice Committee

27th Meeting, 2023 (Session 6), Wednesday 1
November 2023

Victims, Witnesses, and Justice Reform (Scotland) Bill

Note by the clerk

Background

1. The Committee is taking evidence on the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) at [Stage 1 of the Parliament's legislative process](#).
2. The Bill proposes changes to the law to try to improve the experience of victims and witnesses in the justice system. The Bill also proposes changes to the criminal justice system to try to improve the fairness, clarity and transparency of the framework within which decisions in criminal cases are made.
3. The Committee is adopting [a phased approach](#) to its consideration of the Bill, to divide the Bill into more manageable segments for the purposes of Stage 1

Topics to be covered

4. At today's meeting, the Committee will be taking evidence as part of the first phase of its scrutiny. This will cover the following provisions in the Bill (namely Parts 1 to 3)—

Part 1

Establishment of a Victims and Witnesses Commissioner for Scotland

Establishes an independent Commissioner for Scotland who is independent from the Scottish Government, and accountable to the Scottish Parliament.

Commissioner's functions and powers:

- Promote and support the rights and interests of victims and witnesses
- Must take steps to raise awareness and promote the interests of victims and witnesses
- Must monitoring compliance with the Standards of Service and the Victims' Code for Scotland
- Must promote best practice and a trauma-informed approach by criminal justice agencies and those who provide support services to victims
- Investigate whether criminal justice agencies have had regard to the interests of victims and witnesses in carrying out their functions, but not intervene in individual cases

Part 2

Trauma-informed practice

Creates a new legal requirement for criminal justice agencies to have regard to trauma-informed practice. The Victims and Witnesses (Scotland) Act 2014 already sets out range of general principles to which criminal justice agencies must have regard to. Part 2 adds trauma-informed approach to that list in the 2014 Act.

Creates a requirement for justice agencies to have regard to trauma-informed practice, and for Standards of Service they produce to cover trauma-informed practice

Empowers the courts to set rules and procedures on trauma-informed practice in relation to both criminal and civil business.

A requirement for the judiciary to take trauma-informed practice into account when scheduling both criminal and civil court business.

Part 3

Special measures in civil cases

Special measures are practical steps a court can take to help vulnerable litigants and witnesses to be in a courtroom setting with as little fear and distress as possible.

Currently under the law, no adult in a civil case is automatically treated as vulnerable or entitled to special measures. Special measures are also only available where evidence is being taken and witnesses are being cross-examined on it.

Part 3 of the Bill broadly split into the following areas:

It would extend a new approach to special measures found in the Children (Scotland) Act 2020 for certain family cases to civil cases more generally.

It would treat certain categories of witness as automatically vulnerable and would also allow special measures to help litigants in hearings where evidence is not being taken.

It would allow a court to prohibit a litigant from personally conducting their own case and cross-examining witnesses in civil cases.

5. The particular focus of today's meeting will be Part 2 of the Bill.
6. Future meetings from late November onwards will cover later Parts of the Bill. Further details of the Committee's phased approach [can be found online](#).

Today's meeting

7. At today's meeting, the Committee will take evidence from the following witnesses.

Panel 1

- **Caroline Bruce**, Head of Programme, Transforming Psychological Trauma, NHS Education for Scotland
- **Professor Thanos Karatzias**, Professor of Mental Health at Edinburgh Napier University and Clinical & Health Psychologist, Rivers Centre for Traumatic Stress

Panel 2

- **Laura Buchan**, Procurator Fiscal Policy and Engagement, Crown Office and Procurator Fiscal Service
- **Sue Brookes**, Interim Director of Strategy & Stakeholder Engagement, Scottish Prison Service
- **Chief Superintendent Derek Frew**, Police Scotland
- **John Watt**, Chairperson, Parole Board for Scotland
- **David Fraser**, Executive Director Court Operations, Scottish Courts and Tribunals Service

8. Submissions on the Bill have been received from—

- [NHS Education Scotland](#)
- [Crown Office and Procurator Fiscal Service](#)
- [Scottish Prison Service](#)
- [Police Scotland](#)
- [Parole Board for Scotland](#)
- [Scottish Courts and Tribunals Service](#)

9. The sections of the submissions covering Part 2 of the Bill, which is the focus of today's meeting, are reproduced below in the **Annex**, along with any sections relating to Parts 1 and 3. The full submissions can be accessed online by using the link in the paragraph above.

10. Professor Karatzias is a professor of mental health at Edinburgh Napier University and also a clinical and health psychologist. He has spent both his clinical and academic career working in the field of psychological trauma. A link to his biography [can be found here](#).

Further reading

11. A SPICe briefing on the Bill [can be found online](#).

12. The responses to the Committee's call for views on the Bill [can be found online](#).

13. A SPICe analysis of the call for views, covering Parts 1 to 3, [can be found online](#).

Previous evidence sessions

14. At previous meetings the Committee has taken evidence from—

27 September

- Cabinet Secretary for Justice and Home Affairs (to set the scene on the Bill).

4 October

- Ann Marie Coccozza, Co-Founder, FAMS (Families and Friends Affected by Murder and Suicide)
- Dr Marsha Scott, Chief Executive Officer, Scottish Women's Aid
- Sandy Brindley, Chief Executive, Rape Crisis Scotland
- Kate Wallace, Chief Executive, Victim Support Scotland
- Dr Louise Hill, Head of Policy, Evidence and Impact, Children 1st
- Bill Scott, Senior Policy Advisor, Inclusion Scotland
- Graham O'Neill, Policy Manager, Scottish Refugee Council

25 October

- James Foulis, Balfour Mason, member of the Family Law Association
- Stuart Munro, Convener of the Criminal Law Committee, Law Society of Scotland
- Jonathan Campbell, President, Edinburgh Bar Association

15. The Official Reports of these meetings [can be found online](#).

**Clerks to the Committee
November 2023**

ANNEX – Extracts from submissions

Extract from [Submission from NHS Education for Scotland](#)

What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

Comment on definition (Section 69)

In general Part 2 is welcomed. However, with the recent publication of NES (2023) Trauma Informed Justice: A Knowledge and Skills Framework for Working with Victims and Witnesses, we suggest that the definition of trauma informed practice in the Bill should be more fully aligned with the agreed consensus definition contained in the framework.

In brief the agreed aims published in the framework are:

1. Recognise the impact and prevalence of trauma on witnesses
2. Prevent re-traumatisation and further harm
3. Adapt practices so that they support (or avoid inhibiting) recovery
4. Adapt to the impact of trauma to ensure effective participation and best evidence
5. Support the resilience of the workforce in the face of exposure to vicarious trauma.

Section 69 of the Bill reflects the first two aims, but stops short of the remaining two aims that relate to witnesses (aims 3 & 4).

In our view it is essential to attend to both the need to adapt processes and practices to be actively restorative / support recovery, and ensure we minimise the significant barriers that the impact of trauma can create on effective participation for witnesses. Leaving out these key elements from the definition may also hinder the effective implementation of other elements of the Bill. For example in section 58 (2) (f) “ if the judge considers that there are steps that could reasonably be taken to enable the vulnerable witness to participate more effectively in the hearing at which the vulnerable witness is to evidence, direct that those steps be taken”, The judge is unlikely to receive the necessary training that will enable them to understand how the impact of trauma may impede participation, or how to address it.

Recommendation

We suggest that following the publication of Trauma Informed Justice: A Knowledge and Skills Framework for Working with Victims and Witnesses, the definition of trauma informed in the Bill is more clearly aligned with the framework. To focus solely on re-traumatisation without mention of recovery and participation is unlikely to address some of the key issues that witnesses told us were fundamental to improving their experiences, and that leaders and science told us were necessary to improve the quality of evidence and the justice process in prosecuting traumatic offences such as rape and sexual assault.

Extract from [Submission from Crown Office and Procurator Service](#)

Part 1 – Victims and Witness Commissioner for Scotland

COPFS notes the provisions surrounding the creation of a Victims and Witnesses Commissioner and recognise the importance of a single body who can promote and support the rights and interests of victims and witnesses in relation to both criminal justice agencies and third sector organisations providing victim support services.

COPFS have concerns over the proposed provisions set out in sections 16 and 17 of the Bill and the proposed statutory powers of the Commissioner in relation to the content of the annual report and the power to require a reasoned response from the Lord Advocate to matters within an annual report and the resultant statutory duty on the Lord Advocate to provide such a response.

The provisions to provide the Commissioner with powers to issue recommendations to the Lord Advocate may unintentionally impact on the Lord Advocate's retained functions as head of the systems of criminal prosecution and investigation of deaths in Scotland, including functions in relation to the training of prosecutors, the content of the standards of service that are set by the Lord Advocate and prosecution policy.

COPFS understand that the intention of the Bill is not to legislate for the provision of statutory powers or duties that interfere with the independence of the Lord Advocate as that would be contrary to Section 48(5) of the Scotland Act 1998. The Policy Memorandum for the Bill recognises in Part 5 in relation to the training required to appear in the proposed specialist sexual offence court that:

“The Bill does not make any provision regarding rights of audience for prosecutors as their appointment is a decision for the Lord Advocate, acting independently of any other person, as provided for under section 48(5) of the Scotland Act 1998”¹ and that “restrictions on the Scottish Parliament's ability to pass legislation which impacts on the Lord Advocate's discretion to appoint individuals to prosecute cases means the Bill cannot require that prosecutors must also have completed trauma informed training before appearing in the court.”²

This position is reflected in the distinction drawn between sections 47 and 48 of the Bill in relation to the statutory requirement of training to acquire rights of audience for solicitors and advocates and section 49 of the Bill which does not impose a similar requirement on prosecutors.

COPFS are concerned that the provisions as currently drafted may be misinterpreted as providing the Commissioner with a statutory power to issue recommendations to the Lord Advocate in relation to the matters within their annual report and as well as the areas identified at section 16 (3) of the Bill.

¹ Policy Memorandum paragraph 321

² 2 Policy Memorandum para 323

Additionally, the provisions in Section 17 of the Bill requiring a person identified in the annual report of the Commissioner to provide a response to the matters when directed to do so by the Commissioner may also be wrongly interpreted as placing a statutory duty on the Lord Advocate to respond to any recommendations made by the Commissioner and to have to explain and justify prosecution policy and decision making to the Commissioner when required by the Commissioner to do so and which could arguably make the Lord Advocate answerable to and directable by the Commissioner.

To avoid any potential misunderstanding that the provisions provide the Commissioner with statutory powers in areas that are protected by the Lord Advocate's independence as head of the systems of criminal prosecution and investigation of deaths in Scotland COPFS submit that it is necessary and appropriate for the Bill to be amended to confirm explicitly that the powers of the Commissioner within section 16 and 17 do not apply in relation to the Lord Advocate.

Part 2 – Trauma Informed Practice

COPFS note the observations in Lady Dorrian's review that "The adoption of trauma-informed practices is a central way in which the experience of complainers can be improved." Consequently, COPFS recognise that it is essential that prosecutors and staff who perform different roles within the Crown Office and Procurator Fiscal Service, such as those who work in the Victims Information and Advice service (known as VIA), understand the impact of trauma, recognise the needs of victims and the risk of re-traumatisation, and identify ways in which we can minimise that risk, wherever possible, when carrying out our professional responsibilities.

Prosecutors recognise that in order to properly respond to the impact of trauma and to enable complainers affected by trauma to participate in the criminal justice process effectively and give their best quality evidence it is essential that there is effective engagement with them. Effective engagement includes providing an opportunity to meet with prosecutors and COPFS staff before they attend to give evidence, and to ask questions about the criminal justice system and learn more about how special measures operate in practice. This is required to provide complainers with an effective choice in the selection of the special measures that would help them to give evidence.

In cognisance of the importance of a trauma aware justice system COPFS already incorporates aspects of trauma-informed practice into our processes and practices in areas such as, the Summary Case Management Pilot, our Victim Strategies in solemn cases and the work of our VIA service with vulnerable witnesses. Our experienced prosecutors and support staff manage and prosecute serious and sensitive cases every day in courts across Scotland. COPFS, through the experience of these highly experienced and specialist prosecutors and staff, is aware that in order to engage effectively with complainers, support and guide them through the prosecution process and achieve the aim of giving best evidence requires comprehensive support in advance of trial and significant support at the time of giving evidence.

In advance of decisions being made as to how a witness should provide evidence there should be sufficient time for a court visit and meaningful discussions between the witness and prosecutor about special measures. We understand the processes and

practices that could be utilised in the investigation and prosecution of offending and the investigation of deaths to reflect trauma informed practices and the current restrictions that our resources place on our ability to support complainers and witnesses in the way that they should be.

The Lord Advocate has committed to implementing the recently published “Trauma Informed Justice: A Knowledge and Skills Framework for Working with Victims and Witnesses” and to ensuring that Scotland has an effective and functioning justice system based on fairness and respect for human rights, which is compassionate, and trauma informed.

It is important, though, to acknowledge the context of the adversarial justice system in Scotland and that prosecutors act in the public interest and do not represent individual complainers or witnesses. This means that although prosecutors will take account of a range of factors, including a complainer’s views when reaching a decision in a case, their views will not necessarily determine the decision that prosecutors take.

Additionally, it has to be recognised that the rules of evidence and procedure of the Scottish legal system, which properly and correctly enshrine the right of an accused person to a fair trial, place the responsibility for proving criminal charges beyond a reasonable doubt on the prosecutor. Proving a case requires the prosecutor to lead evidence from witnesses, and an accused person is entitled to cross-examine those witnesses, during the trial. Inevitably, that will involve asking the witness to recall and speak about events, which may have been very traumatic for them. There are further challenges in ensuring that a complainer feels able to remain engaged in the system are exacerbated, when there is delay in reaching a conclusion in a case or uncertainly as to when a case will call for trial, such as exists in a system of floating trials.

These challenges do not prohibit the criminal justice sector recognising the impact of trauma on individuals and seeking to operate in a manner that seeks to avoid traumatisation.

In order for these further changes to be delivered effectively, however, there will be considerable resource and practical challenges associated with the implementation of trauma informed practices. Consequently, the ability to ensure a properly trauma informed justice response will require investment and resources. The resource required by COPFS would exceed current resource provision.

Extract from [Submission from Scottish Prison Service](#)

Thank you for your invite to the above Committee and the opportunity to provide a written submission on the Scottish Prison Service’s approach to embedding Trauma Informed Practice ahead of the panel. As an organisation, we recognise the importance and value of Trauma Informed Practice, in particular considering how we best support and work with those in our care.

As such, the new Scottish Prison Service Corporate Plan [SPS Corporate Plan 2023 - 28](#) contains the following purpose statement which prioritises Trauma Informed Practice:

The Scottish Prison Service (SPS) will deliver prison services in a way that is focussed on being person-centred, inclusive, trauma-informed, and rights-based. We will better promote the health, safety, and wellbeing of all people who live in Scotland's prison system. Our skilled and dedicated staff will be supported and have the knowledge to do their jobs well. We will carry out our role and duties in support of a just, safe, and resilient Scotland.

SPS has already begun making progress towards a number of areas which are outlined below.

Governance and early Framework development

Our Executive Management Group have agreed the initial direction of travel to embed Trauma Informed Practice within the organisation. We acknowledge that this is a long-term journey, and this will be led via a dedicated delivery group who will report to the SPS Strategic Delivery Group.

Evidence demonstrates that the most successful way for an organisation to implement a trauma informed approach is to do so gradually to allow culture change to be embedded. Evidence also suggests that where organisations have experienced challenges on the journey, it has been when training has been rolled out too quickly without supporting infrastructure. We have worked closely with NHS trauma experts who advised that the successful implementation of Trauma Informed Practice starts by raising the awareness and knowledge base of senior leaders, who can then support practice development as training is cascaded to staff at other levels.

Additionally, we are developing an outline organisational framework which will, in time, be developed into a Strategy for becoming a Trauma Informed Organisation.

Leadership Development

Trauma Informed Leadership training has been delivered to Senior leaders in the organisation at Governor/Deputy Governor, or Directorate lead level as well as several National TUS representatives through a series of 2-day workshops. TUS colleagues are broadly supportive of the direction of travel and the SPOA have requested a presentation of progress to date at their 2023 national conference.

We are now collaborating with clinical psychologists across health boards located in prisons to roll out this training to all local senior management teams in establishments, including multi-disciplinary partners. A session is planned with clinical psychology colleagues for November where a delivery plan to achieve this will be developed. This will then be shared with all Governors in late December with roll out commencing in early 2024.

Training

Awareness level NES Trauma Informed Practice e-learning modules have been made available to all staff via the internal SPS learning platform Mylo. These modules are not

mandatory, however initial engagement figures provided by the SPSC are positive. The available modules are outlined below:

- Developing your trauma skilled practice 1: understanding the impact of trauma and responding in a trauma-informed way.
- Developing your trauma skilled practice 2: trauma in children and young people.
- Developing your trauma skilled practice 3: understanding the impact on mental health and evidence-based pathways to recovery.
- Developing your trauma skilled practice 4: understanding the use of substances to cope with the impact of trauma.

In addition, specific Trauma training has been provided to staff working with women and young people. Our residential officer training programme (ROFP) also now includes a trauma awareness session meaning all new officers joining the organisation have a foundation in Trauma Awareness. Learning to date would indicate we are likely to need to develop a bespoke training package for prison staff and we have initiated a short life working group who are reviewing existing trauma training products with a view to developing a training offer. This work has been underpinned by mapping of existing staff roles against the NES trauma training model.

Recently appointed Harm Reduction Officers that were funded by SG provide a further opportunity in due course with enhanced training to establish a network of local establishment contacts who can coach others, support Governors and feed into the national programme structure. Initial discussions have also been held with SG colleagues to explore access to funding for a national trauma lead comparable to that currently available to local authorities.

Over time all SPS training products will be reviewed to ensure they are trauma informed.

Evidence Gathering

A literature review has been commissioned from a clinical psychology PhD student who will also undertake interviews with senior leaders who have attended recent training to gather feedback. In addition, a survey will be circulated as part of PhD research to new recruits to establish their views about Trauma before joining the organisation.

A baseline organisational audit using the draft SG Quality Indicators for Trauma Informed Practice will be completed at both establishment and corporate level.

In addition, we will shortly commission formal research in respect of Trauma Informed Practice in the SPS. This will be a multi-year undertaking, commissioned via the research framework contract to monitor progress against our corporate ambition. Phase one will be undertaken throughout 23/24 and will be focused on mapping activity to date and baselining the organisational position (making use of SG's Ti Roadmap audit tool), this will create an evaluation framework for future use and make recommendations for the way forward.

A staff survey has been undertaken in HMP Edinburgh and finally, the next SPS prisoner survey is being designed to include trauma informed questions which will gather the views of those in our care.

Professional supervision

Properly embedding a Trauma Informed Approach requires systems and processes for staff which help address compassion fatigue and vicarious traumatisation. Consequently, SPS has developed an outline approach for the delivery of professional supervision to our front-line staff which includes group reflective exercises as well as one to one supervision. The pilot / implementation of this has been delayed due to current resource constraints within the psychology team however implementation of these supports remains a key priority. Supervision structures are critical to the success of trauma informed practice and will over time require change to staff deployment practices within establishments.

Extract from [Submission from Police Scotland](#)

What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?

Police Scotland previously submitted a response to the Scottish Government in relation to Part 1 of the Bill, creation of the Victims and Witnesses Commissioner. This was requested prior to the submission of the Bill to Parliament. Now that provisions contained within the Bill have been published, Police Scotland have provided further comment as follows:

While the Chief Constable is willing to engage with the Victims' Commissioner, any engagement should be limited to what is reasonable in the circumstance and should not prejudice any ongoing or future criminal investigation.

Section 3 of the Bill refers to a 'civil function' of the Commissioner in respect of persons involved in non-criminal cases. At first glance, this may appear not to be of particular concern to the Chief Constable, however this could take in a wide range of matters such as FAIs, Public Inquiries, and the various forms of civil litigation in which the Chief Constable is involved. It is of particular importance that any 'support' provided to those engaging in civil litigation does not stray into the realms of 'advice' and it should be clear to parties engaging with the Commissioner in respect of any civil function that the provision of advice is not a matter for the Commissioner.

We would welcome further detail about the envisaged role and scope of the Commissioner in civil matters, particularly where parties have chosen to enter into litigation against the Chief Constable or other criminal justice agencies.

Section 6 of Part 1 gives the Commissioner the power to work with others, including the Chief Constable. This could bring the opportunity for closer engagement to ensure the right outcomes for victims and witnesses. It would also likely bring additional requirements to information sharing activities and those considerations would have to

be met by operational areas in consultation with Information Assurance to ensure compliance with information governance requirements.

As set out at Section 8(1) of the Bill, it is preferable that the Victims' Commissioner is not in a position to intervene in individual cases. It is considered that this is likely to result in circumstances where investigations are prejudiced as a result of information sharing with the Commissioner or circumstances where the level of engagement of the Chief Constable is limited so as to prevent the prejudicing of criminal investigations and the data protection rights of various parties involved in investigations. The limitation of data protection may also prohibit the Chief Constable from being able to provide the appropriate level of assistance to the Commissioner where they to be able to intervene in individual cases.

Section 12(1) (a) of the Bill gives the Commissioner powers to require any person to give evidence on any matter within the terms of reference of an investigation. This is potentially problematic where the evidence required may prejudice an ongoing or future investigation or may result in the disclosure of sensitive or confidential information, intelligence, or investigative tactics employed by police officers. This could also raise issues of data protection where evidence is sought in respect of specific details of specific cases.

Section 12(1) (b) of the Bill gives the Commissioner powers to require any person to produce documentation held by them which will have a bearing on 'any such matter'. The wording of this section of the Bill is not clear in respect of what 'matters', documentation may be required to be produced in relation to or in respect of whom these requests may be made of. It is not clear when these requests may be made. Again, this is potentially problematic where the documents sought may prejudice an ongoing or future investigation or may result in the disclosure of sensitive or confidential information, intelligence, or investigative tactics employed by police officers. This could also raise issues of data protection where evidence is sought in respect of specific details of specific cases.

We may welcome an additional requirement that any evidence or documentation produced in the course of an investigation should not be used for any purposes other than in respect of the investigation for which it was produced.

Section 13(2) of the Bill gives the Commissioner powers to require any criminal justice agency, including the Chief Constable, to respond to any report of the Commissioner. While we agree that the Chief Constable should seek to engage with the Commissioner, any engagement will require to be reasonable and proportionate and should not prejudice any ongoing or future criminal investigation. Any mandatory response would require to have regard to the extent to which sensitive or confidential information, intelligence, or investigative tactics employed by police officers would be disclosed as a result of the response.

Section 13(3) is welcomed as an opportunity for the Commissioner and the Chief Constable to work together on reports prior to their publication to ensure accuracy and transparency in reporting.

The Chief Constable will only be in a position to comply with any requirement under

Section 14 of the Bill where such information sharing will not prejudice any ongoing or future criminal investigation or any policing objective.

In the interests of collaborative working, it would be of assistance if criminal justice agencies had notice where recommendations in respect of any report under Section 16 of the Bill relate to them.

Section 17 of the Bill allows the Commissioner to require that criminal justice agencies respond to annual reports published by the Commissioner. The Chief Constable will only be in a position to respond to such reports where this will not prejudice any ongoing or future criminal investigation or any policing objective. This may limit the ability of the Chief Constable to respond in such full terms as may be necessary.

In terms of Section 21 of the Bill, the Chief Constable will only be in a position to co-operate with the Commissioner where this will not prejudice any ongoing or future criminal investigation or any policing objective.

What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

Amendments to the Victims and Witnesses (Scotland) Act 2014 contained within Part 2 of the Bill will mean that victims or witnesses should be treated in a way that accords with trauma-informed practice in the course of criminal investigations by police officers.

This will require significant investment in training by Police Scotland to ensure that there are an adequate number of officers who are sufficiently trained in trauma-informed practice.

At a time of substantial budgetary restraint, the costs of training sufficient numbers of police officers to the necessary standard, together with any ongoing training in this area, raises very significant concerns.

The requirement for officers trained in trauma informed practice also has potential to create particular issues in rural communities with limited police resource where fewer officers may have had relevant trauma-informed practice training.

Police Scotland have already provided a response to the Scottish Government in relation to the financial implications of training the relevant staff in trauma-informed practice and the accompanying Financial Memorandum response gives further detail in relation to our position on this.

Further clarity is sought as to how victims and witnesses will be identified as trauma-impacted however it is acknowledged that this is likely to be addressed through relevant training.

What are your views on Part 3 of the Bill which deals with special measures in civil cases?

Police Scotland generally have no comment in relation to Part 3 of the Bill. Clarification sought as to whether the scope of civil cases would extend to public enquiries.

Extract from [Submission from the Parole Board for Scotland](#)

Information about your organisation

The Parole Board for Scotland is a Tribunal NDPB. The Board's main aim is to ensure that the risk posed by a prisoner, if released, can be safely managed in the community. The prisoner may serve the remainder of their sentence in the community under the supervision of a social worker.

The Board is statutorily required to fulfil a range of duties in relation to victims including the provision of information, the consideration of representations and, in some cases, facilitating victim's observations of Tribunals.

The Board's administrative support team - Parole Scotland - has a dedicated victims team who work in a trauma informed way to ensure the Board meets its statutory duties.

What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?

The Parole Board for Scotland (the Board) welcomes the establishment of a Victims and Witnesses Commissioner for Scotland and considers that this will further strengthen support for victims and witnesses in the Scottish legal system. The Board does not consider that it is a Criminal Justice Agency nor should it be designated as such. It is a judicial body and has nothing in common with the individuals or bodies listed in Clause 23. It does consider that it should be part of the Victim and Witnesses Commissioner's ambit but in this it should be grouped with the criminal and civil courts.

What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

The Board welcomes the introduction of trauma-informed practice in criminal and civil courts. The Board has a significant role in engaging with victims whether in interviews for life sentence cases or where victims attend oral hearings in indeterminate cases. In addition, Parole Scotland which provides support to the parole system, also has a significant role in supporting victims to make representations in relevant cases and to attend oral hearings as observers. The Board is acutely aware of the impact on victims of having to provide representations on the potential release of the prisoner and considers that introducing trauma-informed practice will improve the overall position for victims. The Board considers that it should be grouped with the courts perhaps in a separate section, "Parole Hearings: conduct of proceedings" which will recognise its judicial functions. It is entirely right that the judicial conduct of parole hearings should accord with trauma-informed practice.

Extract from [Submission from Scottish Courts and Tribunals Service](#)

What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?

I refer to the above call for views to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and does not include the views of the Judiciary.

The SCTS had the opportunity to contribute responses to the Improving victims' experiences of the justice system (the pre-Bill Consultation) and The Not Proven Verdict and Related Reforms consultation processes.

The SCTS has separately written to the Finance Committee to provide its response to the calls for views sought by it in relation to information contained in the Financial Memorandum to the Bill.

Whilst the SCTS makes no comment on the creation of a Victims Commissioner, nor how the role should be established and the powers the Commissioner should have we will fully engage with the Scottish Government and other justice partners as required as the provisions progress.

As set out in our response to the pre-Bill Consultation, it is not yet fully clear what role the SCTS will be expected to play in ensuring compliance with requirements placed upon it by the Commissioner, in line with their statutory role and responsibilities. Whilst the SCTS is already required to publish an annual report which provides, amongst other things an assessment of how, and the extent to which, the standards set by the SCTS have been met during the period of the report, the Commissioner's compliance monitoring function may affect this. There may also be resource implications for the SCTS in complying with the Commissioner's information gathering powers set out in the Bill. It is difficult to quantify these at this stage.

What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

Trauma informed practice

The SCTS is committed to providing excellent service and it takes its current obligations under the Victims and Witnesses (Scotland) Act 2014 (2014 Act) seriously. This includes the need to continually review and update our standards of service in so far as applicable and appropriate.

We are continuously driving forward, in so far as possible, initiatives which have emerged from the judicially led Evidence and Procedure Review and the Lord Justice Clerk's cross justice sector Review to Improve the Management of Sexual Offence cases. These initiatives are designed to improve the experience of users of its courts and tribunals, and to support Scotland becoming a trauma informed justice sector.

The SCTS recognises that attending a court to give evidence can be a daunting experience. In response to those concerns the SCTS has developed and opened a number of bespoke and dedicated evidence by commission and remote (live link) giving facilities. We have just completed building work and installation of state of the art IT equipment in our 4th bespoke evidence by commission facility in Aberdeen. Work has commenced on an innovative and bespoke multifunction evidence giving justice suite, in Dundee . The new Justice Hub will provide new multi-functional trauma

informed evidence by commission and live link facilities, supporting the most vulnerable in our society have choice in, and to provide their best evidence to court.

The SCTS has also played a key role by facilitating the provision of essential IT equipment in Scotland's first Bairns Hoose (launched 29 August 2023), which will allow and support children who require to give their evidence to court in a more trauma informed and supported environment, away from the physical court building.

The SCTS fully supports the recommendations of the Lord Justice Clerk's Cross Justice Review, and in particular its recommendation (Recommendation 2) for the establishment of a national specialist sexual offences court, which adopts trauma-informed practices. The specialist court would be presided over by trauma informed judges, where staff supporting it and all legal practitioners participating in it would receive specialist trauma-informed training. The pre-recording of evidence of complainers which allows the earlier capturing of 'best' evidence, would be the default position.

Amendments to the 2014 Act

As the consultation paper which preceded the Bill highlights (at page 25), the introduction of a specific legislative provision under the 2014 Act requiring agencies to operate in a trauma-informed manner will, however, only reach a proportion and not all those who participate in the essential day to day running of the criminal justice sector. The 2014 Act itself applies only to criminal matters, whereas the provisions contained within Part 2, specifically seek to make and encourage changes in both criminal and civil court jurisdictions.

Resource implications

The estimated costs set out in the Financial Memorandum are principally focused on the SCTS implementing a programme of trauma-informed training for staff at all levels, as a response to the proposed obligations set out in section 24 of the Bill. Aside from whether this is ultimately an approach adopted by the SCTS, the costs incurred in any such approach will be subject to a number of variables (e.g. format, duration, content and objectives of any such training) some of which the SCTS may have limited control over. This includes in particular the costs of any external providers, determined by market conditions, and the staff 'buy out' costs which are determined by the rate of pay applicable at the time of the training. The estimates provided by the SCTS in this instance were based on 2022/2023 salaries and data available at the time of submission. The costs therefore have the potential to increase, while also potentially reducing if e.g. the length of courses or use of external providers is reduced.

The Financial Memorandum suggests that work in train in relation to the Trauma Informed Justice – A Knowledge and Skills Framework for Working with Victims and Witnesses (Framework) may limit any costs associated with implementation of the provisions and states at paragraph 143, the Framework is focused on "the knowledge and skills their staff need to respond to victims and witnesses of crime...".

The provisions in the Bill, and specifically sections 25 to 29 are more extensive, and would apply across what would traditionally be categorised as both civil and criminal

proceedings. Therefore while work undertaken in relation to the Framework may have the potential to assist, the landscape, people and volume of cases to which the Bill provisions propose to apply to is much wider; and will likely require any changes brought in to a substantively larger number of cases and the staff that support them. To place this in context, whilst acknowledging that the justice system is still recovering from the pandemic, there were 85,567 first instance criminal cases registered in Scottish courts in 2021/22 alone (this equates to only 81% of 2019-2020 pre-covid levels), and 53,866 civil law cases initiated across the Court of Session and sheriff courts in 2021-22). The latter figure excludes summary applications which make up a substantial volume of cases, SCTS internal data estimates that for this period they make up over 3,000 cases.

Court scheduling

The SCTS supports the need for a flexible and responsive court programming model which supports the efficient disposal of business, particularly in our criminal courts. As was recognised in the consultation document (page 36) which preceded the Bill, court scheduling is not carried out by the SCTS and the judiciary in isolation but is done in conjunction with justice partners including the Crown Office and Procurator Fiscal Service (“COPFS”) and defence agents. The loading of cases per trial court in the High Court in particular reflects the cases identified by COPFS and defence at the applicable procedural court hearing as cases that are ready for trial. Programming in both the High and sheriff courts is proactively managed by meetings with COPFS (e.g. in the High Court discussions occur on a daily basis and specifically on a Friday to look to the week ahead). Any instances when trials do not go ahead require to be kept to a minimum and all justice partners need to play their role in avoiding them. Parties engaging and preparing thoroughly and effectively in advance of the diets, is just one example which can help minimise the opportunity for valuable trial diets and justice resources not to be lost. The SCTS considers that the current basis (through the statutory powers of the Lord President, and the judiciary) for court scheduling should be maintained.

Paragraph 176 of the Policy Memorandum to the Bill provides that the “Scottish Government supports the aspiration to reduce the use of floating trials where that can be done without negatively impacting people’s experiences”. In response, we would highlight that court scheduling is exceptionally complex and already involves balancing various interests and factors including (in criminal cases) those of the complainers, witnesses and the accused and the period of time that has already elapsed in bringing the case to trial. It also requires to take account of the time estimates given by the parties. Floating trial diets in the High Court in particular provide a degree of certainty that is notably higher than may be commonly perceived. In the financial year 2022/2023 94% of High Court trials commenced within the initial 4 day float period.

A flexible trial scheduling system is essential for the efficient disposal and utilisation of finite resources, and to support all court users, and the recovery programme. Currently a move to fixed trials, and particularly in our most senior courts with the current covid backlog has from an operational perspective the potential to disadvantage those directly impacted by court journey times and result in under-utilisation of finite court, judicial and justice sector resources.

By way of illustration, from an initial analysis of the latest data currently available in 21/22 a move to a fixed diet tomorrow in the High Court could add a minimum of 11 weeks to average journey times (from pleading diet to evidence led trials) in new cases entering the system. The current average waiting period (based on the data published in the SCTS June monthly workbook) is 43 weeks for High Court, compared to the pre-COVID level of 22 weeks. In a fixed trial model, adopting the aforementioned analysis, the average wait time for new cases would increase to a minimum of 54 weeks before other variables (discussed further below) are considered (which have the potential to increase timescales further).

One key variable is whether the estimate of the length of the trial given for a case is correct. For 22/23 in respect of trials concluded only 24% of High Court trials remained in line with the estimate given by parties. Therefore it is possible that a case fixed to start in a specific court on a Monday, may not be able to because the trial before it ran over its estimate. In such an instance the case may start late, which will have a knock on impact on the case immediately after it, and potentially others, or it may be postponed. In circumstances where a case finishes under estimate in a fixed trial model, that court resource assigned to it will sit under-utilised.

It is very difficult to guarantee that a trial will start or a witness will give evidence on a particular day, irrespective of the scheduling model used and efforts made by parties. This can be due to witnesses and accused persons and legal personnel being unable to, or failing to attend due to a variety of reasons e.g. ill health, most keenly seen with the pandemic. While the floating trial model does not eradicate this or the above mentioned issues of inaccurate estimates and other challenges, it currently provides and supports greater flexibility for case scheduling and the utilisation of finite court room, judicial and staff resources to respond to them. In contrast a move to a fixed trial system has the potential to further aggravate the factors and challenges which are already present.

A key trauma informed approach, and particularly to the unprecedented changes in journey times that the pandemic has brought, is to seek to capture the evidence of complainers and vulnerable witnesses much earlier via the greater use of pre-recorded evidence by commissioner (as proposed in Part 6 of the Bill for the Sexual Offences Court for all sexual offence complainers). As noted in our answer to Part 2, the SCTS has taken and continues to take steps to support such provision.

The provisions within section 27-29 have implications, if enacted, for all Scottish court forums, including civil. We set out below some potential implications.

Sheriff court solemn business

In the Sheriff Court (solemn) there are no floating trials but instead cases can be continued from sitting day to sitting day for a period of up to 4 days. Doing so ensures that should the court have to adjourn a trial (for example due to non-attendance of accused or illness of an essential witness) or should an accused plead guilty at the trial diet, the court can still utilise the available court resource to commence another trial.

Sheriff and Justice of the Peace court summary business

The volume of cases heard in sheriff court summary proceedings is significant. To move away from the current model of assigning a number of trials for a particular date, which is done for the same reasons as above, would have a significant impact on court programming and impact on journey times. Courts do however already give priority to cases involving allegations of domestic abuse and where there are children under the age of 18 involved when allocating summary trial diets. Scheduling of summary trial diets is also subject to shorter custody time limits (in section 147 of the 1995 Act) than in solemn cases (section 65 of the 1995 Act) however all of these time limits impact on scheduling.

The ongoing summary trial pilots and the Trauma informed domestic abuse court which the SCTS proposes to pilot in Grampian, Highlands and Islands all aim to support strong case management approach, improved utilisation of court resources, and supporting our most vulnerable court users.

Civil court business

We would highlight that courts already take into account the nature of proceedings and those involved, when assigning court business and there are a number of Practice Notes and forthcoming rule changes (due to commence on 25th September 2023) that seek to improve case management of certain case types. As with criminal proceedings, where an evidential hearing is fixed there are a number of matters that need to be considered. For example parties readiness, availability, and the fact that a witness could be entitled to “special measures”. Consideration has to be given by the court to the most appropriate method to enable the witness to give evidence. The court therefore also has to take into account the availability of the equipment to facilitate that special measure.

To take a different approach to court programming in the civil forum would have a significant impact, on judicial, staff, and course resources.

The SCTS supports the need for a flexible and responsive court programming models being available to support the efficient disposal of business and court users.

What are your views on Part 3 of the Bill which deals with special measures in civil cases?

Whilst the SCTS makes no comment on whether special measures should be available in all civil hearings, it would highlight that extending the full range of measures set out in the Vulnerable Witness (Scotland) Act 2004 to all civil hearings will have resource implications for the SCTS. This will include making “vulnerable witness equipment”, in whatever form may be considered most appropriate, available, in some cases at short notice. Whilst courts do currently have access to facilities such as live links and screens, this equipment is principally used in criminal proceedings, and their use has increased and will do so further following the introduction of the measures in the Children (Scotland) Act 2020.

Whilst the Financial Memorandum provides some indication of the potential volumes of cases to which the measures may apply, we do not consider that these fully reflect the number of occasions measures will require to be put in place, and that the

numbers/projections have the potential to be substantially higher with commensurate impact on access to resources. We comment further below.

“Civil” Protection Orders

The SCTS is of the view that the figures given at paragraph 65 of the Financial Memorandum may not capture all cases in which the party will hold a relevant protection measure. Firstly these figures relate to the “main crave” of a case, however this does not capture those cases where relevant orders/interdicts are sought as an additional crave.

Additionally we note that the Financial Memorandum does not mention non-harassment orders made in criminal proceedings. We assume that the provisions will apply equally where such an order has been made in criminal cases. For years 2021-22 and 2022-23 there were an average of 3.75k such orders granted in criminal prosecutions, the majority had domestic abuse listed as a factor in the prosecution.

A criminal court is required to consider whether to make a non-harassment order in various types of domestic abuse cases as specified in legislation.

Family actions including contact and residence cases

The Financial Memorandum indicates that contact and residence cases are the most likely type of case where the question of prohibition on personal conduct will arise. The SCTS considers that special measures are also likely to be required in these cases for non-evidential hearings where parties require to appear, in particular child welfare hearings and the new case management hearings which will be introduced from September 2023 for family and civil partnership actions. These case management provisions will add an additional procedural hearing in such cases.

In years 2021-2023 there were an average of 14.5k child welfare hearings held per annum. There were additionally an average of 2.35k per annum other procedural hearings where parties would be expected to appear.

Additionally, the Bill provides that where a party is deemed a vulnerable party the court should grant the measure sought by that party. At this stage it is unclear which measures will be sought in individual cases making the impact uncertain.

Domestic Abuse (Protection) (Scotland) Act 2021

As noted in the Financial Memorandum (paragraphs 47-49) the SCTS has raised concerns about the potential impact of the Domestic Abuse (Protection) (Scotland) Act 2021 once commenced.

By their very nature allegations of domestic abuse will be at the heart of an application for a Domestic Abuse Protection Order.

As a result of the timescales set out in the 2021 Act for holding hearings, particularly the initial hearing, determination of the most appropriate measure will require to be completed at short notice and with less certainty as to whether a party will attend.

There are therefore likely to be significant calls, at short notice, on the relevant SCTS equipment/courtrooms. Unless sufficient resources are put in place, which may require more than the 20 kits which costs have been provide for in the Financial Memorandum, this may require the available equipment/courtrooms to be “reserved” for use and could result in previously scheduled business being delayed.