OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 27 November 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 27 November 2018

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JUSTICE COMMITTEE
31st Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ronnie Barnes (Action on Elder Abuse Scotland)
Daljeet Dagon (Barnardo's Scotland)
Mary Glasgow (Children 1st)
Kevin Kane (Victim Support Scotland)
Mhairi McGowan (Community Safety Glasgow)
Colin McKay (Mental Welfare Commission for Scotland)
Malcolm Schaffer (Scottish Children's Reporter Administration)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 27 November 2018

[The Convener opened the meeting at 10:00]

Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 31st meeting in 2018. There are no apologies, but Liam Kerr has indicated that he will arrive slightly late.

Agenda item 1 is our second evidence session on the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. I welcome our first panel: Daljeet Dagon, national programme manager for child sexual exploitation, Barnardo's Scotland; Mary Glasgow, chief executive of Children 1st; and Malcolm Schaffer, head of practice and policy at the Scottish Children's Reporter Administration. I thank all our witnesses for their written evidence. As always, the committee has found it particularly valuable to have that in advance of our formal evidence session.

We will now have questions from members, starting with Rona Mackay.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, panel. I note from your submissions that you are all largely supportive of special measures, but can you tell us about any concerns that you might have about them? Is there anything about the bill's proposals that you would like to flag up?

The Convener: Who would like to start?

Malcolm Schaffer (Scottish Children's Reporter Administration): I will start by saying that the Scottish Children's Reporter Administration welcomes the proposals. They are a progressive way forward, and nothing that I will say should contradict that. I understand the need for an incremental approach, so as to test it out as far as resources are concerned.

I will speak briefly about our end of the process, which concerns children's hearings, and its relationship to the proposal. I always have a slight worry that we make law in silos. The committee is concentrating on criminal justice and prosecution, which is what the bill is about. However, the law intervenes in different ways in such cases. For instance, if it is alleged that a child has been raped by her father, the law will intervene to prosecute the father. The bill's proposals are very much aimed at securing the best-quality experience for that child if she should have to give evidence. However, quite separately, the law also applies to protect the child, which is where the children's hearings system comes in.

I have been left slightly confused about where we stand on the bill's provisions on recording being applied to the hearings system. We often have to go through the same evidence. For example, quite often, if the child is in a place of safety, a proof will have taken place before the prosecution. There is therefore a very complicated interrelationship between prosecution and protection proceedings, and an overlap in the evidence that is heard. Because children's hearings are civil proceedings, we have the ability to admit hearsay evidence, which can mean that the child's direct evidence is not always required. However, on occasion it is. More work needs to be done to ensure that the two parts of the process are handled seamlessly.

The hearings system also applies in relation to children who offend, and there will be occasions on which a child who commits rape might be referred to us to be dealt with. The bill's provisions apply very much to High Court prosecution proceedings and not to children's hearings proofs, so there are a few gaps there.

We have been involved in discussions on the evidence and procedure review. As I said, we very much support the bill's moving forward. However, we need to look at the mistake that has sometimes been made in the past of creating laws in one silo that do not apply to the equally important silo of child protection. That, above all, is my main issue in relation to the provisions.

Rona Mackay: With regard to your first point, do you have a solution to or a preferred way forward for that situation?

Malcolm Schaffer: I would prefer it if, instead of creating laws in criminal justice on the one hand and family law on the other, as is happening at the moment, we had a joined-upness that concentrates on the child rather than the system and does not create any confusion.

For instance, as far as special measures are concerned, there is a provision in criminal law to allow prior statement evidence, which is very valuable and useful, to be admitted, but that has not been extended to our proceedings. There are examples of innovation in criminal justice that are not being directly applied to other areas, and that is because we work in different law and justice silos. The separate family law consultations will, I hope, bring about many of those innovations, but we need to marry it all together and ensure that

children are not caught in that space in the middle, where, although we have acquired a child's evidence to be heard in our proceedings, we have to apply separate measures that might not offer the same protection that—ironically—is available in the criminal justice arena. That is our main core issue with the provisions and, as I have said, it applies to law reform in general, not just the provisions in the bill.

Mary Glasgow (Children 1st): Like Malcolm Schaffer, we welcome the bill, and we concur with his comments in that regard. However, we feel that measures are already in place, and a big challenge with the bill is how we ensure that custom, practice, culture and behaviours are enforced in the way that they should be. Although special measures have already been introduced, we hear lots of stories of their not being applied or of children not being offered them. As I said, we welcome the bill, but it does not go as far as it should in realising children's rights and enabling children to give evidence in a way that is commensurate with their developmental stage, that takes account of the way in which they communicate and which understands the impact of trauma.

Much more could and should be done for children, and it should happen at a much quicker pace. We often hear of children being told that they will get better justice if they give evidence without special measures; there continues to be a lack of support for whole families—both parents and children—as they go through the process; there continue to be long delays; and children continue to tell us that the experience of going to court is more traumatic than the abuse that they have suffered. We also need to think about the shocking lack of support to prepare families and children for that experience and to allow them to recover in the aftermath. That is where the gaps are.

Although we welcome the bill, we want a faster approach to the child's house model to ensure that no child goes into court, because it is clear that they are not able to give their best evidence in that process. Our court system is just not set up to allow them to do that, and we strongly believe that if we get the system for children right and ensure that it is much more developmentally appropriate and takes account of the impact of trauma, we will get better justice not only for children but for the accused, given the impact of the process on a child's ability to explain what has happened to them and to give good evidence.

Rona Mackay: Are you saying that the bill does not go far enough or that it is being phased in too slowly?

Mary Glasgow: The bill is welcome, but we want it to go much further. From the stories that we hear from children who are victims and witnesses, we think that special measures are useful ways of militating against a system that does not allow children to give their best evidence. What would be very welcome would be a move in Scotland towards a much faster system in which children are removed from the court entirely, go to specialised suites where the trauma recovery starts at the moment of disclosure, give their evidence away from the court system and are not expected to engage with a system that they find difficult to navigate and which currently causes them harm.

Rona Mackay: Thank you. Does Daljeet Dagon wish to comment?

Daljeet Dagon (Barnardo's Scotland): There might not be much left for me to say. However, like the organisations that Malcolm Schaffer and Mary Glasgow represent, Barnardo's welcomes the opportunity to give evidence today and to improve the measures in the bill.

I suppose my starting point is that, although we welcome the bill, there are stages before the stage that we are discussing that act as barriers for children. Many of the children whom we work with who have experienced child sexual exploitation will not disclose the abuse because they do not recognise it. We need to have practitioners on the ground who can identify what the issues are so that we can safely support children through the process that Mary and Malcolm have spoken about.

In our experience of child sexual exploitation cases—I have been involved in a number of police operations over the past seven years—we often find that statements are taken and the police investigation concludes years before the actual process takes place. Recently, we found ourselves chapping the doors of young women who are now in their 20s but who had given statements when they were aged 14 and 15. Their situation had moved on, yet we were going back and retraumatising them, saying, "We've got new evidence. Are you willing to come forward? We don't know how long the process is going to take." That illustrates the lengthy delays in procedures and processes. There is a link between the children's hearings process and the criminal justice process, because young people become adults and situations change.

I reiterate Mary Glasgow's point about culture and practice. It is not just about the measures; it is also about making sure that the right people are involved at the right stages and that they are competent and, first and foremost, child centred. It is about making sure that we have that support for children before, during and after the process.

Rona Mackay: Does that come down to training at all levels?

Daljeet Dagon: Training is significant, but it is not just about that. It is about the people who are involved actually wanting to be involved and to work with children, and about their understanding not just child development, attachment and trauma but brain development and the child's ability to remember. It can be quite difficult for the child to recall memories.

I said to a colleague earlier that we had a young person who gave the police 27 statements and, by the time we came to the court process, she was deemed to be an unreliable witness. She should never have given 27 statements. It is about people thinking, "At what stage should we take the statement? At what stage will this child be ready?" The more she was interviewed, the more she remembered, but the more she contradicted herself. Because there were multiple perpetrators, multiple occasions and multiple episodes, she could not remember the details, so every time she was interviewed, the information changed. When the procurator fiscal looked at it, they said, "There's absolutely no way I'm putting her on the stand", yet she was the main complainant.

It is about training at every level, but not just training on the court processes; it must start way before that with the first person who engages with the child and how the child is taken through the process. Often, workers on the ground do not understand what they can and cannot talk to children about and they have a fear of contaminating evidence. They often think, "I'd rather not say anything", and then the child feels even less supported and so does not go through the process. The culture seems not to be child friendly or to help us to take young people through a process that we hope will give them better outcomes and help them to recover and move on with the rest of their lives.

Rona Mackay: Thank you. That is really helpful.

The Convener: Fulton MacGregor, Liam McArthur and Daniel Johnson have supplementary questions.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Although the conversation has moved on a bit—we have heard some really powerful evidence—my question goes back to a point that Malcolm Schaffer made.

I agree with what you said about the systems marrying up, but do you agree that the children's hearings system is designed to be child friendly and child focused and that, although improvements are needed in some areas—I know that you have said that before—it is totally different from the court system? The court is not a good place for kids to give evidence, and that is what the bill primarily tries to address.

10:15

Malcolm Schaffer: Yes, but we could still do better at all stages, and we are working on that through our better hearings project. We must remember that the court comes into the children's hearings system at various stages. If the grounds are denied, the case will go to court for proof, as you know, and that can be a very challenging and formal process, with the case being heard before the court in a formal setting. If there is an appeal against any decision by the hearing, the court comes in again. Court rules therefore apply, and court facilities and settings come in too. The whole way in which children are supported in that process, if it is needed, applies in our setting. As I said, we have an advantage in that we can use hearsay evidence. On many occasions, if we can avoid having the child give evidence, we will do so. However, that is not always possible; in particular, it will not be possible if the child is the victim of an offence committed by a child.

Fulton MacGregor: So is your concern more about cases in which a child's evidence might be required proceeding to court, rather than about cases in which you would use hearsay evidence or which stay in the children's hearings system?

Malcolm Schaffer: It is about trying to work out the status of the evidence that has been collected in the criminal process. If the recording has already taken place, how can we use it? Do we have to start again? Do we have to take evidence by commission, which we have done on occasion? Can we rely on that as the hearsay evidence? I am not sure that we can, because it would be regarded as a prior statement. As we progress the criminal side, we should ensure that the child protection side progresses as well. We should remember the informality of the children's hearing, but we should not forget that the court comes in for certain elements and that that requires the protective and progressive measures that are being introduced in criminal law.

Liam McArthur (Orkney Islands) (LD): I have a follow-up question on Mary Glasgow's evidence in relation to the current measures. I think that you suggested that they are not necessarily applied in all circumstances, as one might expect them to be. I suppose that the argument that we got from the bill team last week was that there will be a staged approach to ensure that things bed in before the scheme is extended. Do you think that that is a sensible approach? It involves picking up where the scheme is not currently being applied when it should be, as well as the extensions that are proposed through the bill.

Mary Glasgow: It is a sensible approach, but there are huge practical challenges around it. We have to think about not only the training, experience, knowledge and skills of the people involved, but where children will go to give evidence in a pre-recorded interview. We know that children will still be interviewed in police stations and that they are still being interviewed in school, which is totally inappropriate. The bill is useful and a step in the right direction; it just does not go far enough in delivering rights-based justice for children.

If we really thought about giving children the best possible opportunity to give their evidence, they would go nowhere near court. Instead, they would go to specialist resources where all their needs would be supported and their family would be given advice about what would happen from the moment of disclosure and interview right the way through to the court process. We would also offer much more effective support to help children and their families talk about what had happened under cover. The bill is a step in the right direction, but there are many practical challenges and many ways in which the process will be difficult to implement unless we are really clear about what true child-centred, rights-based justice looks like.

Liam McArthur: But what you have described does not necessarily mean that you would extend the process to a broader range of circumstances. It is more about the setting having to be appropriate, as you rightly said, as well as the fact that the child is being triaged through the process and kept away from a court setting. That tends to suggest that an incremental introduction of the scheme, in the right locations and with the right support, is the best way of securing the bill's objectives.

Mary Glasgow: There is a challenge, though. You are right that there needs to be a careful approach to the process so that a system is built that gives all children, no matter their circumstances, the same level of support.

We urge the committee to keep an eye on that, not just in relation to the bill but throughout the lifetime of this Parliament. The fear is that we do this and think, "That's it—job done", but there is a long way to go to deliver justice for children.

We know that children are continually subject to things that are simply convenient or possible for the agencies to deliver. As all the panel members have said, what we really need to do is to make sure that what children need—and not just what is possible for us to deliver incrementally—is at the centre of the system that we build. We need to hold on to the notion that children will give their best evidence—in a way that is better for them and the justice system—if we build a system around them that understands the impact of trauma and the way that they communicate, and which gives their whole family the support that it needs to understand what is an incredibly complex system to navigate. Most professionals find it intimidating to go to court; for children, even when we put special measures in place, the system is often still not built around their needs, but around what is possible for the professionals or agencies to do well.

Daniel Johnson (Edinburgh Southern) (Lab): You said that children should not be giving evidence in court but in an appropriate setting, and my understanding is that the courts service is developing facilities to provide exactly that, so that evidence can be given in specially designed suites. That is not in the bill, but it is what is being developed in practice. Are you saying that that is insufficient? Does it need to be in the bill?

You also spoke about interviews taking place in police stations and schools, which is very much at the investigation stage rather than during court proceedings. Are you saying that the bill should address that as well, or should that be part of the next steps? I want to clarify what you think should be in the bill to improve such things and to what extent you think that it is insufficient to simply leave things as matters of practice.

Mary Glasgow: We would have welcomed it if the bill had gone much further and worked towards the full implementation of a child's house model, whereby children are taken completely out of the court system. We recognise the challenges of our adversarial justice system, and that lots of work needs to happen in relation to it. The concern for us about the child witness suites that are being developed, although there are some positives to them, is that they are far from being the same as the child's house model that can be seen in other countries. They are places where children will go to give their pre-recorded evidence, but there continues to be a huge gap for children and their families, as Daljeet Dagon said, with regard to navigating their way through the whole process. They need support.

For the court system to work for children and for justice, there needs to be a better recognition of children's needs. If something happens to a child, it is one thing if they are interviewed, evidence is taken and the evidence goes into court. However, there is also an impact on the child with regard to understanding the timing, what will happen, who will support or feed back to them, and how they will access support to recover from what has happened.

We welcome the bill, which is a step in the right direction, but it does not go far enough for us, as an organisation that works with child victims and witnesses and hears every day the dreadful impact that situations have on them, which the

court system can often make worse. We wanted a bill that said that, with all that we know about children's development and all that we are learning about the way in which they communicate, there is no way that children should enter into an adversarial system that was developed in the Victorian era. We want them out of the court system completely and we should do that sooner rather than later, although we recognise the challenges.

We welcome the bill and think that progress has been made, but we should not rest on our laurels with the development of child witness suites. They are just different places for children to go. They might have a nice room that is painted a different colour and there might be nice people there, but the whole system needs to be right for children, from the point at which they tell their story to the support that they get alongside their family to recover from what will have a lifelong impact on them. There needs to be a much more holistic approach to how children interact with the system. It is not just about giving evidence and it is difficult for us to say that it is about just that. If you got that part right, it would help, but it needs to be much more holistic than that.

Daniel Johnson: My difficulty is that I do not understand how we can do that without completely moving away from our adversarial system. Is that what you are asking for?

Mary Glasgow: We think that we could go further within the system that we have. Of course, we would like to move to a system that is not adversarial because an adversarial system does not work for children: it does not respect their rights and they cannot recall and give evidence in that way. However, we recognise the system that we have to work in and we are supportive of the measures to improve things. Even so, there is a need to continue to go further for children. In our current system, there are ways in which we could have gone further and can go further. However, we recognise that there are some challenges around that.

The Convener: Daljeet, you were nodding vigorously. Would you like to comment?

Daljeet Dagon: At the end of the day, we are trying to get the best-quality evidence that we possibly can from a child. We should not be making them jump through hoops and it should not be a postcode lottery, because that is what it will become if, right from the start, we do not embed what we mean by a place for children to go to give evidence. It is not like going to a sexual health clinic, where the person gets patched up, goes through the next door and gets their medication or contraception. We are getting young people to go through different doors to speak to different professionals, at different stages, who can often give them contradictory information. Frequently, the professionals will not even know what stage the young person is at in the process.

We need a holistic approach, almost like having a team of people around the child who are working closely together, whether that team is based in the court, police stations, social work or voluntary sector services. The members of the team around the child have different roles to play, but the team can keep the child, their family and their wider network informed at each stage on what is happening and it can provide feedback. Often, we take information from a child, it goes into a machine somewhere else and we do not let the young person know what is happening next.

As professionals, we often do not know what will happen next, but even if we were to say, "I will check with Mary, who will find out and come back to me in two days' time," it would help. We need to keep young people informed. That also keeps them engaged in the process and makes it less likely that they will retract or withdraw their evidence. Our experience of what often happens is that young people say, "Do you know what? This is too difficult and too much hassle. I just want to move on with the rest of my life and put this to one side."

John Finnie (Highlands and Islands) (Green): Good morning, panel. Your evidence has been extremely interesting. I want to comment on something from Mary Glasgow's submission that we have not yet touched on. Children 1st talked about circumstances in which a young person had been advised that they were "more likely" to secure a conviction if they presented their evidence without special measures. That the advice came from the victim information and advice unit is in itself a cause for concern. The submission continues:

> "Our cultural notions of justice can result in some child witnesses expressing a strong preference to give evidence within a Court room setting without a fully informed understanding of what this could be like."

That is key to everything.

I know that the witnesses have been asked this already, but do you think that the bill goes far enough in addressing that culture, which still has foundations in the idea that people should stand up strong and say their bit?

Mary Glasgow: That is the challenge with any legislation: it helps to lay the groundwork for what we should be doing, but then we need to think about how we embed a practical approach. That approach must recognise that children have an entitlement and a right to engage with a system in order to achieve justice that recognises the ways in which they are able to recall information, the sense that they make of a very complex adult

world and the impact that the trauma will have had on their ability to communicate what has happened to them.

We know that there is a huge gap—we hope that that will be addressed through several other processes—in the professional understanding of the impact of trauma on children. There is a gap in relation to the understanding of professionals around child development and how children communicate.

The fact that the system does not take account of the ways in which children develop has a huge impact on their ability to get justice. The legislation will help, but we need to be very clear practically about the resources that will be required to make it and the principles behind it a reality for children.

10:30

The Convener: Did you have a supplementary, John?

John Finnie: I have just a brief question for Daljeet Dagon. Clearly a lot of resources must have been deployed in order to secure 20-odd statements from someone. From what you have seen in the bill, do you envisage that situation not happening again?

Daljeet Dagon: One of the lessons from that operation was that the important thing was not getting the statement, but building and developing a relationship with the young person and understanding them, their talents, their interests and so on. Young people often say, "That police officer is only interested in getting my statement. They just go away and I never see them again." We have been involved in a number of police operations, and we know that things can develop and change.

Young people subject to special measures have recounted that they were able to go along to the court and see what the courtroom looked like, who was going to sit where and so on. However, although that can be helpful, for one particular young person the court was changed at the very last minute, and they found themselves in a different one. As a result, there was no benefit whatever from the special measures.

We need to think about the best way of getting evidence from young people and where that should happen, whether it be in a court setting or in a different place. At the end of the day, we need to meet the holistic needs of the child, their family and the networks around them. As professionals, we follow young people on this journey, but at the end of the journey, we often all step aside, and the issue is how that young person can continue to develop and recover when that support steps away. What supports are we putting in place not only before and during the court process but afterwards, when everyone steps aside?

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Daljeet, you have just spoken at length about getting the best-quality evidence and meeting the child's holistic needs. Does the current use of the evidence-by-commissioner approach deliver the best-quality evidence?

Daljeet Dagon: I should say that our submission to the committee was quite limited and very much based on young people's experiences before, during and after the process. We welcome the measures, but we would like to understand why they are being phased in, in terms of age and court setting. At the very least, we are looking for the age limit to be increased to include children under 18, if that is possible. We know of young people who had offences committed against them when they were 14 but were 16 and a half by the time they presented at court, by which point they were very different people from who they were as 14-year-olds. Because of the trauma that they have experienced, they can be involved in a lot of behaviours that are not seen to be positive. What the court sees is a difficult, belligerent, drug-addicted, alcoholic young person instead of the child they were when the offences happened. Given the length of the court process, we need to ensure that we present what happened to the child, instead of having the court focus on how they come across now.

Jenny Gilruth: I know that you have already referred to delays, but do you think that things could be expedited for children? Is that what you are advocating for?

Daljeet Dagon: Yes, at the very least, although I understand that that will be a challenge. I do not have technical knowledge of all the different processes that happen from the minute the young person makes a disclosure right the way through to recovery, but I think that it is about sitting down, looking at all the markers, ensuring that adult processes are not applied and thinking about what is in the child's best interests and what can be done now to expedite certain processes.

Jenny Gilruth: Do the rest of the panel agree?

Mary Glasgow: I concur with that, and I think that it is a danger in the bill. We hear continually—particularly in the sheriff court, where there are still long delays—that when children talk about what has happened to them they may go to a police station alone to give a statement, even at the age of nine, and nine months later a letter will pop through the door to cite them to go to court. The child has coped in whatever way they can—usually not well—with what has happened to them, and then out of the blue and without any support

during the intervening period they are expected to go to court.

You are right to say that we need to be careful about that. We should not think "job done" just because children are able to give pre-recorded evidence that is then presented to the court. The process needs to be shorter, because the experience stays with the child and does not disappear once they have given evidence and it has been recorded so that they do not need to go to court. That is better than having to go to court, but that child is still living with the knowledge that, at some point, that story will be presented in evidence. If we can shorten that process as quickly as possible, we have a much better chance of encouraging and helping children to recover.

The truth is that there is a huge lack of resources, and a huge lack of human resources. Children want a relationship with a person who can walk through the process with them and support them from the moment they talk about what has happened right the way through to the process's conclusion, particularly to support parents in talking about what has happened. The danger, as Daljeet Dagon has eloquently described, is that children bury this stuff, and it always emerges when they are older. It can emerge in behaviours that are viewed as not helpful, and they are often punished for those behaviours, and no one tracks it back to the moment at which the child was the victim of a serious crime. We really need to understand what trauma does to children, and we should not have a system that, through the protracted nature of its processes, which are set up to suit all the agencies involved, further damages children.

Jenny Gilruth: I noted that Mary Glasgow spoke about the lack of support for families. That ties in with providing emotional resilience to young people. Daljeet Dagon also alludes to that in her written submission and talks about a gap in support for parents and carers, going on to suggest advocacy. Is that what support should look like? Some young people do not have parents or carers at home to look after them, so might there be a role for the school to be involved in that support? Who would you like to see providing better support to young people through that process?

Daljeet Dagon: In some of my answers, I have referred to children, their parents and carers and the wider networks around them. I do not think that we can say that it should be the school or the youth worker. It is about getting alongside the child and working out with them who is best placed to support them and who they want to support them. We often find that the very agencies that have the closest relationships with children and young people are excluded from some processes, because they are not statutory or they are not experienced in that particular area of work, when that would not be the child's choice.

Mary Glasgow is absolutely right. I used to work in a service where there was an idea that you would undertake street work and meet the young person, and you would then pass them on to a duty service, which would pass them on to the resource resettlement service. The young people I met on the street wanted me to continue that journey with them through the process, but the resources and capacity did not always allow that to happen. We have a notion in our heads that, as professionals, we should hand young people on to others as we go along that journey, but that is often not what young people want. It is not about having expert knowledge; it is about consistency, flexibility and the predictability of support. For young people, that is often the most important thing, rather than having all the knowledge and skills. It is about ensuring that that worker or that person, whoever they are, is supported and has access to all the information continuously, so that they can relay that information not just to the child but to the people who are looking after the child and who are supporting that young person outwith the nine-to-five set-up.

Malcolm Schaffer: There are a couple of issues to highlight. One is about the timing of court cases. Courts are very insensitive in terms of time. The institution does not allow the human impact to come in on that, but we see green shoots, particularly in family law, where we have seen the success of the PACE—permanence and care excellence—project, which includes the court process when looking at all the causes of delay and how to reduce them. We do that by bringing together all the different agencies in a particular area to look at what is causing delay. An initiative that focuses on how to reduce delay in cases in which children are giving evidence and which brings together the court administration, the police and social work, might have an impact.

I do not know a lot about the support that is provided to children, but I know that in England and Wales the role of an intermediary is viewed as being very successful and appropriate. That person knows the court system, the contacts and how to fix things, but they are also good at relating to children and supporting them and their families in the process. Such a person is not mentioned in the bill. I know that that would be an extra person and an extra cost, but I wonder how much we need to learn from the experience in England and Wales, where that person is viewed as an important part of the process.

Jenny Gilruth: I go back to the point on parents and carers that was raised in Daljeet Dagon's

submission. Would you advocate an education programme to support parents and carers in understanding the court process? Is there a lack of knowledge that prevents young people from being helped more generally? Their parents or carers might not be able to explain the system to them, and that takes away some of the support that could be provided.

Daljeet Dagon: It is about education. Sometimes, parents and carers are excluded from the processes, because the services that are set up work mostly with the child. It is not always about the process and the procedures; it is sometimes about understanding the impact on the child and how they will manage some of their behaviours. It is important to get additional support around the parent or carer in order to build their resilience as well as the child's resilience. It is about education so that people can navigate the system, but it is also about parents and carers being fully informed and properly prepared for the impact.

The Convener: The submission from Victim Support Scotland—from which we will be hearing on the next panel—said that it would be interested in having discussions with the children's hearings system on the role of the intermediates, to see whether it could get involved. Malcolm Schaffer, given that you said that there is a gap in the bill, would you welcome such discussion?

Malcolm Schaffer: Indeed. We have created much closer relationships with Victim Support Scotland, which used to support only victim witnesses in criminal proceedings but which now supports children in our proceedings. We have found the organisation extremely helpful in all sorts of ways. For example, in one sexual abuse case in which a girl was giving evidence and the court officer was male, the Victim Support Scotland worker asked whether the officer could be female. That was nothing to do with the particular individual; the worker just asked if that could happen in order to make the girl feel more comfortable. That is just one tiny example of the work that Victim Support Scotland can do because it knows its way around. The organisation has a lot to offer, and it will be interesting to hear its thoughts.

The Convener: That is helpful.

Fulton MacGregor: I will stick with the pre-recording of evidence, and specifically the joint investigative interviews, which are carried out by police and social work. At this point, I should refer members to my entry in the register of members' interests, given that I am a registered social worker and have previously been involved in joint investigative interviews. There is a general acceptance that such interviews are not perfect, by any means. How could they be improved? The answer will probably relate to the period prior to the interview taking place and to the period afterwards. Some of that has already been touched on, but the witnesses could perhaps elaborate.

10:45

Mary Glasgow: We are involved with the strategic group and the implementation group that are doing work on JIIs. The work is currently focusing on improving the training for social workers and police officers, which is welcome.

There is a need to ensure that joint investigative interviews take account of the broader needs of the child. The danger is always that the child is made to fit into the police and social work process. Social workers are interested in care and protection and in making sure that there is a safety plan for children. Police officers obviously have to be focused on the same thing—making sure that our children are safe—but they also have to secure enough evidence with regard to the accused.

The danger in all of that is that the child's needs get lost. Therefore, the training needs to start with the ways in which children respond and the ways in which they experience abuse and neglect, whether they are victims or witnesses. That is what we want, and we are involved in supporting that process. We need to build a system in which professionals start with an understanding of child development and communication. They need a broad training programme that focuses on children's holistic needs.

Real progress is being made but, practically, we need to make sure that we have police officers and social workers who can build enough confidence, skill and knowledge to do those interviews, which are incredibly tricky. Years ago, I was seconded to a multidisciplinary team, where I delivered child protection training to groups of professionals. The challenge was always when they went back into practice. There might be six or eight months between interviews, and the evidence shows that it takes around 100 or 150 interviews before professionals get really confident and feel that they can engage with children in a way that elicits their best evidence.

We need to think about the resource issue and support for practitioners. We expect police officers and social workers to work in a challenging environment that requires a high level of skills. If in the morning you are at a children's hearing and in the afternoon you are rushing somewhere to interview a child, that is very difficult. We cannot operate like that as humans. We must make sure that the system is not just about the JII training, and that we do not focus only on the interview. We

need to get the whole system right and we need to have professionals who are specialist, skilled and able to give the child the best possible shot to give their best evidence.

Fulton MacGregor: At the moment, that would mainly be done through social workers and police officers—albeit specialised—up and down the country. Are you suggesting that it should be a specialised resource and that the workers should be involved only in that particular line of work rather than anything else?

Mary Glasgow: Along with partners, we strongly advocate the barnahus model—the child's house model—and we welcome the Government's commitment to work towards it. That model takes children right out of the court system and develops a resource and a community that looks like an ordinary space for children, which has the child's rights and needs, not only for justice but for care and support, built right into it. Therefore, the child and their family engage with one place. They go to one place, and the professionals come to them. At the moment, the system involves children going to one place to get interviewed, and sometimes two or three, depending on how many times that happens; another place to get medical treatment or a medical examination if that is required; and then possibly, and most often, they go nowhere to receive any long-term support to recover. We strongly advocate moving at speed to deliver a child's house model, which will elicit best justice for children and accused, but which will also save us all in the long term, because it builds in support for the child to recover from the impact of trauma. The child goes to one place and the professionals come to them.

Fulton MacGregor: That links to the earlier part of my question. I am interested to hear thoughts on how we can develop relationships before the interview. When I was involved in such interviews, it struck me many times that it would perhaps have been better if there had been a non-interview setting prior to the actual meeting. I know that that is more difficult for the police than for social work, and I understand the reasons for that, but what are your thoughts on that? Would the model that you have talked about be more open to that?

Mary Glasgow: It is such a complex area. The first thing that I should say is that we also advocate that we need to talk to children and young people, because they have really strong views about the process. Often, some of the most practical answers lie with children and young people, because they can clearly articulate what would have helped them.

We need to create a space and resource that allows all of those complexities to be taken into account and a place where exploratory interviews and discussions with children can happen and where much better planning can be undertaken. Because resources are so stretched and the system is so pressed, we cannot cope with the numbers of children who need the support and, as a result, we do not give children the best opportunities possible. We are always having to work at pace when we need to slow the process down for children to ensure that it matches the stage that they are at and give them these opportunities, and we need a space where people can have conversations, planning meetings and discussions about how to get the best evidence from children.

The bill represents progress, but we are still tinkering incrementally with a system that is not and never will be built around children's needs. That is why we are urging the committee to think about the bill as a start rather than a finish and to understand that, although it is better than what we currently have, it is nowhere near good enough for children. We are still squeezing and squashing children into a system that is not built with their needs in mind.

A justice system that is right for children and vulnerable witnesses delivers better justice for everybody. We will all do better if we build a justice system that is much more human and recognises the impacts on humans who become involved in processes in which they are required to be victims or witnesses.

Fulton MacGregor: Daljeet, you said that it is not always the social worker or police officer who has the best relationship with the child. Would the model highlighted by Mary Glasgow allow for a third person to be involved in interviews, if that was necessary or required?

Daljeet Dagon: Over the past seven years, we have been involved in four police operations in Glasgow, and each has been different, because we have used what we have learned from the previous operations to try to improve our practice. A long time ago, the police service established what are called SOLOs—or sexual offences liaison officers—who, as part of the operation, are allocated to the victim. That is their sole job and, as a result, police officers are used to undertaking the whole process of taking statements. If social workers get involved, it is something of an add-on; as Mary Glasgow has described, they can be at a children's hearing in the morning and at a core group meeting at lunchtime and then they have to go off and interview a young person. How well prepared can they be for that?

In the police operations in which we have been involved, we have focused on planning meetings, and we can often have two or three such meetings before we go anywhere near a child. We get those who know the child best round the table and discuss the best environment or the best time for

an interview, the supports that need to be put in place before and after the interview and so on. Some of our staff have been the third person that you referred to; sometimes they have sat outside the room, and sometimes they have been allowed to sit in as an observer and to act as a comfort to the child, because they know the triggers for the child becoming stressed, animated, angry or whatever.

We have tried lots of different systems, but ultimately we need people who know the child and how to get the best out of them to be involved. We also need the person who carries out the interview to have that as their sole task. If it is just an add-on, the person who does it is not particularly skilled at or confident about it. I suppose that my question for you, Fulton, is: how many JIIs did you do in your social work career and how confident did you feel going from one to the next, given the gap involved?

Fulton MacGregor: I did nowhere near 160, I have to say.

Daljeet Dagon: But you know what I mean. If we are not in the best place and feeling confident about what we are doing or if we are not completely clear about what we are doing and how we are doing it, how are we supposed to bring out the best in the child?

Daniel Johnson: I am interested in how the rules will apply. The panel has been very good at identifying where we need to be and stating the limits of the provisions, and I want to look at the offences that the bill will apply to and the courts that will be involved.

Given that much of the bill will come in through regulations and that not all the provisions will come in at once, would it be a sensible improvement to the bill at least to provide for the possibility of the measures being extended to other crimes or, indeed, to the sheriff court or other tribunal settings? Would you like to see that at stage 2?

Malcolm Schaffer: Very much so. I would single out offences involving domestic abuse when a child is at the centre of the case. It strikes me that those are the cases that put the most pressure on the child and that they are an obvious example of where we need to consider extending the measures. I understand the incremental approach, but the sooner that the measures can be applied to cases that cause the most trauma to children—at least, to some of them—the better.

Daniel Johnson: Are there any particular situations that you want to be looked at prior to the extension beyond the current scope, or is it purely about practical considerations once the practice is already established?

Malcolm Schaffer: I have already flagged up the core issue for me, which is about the links with the child protection proceedings. The other practical issue that has an enormous impact is about the ground rules hearing, which we have not touched on.

Daniel Johnson: I am about to come to that.

Malcolm Schaffer: Good, because we have experience of that in the hearings system. Certainly, when that approach is applied properly, it helps to make the setting that helps to create certainty and control in terms of the direction.

Daniel Johnson: Would Mary Glasgow or Daljeet Dagon like to add anything?

Mary Glasgow: I agree with the point about children who are witnesses in domestic abuse situations. As you would imagine, it is incredibly difficult for children to be involved as witnesses in those situations. There is also the issue of children who are accused of crimes, because we need to remember that, first and foremost, they are children, too. If it is about seeking better justice for all children, we need to think about how the measures can apply to those young people as well so that the best evidence is heard in their case and that there is equal provision between High Court and sheriff court, because there is a gap.

Daljeet Dagon: I agree with what Malcolm Schaffer and Mary Glasgow have said. All that I would add is about the issue that we refer to as harmful sexual behaviours. Certainly, we are seeing more and more young people being involved in peer-on-peer abuse. That can be about harmful sexual behaviours, domestic abuse or child sexual exploitation—it comes in various guises. We will often get a referral for the victim but will not get one for the accused when they are also a child; and they can be as young as nine, 10 or 11. We need to consider also what that child has been exposed to prior to their being involved in that activity. If we open out the measures, we need to look at how we can realistically support those children who might have been involved in offences that are extremely harmful to other children, while taking cognisance of what they might have been exposed to themselves either as witnesses or as victims.

Just now, we often focus only on the victim, particularly in relation to online offences around the sharing of images and acting out some of those activities. However, we have had recent examples where offences that have been meted out by other young people have not been seen as child protection issues, never mind criminal offences. That is because the gender of the child has been considered rather than the actual offence and the harm that the victim has

experienced. We need to think about peer-on-peer abuse as well.

Daniel Johnson: Malcolm Schaffer hit on one of the central points. It strikes me that the bill's proposals are highly dependent on the ground rules hearings working. In essence, the practice will flow from those establishing the right principles and the different parties agreeing to a particular approach. Do you think that that is the right way to proceed? The argument is that that allows the practice to be flexible and to develop. Does the bill need to go further by stipulating certain things that need to be considered? For example, should the bill set out how the ground rules hearings will work or the elements that should be considered in deciding on how the commissioned evidence is taken?

11:00

Malcolm Schaffer: I am not sure. There is a limit to how much you can legislate for, isn't there?

Daniel Johnson: Indeed.

Malcolm Schaffer: The provision has been set up. As I said, when we have seen that approach working, it works—it can really set the scene. If the sheriff or the commissioner is in control of asking the right questions, I am not sure whether legislation can help to develop that further. It might be more a case of using the experience and understanding of the commissioner or whoever is in control of the process.

Daniel Johnson: I wondered whether there should simply be a requirement to consider particular elements rather than a provision that is explicit about precisely what must happen. It could simply be stated that the ground rules hearing should reflect on the support that might be required for the child and that there should be familiarity with the context. We do not need to legislate for the particulars; we could simply ask that certain things be considered. Would that be a way of addressing some of the concerns that have been raised by the panel?

Malcolm Schaffer: A requirement to consider the support, in particular, would be welcome. I hope that that question would be asked anyway, but having that check set down in black and white would be helpful.

Daniel Johnson: Would anyone else like to comment?

Mary Glasgow: As I have said, there are measures in the current system that are not always applied. We need to firm up the legislation to make sure that it is the default position that we anticipate that children will always require special measures, that those special measures are available and easily accessible and that children and young people can choose which of the measures they want to use.

Daniel Johnson: I have found it slightly surprising that it is possible for the judge in the case to be a different individual from the person who will preside over the ground rules hearing, who in turn could be a different individual from the commissioner who takes the evidence. I wonder whether that is right. Would it be better to have the same individual in all three contexts, or would that have knock-on effects?

Malcolm Schaffer: I agree that continuity of the individual has a lot of advantages, but the danger is that it could build in huge delay. The relevant individual might already be tied up in a lengthy trial for, say, two months. We have found from experience that, although there are huge benefits in having that continuity, there is a huge danger of it building in further delay.

Shona Robison (Dundee City East) (SNP): Good morning. Thank you for your interesting evidence.

I will come back to the issues of the child accused and resources, but first I want to ask about the tension that exists with the bill. Throughout your evidence, you have said that we need to work towards the child's house model, that we need a whole-system approach and that, to get that right, we must move at speed. However, you have also said that what is in the bill will be difficult to implement. There is a tension between what should be contained in policy, strategy and direction and what should be in the bill. I do not think that those two things are the same. We need to be cautious and ensure that we get the basics right. Given what you have said about resources, we must ensure that there is not an unintended consequence of more delay in the system.

As well as seeking acknowledgement that that tension exists, I would like to hear how we can get the right balance between what is in the bill and what the policy intention is, which should be very clear. That is not an easy question; I guess that I am asking you to reflect on some of the tensions in your evidence, which show how complicated the situation that we are dealing with is. In its evidence, the Scottish Government has talked about proceeding carefully because this is such a major change. Where does the balance lie?

Mary Glasgow: That is a really difficult question.

Shona Robison: It is one that we need to resolve.

Mary Glasgow: Yes, and that is the difficulty for us. I am here to represent the voices of the children we support and their families, to share their stories and to do justice to them in the best

way that I can. That is incredibly difficult, because we believe that we do not have a justice system that is fit for purpose for children; we want to see the implementation of an entirely different system.

However, we are also practical and we know that we are where we are. As you say, we do not want to rush into something that has unintended consequences because we have worked at speed and have not taken into account all the other complexities in the system.

There are still things that we can do. As we have agreed, we could take a more holistic approach and children could go to one place—we could do that within the current system—where children's evidence could be pre-recorded and they could access support. The answer is less about educating parents and more about supporting them to understand and navigate their way through what is currently a very complex system.

Therefore, we can make improvements to the current system at the same time as we continue to focus on the bigger prize, which is a much more child-centred, child rights-based justice system.

There are measures in the bill that are welcome, but there is still a challenge—as there always has been. Previous measures have not been implemented because the system is built not around children but around what the system needs and what the system thinks it requires from victims and witnesses.

You are right to point out that tension—it is there. However, we are obligated to the children we support, who continually tell us really painful, difficult stories about their experience of the justice system. They are very clear about some of the things that they want to change: they want to tell fewer people about the awful things that have happened to them; they want to get support much quicker so that they can understand what has happened to them and recover from it; they want to deal with a system that understands that they are children and so any delays impact on their ability to recall; and they want to be prepared and to understand the process in which they are engaged.

There is a tension because we want to see progress, but we know that the bill does not go far enough. We are starting in a really difficult place for children. We need to implement the bill but not forget that we have a much longer-term goal for children and that we really need to work towards a different system.

There are things that could be done immediately. The child witness suites are welcome, but they are a long way from the child's house and barnahus models. We could have resources that mean that all the professionals are based in one place and that children go there to get all their needs met—evidence is pre-recorded and goes to court. There is nothing to prevent us from doing that.

There is a challenge around resources, but there is a cost to us all anyway, because these kids and young people pop up in other parts of the system.

I am not sure that I am answering your question, because you are right that there is a tension and we do not have the solution to that. We welcome elements of the bill, but we would like it to go further and we know that we are engaged in a process that is not designed around children.

Shona Robison: It sounds to me that you are asking for a clear statement of intent about the end point.

Mary Glasgow: Yes—a commitment.

Shona Robison: The bill is part of the jigsaw, but it is a part that needs to be got right.

We have touched on resources. Resources are not infinite, so what are the key priorities? Mary Glasgow has touched on getting the facilities right and ensuring that there are staff to support the children. Given all the resource implications and demands, would that be your number 1 priority?

Mary Glasgow: Yes.

Malcolm Schaffer: I agree. There is a lot that is not legislation dependent. A lot can be achieved by skilling ourselves better and improving procedures in the law. The bill can act as a further boost and incentive to get it right. Mary Glasgow has talked about the improvements that have already been planned, such as joint interviewing, which can make a significant difference.

A lot can be achieved, always remembering that we have an ultimate goal and, hopefully, a timetable with which to get to it. It is not a matter of having the bill, ticking that off and seeing it as done. This is just a stage.

Shona Robison: Would you like to see a timetable set out, which would not necessarily be on the face of the bill?

Malcolm Schaffer: Yes, I absolutely would.

Daljeet Dagon: It is about giving a sense of control back to children. The children that we work with feel extremely disempowered and disengaged from the processes, because they do not have an understanding of what is going on and why. I continually hear children and young people saying, "I just want this to stop. It's not that I want justice or that I want this person charged and convicted. I just want this to stop." We need to ensure that we listen to the voice of the child and that we do not disempower them even more by going down a

path that is not in their best interests, or is not what they want.

Shona Robison: You have all touched on the issue of the accused child. At the moment, the bill does not extend the measures to the accused child, and you have touched on some of the grey areas in which an accused child could also be a victim. Do you think that they should be included at this stage, or would you like that to be part of a timetable going forward?

Daljeet Dagon: We said in our original submission that we understood why you were taking pragmatic steps by phasing the process. It would also be very helpful if we could consider accused children, because they are children first and foremost, and we do not know what has happened to them. Therefore, it is very important that we work with them first as victims and then as the accused.

Shona Robison: One of the arguments that is put against that is that it could do a disservice to the child accused and their ability to come back on evidence that is heard in court; that might be difficult if the evidence has already been given. Do you recognise that as a tension?

Malcolm Schaffer: Yes, it can be, but provision could and would be allowed for that child to give further evidence, should there be any supplementary issues. That is already built in for the child witness.

Mary Glasgow: On the whole, I would agree, but these children are already disadvantaged by the current system and, like Daljeet Dagon, we would strongly advocate that the children who are accused are also those who have most often experienced trauma and who have been victims of crime and of abuse or neglect. In most cases, we have to consider that these children are involved in the justice system because of things that have happened to them, which we may not know about. They are already disadvantaged by the system that they are in, and measures could be put in place to make sure that they get an opportunity to access that supplementary questions process.

Liam McArthur: A number of you have referred to the child's house model as being the aspiration. Is there a risk that, without a pathway to that ultimate objective, as Shona Robison said, we end up using scarce resources to put a model in place around the legislation that we will then have to rip out and replace with something else?

Malcolm Schaffer: It is potentially a risk. We need to get to the child's house model but there are some challenges in that, because it challenges the adversarial nature of our process. It is not just a resource issue; it challenges some fairly basic aspects of the legal system. I would love to get there tomorrow but, realistically, I can understand the need for a staged approach.

Liam McArthur: Do you have any concerns about the adoption of that approach, given the resources required across the board and across the country, not simply in areas of highest demand?

11:15

Daljeet Dagon: It is not just a resources issue; it is a cultural one. If we really believed in getting the best for children we would not be having this debate and discussion. Just now, we are fitting children around a system that is meant for adults but which probably does not work for them either.

We need to think about what children need and how we can get there. Having a timetabled approach would be very helpful. I agree with Malcolm Schaffer: I would like this to happen tomorrow, but I know that it will not. My worry is that—as Mary Glasgow said at the beginning of the session—we simply do this, tick the box and think that it has been done. However, if we knew that there was a vision for us to get to a better place and how we would get there incrementally, all the organisations around the table would be much more supportive of the bill because we would know what the end game was.

The Convener: The panel may be interested to know that the committee is going to see the barnahus model. We are very interested in that, given the panel's comments.

John Finnie: I was going to ask the panel about their positions on the procedures for standard measures, but the generality of that has been covered. I also know that the simplified notification procedure has been welcomed. I ask Malcolm Schaffer—and, indeed, other panel members—whether they wish to expand on the comment in the Scottish Children's Reporter Administration's submission that, at the moment

"Anecdotally, witnesses' views are not always being sought and screen and supporter are used as a 'default' special measure."

The submission very helpfully goes on to suggest an amendment that would ensure that reasonable steps were taken to ascertain the views of witnesses.

Would the panel like to comment or make any further suggestions on that?

Mary Glasgow: Earlier, a point was made about having a support person who would travel through the process with a child or a young person, elicit their views, give them information and act as a flow between the system and the child and their family. By using such a process, we could consult children on their views and ensure that any

choices that they make about measures are based on understanding what those will look and feel like. In certain situations, it would be very helpful for children to be able physically to see what giving evidence will look like. There is a huge gap there just now.

Malcolm Schaffer: In the hearings process, where we consider special measures, we are under an obligation to consult the child and their parents, so that approach is built in. However, the effectiveness of that depends partially on those people's understanding of what such measures are, which can take a bit of explanation. The intervention of a special person who has a link with the child would certainly add to that process.

Daljeet Dagon: In a previous answer, Malcolm Schaffer made reference to the intermediaries that we have in England. For instance, we have services there with ISVA—independent sexual violence advocate—workers. Their role is to talk the child or young person right the way through the process—who they need to talk to, what about, and the processes for doing so. They also continually share information and feed back—both to the child or young person and to their parent, carer or wider network, as appropriate—on what will happen next, so that the young person is kept informed all the way through and is not excluded from any decision making. That seems to be a system that works for children and young people. However, it does introduce yet another person into the process, so if we could do that as early as possible in the journey, that would be helpful.

John Finnie: That is very helpful. Thank you.

The Convener: I have noticed that communication came up in all the submissions. Very briefly, would panel members like to add anything on communication and taking the child's view into account in relation to giving evidence at trial?

Mary Glasgow: We have experience of supporting children who have communication issues, developmental delay or learning disabilities. There is a requirement to have specialist support for professionals who are involved in speaking to or interviewing such children and ensuring that their specific needs are taken into account. There is careful planning about who might be the best person and which particular measures might be most useful for such young people. There is a real need to build an understanding that children's stages and developmental needs will vary across the piece. We know that there is a huge gap in relation to children with specific communication difficulties and learning disabilities.

The Convener: Yes. Does Daljeet Dagon want to say anything about communication more generally? You have emphasised the issue.

Daljeet Dagon: The only thing that I would add is that we have had recent experience of working with a particular community and, in this country, we simply do not have interpreters who speak that community's language. The language of the interpreters that we use is one that the people of that community would describe as the language of their oppressors, back home in their own countries. We have to be mindful not just of communication and cultural difficulties but of the power dynamic among people who do not speak the same language.

Another interesting point is that the community about which I am talking does not have vocabulary to describe certain things. For example, they do not have words for "domestic abuse", "sexual exploitation", "mental health" and "substance misuse". I have been in sessions where an interpreter has used the phrase "sexual exploitation", but I knew that the parent had absolutely no understanding of what it was that everyone was concerned about. If we know right from the beginning that we do not have the words or the language to enable us properly to communicate with children and young people, we need to find a different way of communicating, to ensure that people fully understand what is being communicated and that nothing is misrepresented in any way.

The Convener: Does Malcolm Schaffer have anything to add?

Malcolm Schaffer: Delays in the system will still occur and, more than anything, we need to be aware of the need to keep in touch with people, to explain what the delays are, why they are happening and what the timetable is. It is a small issue, but it can cause the most anxiety, especially if something goes away and suddenly returns—we heard the example about someone hearing about a prosecution after nine months had passed. That must cause huge dilemmas for child witnesses, in particular. We need to concentrate on that—the SCRA included.

The Convener: Thank you all very much. That was an excellent evidence session.

11:22

Meeting suspended.

11:26

On resuming—

The Convener: I welcome our second panel: Ronnie Barnes is a trustee of Action on Elder Abuse Scotland; Mhairi McGowan is group manager of the ASSIST—advocacy, support, safety, information and services together—service at Community Safety Glasgow; Colin McKay is chief executive of the Mental Welfare Commission for Scotland; and last, but not least, Kevin Kane is parliamentary, policy and research officer at Victim Support Scotland.

I thank you for your written submissions. It makes a big difference to the committee to have those in advance of taking evidence from you in person.

Rona Mackay: Will you expand a wee bit on concerns that you expressed in your submissions? You all appear to be largely supportive of the bill, so perhaps you could talk about what might be added to it.

The Convener: Who would like to start?

Mhairi McGowan (Community Safety Glasgow): I very much welcome the bill, but I have a real worry that the new approach will be brought in for the most serious cases and then progress will stop. That was our experience with the introduction of multi-agency public protection arrangements. We were assured that MAPPA would be introduced for very serious crimes first, and that eventually domestic abuse would be picked up by the process, but that has never happened. My concern is that if there is no set timetable that Parliament can properly consider, we will lose the benefits of extending the approach. I am aware that previous witnesses have raised the issue of a timetable for extension. It is a huge issue for me.

My big concern is about how the approach affects adults' and children's experiences of the justice system in the context of domestic abuse. I have brought some examples that I will be happy to talk the committee through at some point.

Kevin Kane (Victim Support Scotland): I echo that. Victim Support thinks that it is important that fewer witnesses be required to give evidence in criminal trials, and we base our view on our work with our witness service, whose staff and volunteers were very helpful to me as I put together my submission.

Victim Support Scotland has supported more than 10,000 children in court, and we provided a witness supporter in court more than 4,000 times last year. We have received more than 22,000 victim information and advice referrals, many of which were for children. The most serious cases involved violent and sexual crimes.

We have been told about the depth of trauma that our volunteers have experienced during those discussions. One volunteer described feeling "harrowed". That is how the volunteer felt, not the witness, so we can imagine the impact that it had on the witness.

We support the bill and the timeline for broadening it out to a range of victims as soon as is practicable.

11:30

Rona Mackay: At what point do you get involved with the victim? You heard Mary Glasgow talking about the idea of having the same person all the way through the process, step by step.

Kevin Kane: VSS is involved at every stage of the process, and our victim service can become involved very early. There is communication between the witness and victim services—our witness service, which is based in courts all round the country, is involved and must react to the case load on the day. We also provide support afterwards, which is important. VSS is trauma informed and seeks to make a lasting difference.

Rona Mackay: Is the same person involved throughout a case?

Kevin Kane: The same person is involved, if we can manage it: a single point of contact is what we try to achieve. We are supportive of the wider Scottish Government mission, which is to have a single point of contact to provide continuity, to minimise trauma, and to reduce contacts with multiple agencies and people. We know that the sooner a child's or vulnerable witness's evidence is heard, the better their recall. Their situation is exacerbated by the challenges that they have faced. Being able to support someone from start to finish is what we set out to do.

Colin McKay (Mental Welfare Commission for Scotland): The commission did not respond to the call for views on the bill, so if the committee will allow me to, I will try to outline where the Mental Welfare Commission for Scotland fits into the process.

The commission is a statutory body whose role is to protect and promote the human rights of people with mental illnesses, learning disabilities or dementia. We did not respond because we felt that because the bill is primarily directed at child witnesses, other people are better able to speak about it, although we are very grateful for the opportunity to comment in relation to people with mental illnesses, learning disabilities or dementia.

There are two problems. There is reasonably good evidence that people with learning disabilities or mental illnesses are more likely than other members of the general public to be victims

of crime. There are particular types of crime to which they are especially vulnerable and which can be difficult to prosecute. That can raise problems in relation to the criminal justice system. There is certainly a problem with victimisation.

There is also a problem with equal access to the justice system, which we see as a human rights issue. The United Nations Convention on the Rights of Persons with Disabilities, which the Scottish Government has committed to implementing, puts a duty on states to take all appropriate measures to protect people with disabilities from exploitation, violence and abuse, and to put in place effective legislation and policies to ensure that exploitation, violence and abuse are identified, investigated and prosecuted. There is a need to do something both in terms of the experience of people with mental illnesses and learning disabilities, and in the broader equality context.

In that context, there is nothing that we object to in the bill. We agree with others that if it is felt to be pragmatic to start with children and look at extending the provisions later, that is absolutely okay, provided that there is a proper process and a commitment to doing it within a reasonable timeframe. A lot of the work has been talked about for a number of years, and the Scottish Courts and Tribunals Service's evidence and procedure review was undertaken back in 2015. This will take a while.

In relation to people with mental disorders, there are probably more specific things that need to be looked at and which I am happy to talk about later—in particular, around how the bill links to the appropriate adult system, and the opportunity to develop the registered intermediary scheme of which the committee has already heard mention.

Ronnie Barnes (Action on Elder Abuse Scotland): Thank you for the opportunity to address the committee on behalf of the Action on Elder Abuse Scotland campaigning charity, and to consider in particular the needs of older people.

Our submission highlighted our experience that many older victims of crime are

"extremely reluctant to speak up due to fear of the consequences and fear of going through the court process ... Why put yourself through such a stressful process if you believe it's unlikely there will be a prosecution?"

We are aware that there is a very low level of reporting of crime against older people. Our experience of the cases that end up in court is that the court system does not take them seriously and that perpetrators of abuse are treated at the lighter end of the sentencing scale. That sends the signal that the abuse is not taken seriously.

Having heard some of the submissions from the previous panel today, particularly those relating to children and the measures that might be introduced for children as vulnerable witnesses, the committee might want to consider the possibility of introducing the same processes for older people who require special treatment and measures in order that they can give their evidence successfully. Such measures would enable them to be nurtured through the court process in a way that is not available at the moment.

Colin McKay mentioned the appropriate adult scheme, which could be expanded to included something similar for vulnerable older people, particularly those with dementia.

Jenny Gilruth: I have a general question for the panel on the benefit of pre-recording evidence. What is the impact on vulnerable witnesses of pre-recording evidence, and on the quality of evidence?

Mhairi McGowan: I did not mention earlier due to my nervousness, but I will clarify what ASSIST does. It is an advocacy project that works across the west of Scotland—apart from Dumfries and Galloway—to support victims of domestic abuse, from the day after the incident through to the end of the court process. We support adults, children and young people. We are co-located with the police in several police stations, therefore we are very aware of the issues that present themselves in respect of taking evidence.

We talk to victims—adults and children—the day after the incident takes place, which is when you get good, fresh recall. To expect traumatised people to remember what happened after a long period is not appropriate. For a witness to give evidence against a family member—a dad or a partner—is incredibly difficult in cases that involve courses of conduct that have been sustained over a number of years. If the incident that is going through court involves threatening or abusive behaviour under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, the witness might wonder which particular instance it relates to, so it is hard to get best evidence.

Although advances have been made—some witnesses can see their statement beforehand—it is crucial for the administration of justice that statements from vulnerable witnesses be taken as quickly and as near in time to the incident as possible.

Kevin Kane: The committee is probably aware of the piloting of section 28 of the Youth Justice and Criminal Evidence Act 1999 in England. I will quickly run through the report on the pilot, which included pre-recording of evidence in chief, cross-examination and a robust ground-rules hearing. In the pilot, it was easier for vulnerable witnesses to recall events and they produced more reliable

evidence. That is fairer for everybody, including the accused. Using that section 28 process, questions were more focused and streamlined, scrutiny was better, cross-examinations were shorter, the trial duration was shorter and there were fewer cracked trials using the process. We should adopt best practice where we can, so I urge the committee to consider that report.

Barnardo's 2017 report "Journey to Justice: Prioritising the wellbeing of children involved in criminal justice processes relating to sexual exploitation and abuse" concluded that

"the better supported and informed a witness is, and the more their wellbeing is promoted and protected, the better their evidence will be."

That is in the interests of everyone.

Colin McKay: The point about taking evidence as early as possible also applies to people with mental illnesses, learning disabilities or dementia. It is more likely that details will be forgotten by a person who has dementia. Dementia is a progressive illness, so the person might be more ill by the time the trial takes place.

The other big advantage is in relation to the levels of stress, anxiety and trauma that are experienced. If giving evidence is done in a managed way, that reduces harm to the person and improves their ability to give evidence: it is easier to give evidence if you are not being traumatised by the process.

My only caveat is that a bad interview done early is no better than a bad interview done in a trial. That is why support is important, as is assessing how a person should be interviewed if they have difficulties with communication, for example. The interview has to be tailored and individualised to meet the needs of the person. It is not just about pre-recording the interview; preparation for the interview is important if you want to get the best evidence.

Ronnie Barnes: I would echo those comments. Anything that assists older people to give their stories and to provide the quality of evidence that is necessary to bring about prosecutions is to be welcomed.

Mhairi McGowan: I mentioned earlier that I had some examples. Time really has an impact on people. ASSIST worked with a 17-year-old victim who had submitted a soul and conscience letter excusing her from court two months before the date of the trial, but she did not know until the day before the trial whether she was to give evidence. By that time, she was physically ill with worry. She had visited a general practitioner, had become withdrawn, and was having problems sleeping and eating.

We supported a 13-year-old boy who gave evidence via closed circuit television on the day of the trial, but he was, due to extreme anxiety, physically sick in court prior to being called to give evidence. If he had been permitted to give his evidence in advance, there would not have been that build-up of trauma.

It is helpful to be able to give evidence early, but it is also important to keep witnesses informed about what is happening throughout the process.

We are supporting a seven-year-old boy at the moment. We are concerned about the level of stress and the quality of the evidence that will be given. However, we also know—as does everybody else—that if his evidence is not heard, the case will fall.

Our children and young people's advocacy workers put in a lot of effort to try to prepare witnesses for court, and into the debrief afterwards because—as Kevin Kane said—support afterwards is also important. The process is hugely resource intensive.

Jenny Gilruth: I have a brief supplementary on that point. In your submission, you state:

"With the advent of the new Domestic Abuse Bill, we expect more children will be cited to give evidence."

In your expert opinion, is the level of stress increased because of the length of time it takes to get to court, particularly for children?

Mhairi McGowan: Absolutely—that is the case without a doubt. Put yourself in the mind of a child who knows that a parent—usually their dad—is being prosecuted and they will have to speak up. It would be far better if the evidence was taken at the time of the offence. All the way through the process, the perpetrator and the perpetrator's family put pressure on the child by asking, "Why are you giving evidence?" and saying, "Just withdraw your statement" and so on. A lot of subtle pressure goes on outside the court process. After all, this is about people's lives.

A lot of the context around individual section 38 or assault cases will be picked up under the new Domestic Abuse (Scotland) Act 2018. That is fantastic and we welcome that. However, we also need to look at the consequences of bringing in such legislation. We need to make sure that we move to a far better process for children as quickly as possible.

11:45

Jenny Gilruth: Does the panel have any views on whether taking evidence by commissioner currently delivers evidence of the best quality?

Kevin Kane: We have had an increase in the taking of evidence on commission. We looked

specifically at the High Court in Edinburgh, and there are issues with the facilities. Going to court, whether to give evidence on the day or on commission, is traumatic in itself, and there are issues of timing, consistency and predictability as to what room will be used. We support all those things being mapped out in advance in the joint investigative interview. Evidence on commission has been on the books since 2004-05 or thereabouts, and there have been only marginal increases in it, which takes us back to the point that other panellists have made about there needing to be a timetable.

We need to be pragmatic, but we cannot adopt a bill for the bill's sake. There needs to be ambition around the facilities where children give evidence. In the Scottish Government's evidence to the committee last week, the officials were candid about not knowing exactly how much resourcing that would entail. That is fair enough, as we do not know what the take-up will be when the bill becomes law. In principle, however, we should support evidence on commission with the best possible facilities, and if that evidence can be given away from the court, so much the better. We supported the recent allocation of money to the Scottish Courts and Tribunals Service to install a hearings suite with mirrors, special facilities and access to intermediaries. All those things need to be considered as part of the wider package.

Colin McKay: I probably sound like a stuck record but, as with pre-recorded evidence, it is not just about giving evidence on commission; it is about who the commissioner is, what knowledge they have and what advice and support they have been given in relation to the particular communication needs that a person may have or any issues around how questions should be asked. Those are quite detailed and specific considerations, and they will be different for a person with autistic spectrum disorder or a person with dementia. If evidence is to be given on commission, that needs to be done on the basis of a clear assessment of the needs of the person who is giving evidence, so that it can be done in the best possible way.

Ronnie Barnes: Would the commission model work for older people?

The Convener: I do not know. Do you have a view on that?

Ronnie Barnes: A lot of what I hear from my colleagues in relation to children and young people could, as I said in my opening statement, read across to certain vulnerable older people, who would have the same issues with being able to tell their story.

Liam Kerr (North East Scotland) (Con): I have one quick point and one substantive question. Mr Barnes, how do you define older people? I know that you try to narrow it down in your submission, but although we can define children quite precisely it is less clear who an older person is.

Ronnie Barnes: You could extend the definition to all adults at risk, who would be covered by the three-point test in the Adult Support and Protection (Scotland) Act 2007, but we are thinking particularly about older people in their 80s or 90s. People are now living longer and in more cared-for situations but are nevertheless vulnerable to some forms of exploitation and abuse simply because of their living circumstances. The lifespan of people who are challenged by having some degree of dementia is increasing but the risks are also increasing exponentially. We want to find a means by which people who feel that they are living in circumstances in which they can be exploited are not without the opportunity to report that or the comfort of a system that supports and understands them.

Liam Kerr: On that point—which brings me to my substantive question—all the evidence that we have seen starts from the position that an appearance in court and the current processes do not elicit best evidence and can re-traumatise people. Mr Kane talked about getting better evidence and better recall. Ms McGowan talked about not building up trauma and getting the evidence in early. All of those principles could be applied much more widely than just vulnerable witnesses. Everyone could say the same thing—with merit, I think.

If there are only positives in the proposed process changes and no negatives as far as the accused is concerned, why is none of you—particularly Mr Kane from Victim Support—calling for those changes to be introduced across the entire spectrum instead of being limited to vulnerable people? Are there any negatives for the accused with regard to the fairness of the trial?

Kevin Kane: We are working within the confines of an adversarial system, and the bill potentially opens up the possibility of looking at the whole justice system and taking it in a more inquisitorial direction. There are many such systems around the world. We are talking about a child-based, rights-based approach that has safeguards for anyone who is involved in the process, including the accused, and we are open to discussing what a renewed system that is compatible with the bill might look like.

Colin McKay: The definition of mental disorder in the Mental Health (Scotland) Act 2015 could, according to some, apply to one in four people at any point in their lives. One can certainly argue that a lot in the current courts system is there because of historical circumstances and that it does not necessarily allow the best evidence to be

given. However, it is also fair to say that there are those who are further away from fairness than others. It is therefore reasonable to start with the people who have the worst time in the current system and think about how we might alleviate things for them.

Let me give you an example. Some of the work on cross-examining people and on the questions that should be asked in a cross-examination started by looking at the experience of child witnesses or an adult witness with a learning disability. It emerged that people should not ask questions with double negatives, leading questions and so on. There are particular styles of questioning that are more likely to elicit unhelpful or untrue answers from a child or vulnerable adult, and people get better at not asking such questions.

Those at the bar are now saying that that is how everybody should be interviewed. It should not be some kind of mind game in which you try to trip someone up; instead, you should be asking questions that people can understand and respond to. Therefore, although it is right to start with those who are experiencing the worst defects of the current system and think about how you fix it for them, it is also right for that practice to be extended over time to a much wider group of people.

Ronnie Barnes: We support a fairer system for all—nobody would disagree with that—but, under the current system, which, as has been said, is of an adversarial nature, some suffer more than others. I would contend that vulnerable older people are among those who are almost victims rather than recipients of the system.

Mhairi McGowan: We need to be realistic. If we are looking to fix the whole justice system and move from the current adversarial process to a more inquisitorial system, that will take an awfully long time. In the meantime, vulnerable children, young people and adults are suffering. I do not think that we can leave such a situation, which is why I am in favour of a staged approach.

I do not think that we will ever have a system that is perfect and that does not have to be looked at again, so we must be pragmatic and make what moves we can when we get consensus across society. I think that there is such a consensus with regard to children, young people and other vulnerable witnesses—which, for me, includes all victims of domestic abuse, who are deemed vulnerable under the Victims and Witnesses (Scotland) Act 2014. The point is that we need to pick up all those whom we have already identified as vulnerable.

Jenny Gilruth: I return to my earlier question about taking evidence by commissioner. What are the panel's views on the importance of the ground rules hearing in cases in which such evidence is taken?

Kevin Kane: It is important that the child's developmental and safety needs are met, and it is easier to do that if you can get agreement very early on. There is a big-picture vision for doing that; indeed, Children 1st has highlighted what it calls its bairn's house model. In Norway—as the committee will see—there are graphs on the wall that show the tone and type of questioning that a particular child can accept and what the duration of such questioning should be, based on their cognitive ability and any other complex needs that they might have.

We have examples of good practice in evidence on commission. The best examples are when good relationships exist between Victim Support Scotland, the Scottish courts and the Crown Office and Procurator Fiscal Service, which is when we can make direct contact. However, we are navigating the system with good people in our ranks rather than responding to a structural reality, which is where we would like to be.

Mhairi McGowan: I, too, support a move to the barnahus model for that reason. We do not have experience of people fighting to give evidence on commission. The folk whom we support go mostly through the sheriff courts, so I will not respond to the question in detail.

Colin McKay: The ground rules hearing model is fundamental to preparation, whether that relates to evidence on commission or evidence at the trial. The English system of registering intermediaries is very much tied into the idea of the ground rules hearing process. There is expert assessment of the needs of the person who is giving evidence, what their deficits are and how those can be overcome. The ground rules hearing is then used to establish how things will play out and, if a person has an intermediary, when they can intervene and the basis on which they might support them. In that way, everyone is clear about the process and, when the evidence is being taken, no one is suddenly saying, "You can't do that. That's unfair." Preparation and the ground rules hearing are fundamental.

Daniel Johnson: I will take up from where we have just left off. I want to ask about the extension and how some of the rules will be enacted, particularly in relation to the ground rules hearings.

I begin by looking at the scope, and my question relates to what Mhairi McGowan said about her support being primarily concerned with the sheriff court. The proposal pertains only to the solemn procedure in the High Court and specific offences. Given that section 3 enables the provision to be extended, by simple ministerial regulation, to other

vulnerable witnesses, do you support having similar provisions on extending it to other court hearings? Obviously, that would be based on how the provisions embed in practice with, for example, child witnesses.

Mhairi McGowan: Absolutely. We support victims through petition. A lot of domestic abuse incidents do not go through the sheriff court, but the vast majority do. If we are looking at the experience of the witness, we need to consider how to create a process—whether a case is being dealt with in the High Court, by sheriff and jury or in a sheriff court—that ensures that best evidence is given. The only way that we will do that is by extending the process as laid out in the bill.

I support whole-heartedly the approach of starting with the High Court, which of course makes absolute sense. However, we need to make sure that it does not stay there, because our evidence from service users and children and young people is that the trauma that they are experiencing is as great for them in the sheriff court as it is in a case being dealt with by a sheriff and jury or in the High Court.

Daniel Johnson: I think that the entire panel has supported the extension of the principle and practice to other areas. Given the volume of cases involved, there would obviously be practical considerations related to doing that. What other things need to be considered or reviewed prior to extending the measures to other categories of witness, cases and courts?

Mhairi McGowan: You would need to look at the support for children. Daljeet Dagon mentioned the ISVA model. Our children and young persons advocacy worker and, in fact, the whole of ASSIST were based on the independent domestic violence adviser—IDVA—model from down south. That is exactly what we do here. We have taken a lot of that model and used it for more than 15 years. Out of court, we have been passing information back and forth between the Crown and the witness and acting as an intermediary.

We have such systems that we could build on. It would be helpful if there was a skilled and experienced support worker and a set of standards that everyone adhered to. We need to look at the wider process.

12:00

Daniel Johnson: Kevin Kane was nodding his head.

Kevin Kane: Yes. We are still to explore the role of the commissioners and who those people will be. We support the commissioners being the ultimate arbiter on what questions to give.

The issue ties into Mhairi McGowan's point about training. Training does not end when someone becomes a solicitor. By the way, I think that the Law Society of Scotland gave an excellent response to the bill, so I am not having a go. It seems very supportive, providing that there is remuneration and resourcing. We need to upskill the commissioners and they need to be trauma aware. There is already the national trauma training network, and there are other useful tacks that we could take to ensure that commissioners understand the ramifications of certain tones of questioning. We know from 30 years of empirical evidence from all over the United Kingdom that solicitors routinely do not adjust their questioning. If we are to achieve what we are trying to do in the bill, the training of everyone who is involved is of paramount importance.

Daniel Johnson: To interpret what you are saying, is it that the bill should explicitly mention training and a review of practice for commissioners?

Kevin Kane: There should be a judicially robust function. If that means explicitly outlining that in the bill, so be it. However, work needs to be done with our partners to ensure that that is deliverable before we put ink to paper.

Daniel Johnson: Following on from the question that I asked the previous panel, the considerations that the ground rules hearings will be required to carry out are relatively narrow. They are about the form of questioning, with there being the possibility of extending support when necessary. Should other considerations be made explicit? This morning, I have been reflecting on whether that possibility of further support should be a much more positive duty to examine what support can be extended to individuals. What are your thoughts on those suggestions?

Kevin Kane: I will not say too much, because my colleague is an expert in that field. There should be consistency with other progress in the justice sphere. The autism justice strategy is just one item that is bobbing along. We need to get consistency across the board so that we can tackle complex needs in a drilled-down and focused way.

Colin McKay: The comments that the committee heard during its earlier session on the need for consistent support for children throughout the system apply equally to adults with vulnerability due to mental illness or learning disabilities. The need for consistent support has also been the conclusion of work that has been done on people with learning difficulties who have been accused of crimes. The key demand from the work that has been done by the SOLD—supporting offenders with learning disabilities—network is that there needs to be somebody who

helps a person who has been accused understand what is going on at different stages in the system. The difficulty up until now has been that we tend to take one bit of the system and say, "What can we do to get this person out of this bit of the system and on to the next bit?"

The appropriate adult scheme is a good example of that situation. As the committee knows, Parliament has legislated to put the appropriate adult scheme on a statutory footing, and the Government is about to implement that. However, the appropriate adult scheme is there to help the police get an interview. Once the police have got an interview, the person goes away and does not normally participate in the court process. A witness, a victim or, indeed, an accused person needs someone who can take them through the system, and nobody really has that role at the moment. Even if a ground rules hearing or a judge were to ask for someone to do that, there would be nobody to step forward to do it. That needs to be addressed urgently.

Daniel Johnson: Should an explicit assessment of the deficits or requirements of an individual who is giving evidence be made at the ground rules hearing? I do not think that that is specifically stated—a much broader assessment is required.

Colin McKay: If someone's communication or ability to engage with the process is impaired by mental disorder of whatever kind, that needs to be explicitly addressed, because there are huge differences in people's vulnerabilities or deficits.

Of course, some people with a mental illness, for example, will be well able to give evidence, but others might have quite complex or hard-to-notice deficits. One of the issues for people with dementia—Ronnie Barnes can probably talk about this—is that they might often present as being more competent and capable than they are. It might be assumed that the person can give evidence when in fact they might have difficulties with some aspects of that. At the other extreme, people might appear to be unable to give a coherent account of themselves but could do so if properly supported.

The important point is that it is not just about the trauma for people in giving evidence in court; it is about the fact that, unless people are supported, some cases will never get to court. For example, the historical evidence around the sexual abuse of people with learning disabilities shows that cases often did not come to court because, in essence, the system decided that a conviction would never be secured because of the person's inability to give evidence and that the person should not be put through that trauma. Unless we do a thorough and more detailed assessment, it is unlikely that such cases will go through the system properly.

Ronnie Barnes: Just to confirm what Colin McKay said in relation to older people, with certain categories of vulnerability in terms of physical frailty and mental impairment, and particularly dementia, it would be recognised at an early stage in the complaint-making process that a person was not able to give evidence appropriately without some degree of support. Anything in the model that is being discussed in relation to children and vulnerable adults should also be applied to certain categories of older people. I would like that to be included in the consideration of the bill.

The Convener: Does Mhairi McGowan have anything to add?

Mhairi McGowan: There is a lot that we could do in providing support for court. The work that we do is not available across Scotland, so children do not have the support that our small group in the west can provide. It is important that the Scottish Government ensures that there is equality in that regard, because someone in Stornoway, for example, needs as much support as someone in the centre of Govan.

Shona Robison: As I did with the previous panel, I want to explore the tension between what is in the bill and the setting out of policy and strategic intent, which I think is important. One witness on the previous panel said that they would be concerned about unintended consequences such as further delay because of a mismatch of pace between what becomes law and what can be done on the ground. Where does the panel think that the balance should lie between what should be in the bill in order to make progress incrementally—I think that everybody has accepted that that needs to be done—and what would be better dealt with elsewhere, such as through a timetable or clarity on policy intention and strategy?

Mhairi McGowan: We should start with the High Court cases that have been talked about, and then a timetable should be set down so that everyone else is aware of when they will be brought in. That would go a long way towards alleviating the issues. I do not think that we will ever be in the position to say that timetables will not slip, but we need to be aware of the impact of delays.

We are supporting a 19-year-old victim at the moment, where the substantive issue happened three years ago and the trial has been adjourned seven times. Nobody is doing that deliberately and the system is not trying to upset that young person, but the reality is that that young person has been waiting for three years.

All domestic abuse trials should have a first trial date within 10 weeks, so there needs to be some

kind of backstop—that is the only word that comes to mind, although it is not the right word to use on a day like today. There needs to be something at the back that will allow issues to be picked up so that we look at not just what is in front of us but where the unintended consequences might be and where the system could pick up people who fall through the gaps. We tend to focus on what is in front of us rather than what has fallen over the edge.

Shona Robison: The other witnesses might want to come in but, while we are on the subject of resources—the fact that the resources are not infinite is one of the considerations—what would be your key priority for investment, given what you have said about the day-to-day experience? Where should we focus the resources? Over and above the timetable for what needs to happen when as regards the specific measures in the bill, where could the biggest difference be made when it comes to resources? What is the key priority?

Mhairi McGowan: Barnahus is the focus.

Shona Robison: Should a timetable be set out for that?

Mhairi McGowan: Yes.

Kevin Kane: Checks and balances need to be written in. The Government and our statutory body partners have an obligation to review progress quickly after the bill is enacted. In its submission, Children 1st referred to the European promise exchange, which is a starting point for the development of a framework for monitoring progress. That might be worth looking at. Money should be spent there to ensure that we get it right. If we do not get it right, that will give us a chance to revisit matters quickly, which will mean that fewer vulnerable witnesses will be put in any sort of predicament.

Colin McKay: This might just be me speaking as a former civil servant, but I am a bit thoughtful about the need not to put too much detail in primary legislation because, as Kevin Kane said, things sometimes do not work out how we wanted and it can be difficult to make a change. It is important that the bill sets out the broad parameters and a framework within which progress can be made. It is equally important that there is a political commitment and a process of monitoring progress.

I commend the justice system for the work that has been done as part of the evidence and procedure review. The general progress on joint working on many reforms in the justice system over the past five years has been significant. That is not the way in which the justice system used to work, when it was thought to be almost constitutionally inappropriate that the police should talk to judges or that judges should talk to the Government. The fact that something such as the evidence and procedure review has got as far as it has done is to be commended.

However, Shona Robison is right that there is a danger that, once we get into the difficulties of implementation, some of the energy and commitment will get lost. People get into the mentality of thinking, “Let’s just get this one thing done and then we’ll see where we are.” It is important that the committee and the Parliament continue to hold the Government to account on a clear framework for action.

There are monitoring mechanisms for some of the international obligations, such as the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities, and sometimes the Government needs to be held to account through those monitoring mechanisms, particularly in relation to how the justice system has served the needs of children and people with disabilities.

There are different ways of proceeding, but it is important that, collectively, the things that we do add up to a framework for action.

Ronnie Barnes: I can only echo what has been said. I am not so familiar with what is in the bill, but anything that ensures that progressive action is taken as swiftly as possible is to be welcomed.

Shona Robison: We have touched on this already, but I want to make sure that we get your full views on the record. Should adult witnesses who might be vulnerable on other grounds but who are not deemed to be vulnerable witnesses be covered by the new rule? If not, what should be done to ensure that evidence is taken on commission, where that is appropriate? You have already touched on that, but is there anything else that you would like to put on the record on that issue?

12:15

Kevin Kane: The UNCRC explicitly states that, when possible, Governments should seek the views of children and not put them in a traumatic position. The bill would give effect to the UNCRC. It is worth getting that broad point on the record.

Colin McKay: Earlier, Ronnie Barnes made a point about the other definitions of vulnerability in adult support and protection legislation, which might be slightly broader than the definition of vulnerable witnesses. I have not done a detailed check on that, but those definitions might be slightly broader. There might need to be a process whereby people who do not fit one of the categories but can identify why they would need additional support or additional measures can ask for them.

Shona Robison: Do you mean outwith the legislation?

Colin McKay: I suppose that the legislation could allow an additional process by which people could demonstrate why they need extra support if they are not in one of the existing categories.

Ronnie Barnes: Other support and protection legislation provides a useful three-point test in relation to an adult who is at risk. Using that definition is a starting point.

Mhairi McGowan: However, very few people satisfy that three-point test. That is why I talked about vulnerable witnesses in relation to the Victims and Witnesses (Scotland) Act 2014, in which the definition in this particular category is far wider. My worry about the three-point test is that few people are picked up by it because it is so difficult to meet.

Shona Robison: So, it is important to identify what the definition would be and why.

Mhairi McGowan: Definitely.

The Convener: There seems to be consensus around support for the barnahus approach for child witnesses. Could some form of barnahus approach be adapted for vulnerable adults?

Mhairi McGowan: It could be—it would be on my wish list. My pragmatic approach means that I would like it for all adult victims of domestic abuse. I can see how such a model could fit for other adults but, being pragmatic, I know that it will be some time before we get it in place for children, as Malcolm Schaffer said earlier. A lot of ground work needs to be done.

There is absolutely nothing to prevent that model from being used as a way to ensure that the best evidence is obtained from children and adults.

Colin McKay: I do not know enough about the barnahus model to say whether it could readily be adapted for vulnerable adults. I am not against it in principle, but I sound a note of caution about taking something that works for one group of people—children—and saying that we should use it for adults because they have a learning disability. We need to be mindful of the different needs that people might have.

There is another thing that you might do quickly. It feels as though the registered intermediary scheme is on the shelf. The English have had that scheme since 2004 and it has been copied in Northern Ireland, South Africa and parts of Australia. There are schemes that would make a significant difference to vulnerable adults that could possibly be adapted more quickly than the barnahus model. I am not saying that you should not use the barnahus model, but there might be other things to use.

Kevin Kane: It might be useful to have a mapping exercise to show where in Scotland the facilities are to elicit the best evidence at the moment. There are some good signs out there. A justice centre has spades in the ground in Inverness; there is the new facility in Glasgow; and there is the money that was given to Scottish courts recently. However, I am not sure that there is an accurate picture of where the best evidence on commission sessions are happening, where the best facilities are and whether those facilities were born out of what child and other vulnerable witnesses said. That exercise could run alongside the bill.

As a large victim and witness organisation, we accept our role in that and, if we can, we will map our experiences to see whether they tie in with what the Government bill team, our statutory body partners and our third sector agency partners have found. At that point, we might be able to identify the gaps in the system and drill down into them. That would be helpful.

The Convener: You mentioned potentially talking to the SCRA about the children's intermediary work. Its representative on the previous panel was quite positive about that.

Kevin Kane: Yes, that work is on-going.

Ronnie Barnes: I am not familiar with the model that we are talking about. However, accepting Colin McKay's caution that it might not read across to all vulnerable adults, what I have heard about it suggests that it has merits and could be applicable to more vulnerable older people, too.

John Finnie: You touched on this point in general terms, but what are your views on the procedures for standard measures and the simplified notification procedure specifically? Is there a need for further reform? You might not have all heard the evidence from the previous panel, but the SCRA suggested a specific amendment to guarantee that witnesses would be consulted. The suggestion was made that measures are sometimes put in place, in the form of a companion or screening, without consulting the individuals.

Mhairi McGowan: It is really important to consult witnesses beforehand. However, I add the caveat that I put in my submission, which is that many victims of domestic abuse start by saying, "I am going to face him in court", but as the court date gets closer that becomes just too much. That is where the trauma-informed approach would be really helpful. Sometimes, at the last minute, we ask the victim information and advice service or the court to ensure that there are screens, but that is always seen as a bit of an issue. If there were

some standard measures, it would make things much easier for that category of witness.

However, it is also important to consult victims beforehand. Screens can be great, but not everyone who applies to have screens understands that the accused can see them and that it is only the witness who cannot see the accused. When they find that out, some people say that they would rather just have an ordinary courtroom. We need to be flexible as well as bearing in mind the argument about resources and the number of cases that are going through the system.

It would be helpful if we could combine making standard special measures available and consulting the witness beforehand about whether to use them.

Colin McKay: The worst thing that you can do is say to someone, "You've got that particular label, so you're getting one of these", regardless of whether that is what they want or need. The second worst thing that you can do is expect the person to understand immediately what might help them. It makes me think about the way in which doctors get consent for operations now. They have all been told that they must get the patient's views, so they explain a very complicated procedure and say, "What do you want to do?", and the patient thinks, "Well, I don't know. You're the doctor, you tell me."

There is something about giving the person the time, space and support to understand what might help them and why they might want it, to make choices and, as Mhairi McGowan said, to change their mind if, nearer the time, they feel that they can no longer face it. We must not just impose things on people. We need to support witnesses so that the choices that they make are genuine and informed.

The Convener: We have touched on communication, which can be so important in the whole process. Is there anything that you would like to say about special needs and communication more generally, over and above what has already been said?

Kevin Kane: I gave the example of joint investigative interviews, which have huge potential to drive up collaboration between victim agencies and the statutory bodies. I base that on what our witness service has told us about the best application of current special measures and evidence on commission. Time and again, that happens where there are good relationships. If we can get to a situation where all the various interests get around the table early on, the positive domino effect will be that we communicate quicker and more effectively and that we see one another as allies in the system.

The Convener: It would be a holistic approach.

Kevin Kane: Yes.

Colin McKay: I have a brief comment on data. I get the point that has been made a few times about prioritisation and limited resources and the question of how big the problem is. One of the difficulties, particularly for adults, is that we do not have good evidence on the prevalence of crimes—for example, on how many crimes are committed against people with learning disabilities. We made a recommendation on that about 10 years ago, in our report, "Justice Denied". There have been tremendous improvements since then. However, we still lack evidence on the nature and type of crimes and the extent of vulnerability and victimisation of vulnerable groups. The Crown Office might be able to help with that.

Ronnie Barnes: I hope that, during the passage of the bill, there will be more mention of older people and the particular issues that they face in being victims of crime, in how they are treated and in their ability to give their evidence and tell their story in a way that is appropriate to them.

The Convener: That concludes our questions. I thank the witnesses for participating in that very worthwhile evidence session.

That concludes the 31st meeting of the Justice Committee in 2018—it is so unusual for us to hear evidence from two panels of witnesses and then finish the meeting without going into private session.

Our next meeting will be on Tuesday 4 December, when we will continue to take evidence on the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill.

Meeting closed at 12:26.

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