OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 8 December 2021

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 8 December 2021

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CRIMINAL JUSTICE COMMITTEE
13th Meeting 2021, Session 6

CONVENER

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

DEPUTY CONVENER

Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)
*Jamie Greene (West Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)
*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Fraser (Scottish Courts and Tribunals Service)
Danielle McLaughlin (Scottish Courts and Tribunals Service)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 8 December 2021

[The Convener opened the meeting at 10:07]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning and welcome to the 13th meeting of the Criminal Justice Committee in 2021. We have apologies from Russell Findlay. Fulton MacGregor joins us online.

Our first item of business is to agree whether to take agenda item 3, which is consideration of this morning's evidence, in private. Are we agreed to take item 3 in private?

Members *indicated agreement.*

Prosecution of Violence against Women and Girls

10:07

The Convener: Members will be aware that we are coming to the end of the current 16 days of activism against gender-based violence. Our next item is consideration of evidence on efforts to improve the ways in which we prosecute violence against women and girls and to support survivors of such crimes. I refer members to papers 1 to 4.

The committee is carrying out this work to shine a light on an important subject. This is the first of three evidence sessions. In later weeks, we will hear from Police Scotland, the Cabinet Secretary for Justice and Veterans and the Lord Advocate. We want to know what our police service, courts, prosecution service and Government are doing to tackle violence against women and girls.

I welcome two senior representatives of the Scottish Courts and Tribunals Service: David Fraser, executive director of court operations; and Danielle McLaughlin, head of implementation of the Lord Justice Clerk's review.

I thank all the people we have spoken to about this subject. We recognise that it takes immense courage to talk about this and I pay tribute to everyone who has done so. It really helps to inform our views. I also thank Danielle and David for joining us today. I expect the session to last for 60 to 90 minutes. I make my usual plea for succinct questions and answers.

I will open the questioning. As we are aware, Lady Dorrian's review of the management of sexual offence cases was published earlier in the year. Given that we are nearly a year on from its publication, I would like to begin with a general question about the progress that has been made on the recommendations that were made in that report. What steps are being taken to implement some of the recommendations?

David Fraser (Scottish Courts and Tribunals Service): It is a report that has the potential to fundamentally change a lot of things that happen in the courts service. From my perspective as someone who supported Lady Dorrian in the process, I learned an awful lot. When you are in an organisation, sometimes you do not fully understand the impact that the actions of you and your staff can have. That was brought home to me forcefully by some of the evidence that was presented before Lady Dorrian.

Since the report's publication, limited progress has been made, because of Covid and the pressures that we have faced in relation to that. My colleague Danielle McLaughlin has been

appointed specifically to implement the recommendations from our perspective, but it is very much a collaborative effort. We have been in contact with the Scottish Government, a governance strategy has been put about and we have determined the different workstreams that will need to be taken forward. We are on the cusp of launching the implementation.

The Convener: I will hand over to Danielle McLaughlin to pick up on that.

Danielle McLaughlin (Scottish Courts and Tribunals Service): Thank you, and thank you for inviting us to give evidence this morning.

Following on from what David Fraser said, I reiterate that the review could have a transformative effect for complainers, the accused and the justice system generally. As David said, I have been appointed specifically to assist with implementation from the SCTS's perspective and from an operations perspective. However, as David also highlighted, it will be key to the implementation of aspects of Lady Dorrian's review that we work with justice partners, the Scottish Government and key stakeholders to implement its rationale and its objectives.

Although, as David indicated, we are in the initial stages of looking at the review as a whole, there are immediate steps that have been actioned from an SCTS perspective. For example, as the committee might have seen, one of the key recommendations is about taking evidence by commission and a presumption that evidence be recorded. In the initial stage, the service has taken steps to provide additional facilities to support the use of evidence by commission. Evidence taking by commission took place even during the early stages of lockdown, when our courts could not open because of public health and safety requirements and the need for social distancing.

During that initial lockdown period, we encouraged justice partners to use evidence by commission. That was taken up supportively and, as a consequence, by the end of this financial year—in other words, by April 2022—we anticipate that evidence by commission will have been used on around 300 occasions, which represents a significant increase on previous years. For example, last year the figure was just over 160, and in previous years—2016-17, for example—it was below 40.

One of the key steps is encouraging and working with justice partners to look at elements of the review that can be implemented now, or which people can be encouraged to implement now, without immediate legislative change.

The Convener: Thank you. I am interested in your comments about taking evidence by commission, which we know is under way already, albeit on a limited basis.

It was helpful to receive that update. In my introductory remarks, I mentioned the evidence sessions that we have had. I think that it is safe to say that some of the witnesses we have spoken to were less than complimentary about a range of aspects of their court experiences. I would like to pick up on your comments about some changes that could be made in early course, such as expanding the taking of evidence by commission. In light of the evidence that we have been given, it seems pressing to us to deal with many aspects of the court system. What could be done soon to begin addressing some of those challenges?

10:15

David Fraser: Lady Dorrian has highlighted evidence on commission as a key dimension. In fact, taking evidence in chief on commission and removing the complainer entirely from the court environment is one of her key recommendations.

We have been scoping out the capacity that we have within the organisation. You will be aware that we have evidence suites at Atlantic Quay and Inverness and that ones at Edinburgh and Aberdeen are coming online, but we are looking beyond that. There will be a significant increase in the number of people using the evidence suites, so we are scoping out the additional accommodation that we will require to ensure that we have the capacity to deal with the numbers that will come in due course, once Lady Dorrian's review is implemented.

Danielle McLaughlin: Another aspect of Lady Dorrian's review on which initial steps can be taken is trauma-informed practice and training. The review identified and highlighted that as an essential aspect of progress, both for the special court that is recommended in recommendation 2 and for the future.

That builds on our experience at the SCTS. As the review identifies, we have implemented training for key personnel at our evidence suites at Atlantic Quay and Inverness. We are doing that along with other justice partners, with whom we made a commitment in 2018 to work with the Scottish Government to identify trauma-informed training and to make progress with that. We are developing and working on trauma-informed training.

Although I work for, and am here to represent, the SCTS, training of the judiciary is a matter for the Lord President, the Judicial Institute for Scotland and the Judicial Office for Scotland. They are also looking at and rolling out trauma-informed training.

There is also the issue of the general experience of a complainer during a trial hearing. That is continually looked at, both from an SCTS perspective and in the light of the training of members of the judiciary.

Those are the key aspects that I can add, but I am happy to address any other issues. I appreciate that we have time and that there is a lot in the review to discuss.

The Convener: We are certainly aware of trauma-informed approaches. That issue has been raised and members may come back to it later.

Another key issue is communication and engagement with witnesses, by which I mean survivors and complainers. There has been some commentary about and criticism of that issue. There has been a suggestion that there should be a single point of contact—someone who could advocate for an individual and chaperone them through the process. Has there been any consideration of that?

David Fraser: We seem to be in a rhythm in which I answer the question and Danielle McLaughlin deals with the finer details.

Each organisation in the justice system does its very best with its own communication. What became absolutely clear as we spoke to all the individuals during the review was that, from their perspective, it was not a joined-up process. They were moved from one organisation to another and, although each of us was trying to do our very best, if you walked in their shoes, the picture was not good. We all accept that.

We would absolutely assist with the recommendation that there be a single point of contact so that the complainer can understand the process as we are going through it. The recommendation has been looked at in a number of different places, including the victims task force, so it is well known that this is an area in which we need to make some progress. We have a lot of victims charters and standards in the organisation to make sure that we do the best we possibly can, but I recognise that more can be done collectively and that we need to work with our justice partners to move this forward.

However, the Scottish Courts and Tribunal Service is probably not able to progress the recommendation but, as I say, the governance structure has now been set up in order to move forward with the recommendations of the report, and that is due to meet imminently.

Danielle McLaughlin: Justice partners work collaboratively. For example, the SCTS, Victim Support Scotland and the Crown Office and Procurator Fiscal Service have entered into protocols in relation to our management of communication with victims. Under statutory obligations and otherwise, all partners have signed up to standards of service for victims and complainers. We work collaboratively to produce our own standards, and we also work together to produce a joint report annually in relation to the standards. That is an on-going review.

Internally, we have five standards that we are committed to, but we take it on an on-going basis that we will review and update those standards and identify areas for additional development as required.

As David said, justice partners work hard collaboratively to communicate about the process and aspects of attending and being involved in the criminal justice sector. Inevitably, unfortunately, and unintentionally, however, sometimes that communication can go wrong. That is why the Lord Justice Clerk's review identified the benefit of having all partners sitting around the table again and looking at what we are doing and what can be improved and expanded upon and perhaps consolidated to ensure that a universal message gets across the justice sector to minimise the instances that the committee has had the opportunity to hear about at first hand from complainers.

Rona Mackay (Strathkelvin and Bearsden) (SNP): During our evidence sessions, we have heard about a situation in which the Queen's counsel representing the accused was acting unacceptably. The victim and the witnesses felt intimidated; they claimed that the QC behaved no better than the accused and that the whole thing felt like a boys' club, and so on. They were very intimidated and demoralised, and no one called the QC out on his behaviour. Is that within your remit?

Danielle McLaughlin: It is not within the SCTS's remit. The broad answer to the point is that justice partners who are involved in a trial process have to work collaboratively and identify when such circumstances arise. That was a theme that was picked up, unfortunately, in Lady Dorrian's review. Partners and those who are involved in the trial process are encouraged to bring such behaviour to the attention of the judge and, if necessary, the relevant regulatory body. Perhaps David Fraser can expand on that.

Rona Mackay: I just want to clarify your role in this first. There have been other cases in which the victims did not meet the procurator fiscal or have contact with them prior to the trial. Everything was new to them and they had no chance to process things. On some occasions, when the case came to court, there were errors in the paperwork and it was too late to correct them. Again, is that within your remit?

David Fraser: I will clarify those points. The SCTS's role is very much about supporting the judiciary in delivering justice. In circumstances in which, as you described, individuals in the court environment feel that the behaviour of a member of the judiciary is inappropriate, there are independent ways in which complaints can be made against judicial members. Complaints go through the Judicial Institute for Scotland, which is nothing to do with the SCTS.

On communication, I come back to your point about paperwork. The role of the SCTS is very much about taking in and looking after those people once they enter our building. Outwith that, communication with them is the responsibility of the Crown Office, so that question would have to be directed there. Similarly, the paperwork and the procurator fiscal meeting would be organised by the Crown Office; the SCTS would not have control of that.

The Convener: I will hand over to Collette Stevenson, who has a general question. We will then move on to issues around safety, the physical environment and care of witnesses.

Collette Stevenson (East Kilbride) (SNP): I will touch on the trauma-informed approach. You referred to the standards in that regard, and I want to drill down into the subject a wee bit more. What training does the SCTS provide for its staff to give them the skills to deal with traumatised and vulnerable victims and witnesses?

David Fraser: We recognised early on that the staff members with whom both victims and witnesses interact need to have the best support that we can give. We have provided training to those who have direct contact with those vulnerable people when they come into our environments, including our specialised evidence suites.

We have also provided training more generally to our SGB2 grade staff, who interact with witnesses. That training was provided before we went into lockdown, but it was very much at an elementary level. Following the review, we are working a lot more closely, and having a lot more input into what is being developed, in respect of further training that will be rolled out in the light of Lady Dorrian's review and all the different things that we uncovered during that process. We are working with Caroline Bruce to formalise that training, which is being developed not just for the SCTS but for all the justice partners.

To come back to an earlier observation, there will be circumstances—indeed, there have been; I have seen it as a clerk of court—in which situations develop in court in a way that puts individuals under pressure. As I said, everything that has come forward from Lady Dorrian's report is based on the feedback that we have had and on lived experience. There are times, as we have seen, when the court environment is potentially not conducive to getting the best evidence. That is why there was an evidence and procedure review and recommendations, and we are trying to address those issues as we move forward.

There is a much greater understanding, certainly in the organisations, of the need to look from the victim's perspective at the challenges that the court environment brings. We are doing all that we possibly can not to retraumatise people or make their experience worse in any way.

That is perhaps a long answer. We have provided elementary training, but we are looking to provide training that is much more in-depth and that involves a lot more understanding as we roll out our wider changes.

Some of the committee's observations relate not just to SCTS staff, but to other players in the court environment. It is essential that it is not just our staff who are sensitive and aware, but every key player who will interact with these people in the court environment, including QCs and counsel. That is in Lady Dorrian's recommendations, too.

10:30

Collette Stevenson: I want to drill down into that a wee bit. You mentioned Caroline Bruce. Did she deliver the training? If so, were any risk assessments carried out ahead of any actual trials? Moreover, does the training come from the current national framework for trauma-informed training?

David Fraser: Danielle McLaughlin will talk about what we are currently doing, but I can say that the training was to ensure that the few key people who interact with the individuals involved have an understanding of trauma and an appreciation and awareness of the impact of their actions on individuals. That was very elementary, but the training on which we are working with Caroline Bruce comes from the national framework.

Danielle McLaughlin: Dr Caroline Bruce is assisting the victims task force in, I believe, task force stream 2, which relates to the development of trauma-informed training that would be adopted by justice partners across the system. The key aspect is ensuring consistency, because there is no point in rolling the training out and then having to pick up things or make changes as we go. It is best to ensure a consistent approach, and in that respect we are looking for direction from Dr Bruce and the guidance that is being developed with the victims task force, to have such an approach not just across the SCTS, but across justice partners in general.

Collette Stevenson: You have talked about the elementary training. Is it correct, then, that the additional trauma-informed training has still to be rolled out to the SCTS and other partners in the justice system?

Danielle McLaughlin: Overall, yes. The initial training that was undertaken in our evidence-giving suites at Atlantic Quay and in Inverness contained trauma-informed elements, and those are the first steps that have been taken across the SCTS. Our education and learning unit is working extensively on the preparation of materials for staff across the organisation, with reference to the guidance and the principles that are being developed with justice partners via the victims task force and under the direction of Dr Caroline Bruce.

Another key aspect is that, in addition to what one might call an overriding programme of trauma-informed training, things have to be finessed further to address the experiences of staff members—for example, those who are actually in court and seeing witnesses—and the circumstances that they will encounter. As David Fraser has said, it is our SGB2s—our court officers—who have the key contact with parties giving evidence in court.

David Fraser: There is still work to be done to ensure greater understanding among all the key people, which would include a lot of our staff. Some key staff have that kind of understanding, but we can do—and will need to do—much more in the organisation to ensure that all of the people in it and outwith it have a much deeper understanding.

The Convener: I will move on to Jamie Greene, who has some questions about environmental issues.

Jamie Greene (West Scotland) (Con): Good morning. Before I move on to my pre-planned questions, I want to pick up on some aspects of the discussion that we have had. What has struck me, over the past few months, is that part of the problem is the number of justice partners. I can see why a victim of crime or someone going through a criminal procedure might really struggle to work out who is responsible for what, who to complain to if there is an issue and, if those complaints are interlinked, which body has overall responsibility for dealing with them. It strikes me that there is no such body, and that is part of the problem.

If someone has a complaint against a sheriff, a JP or a judge, there is a specific Government process to go through. If the complaint is against a deputy, it goes to the Crown Office, and, if it is against a defence solicitor or a QC, they have their own regulatory environment through the Law Society of Scotland or the Scottish Legal Complaints Commission. If the complaint is about the work that you do, I presume that it comes to you in the first instance, and you are governed by the Scottish Public Services Ombudsman. The process is hard enough for me to get my head around, never mind someone who has been the victim of a traumatic crime. Therefore, can you see why so many people feed back to the committee and Parliament that they find the process extremely confusing, complex and retraumatising?

David Fraser: I absolutely agree. The justice system is a composite of lots of different independent organisations that are doing their fundamental duties. If you follow a victim through the process, they have initial contact with Police Scotland, they are moved to the Crown Office and then on to us, and then they potentially have to deal with the Scottish Prison Service in relation to release. That is one of the issues that we recognised as went through the review with Lady Dorrian.

The communication that people get, and moving them from one organisation to another, creates stress—there is no question about it. There is no single organisation that a person enters at one end and comes out the other end of. I absolutely agree with your point, and it is one of the areas in which we need to make fundamental improvements. That is one of the recommendations of which you will be well aware.

It is also about the support for individuals. In the short term, there should be a single point of contact—someone who understands all the organisations and who is able to get the key information and be a liaison for the individual. I feel that that would make a significant difference for complainers.

Jamie Greene: Absolutely. I do not disagree that it is a common theme. The problem is that much of that work is currently taken up by the third sector and, in some cases, by volunteers. It is not formalised in any sense. People have access to Victim Support Scotland or to victim information and advice, which is the Crown Office's process. However, in many cases, people are directed to charities such as Rape Crisis Scotland or Scottish Women's Aid, or to their MSPs or MPs if they are really stuck, as we can write letters to people and generally get answers back.

I think that the lack of centralised support to hold someone's hand through the process has led to accusations that the system is geared and weighted towards the accused. They have a single point of contact—their lawyer—who will hold their hand and educate them as they go through the process, whereas the victims often feel that they are passed from pillar to post.

With regard to your bit of the process, you manage the estate, but you have little control over the physicality of the estate. Many people have said to us that the estate creates difficulties—it is not a pleasant place to be, and victims often come face to face with the people who have attacked or abused them. In addition, the physical layout of the buildings, many of which are antiquated, is not conducive to a trauma-informed experience. What will you do to improve that?

David Fraser: With the limitations of our current estate, we do our very best to ensure that we have separation. We are aware that it is not a fantastic experience or environment for people. The vast majority of people do not want to be in our court environments. I noticed that there were occasions on which people had come into face-to-face contact with the accused, which was disappointing. On the vast majority of occasions, we do our very best to ensure that people are separated and are not in an environment in which they could come together.

You are quite right that the victim support service supports the individuals in court. Often, they will be asked to arrive at a slightly different time. In some of our locations, including all of our new estate, we have separate entrances. We are trying to minimise the opportunity for face-to-face contact in the court environment. We can control to the best of our ability what we have in our estate, but outwith the court estate, which is where the focus is, there is the potential for such contact to happen, and I appreciate the distress that that would cause.

That is one of the reasons why permitting evidence to be given on commission is a good idea. One of the key things that came out of the work that has been done was the issue of how we can remove the need for those people to have to physically be within the wider court environment at all. Getting that evidence in chief commissioned so that it is all pre-recorded as close to the event as possible does that. Again, that would make great strides towards improving the experience of those people.

Jamie Greene: I might come back in later with some supplementary questions on other issues, but I have one more question at the moment.

Obviously, the elephant in the room is the backlog of cases that we are dealing with. From evidence that we have taken from victims of crime, we know about the inevitable stress and trauma that that creates. It is not simply a question of the timescale; it is about the fact that many of those cases have been cancelled or rescheduled many times—sometimes dozens of times. A number of victims, particularly survivors of crimes of sexual assault and abuse and gender-based violence, have called for statutory maximum timescales for trials of that nature.

We are very aware of the backlog, and I appreciate that you are only one cog in the machine, but what can you do in that regard? Given that we are coming up to negotiations around the budget, what would you ask the Government to do to facilitate more trials more quickly, while, at the same time, not weakening the sanctity and effectiveness of those trials? Both parties have an absolute right to a fair trial. In an ideal world, what would happen in order for you to process those cases more quickly?

David Fraser: You might be aware that we put our recovery programme in place in September. We introduced four more courts for the High Court, raising the number from 16 to 20 each day, and we introduced a further two courts for the solemn cases and 10 courts for the summary cases.

Our current projections suggest that it will be a couple of years—or, potentially, 2026—until we get the backlog under control. It is essential that we continue with that recovery programme, with those additional levels. We could go beyond that and further increase our capacity. However, as you know, resources are finite—that is the case not only for us but for the Crown Office and the defence community.

We are looking at different things that could be done. For example, we are introducing pre-intermediate diets. For me, the key is ensuring that the court service makes the best use of the slots that we have available for trials to proceed. The biggest difference that could be made is the prosecution and the defence using the processes that we have and getting to a position whereby they are absolutely certain that the case has to go to trial before it does so. That would remove a lot of the problems that you mention, which involve cases being adjourned or pleas being made at the trial diet, which results in slots being lost.

To be honest, those are not new problems. I have been in the organisation since 1982 and, as a senior manager, I have grappled with the issues and have made small inroads in different areas. However, dealing with those issues is the fundamental thing that will make a phenomenal difference. We need to better use the court time that we have available. The communication and the processes that we set up in advance of the court process must be made to work really well, so that only those cases in which the issues have been identified between the defence and prosecution go to trial.

Jamie Greene: Five years is a long time to wait for a case to come to trial, whether you are the accused or the victim. It is horrendous.

David Fraser: I agree. As you say, we are just one cog in the machine.

With regard to our part of the system, before the pandemic, it would take a case perhaps 22 weeks from its first appearance to reach the trial diet in the High Court. At the moment, it might take just under a year. That is a considerably long time, and I appreciate that there is some time before that, when the case is with the Crown Office and the police. I acknowledge that, from the victims' perspective, that is a long time.

Rona Mackay: I would like to ask about cases of domestic violence. By its nature, domestic violence differs from other offences because it is a continuing offence. We know that there is a huge backlog of cases. Do you have a remit to prioritise domestic violence cases? If so, are you doing that?

David Fraser: It is within our remit and we are doing that. Even before the pandemic, we had a different target for the time that it takes to get those cases before the courts. We had the timescale down to between eight and 10 weeks before the pandemic, but it climbed to about 15 weeks during the pandemic and is now about 14 weeks, which compares with a timescale of about 23 weeks for non-domestic abuse cases. We prioritise domestic abuse cases in the system and try to get them through as quickly as possible.

At the height of the pandemic, we used technology and piloted virtual summary trials specifically for domestic abuse cases, because we saw that those cases lend themselves more to the virtual environment because, normally, they involve a complainer and perhaps two police witnesses. We have run a limited number of those trials, but they have not been as successful as we had hoped. We had lots of discussions with the victim support agencies in order to get the pilots up and running but, again, it is one of those areas in which we are just one player and it takes a lot of players to make things successful.

Rona Mackay: My colleagues have further questions on that area, so I will not ask any more just now.

10:45

Pauline McNeill (Glasgow) (Lab): I have two sets of questions. One is around the trial diets, and I have another question for Danielle McLaughlin about the specialist court issue.

Mr Fraser, what is your view on ensuring that rape cases have fixed trial diets as opposed to floating ones? I have dealt with such cases, and I have discussed a couple of them directly with you. One survivor had 13 different first diet dates—from any point of view, that is not acceptable. What would the barriers be to implementing fixed trial diets for rape cases, which would prevent the continual rescheduling of those cases?

David Fraser: I am aware of the issue because we have been asked directly about it. I am sympathetic to the proposal, and we did quite a bit of work on ensuring that the location of the trial in rape cases was not moved, which was one of the things that could happen in the system. We have managed to eradicate that practice and have removed that uncertainty.

To be honest, the difficulty that we have is that we use a floating date system. The vast majority of such cases will start within that period of time, and very few will then be moved to another sitting. I accept that the person does not know whether the trial will start on the Monday, the Tuesday, the Wednesday or the Thursday, but the vast majority of such cases are dealt with in that period.

If we were to go back to pre-Bonomy reforms and introduce fixed diets, that would reduce our capacity in terms of the amount of business that we can get through the system, because, although there is a good rate of cases proceeding, particularly in the High Court, we still get pleas at the trial diet, which means that that day will be lost. The present process gives us an element of flexibility and ensures that the system is as healthy as it possibly can be.

I accept that, from a complainer's perspective, there is an element of uncertainty as to the day on which the trial will proceed. We have looked carefully at what we can do, but—to be perfectly honest—moving back to a fixed diet would tie our hands to a great degree with regard to the volume of business that we could get through.

Pauline McNeill: You mentioned that the location could be moved, which has triggered a memory for me. One survivor told us that the trial, in what is quite a well-known case, was scheduled to be held in Glasgow—you can correct me if I am wrong—and, two days before the start, it was rescheduled for Livingston. To my mind, thinking about the logistics of getting to Livingston and having no support, that is an absolute no-no. I was really quite horrified to hear that.

David Fraser: That is one of the areas in which we have managed to do something, as we are very sympathetic to that view. I do not have exact figures, but, since we looked into that issue and decided that we should not transfer those types of cases, I do not think that that has happened. I can come back to the committee to confirm that, but I do not think that, since then, we have put people in a situation in which they think that they are going to one location and they then find out that they are going to another. We recognise the

impact that that has, and it is one area in which we have been able to make a positive impact.

Pauline McNeill: I really welcome that. I would go so far as to say that, if that practice had continued in such cases, someone—I do not know who—should have been able to intervene and say no. It is so fundamentally oppressive to the victim for that to happen; I was quite shocked by it.

I want to ask about the specialist courts—this question may be for Danielle McLaughlin. Maybe I have not understood this correctly. Is there any reason why the specialist courts cannot be part of the High Court, or is that the intention? It is confusing. It has been suggested that the sentencing power should be 10 years. To my mind, that means that rape cases cannot be brought to a specialist court, because they must go to the High Court—unless you are going to tell me that I am wrong about that.

I support the idea, but I have some issues with a specialist court—I have to be honest about that. We have been here before, when there was a suggestion of grading crimes of rape. Obviously there would be concerns about any suggestion of downgrading if it looked as though such a case was going to a different court. I appreciate that I may not have understood exactly what is intended, but that is my line of questioning.

Danielle McLaughlin: I come back to the point about downgrading. If anything, it is the converse. The review group, in particular, has identified—and, inevitably, other research and studies have shown—that, in sexual offence and rape cases, victims and complainers have to be treated differently. We need something different, which is why the review looked at what unique solutions could be found to address that.

The High Court is our most senior court, but the view was taken that we need to develop on that and look at what is needed to address instances of specific crimes. The specialist court is seen as an extension of the High Court but with its own unique systems, practices and procedures in place to identify and address the concerns that are associated with, or that can be experienced by, complainers and all those who are involved in such cases.

Pauline McNeill: Are you saying that the specialist court is the High Court or not? We need to be clear about that. Either it is or it is not. If it is not, that means that it is not the senior court. You can disagree with me. I am saying that you cannot put rape cases in a specialist court—well, perhaps that is not the intention. There is obviously a difference between sexual offence cases, which are non-rape cases, and rape cases.

David Fraser: It is a brand new court. It is neither the High Court nor a solemn sheriff-and-jury court. It is a brand new court that is designed specifically to look at all sexual offence cases.

Pauline McNeill: Including rape?

David Fraser: Including rape.

Pauline McNeill: How is that lawful? I studied law, and I was taught clearly that rape cases are a plea to the Crown and must be heard in the High Court. Is that just a convention?

David Fraser: No—

Pauline McNeill: Do you see where I am coming from?

David Fraser: You are quite right. The High Court currently has privative jurisdiction in rape, murder, piracy and treason cases, if I have got that right. All such cases have to go to the High Court.

Legislation would be required to create this court, because of the sentencing powers. At the moment, the sentencing powers in sheriff-and-jury courts and in the High Court are very different. The intention is to create a brand new court that would have national jurisdiction, and dimensions such as sentencing and privative jurisdiction, which you mentioned, would have to be dealt with.

The only exception, which we also considered, would be a sexual offending case that involved murder, which would clearly have to go to the High Court. However, the idea behind the creation of this court is to have a specialist environment with specially trained people who have an understanding of and are able to get the best result, if you like, from these particular crimes.

I hope that I have made things clear. The court will be neither the High Court nor a sheriff-and-jury court.

Pauline McNeill: You have made it clear, and your comments were really helpful. I now understand the motivation behind it. Earlier, it sounded as though you were just going to implement the review, but you have made it clear that legislation would be required. That makes complete sense.

The Convener: On the point that the domestic abuse court would be neither the High Court nor a sheriff court, you talked about sentencing powers. In the High Court, sentencing powers are unlimited, but what sort of sentencing approach would fit with a specialist domestic abuse court?

David Fraser: I should make it clear that this is a court for dealing with sexual offending, which is the most serious crime at the solemn level. We looked at the sentences given in the High Court for such crimes, and I think that 98 per cent of cases fell within the 10-year period, which is why that particular proposal has been made on sentencing.

The court would very much stand on its own as an entity with its own sentencing powers, and it would deal with the more serious sexual offending cases that would go through our solemn procedure rather than the domestic abuse cases that would normally go through our summary courts.

We have been talking about the court in terms of serious sexual offending, but, if we are successful in moving forward with this, there is also, as we have discussed in the group, an issue with what we will do with the lower-level—if I can call it that—sexual offending that goes through our summary courts. We would have to take small steps in this regard, but there is the potential to have, at some point in the future, a more specialist approach with trauma-informed training in relation to the domestic abuse cases that go through our summary courts. However, that is looking to the future.

The Convener: Katy Clark has some questions on specialist courts.

Katy Clark (West Scotland) (Lab): I think that it would be helpful to ask them. Perhaps I can deal with sexual offences before I move on to the slightly different issue of domestic abuse cases.

Are you suggesting that cases in which a sentence of 10 years or more would be suitable—there are many appalling sexual crimes, such as historic child abuse, rape and so on, for which the sentence would be greater than that—would still be dealt with by the High Court?

David Fraser: The decision on where cases are prosecuted sits with the Crown Office, which is the master of the instance in that respect. The finer details of exactly what would go through the new specialist sexual offending court or the High Court would, to be perfectly honest, still have to be bottomed out through collaboration and discussion with our justice partners. As with all courts, if a case came before it in which the sentencing judge felt that their powers were limited, they would have the power to remit it to a court that had those sentencing powers. However, as I have said, the finer details about the interaction and so on still have to be worked out.

Katy Clark: I apologise. I appreciate that the proposals do not necessarily come from you. Perhaps I phrased my question wrongly. I was just trying to gather your understanding of what is proposed. Are you saying that, if the sentencing judge in a specialist court felt that the disposals that they had available to them were not sufficient, they could refer the case to another court for sentencing?

11:00

Danielle McLaughlin: That was the broad recommendation discussed in Lady Dorrian's review. Sentencing referrals are a common practice within our courts. Sheriffs understandably have limited sentencing powers, so they have the power to remit to a higher court. A similar model was recommended in the review so that, if the presiding judge in the proposed sexual offences court felt that their sentencing powers were insufficient, the case could be referred to the High Court, which would have greater statutory power to sentence.

Katy Clark: I do not particularly expect you to comment on this, but there is a concern that that might create a hierarchy. If there is a limit on sentencing, the message that is sent by conviction in a specialist court is different from that sent by conviction in the High Court.

It is the same at the other end. At the moment, the courts deal with many sexual offences, such as underage sex, that might involve a boy who is over 16 and a girl who is younger than 16. The suggestion is that some of those cases, which are difficult and sensitive for the people involved—often they are very difficult cases that involve very young people—might not go to the specialist court but might continue to be dealt with as they are at the moment. Is that your understanding?

David Fraser: Unfortunately, I cannot help you with that question. It would be speculation on my part if I were to give you my view. However, we were aware that some people might regard the proposal as a downgrading of justice. We worked hard with all the people in the review group, which includes lots of third sector organisations, and our hope is that the proposal creates a much better experience for people who come through the system.

As I said, 98 per cent of the cases that we considered would fall within the proposed court's sentencing powers. We need some discussion with Crown colleagues about where they would put the different cases, to ensure that we do not end up with cases being remitted from one court to another, when that is possible.

The fine detail of all the implications of what the proposal creates has still to be worked through with our justice partners. The focus is very much on creating a better experience for people who have to use our services.

Katy Clark: I fully understand that your role is to implement the proposal, so I am not asking you to justify anything. We are just trying to understand what you think is happening.

I will ask about domestic abuse, which is different from sexual offences. I understand that it

has been possible to pilot certain practices in domestic abuse cases without the need for legislative change and that there have been specialist domestic abuse courts. Will you outline what difference that has made to the way in which cases were dealt with before or, indeed, are dealt with now in many situations?

David Fraser: Are you talking about the virtual summary trials?

Katy Clark: I am thinking not so much about the virtual trials as about pilot specialist domestic abuse courts. We were told that those were piloted before Covid. Will you share your understanding of that approach, any information that you have about how it worked and any evaluation that you are able to provide?

David Fraser: If you will forgive me, I will dig out all that information and send it to you for your deliberation. The domestic abuse courts were created specifically to get a specialism on domestic abuse, and they took place in a number of different locations. I will communicate to you any evaluation that we have.

Katy Clark: That would be very helpful.

Danielle McLaughlin: The review group looked at the example of domestic abuse courts across Scotland. As David Fraser indicated, there have been a number of such courts throughout Scotland—the first instance that I can remember was in Glasgow. As David indicated, we can give additional information on that, and there is some summary information in the cross-justice review from the LJC in relation to those courts.

From my recollection, one of the key aspects of such courts is that there is a dedicated prosecutor. There was an independent evaluation of the domestic abuse court pilots in, I believe, 2014 or 2017—I apologise, but I cannot remember the exact date. In that evaluation, a dedicated prosecutor was seen as being one of the positive aspects of those courts. Parties were specified, which allowed engagement and discussion, and that minimised the time at trial if a trial needed to take place. That was a key aspect of the domestic abuse courts.

Katy Clark: Did those courts take place in the court buildings where such cases are normally dealt with? I presume that you did not have anywhere else and, therefore, that those cases took place in a very traditional court setting.

David Fraser: Yes, they did. At that time, we did not have the technology to offer any alternatives. It was a specialist court created within our own court estate that dealt particularly with those types of cases.

The Convener: I am aware that Fulton MacGregor has not yet come in. I will bring him in shortly, but Rona Mackay and Pauline McNeill are keen to pick up on some points.

Rona Mackay: Before we leave the subject of the specialist court, can you say whether it would include specially trained jurors?

Danielle McLaughlin: The proposal is what was set out in the review. At that juncture, there was no identification or discussion in relation to the specialism of juries.

Rona Mackay: We will go on to discuss juries, so I will leave the matter there. I simply wanted to ask that question in relation to the specialist court.

Pauline McNeill: I want to flag something up, but I am not sure to whom the question should be directed, so I do not really expect an answer.

The Bonomy reforms have extended sentencing powers to five years in the sheriff court. At the time, Lord Bonomy was clear that that should not debar serious cases from having senior counsel. However, it is now virtually impossible to get senior counsel even for a serious case, because it is not automatic, as it used to be. In contrast, my understanding is that, for cases that go to the High Court, there would automatically be counsel.

I flag to everybody that, if rights of audience are an issue for the new specialist court, it will look as though those crimes are being downgraded. Somebody has to address that question somewhere, if you see where I am coming from. There are lots of complex cases in the sheriff courts that previously, before we changed the sentencing powers, would have gone to the High Court—you can check that with the Faculty of Advocates—and I would be concerned if the rules around rights of audience were to change.

I do not expect an answer, but I wonder whether that could be flagged up to the partners in relation to the strategic review.

David Fraser: I have a recollection that rights of audience were discussed, but I do not have that information at my fingertips. All those people would have to go through the trauma-informed practices, irrespective of who they were and how they were appearing. Pauline McNeill's point is noted. Although I think that the matter was discussed, I ask her to forgive me, as I cannot recollect at the moment what the outcome of that discussion was. I will say no more than that. Nonetheless, the point is very much taken that, if a different type of person is representing you, it will be viewed in a different way, which was not the intention of the court.

The Convener: I will bring in Fulton MacGregor and then pick up on a final question before we move on.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I thank the panel and—because I am participating remotely—committee colleagues.

Many of the main issues that we heard about in private and in other evidence sessions have been covered by colleagues. The answers have been pretty robust, as well as reflective and accepting of the fact that there are difficulties within the system for witnesses and victims. I put on record my appreciation of that.

Some of the evidence that we heard—this is particularly true of evidence that we heard in private—was, for want of another word, heartbreaking. The panel will know about that from the work of Lady Dorrian. When people tell us that the system retraumatises them and when some people—not all people, but some—tell us consistently that the system itself was worse than the initial offence that was committed, that is hard for everybody to hear.

I note what has been said today, and I know that you are only part of the system, but what else can be done to make sure that victims are taken through the process in the same way—as my colleague Jamie Greene said—that an accused would be? When it comes to your part of the system, how can we make sure that the people victims have contact with are trauma informed and are seen to be—if you like—on their side?

I also want to ask a more specific question that I do not think has been asked yet. What role can the barnahus play in helping witnesses who are vulnerable? It is not just child witnesses who are vulnerable; anybody who has experienced such offences is vulnerable.

David Fraser: We are looking at the barnahus model—or, rather, I think that the Scottish Government is leading on looking at that independently, but we are very much part of what is being looked into.

To answer your question about what else we can do, from my perspective, each organisation has to wake up and see the impact that it has on individuals in what it does through the services that it provides. As I said, what I have learned through supporting Lady Dorrian in the review has been fundamental and astonishing. It has been phenomenal for me, as a senior leader in the Scottish Courts and Tribunals Service, to take a step back and look at what we do as an organisation and the effect that we have. I think that the people from every other organisation that was in that review group will feel exactly the same way from the perspective of their organisations.

If we successfully take forward and implement Lady Dorrian's review recommendations, I think that that will make an absolute and fundamental difference and have a profound effect on the experience of the people who come into our justice system.

The Convener: Would you like to come back in, Fulton?

Fulton MacGregor: I am happy with that. My colleagues who are present in the committee room today have covered a lot of ground.

The Convener: I have a question about the timescales for working through the proposed changes, in particular in relation to your work with justice partners in establishing a specialist court. Forgive me—earlier, I conflated domestic abuse courts and specialist courts when I was referring to specialist courts.

How long do you anticipate that that process might take?

David Fraser: I will start; I am sure that Danielle will correct me afterwards.

We have fundamentally gone through all the different recommendations and worked out what different workstreams will require to be taken forward. It is a project not for the SCTS alone, but for the justice system as a whole. Areas in different workstreams will need to be led by different organisations. We have done all the groundwork around what needs to happen and where we need to go forward.

However, we have not sat down and discussed timelines. Some things will require legislative change, which means that there will need to be legislative vehicles to progress them. Some things can be taken forward and will be worked on once we have our governance group established and are pushing forward. At this stage, I cannot say that in six months we will have done this, and in a year we will have done that. However, I hope that, early in the new year, we will have an opportunity to map out the road ahead.

11:15

The Convener: I have a final question on the subject of court processes. Are special measures and videolink evidence available in all High Court and sheriff court cases? If not, could consideration of that be taken into account when you are deciding whether to move a case from the High Court to a sheriff court? Does taking evidence by videolink have cost implications, and would that be an issue?

David Fraser: For a number of years, we have allowed evidence to be submitted by videolink for vulnerable accused people. That used to involve an application process, but that was then transformed into a default position, whereby the person would have a supporter to accompany

them or the ability to submit evidence via a screen in the court. We have had remote video sites for a number of years in lots of locations. Evidence can be submitted from them for the High Court and sheriff courts. Danielle can tell you about the specifications, but taking more evidence by videolink would not create additional difficulties for us. The facilities are not used to their full capacity.

Lady Dorrian was concerned with the evidence that we would capture at the initial stages. With regard to people giving evidence by videolink or in the court, if you move forward to post-implementation, people's experience in the court environment should be very diminished and very rare in that regard.

Danielle McLaughlin: The key aspect of SCTS's role here is to facilitate the process and provide the facilities that enable evidence to be submitted by videolink or on commission.

With regard to the earlier part of your question, those applications are outwith our control. Decisions in that regard are governed by legislation or, indeed, by Crown Office or defence colleagues, and, obviously, steps have been taken. There are general measures in legislation that allow special measures to take place and, via the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019, Parliament has put in place a presumption for the pre-recording of evidence given by children. If we can facilitate evidence being given in that way, subject to applications being made and appropriate resources being available—we have finite resources and further support in that regard is encouraged—we will do that.

We are dependent on working with justice partners for those applications to be made. We will do our best in that regard, but the provisions that determine the circumstances in which such requests can be made are set out in statute. I stress that we facilitate the physical aspects of the process but, with regard to discretion around applications, that is a matter for the judiciary to decide on.

The Convener: Thank you—that was helpful. We have some outstanding questions on support for victims. Jamie Greene, would you like to come in on that issue?

Jamie Greene: I have some questions that I want to ask, but they are not on support for victims.

The Convener: Does Rona Mackay have any further questions in that area?

Rona Mackay: No.

Jamie Greene: My questions will follow on nicely from yours, convener.

I think that it is fair to say that there is a spectrum of views on the subject of video links and technology. Some people would prefer an environment in which the accuser or victim gives a pre-recorded statement that is played in a court in which not everyone is present—the use of remote juries in different buildings has been trialled in that regard. On the other hand, there are people who want everyone to be in the court—the accused, the accuser, the jury, the judge, the witnesses and everyone else. Between those two views there is wide spectrum of opinion. Obviously, we are trying to modernise how we do things—the pandemic is forcing us to do that, in any case, but it is also the right thing to do.

I want to ask about the issue of pre-recorded cross-examination, which we have not discussed yet. You will be aware that trials of that approach have taken place in London and elsewhere in England—I know that Durham Crown Court is running one. Does that happen in Scotland? If not, why not? Are there any plans to run such trials here?

Danielle McLaughlin: It is possible to do that via evidence that is given on commission. That is the key aspect of Lady Dorrian's recommendation: recommendation 1 of her review says that, by default, all evidence should be pre-recorded and be given at the earliest opportunity possible. It is envisaged that the evidence would be taken by specifically trained police officers as soon as possible after the complaint is raised. That would be the principal evidence, or what we would term the evidence in chief. What we know as cross-examination would be undertaken through evidence by commission, and that is where the court process comes in. That would be done in accordance with the relevant procedures.

As I said, what you suggest already happens within our current procedure and practice in Scotland. I should say that when I say, "our current procedure", I am talking about the justice system as a whole rather than SCTS, which has the role of supporting the functions of our courts.

David Fraser: As Danielle McLaughlin said, what you are asking about is already being done. We have ground rules hearings that take place in advance in the High Court, at which the key people will go through the lines of questioning that will be put to the witness and the complainer. That is a different environment from one that involves doing that in front of a jury sitting in a court.

Jamie Greene: The specific scenario that I was thinking about is one in which a recording of the accuser being fully cross-examined by the defence lawyer is played back during the live trial, and the jury—whether it is in the building or not—watches that evidence. Does that happen at the moment?

David Fraser: The evidence that is submitted on commission is played in the court to the jury during the trial.

Jamie Greene: Are findings and learning from pilots and trials arising from initiatives such as the UK rape review, which is the underlying principle of some of the reforms to the way in which sexual assault cases are tried in England and Wales, shared between SCTS and Her Majesty's Courts and Tribunals Service or the Ministry of Justice? What conversations take place in that regard?

David Fraser: That is a difficult question. We look at what is happening in other jurisdictions. There is no formal communication or agreement about sharing information—certainly not that I am aware of at my level in the organisation, although that might happen elsewhere. However, we do well in sharing learning with our justice partners within Scotland.

I apologise for the fact that that is not a satisfactory answer. Obviously, during the pandemic, we have looked at what other jurisdictions are doing and other jurisdictions have looked at what we have done, so there is an element of learning being shared. However, there is no formal regular communication of what is being done and what can be learned, as far as I am aware.

Danielle McLaughlin: The review takes that into account. It is an independently led review, with membership from across the justice sector, which has an expansive remit that enables it to look at and review legislation and experiences in other jurisdictions. In particular, in England and Wales, the issue of cross-examination and the pre-recording of evidence is dealt with in section 28 of the Youth Justice and Criminal Evidence Act 1999.

The review group looked at and reflected on various examples and experiences elsewhere, but, as with anything, you can learn from others but you also have to take into account your own unique system. Obviously, the Scottish judicial system is unique in its own way.

Inevitably, we—by which I mean SCTS—publish on our website the findings of our own reviews. For example, when there was greater emphasis on the use of evidence by commission, two practice notes were introduced by a court, and we made publicly available the evaluations of those, figures for uptake and so on. It is an on-going internal process, but we look at, are privy to and are aware of developments in other jurisdictions.

Jamie Greene: I find it fascinating that, where the approach in question was trialled, the conviction rate for rape was twice the national average.

As my other question is about advice to juries, I will park it and let other members come in.

The Convener: We will pick up on that after questions from Rona Mackay.

Rona Mackay: I want to ask what I think is a really important question about juries. We have heard in evidence that some complainers felt that the jury did not fully understand not just the legal process, but the evidence that was given. There is also a specific question about the Moorov doctrine, which I will park for a minute.

In general, given that juries receive no training and might not have an understanding of the subject at hand, and given that there might well be unconscious bias or prejudice against certain aspects of a case—for example, the complainer might have had too much to drink or whatever—do you see it as part of your role to promote the training of juries? Would that be a good thing? I would have thought that, for the specialist court, it would be essential for juries to have some training. Do you give any instructions to juries at all? Does that fall within the court service's remit?

Danielle McLaughlin: No. That is not within SCTS's remit. We support the judiciary. Any direction or information to jurors falls within the remit of the Judicial Office.

I refer you to the recommendations that were made and the discussions that were set out in Lady Dorrian's review on the steps that could be taken to improve the experience and engagement of jurors. It was perceived that such moves would have a potential beneficial effect on the whole justice system. I believe that recommendation 4 identifies processes by which jurors' knowledge and experience can be improved; indeed, an element of that recommendation is about addressing rape myths by providing information and a video to jurors. However, that falls outwith the remit of SCTS and the Judicial Office, and justice partners will have to discuss the issue collaboratively and probably with guidance.

No doubt the context will be discussed by the governance group that the Cabinet Secretary for Justice and Veterans is commissioning. Indeed, the question "What is a rape myth?" itself will have to be discussed. Legislation is in place that supports the judiciary in advising jurors of specific situations that should be disregarded in evidence, but I do not want to go into the minutiae of that, given my remit.

In short, provisions are in place, and there are recommendations in the Dorrian review that the justice system as a whole will need to consider.

Rona Mackay: I will leave the Moorov doctrine for colleagues to ask about, but—I am sorry for this diversion—I would like to ask about support

for victims and witnesses. I presume that this does not happen, but do you produce any guidance for victims and witnesses who are going into the judicial system for the first time that sets out what they can expect and so on? Has that ever been produced? Would that not be sensible? Because the victim is the Crown, they do not get any independent legal advice. I am not expecting you to give them legal advice, but is there step-by-step guidance on what they can expect when they come to court, who will say what, and what the process is?

11:30

Danielle McLaughlin: Justice partners produce the standards of service collaboratively. They set out the various stages and aspects of the process, with each justice partner identifying what it sees as its primary responsibility. As far as SCTS is concerned, we support Victim Support Scotland with regard to consideration of victim familiarisation requests, which give people the ability to visit our courts and have a look round the evidence suite in which they will give evidence.

Going back to the standards of service, I note that there are agreements with justice partners that tie in with the victims code, which is published by the Scottish Government and cross-references various documents. Such documents are in place, and various organisations have the responsibility of assisting with the process.

Rona Mackay: Is that happening at the moment? Is that information being given to witnesses and victims?

Danielle McLaughlin: I refer you to the latest updates to the standards of service, but my understanding is that, bearing Covid in mind, partners are working to the best of their ability. Inevitably—I think that the committee has received evidence on this—all justice partners will be aware that there are always opportunities for reflection and development.

David Fraser: We have documentation on what people should expect when they come to court, and that is sent out in our juror's pack. We also work closely with Victim Support Scotland, which takes people through what to expect in the process. Its staff have recently gone round a number of our courts to capture images so that they can share with people what the places look like without their having to be there physically.

We have our own publications that set out what people can expect when they come to court, and there are other streams of different work. However, I accept that, as Lady Dorrian's review suggested, the information is not joined up and it does not fill every gap. There is further work to be done holistically across the system, and the issue must be looked at from the individual user's perspective with regard to what they actually need. That is what we provide. In short, we have that sort of information, but there is a lot of room for improvement.

The Convener: I will bring in Jamie Greene, to be followed by Collette Stevenson.

Jamie Greene: You will be relieved to learn that I am not going to ask you to comment on the Moorov principle. Those matters are for other judicial partners, as you have said. However, it is clear that there are two sticky areas in the Scottish system—first, the use of three verdicts and the issue of corroboration, and secondly the complexity of navigating things such as the Moorov principle. Our initial questions were about whether jurors really understand the intricacies of all of that and the consequences of any decisions that they might make, which is an issue that arose as a result of evidence with regard to a case where that aspect was not clear to the jury.

With regard to the comments about responsibilities, I presume that the judge or sheriff has a duty to counsel and advise jurors from the day that the jury is picked. Danielle McLaughlin mentioned the Judicial Office, by which I presume she means the one at St Andrew's house—in other words, in the Scottish Government. The ultimate responsibility therefore lies with the cabinet secretary for justice, not the Lord Advocate or the Crown. Who would have overarching responsibility for making any reforms?

David Fraser: I had been working in the organisation for quite a time before I understood exactly what Moorov means.

It is not down to SCTS to interact with the jury, other than to look after their domestic needs. Once the jurors are in our environment and have been empanelled, it is the judge or sheriff who will communicate and advise them of the process, of what is happening and of their role. That sits with the members of the judiciary.

As Danielle McLaughlin mentioned earlier, we recognised in the review that there was a need to address myths and preconceptions. People come with different lived experiences and they will view things and weigh things up according to their own perspectives. There are areas of pre-instruction where there is a recommendation in plain language to jury members, but such questions are perhaps for members of the judiciary or those who interact there.

Jamie Greene: It is clear to us from speaking to people that, for many victims of such crimes, the current system is not necessarily fit for purpose. That is the premise of our discussion. I do not think that these are isolated cases. I have spoken to jury members who have been told different

things by judges, and there is clearly an issue. For example, there is huge confusion about what the not proven verdict means and what happens as a result of it. That sparks the question about Moorov and different decision makers in different bits of a case, for example. There is clearly work to be done there, but we can take that up with the cabinet secretary and the Lord Advocate, so I will not press the matter any further now.

Collette Stevenson: I have an observation regarding support for victims and witnesses. Sometimes I go to the SCTS website and I look at various appeals and the criminal cases that are coming up, and I also look at the Judiciary of Scotland website. I came across a video about the process from start to finish for somebody who reports a sexual abuse case. It went through dealing with a sexual offences liaison officer and how the procurator fiscal deals with stuff, even from the medical perspective when the person is swabbed. It was really good. I always think that visual stuff such as that sends a strong, clear message about what to expect.

Would you consider putting that on your website to inform and help people and address the expectation gap that clearly exists, to judge from the evidence that we have taken from various people and the survivors that we have spoken to?

David Fraser: Forgive me—I am trying to recall the video that you are talking about.

Collette Stevenson: I was just trying to find it. It is on either the Rape Crisis Scotland site or the Police Scotland site. It is really good on what to expect and what not to expect.

David Fraser: That is one of the fundamental points regarding the poor communication that victims get at the moment. I think that I know the video that you are talking about. It provides an overview of the whole process rather than saying that the Crown Office will do this and the courts will do that.

Collette Stevenson: Yes—it is very joined up.

David Fraser: That is ultimately what we are aiming to get to. Having taken feedback from people and looked at things from their perspective, it is clear that that is what we need. We also need to go beyond that, however, and have a single point of contact. We would certainly welcome that being placed on our website, if that would help. That would not be a difficulty for us.

Danielle McLaughlin: The key is for justice partners to work together. A recommendation came through from the evidence that was given to the Lord Justice Clerk's review group—and the importance of this has also come through in the evidence that the committee has heard—that we should focus on how we can improve the communication and on the best means of communicating, whether that is via videos, text or fact sheets. That will involve a collaborative process where we all work together to get the best messages. That is the key recommendation that came through from the report. People are working together and doing their best, but how can we do things consistently, in a concise way and by the best possible means?

Collette Stevenson: Absolutely. That ties in with equality, diversity and meeting everyone's needs. The video will be more accessible if it is on each of the websites that we have mentioned, and if it is subtitled. I think that I saw it on the Rape Crisis Scotland website.

David Fraser: I will have a word with Sandy Brindley and try to identify it. That is helpful—thank you.

The Convener: Diane Barr, one of our clerks, has helpfully checked and the video appears to be on the Rape Crisis Scotland website.

I am watching the clock. I will move towards closing this evidence session with a couple of final questions, the first of which is about the follow-up process for survivors in the aftermath of a case or trial. During our evidence sessions, a survivor spoke about the difficulties that she experienced in accessing court reports and documents that she felt might have been a helpful part of her healing process. There was a cost involved in sourcing the documents. Would that be the case and, if so, why? Is there an opportunity to ensure that materials are accessible, given the positive role that access to them might play?

Danielle McLaughlin: The general position is that the circumstances in which that type of information can be disclosed are set down in statute. I believe that that is governed by section 94 of the Criminal Procedure (Scotland) Act 1995, but forgive me if I am wrong about that. I believe that it sets out the confines and the circumstances in which that information can be disclosed, along with the associated costs. It is therefore not necessarily within SCTS's remit to progress or consider that in any great detail.

David Fraser: We got a request and we looked into it. In what we do as an organisation, we are bound to comply with the statute and legislation that governs that.

The Convener: That is unfortunate, but it is helpful to know that.

Bringing things back to where we started, I note that many of the issues that were raised in Lady Dorrian's review are not new. Do you have any final comments on what needs to be done to resolve the issues as quickly as possible?

David Fraser: We have it in our gift to move a number of things forward now. We have general support from our justice partners, although some things will require a legislative fix. The first opportunity that we will have to get together formally will be before the end of this year, and that will be the starting point for pushing forward. I anticipate that we will identify workstreams and leads, and that we will set down a timescale for which things can be done in which areas. That will more or less give us our plan or route map. We have done our homework, and once we are all together as a collective justice community with everyone moving forward, that will be key.

Danielle McLaughlin: I reiterate David Fraser's comments. The Lord Justice Clerk's review gives the justice sector, the Scottish Government and third sector parties a real opportunity to continue to transform our justice system for complainers, witnesses and the accused, and to build confidence in the justice system in general. Although each individual partner may be able to take steps now, the key thing is for us to work together and identify a collaborative approach. Sometimes, taking steps on your own can do more damage than good. That is why we welcome the cabinet secretary's instigation of the governance group, whereby we can all get together and identify which key workstreams and areas need to be developed, what legislative support there is, if any, and what public consultation will be required for some aspects, given the inevitable interest that the reforms and changes could bring. There will be interested parties. That is all that I would add.

The Convener: On that note, I bring this part of the meeting to a close. Thank you both very much for your participation today.

Next week, we will be joined by a senior representative of Police Scotland and the Cabinet Secretary for Justice and Veterans.

11:45

Meeting continued in private until 12:40.

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