OFFICIAL REPORT
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Criminal Justice Committee

Wednesday 11 January 2023

Session 6

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Pàrlamaid na h-Alba

Wednesday 11 January 2023

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CRIMINAL JUSTICE COMMITTEE
1st Meeting 2023, 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:

Emma Bryson (Speak Out Survivors)
Dr Hannah Graham (University of Stirling)
Professor Lesley McAra (University of Edinburgh)
Professor Fergus McNeill (University of Glasgow)
Kate Wallace (Victim Support Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 11 January 2023

[The Convener opened the meeting at 10:01]

Bail and Release from Custody (Scotland) Bill: Stage 1

The Convener (Audrey Nicoll): A very good morning, and welcome to the first meeting in 2023 of the Criminal Justice Committee. I wish everyone a very happy new year. Apologies from Pauline McNeill have been noted.

Our first item of business is an oral evidence session on the Bail and Release from Custody (Scotland) Bill. Consideration of the bill will be our main item of business over the next few weeks.

Two panels are joining us today. Our first witnesses are Kate Wallace from Victim Support Scotland and Emma Bryson from Speak Out Survivors. I welcome both of you.

I refer members to papers 1 and 2. I intend to allow about 60 minutes for this session. As ever, I would appreciate fairly succinct questions and responses. As time is quite tight, we will move straight to questions.

I will open with a general question for Kate Wallace. We thank you for the submission that Victim Support Scotland has provided to us. In that submission, Victim Support Scotland set out its general concerns about the proposed provisions relating to the use of bail and remand. Will you update members on the details of your concerns, particularly about the new test? I will also bring in Emma Bryson on that.

Kate Wallace (Victim Support Scotland): In summary, we recognise that the proportion of people who are on remand has increased. However, we think that it is really important to remember what the purpose of remand is. It is really important for the safety of the public and of individual victims and complainers. We are concerned that robust risk assessment has to take place in order to ensure that the safety of victims, complainers and the public remains paramount.

In essence, that is what we have discussed. It is about ensuring that there is robust risk assessment, that adequate resources are in place, that the right information is shared with the right organisations, that risk assessments are carried out by trained professionals and, ultimately, that there are the right resources to supervise, monitor and support individuals in the community. That summarises things.

The Convener: Thanks very much.

I will ask a follow-up question, but will Emma Bryson pick up that question first?

Emma Bryson (Speak Out Survivors): I am a representative of a very small organisation of three people who work in a voluntary capacity, so we do not have the resources to carry out large amounts of research. However, we bring to the table the lived experience and, we believe, the best interests of victims and survivors—specifically, victims and survivors of sexual and domestic offences, but, more broadly, anyone who has been a victim of crime.

I echo much of what Kate Wallace has just said. We know anecdotally from many of the people whom we support and represent that, when it comes to bail conditions, the concerns and experiences of victims are often not adequately considered. We have concerns about the frequency with which bail conditions are breached and the on-going impact that that has on victims of offences.

The Convener: Thanks very much. Before I hand over to other members, I will pick up on the risk assessment process that Kate Wallace outlined and which Victim Support Scotland wants to see as part of the consideration process. The proposal in the bill is that criminal justice social work would have a big role in informing bail decisions.

I am interested in your views on who else or which other organisations it would be appropriate to have participate in the process, particularly given the concerns that you have outlined for victims and the importance of their voices being heard in that decision-making process.

Kate Wallace: Our concerns are about ensuring that that risk assessment considers the safety of the public, victims and complainers as paramount, and to do that, access is needed to the right information from the right organisations. That includes organisations that currently support victims. That does not routinely happen, as I am sure you are aware. That is really important, and risk assessments should be carried out by trained individuals.

Yes, the timescales for that will be challenging, but given the profile of people who are on remand, the proportionate increase in remand is not driven evenly across all crime types. It is very much driven by people who are on remand accused of sexual and violent offences, as you know. Figures show that a significant number of people are convicted of crimes that were committed while they were on bail. For example, in one year, 11

people on bail were convicted of murder or culpable homicide and more than 70 people on bail were convicted of rape, sexual assault or other sexual crimes. Therefore, the risk assessment process is really important, and it is important to include the experiences and insights of victims.

The Convener: Emma Bryson, would you like to come in on that?

Emma Bryson: Yes. With regard to risk assessments, the experiences of victims are often not adequately considered, as I said previously. Nobody is better placed to understand the specific risk posed by a particular offender than the person who was the victim of their offending. That is especially true of domestic abuse, which can be difficult to prosecute due to the nature of the offence—offences that happen behind closed doors—and the same is true of sexual offences.

We know victims who have been affected by domestic and sexual offences that were committed when the offender was on bail. We hear over and over again that, when bail conditions are breached, that is not necessarily acted on. There seems to be a gulf between the theory of what constitutes a breach of bail and how that is supposed to be responded to and how that is implemented in practice. That can be really disheartening for victims and can cause many of them to disengage with the process—to withdraw complaints—because they feel that they are being continually retraumatised by a process that has not fully understood not just the harm that they might have experienced but the on-going psychological impact that it has on them. We would like that to be taken account of.

We welcome the fact that the committee recognises the psychological element, but we would like further specific focus on how we respond to that and implement safeguards in that regard.

The Convener: Thanks very much. There is a lot in what you have said and we can ask lots of follow-up questions, but I will bring in other members now, starting with Russell Findlay.

Russell Findlay (West Scotland) (Con): Good morning. The intent of the bill is to reduce the number of people on remand and therefore to increase the number of people who are granted bail. We already know that one in eight crimes are committed by people who are on bail.

In your submission, you say:

"The unfortunate reality of more individuals being released on bail that would otherwise be remanded will mean an increase of individuals who commit crime whilst on bail."

We also hear later in the committee's paper from some academics who address the same point in their written submission. They say that bail reform

"need not be causally associated with increases in crime."

Can you explain that a bit more? There seems to be a contradiction there. On the one hand, victims organisations say that more bail equals more crime, and the data that exists suggests that that is the case, but, on the other hand, some academic research or opinion appears to suggest otherwise.

Kate Wallace: At the moment, as you have said, a significant number of people are convicted of other offences while still on bail. Without any change to what is in place around bail—supervision, monitoring, management and support—yes, logic tells us that more people will be put at risk, there will be more victims of crime and more lives will be ruined. However, there is an opportunity to change the supervision, management and monitoring around bail. That would require a significant amount of resource and a significant number of different approaches that, it appears to me, we do not have in Scotland.

The scale of people who are convicted of offences while on bail tells us that what is happening with bail is not working. That is the difference between the two statements that you mention. With a different approach to bail supervision, services for people with complex needs and closer management, monitoring and supervision, that perhaps need not be inevitable. However, those services do not currently exist, and resources across the country in all areas are under pressure.

Russell Findlay: The existing crimes that occur while people are on bail need not happen in a system that is fully reformed across the board. Is that a fair assessment?

Kate Wallace: That would potentially be a fair assessment if there was robust risk assessment based on ensuring that bail is considered only when we can be certain that people will not be put at risk and there is certainty that there is adequate management and supervision in the community.

Russell Findlay: I would like to pick up on another issue, convener. Is that okay? Do we have time?

The Convener: What does it relate to?

Russell Findlay: It is about electronic monitoring as time served.

The Convener: Okay.

Russell Findlay: On page 7 of the paper, you say:

"Time spent on electronic monitoring should be no substitute for time that should have been spent in prison as part of a sentence."

I turn to the submission from the academics. They suggest that, at the time of sentencing, it would be reasonable to treat two days spent on electronic monitoring as the equivalent of one day in custody. Have you come across that formula or suggestion, and do you agree with it?

Kate Wallace: No, we do not agree with that. They are two completely different things. A custodial sentence is completely different from electronic monitoring at home, so we continue to disagree with others on that.

Russell Findlay: If an individual is bailed but subject to electronic monitoring, when it comes to sentencing, should any consideration be given to the restrictions that they were under prior to that?

Kate Wallace: Consideration should be given to that, but time spent in custody should not be reduced because of the time spent under electronic monitoring.

Russell Findlay: Is that partly ideological and partly because there are offenders who play the system and prolong proceedings? We know that they churn cases. Is that a softer way of doing time?

Kate Wallace: They are two completely different things and should therefore be treated as such. I will leave it at that.

Russell Findlay: Thank you.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, Kate and Emma. Earlier, you talked about the removal of restrictions on bail in solemn cases. From your submission, I know that you both oppose repeal of section 23D of the Criminal Procedure (Scotland) Act 1995, which would mean that the same test would apply for all offences; you talked in that respect about sexual violence and domestic abuse. Could you expand on that a wee bit and tell us about your opposition, what your fears are and whether you would like the exceptions to remain rather than being repealed?

I come to Emma Bryson first.

10:15

Emma Bryson: Speak Out Survivors has concerns about repealing section 23D. Our understanding is that the provision was implemented specifically to address crimes that involve violence against women and girls, and we would want any legislation that replaces it to offer specific protection in respect of those types of offences.

I go back to the point that we fully recognise that domestic and sexual offences are the hardest to prosecute and the hardest in terms of victim welfare, so we feel that it is all the more important that any legislation is robust enough to recognise the very specific risks and harms that such victims face.

Rona Mackay: I turn to Kate Wallace. From the point of view of victims, would it cause some alarm if section 23D was repealed and victims felt that they were being treated just the same as victims of every other offence, despite the almost unique nature of domestic abuse and sexual offences?

Kate Wallace: Exactly, yes, and we agree that those exemptions should remain.

Rona Mackay: Do you want any changes to be made to the current exemptions? Should those exceptions be strengthened, or are you happy that they are in place?

Kate Wallace: We would need to come back to you on that; I do not think that we have considered that aspect.

Rona Mackay: Okay—that is fine.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning to Emma and Kate—it is good to see you both.

Kate, you mentioned the system that would need to be in place around bail if the legislation was going to work. That is probably the crux of the matter. If we are serious about reducing the numbers of those on remand, we do not—as you have both articulated—want to put people more at risk because there are no robust safeguards in place.

Can you tell us what that system might look like with regard to people who are on bail? Which bits of the bill are good in that regard? Do we need to go a bit further?

Kate Wallace: I am here representing Victim Support Scotland, which supports victims of crime. From that perspective, what needs to happen, which is currently not happening, is better communication with victims about bail conditions. Victims need to be satisfied that there is a robust system for managing an individual in the community, and that is not currently their experience.

That would involve gathering information from victims to inform risk assessments, updating victims on bail conditions and letting them know and understand what that means.

With regard to the part of the bill that relates to judges and sheriffs having to explain why remand is used, we think that the reasons for bail should also be explained. That would be helpful for victims and others, so consideration should be

given to ensuring that those reasons are given. Any changes should also be explained, so that there is a clear understanding of what happens when there are breaches and where the information goes.

At present, the experience of victims is that the provision of information is extremely patchy. Victims often feel as though they have to police the bail conditions themselves, and they often do not know what those are. They are often not given an opportunity to contest bail conditions, even in situations where those conditions would make them or their children unsafe.

I can answer that question from the perspective of victims; other people will be able to answer it better with regard to the mechanisms that should be in place around the accused person who would potentially otherwise be on remand. For us, it would be about transparency, support being given to victims, gathering and sharing information and having a robust set of measures that means that victims and the public are kept safe.

Fulton MacGregor: I will come to you in a wee minute, Emma. Kate, I wonder how we might achieve that. If we go back to the provisions in the bill around input from justice social work—which I know you will be aware of, and it is a big part of the bill—is there anything in there that would allow justice social workers at that stage to bring in agencies such as yours or Scottish Women's Aid or other organisations that work with victims? Is that the way in? I do not think that that could be made a statutory duty, but could it be developed in practice? Is that how you think what you have just outlined could be achieved?

Kate Wallace: Yes, we agree with that—gathering information from victims, complainers and victims organisations and feeding it through criminal justice social work in the way it happens in other countries should be done more routinely in Scotland. Do not get me wrong—it is not without its challenges, but that piece of the puzzle is missing at the moment, and it would be helpful to have it. We have examples of bail conditions that have not had due regard to, for example, where victims reside, contact arrangements with children and other issues, which puts people at risk. Therefore, that would certainly help to alleviate some of those issues.

Emma Bryson: I echo much of what Kate Wallace just said. We hear time and again from victims that, if the offender is on bail, they are not informed, particularly in a timely fashion, when the offender is being released. Quite often, the information is not given to them until after the fact, so they do not have the opportunity to prepare for it or to put their own safeguarding measures in place if they feel at risk. Repeatedly, we hear that victims feel that their specific concerns about specific offenders are not taken into consideration. I reiterate the point that nobody is better placed to understand the risk that they face than the victim, who has already been through that process. Victims' experiences are not a homogeneous entity; they do not fall neatly into very closed categories. In her written submission, Kate made reference to taking a holistic approach, and we whole-heartedly agree with that.

When it comes to victims' experiences, there is sometimes a gap between the theory of what should happen when bail conditions are breached and what actually happens. In the case of a person we supported, when the bail conditions were breached by the offender approaching the woman in a public place, she was advised by the police that she ought to stay out of his way. That is not how bail conditions are supposed to work.

Fulton MacGregor: Similar to the question that I asked Kate Wallace, and to dig a bit more, do you think that part of the provisions around the powers for justice social work should be that, if there is a specific victim or victims—which might not always be the case—the assessment must include a plan for how that person or persons can be kept safe? This is obviously an area that you deal with.

Emma Bryson: I think so. Understandably, you cannot tailor a plan for every individual victim, but there is an idea that risk factors are often treated as a box-ticking exercise and that regard is not always had to specific risk factors. I keep coming back to domestic and sexual offences, because those are the most difficult to deal with, and they are also the cases in which victims suffer the most harm when bail is breached or when they are not informed in a timely fashion. The psychological harm that victims suffer, which is on-going and long term, really cannot be quantified.

Katy Clark (West Scotland) (Lab): The witnesses will be aware that the bill will bring in a new concept of public safety, which is not something that the criminal courts have dealt with before. There is concern about a lack of clarity about the concept and the potential for lots of court appeals and arguments about what it means. It might be helpful if it was better defined in the bill. Kate, is the introduction of the concept helpful? Do you have thoughts on how it might be better defined?

Kate Wallace: It is helpful. It is also helpful that the bill mentions not only public safety but the safety of individual complainers and victims. Often, people think about public safety in general terms, rather than thinking about the safety of individual complainers. In the context of crimes such as stalking, it is useful to include both concepts.

It might be beneficial to have a clearer definition. It comes back to the point about the need for a robust risk assessment. I think that, in a couple of weeks' time, this committee will take evidence from the Risk Management Authority, which I am sure will have a view. It is important to be clear about types of harm, as Emma Bryson said. It is helpful that the bill defines harm as

"physical or psychological harm".

That is our view. It is about remembering the purpose of remand and not losing sight of that. It seems to us that one of the main purposes of the bill is that it will potentially strengthen the approach to public, complainer and victim safety.

Katy Clark: Yes, with a greater emphasis on complainers.

When might it be appropriate to remand a person who is accused of a non-violent offence? You spoke about sexual offences and violent offences; are there other situations in which it might be appropriate to remand someone?

Kate Wallace: Others will be better placed to answer that. Our view is that remand has the clear purpose of protecting the public, victims and complainers; we think that it is helpful to keep that primary purpose in mind. I guess that it depends on how different types of crime are defined. Other people might have arguments about issues such as repeat offending and all the rest of it.

Another thing to remember—all committee members will know this—is that some crimes and index offences, particularly in cases of domestic abuse, often shield types of offending behaviour that potentially put individuals at risk. For example, breach of the peace is a massive, catch-all category, which covers a range of offending behaviour. It is worth bearing that in mind. Hate crime, too, is not necessarily defined as a crime of violence, but it might give rise to such concerns. There is probably too much to go into in that regard.

Katy Clark: Emma, have you had the opportunity to consider the concept of public safety? Do you have thoughts on how it might be better defined? Are you concerned that bringing in a new concept, with a lack of certainty about what the law is, might make things more difficult for victims?

Emma Bryson: We broadly welcome the introduction of the public safety element, because from the general public's point of view, that is the purpose of remand, which absolutely needs to be stated.

There is a difference between the concept of public safety, which is about keeping the general public safe from various forms of harm, and the safety of individual victims and complainers. That is a very different kettle of fish.

10:30

In relation to the difference between violent and non-violent crimes, I think that most people would agree that violent crimes are recognisably more serious than non-violent crimes. However, with domestic abuse offences, coercive control can be added to the mix, and that is such an insidious offence, which can be very difficult to define and identify. When victims report coercive control to the police or to another organisation, the things that they are afraid of—the actions of the offender that have placed them in a state of fear and alarm—can seem completely inconsequential to somebody outside of that relationship.

That is why I come back to the point that nobody is better placed to understand the risks that those people face than people who have already faced those risks. For many people, non-violent crimes are automatically considered to be less serious but, in many cases, they can be more serious because of the psychological harm that is inflicted, which is not as easily remedied as a broken bone or other physical injuries would be.

Katy Clark: Thank you.

Collette Stevenson (East Kilbride) (SNP): I want to ask about release planning. I thank Kate Wallace and Emma Bryson for their submission. The aim of the bill is to support the successful reintegration of prisoners back into the community. That includes release planning and throughcare. Are the bill's proposals helpful? Would you like any other changes to be made to reflect the interests of victims? In your experience, have you seen any good practice in that regard?

Kate Wallace: The committee has heard me talk about release planning before. In relation to emergency early release, I have given examples of when there was no information sharing whatsoever with victim support organisations and victims to help them to prepare for an offender being released into the community. That had a catastrophic impact across a wide range of organisations and individuals.

Although we welcome what the bill, as it is drafted, is attempting to do, that is contingent on there being a complete review of the victim notification scheme and changes being implemented at pace. We want to work through in a bit more detail some of the intricacies relating to how information could and would be shared and how the system would work. We welcome the attempt to consider those issues through the bill, but there is further work to be done to ensure that the system works in practice in the way that is intended through the drafting.

For example, the bill says that information can be shared with victim support organisations regardless of whether a victim has agreed to that. There might well be a very good reason for that, but there could be unintended consequences of sharing information with organisations when victims have not consented to that. Our experience of criminal justice agencies sharing information with third sector organisations is not good, so we have concerns that, in practice, there would be quite a few more barriers than would be anticipated, particularly in relation to organisations such as Police Scotland. We would have to work through all those issues to make that a reality.

There are some examples of good practice. In relation to domestic abuse, the Caledonian system involves information being gathered from victims, who are an integral part of the programme. I can think of another domestic abuse organisation that has information shared with it prior to somebody being released on bail. Our issue is that those are probably the only two examples that I can give. The types of approaches that we would expect are in no way widespread across the whole country.

I absolutely get the point about making sure that support and services are in place for people who are released from custody, and that that happens quickly and those services are ready, but, from my perspective, that has to be mirrored for victims, too. We have a justice strategy that talks about trauma-informed and person-centred approaches. To me, that means that we should prepare victims earlier for people being released. We should have support in place for victims prior to, at the point of and after release, and there should be clear mechanisms in place for sharing information, for example, when things go wrong.

Ultimately, if those things are working in the way that I have laid out, ideally, we would end up with fewer people being victims on an on-going basis, and fewer people being traumatised than is currently the case.

Collette Stevenson: Emma, do you have any comments on that?

Emma Bryson: We do not have a great deal of knowledge or experience of that side of things, but I would like to make a few comments. Again, they are about victims being informed. I completely agree with Kate Wallace that information sharing is critical. When offenders are due to be released, the more warning victims have, the better prepared they can be. From speaking to victims, we know that they often feel that, throughout the criminal justice process, they have no agency—decisions are made on their behalf and actions are taken that they often feel do not have their rights and interests at heart. When prisoners are released, it is important that the people who have been affected by their offending in the first place are placed front and centre of the process, are kept informed and up-to-date and have the support that they need.

The phrase “trauma-informed practice” is freely bandied around. We would like it to be applied a bit more specifically to individual traumas. It is very much a catch-all phrase, but trauma takes many different forms. Everyone who experiences trauma experiences it uniquely, and the consequences that it has for them are also unique. Therefore, a one-size-fits-all approach is not always appropriate.

Collette Stevenson: On release planning and throughcare, there is a view that there will be third sector involvement, purposeful activity and activities to get people to reintegrate into the community. Our justice system is about the punishment and the rehabilitation aspect. You have talked about safeguarding and early informing. Having worked with victims, what assurances do you have that, when release is being planned or people are coming out of prison, a proper rehabilitation programme will be in place so that they do not reoffend?

Kate Wallace: Victims who we work with say that they are looking for a justice system that is robust and will keep them safe and ensure that what has happened to them does not happen to anyone else. However, that is not the experience at the moment. I talked about people being convicted while on bail. That tells us that there is a problem. We need to get a balance between justice and rehabilitation, so that we put in place appropriate programmes to ensure that people do not reoffend, as well as dealing with some of the root causes and putting in place fundamental services that may be needed.

Given the size of the remand population, for victims to have confidence in alternatives to remand, we would need to scale up significantly the resource, capacity, expertise and services for people with complex needs. Frankly, I do not think that we currently have those at the scale that we would need in this country.

At the moment, victims are expressing deep concern about their and others’ safety if those things are not put in place. I agree. Properly resourced rehabilitation, whether in custody or in the community, is a crucial part of that. Some of that will be about addressing specific types of offending behaviour. We have talked about that before in relation to stalking. Unpaid work without any other intervention, for example, is unlikely to make any impact on that obsessive type of behaviour for those individuals.

Collette Stevenson: Emma, do you want to comment on that?

Emma Bryson: I do not have anything to add.

The Convener: I will follow up on some of Collette Stevenson's questions and ask about communication with victims.

The witnesses might be aware that the committee had a private meeting with survivors. One thing that came through to me loud and clear from that was the mixed picture that exists in relation to contact and communication between, in particular, the courts and a victim while a case is being processed to make clear to the victim what is happening and enable them to plan their and their family's life around it.

What opportunity might the bill provide on that? We are focusing on bail, remand, throughcare and release, but a key part of that work is communication with victims. Is there an opportunity for the bill to improve the lines of communication? If so, how would you like them to be improved?

Kate Wallace: I outlined some of that earlier in relation to gathering information from victims to inform risk assessments. There is reference in the bill to stating the reasons for refusing bail. My view is that we should give reasons for granting bail as well. That would be helpful.

Some aspects of communication about release are picked up in the bill, but more work needs to be done on that. The timing of the victim notification scheme review is unfortunate. If that had happened earlier, we could have had this conversation around the recommendations from that review. A lot of what you describe falls into that category, too.

I recognise that some attempt is being made in the bill to address communication. The question is how it will work in practice. We were grateful to the committee for taking the time to discuss the matter with victims directly. I know that they were, too, because they have expressed that to me. I thank you for that.

Anything that can be done to strengthen information on bail conditions, when those conditions change and breaches of bail—the things that are not routinely shared with victims at the moment—would be enormously helpful. People are sometimes completely unaware of the risk that is around them. You will have heard the examples of victims bumping into somebody in the supermarket or somebody appearing outside their house when they were not expecting it because they did not know that things had changed or even cases in which people were pretty much told that bail would happen but it did not for whatever reason and, because they were not aware of that, they were not able to take steps accordingly on their own and their families' safety.

Strengthening such communication and information would be helpful.

10:45

The Convener: I will just ask a quick follow-up to that and then bring in Emma Bryson. Going back to the sessions that we had, I was not surprised that one of the people to whom we spoke told us that she received a lot of information from the police. In your view, who should have responsibility for communicating with a victim, particularly around, for example, the outcome of a bail appeal or a bail review and some of the other decision making that takes place? Who do you feel is best positioned to have responsibility for that role, or does it stretch across different organisations such as Victim Support and the court system?

Kate Wallace: The complexity at the moment is that there are different types of bail, as well. That does not help. What we would say about information sharing is that, if someone is already being supported by a victim support organisation, working with that organisation can be enormously helpful.

One of the challenges that people have expressed to us is around information being shared with them. First, there is a problem of information not being shared with them at all. The other problem is when information is shared in a way that is anxiety provoking and does not help them to understand. The committee will have heard some of those examples. We are still getting examples of very cold and clinical letters coming in on a Friday afternoon when there is nobody around for people to phone and ask for help.

From a trauma-informed perspective, I do not think that there is a single answer to that. There is a need for clarity around roles and responsibilities and to ask victims for their preference, where that can be done. Some people might not want to be contacted directly but would prefer a victim support organisation to be contacted first. They can then share the information in a way that might well be face to face, and there may not be a letter at all.

The other challenge with letters is that you do not know what is in it until you have opened it. I gave the example before that we do not expect people to open a letter giving them a cancer diagnosis without putting in a whole raft of support. For some people, because of the trauma that they have experienced, as Emma Bryson explained, the impact of opening a letter telling them that somebody is potentially already out of prison, which is what can happen, can be pretty catastrophic.

Therefore, making sure that there is choice and control and that people can pick what the best options are for them would be good. I would love to give you an easier and simpler answer to that

question, but I do not think that there is one in a trauma-informed justice system. The important thing is to make sure that information is shared and that that is done in a trauma-sensitive manner.

The Convener: That is helpful. Different modes of communication is something that I had not thought about, but I absolutely understand the value of that. Does Emma Bryson want to come in on any of that?

Emma Bryson: When it comes to communicating with victims and witnesses about court outcomes and bail hearings, we hear anecdotally from victims that that can be done in lots of different ways and can come from different sources. Quite often, it comes from Victim Support or directly from the police. Sometimes, the information is not imparted until after the fact, as has been referred to, which immediately puts the victim in a state of fear and alarm because the person who has presented a risk to them previously is unexpectedly free, and they have to accommodate that.

The way in which information is passed on and who it comes from can make a huge difference, so if you have a nominated support worker who is happy to receive that information and take the time to sit down with you and explain what it means, that is really helpful.

Quite often, when information is passed on to victims, it is not explained. Information might use legal terms, or it might say that bail conditions have been applied but then not explain what those bail conditions mean or how they work. There are lots of examples of good practice. When those things are done right, they can have a hugely positive effect on victims. When they are not done right or are not done in a timely fashion, or when key information is not explained or imparted or arrives in an unexpected letter, that can be very damaging.

We recognise that there is no easy, one-size-fits-all answer, but that should be considered. We would like to see a higher priority being given to how and when victims are informed and adequate explanations being given about the information that is passed on.

Kate Wallace: Can I come back in?

The Convener: Of course.

Kate Wallace: I can talk about the impact of that. I have spoken to the committee before about safeguarding and about suicide among victims and their families, which can result from ineffective communication. I have a briefing with a number of examples of times when Victim Support has had to phone the emergency services because we have received a phone call from someone who has been so traumatised by a letter that they have opened without knowing what it was that they have attempted to take their own life. Those safeguarding concerns began to increase at the beginning of the pandemic and have not gone back to pre-pandemic levels. That is a big concern.

That is the real-life impact of not taking a trauma-informed approach to communication and of not taking care with that. The briefing describes cold, clinical letters being sent by organisations that think that they are doing what they should because those letters are factually accurate but which have a massive impact on people's mental health. It is important to bring that back into the conversation, given that we have those examples.

The Convener: That is helpful; we appreciate that.

Do any other members have questions?

Jamie Greene (West Scotland) (Con): Good morning. Thank you for your written submissions.

I will focus on the bill. I appreciate that there are many wider issues that the committee could focus on, but we have limited time and I am keen to extract as much as I can from you about the bill and its content.

Part 1 of the bill deals with narrowing or restricting the parameters for granting bail. I presume that the Government would argue that our remand population is too high. Others might attest to and agree with that point and would argue that the bill, as drafted, would meet its obligation of reducing the remand population. The financial memorandum to the bill estimates that it would lead to a reduction in the remand population of around 20 per cent. On current figures, that equates to the release of around 1,800 people who would be remanded under the current system.

On the face of it, the bill therefore meets its objectives. First, do you agree philosophically, or as a matter of principle, that the remand population is too high? Secondly, do you agree that the bill meets its objective of reducing the remand population, and does it do so in a way that also meet the needs of victims?

I put that question to Kate Wallace first.

Kate Wallace: It is important to look at what is driving the remand population. It is true that that population has increased, but the profile of those who are in prison in Scotland has changed over time. I get a wee bit frustrated when people forget Scotland's presumption against short sentences. That presumption has meant that people who would otherwise have gone to prison for sentences of less than 12 months are, on the whole, not there in the numbers that we would

have seen before. That changes who is in prison. Overall prison numbers are considerably down on what they would have been in the past.

When you look at what is driving the remand increase, the proportion of people who are on remand was of course going to go up due to the removal of the category of people with short sentences. However, when you look at the numbers, you see that the increase in the remand population is being driven by the number of people who have been accused of sexual offences, which increased by more than 20 per cent in 2021-22, and the number of people who have been accused of violent offences, which went up by nearly 10 per cent. As I said at the beginning, the increase is not even across all the different crime types.

When you consider that, according to the most recent figures, around 60 per cent of people who are on remand are there for either sexual offences that they have been accused of or for violent offences, that paints a different complexion of who is in prison on remand. That is something to consider.

As I said, we are saying that remand has a purpose, and as long as we are clear about that purpose with regard to public, victim and complainer safety, remand continues to have a place. On the use of bail, as we talked about earlier, we need to make sure that people are protected and that robust risk assessments are done when considering the use of bail. There is a considerable number of offences that people have been convicted of while they were on bail for other offences. That is something that must be borne in mind. In 2019-20, 11 people were convicted of murder or culpable homicide while they were on bail; more than 70 people were convicted of rape, sexual assault or other sexual offences while they were out on bail; and 189 people were convicted of either attempted murder or serious assault while they were out on bail. That is the context in which we need to consider remand.

As I said earlier, if the public and victims are to have confidence in reducing the remand population, the alternatives have to be based on robust risk assessments and we must have in place adequate services for people with complex needs, including management, supervision and assurances that those services will be in place to keep people safe.

Jamie Greene: Before I bring Emma Bryson in, reading between the lines, I think that you are saying that it is not simply the case that too many people are being chucked into prison on remand; rather, it is the case that the profile of those who are being remanded has changed drastically—in part due to the presumption against short sentences and also due to the nature of the crimes and certain types of crimes increasing—that those people really should be on remand, and that those decisions are best made by judges under the current system. Of course, part 1 of the bill goes to great lengths to narrow the parameters within which judges can make those decisions, so I might ask you both about your concerns about that.

Equally, part 1, as far as I can see, does not do the second part of what you are asking for, which is that, if more people are let out, that must be countered by strengthening bail conditions, enforcing them and communicating with victims about them. The element of public safety is so wide in scope that it does not necessarily take into account some of the secondary types of crime and abusive behaviour that might result from someone being bailed.

I cannot see anything in the bill that addresses any of that or strengthens any victims' rights. Have you spotted anything? For all intents and purposes, we have to amend the bill where possible, so what should be going into it? I will throw that question out there and bring Emma in, but feel free to come back in, Kate.

Emma Bryson: On the use of remand, the public perception is very much that, in the interests of public safety, if someone is guilty of committing an offence, the idea that they are removed from society keeps everybody safe. In reality, it is not practical to lock up everybody who has committed an offence, and nor should we.

In the prison population, there is a prevalence of offenders who have committed sexual and violent offences—arguably, those are the most serious offences that victims experience or that the public have concerns about—and it is right that they make up the majority of the prison population.

11:00

We have concerns about that narrowing or limiting of restrictions. We certainly have concerns about repealing section 23D, because it was specifically intended to address violence against women and girls, and we would very much like to see something replace that. More generally, on what changes could be made to the bill, we would like to see something more explicit on the rights that are afforded to victims, what victims can expect with regard to information being passed on and what support is offered when someone has been the victim of really serious crimes. That would be of benefit to most of the people who we represent.

Jamie Greene: Perhaps there is a view that the judiciary are already quite well placed to make those sorts of decisions, based on the information that is available to them—the view that, "Why on earth are politicians tinkering with that independence?" Is that the case?

Emma Bryson: Yes, to a degree, the judiciary are absolutely well placed to make decisions about these things, but we would argue that that element of discretion is very important. If you start to limit even more those restrictions on bail—I think that Victim Support Scotland referred to this in its written submission—that increases the risk to victims more broadly, and that should be avoided at all costs.

Jamie Greene: I will come back to you now, Kate, because I asked quite a lot of questions.

Kate Wallace: I will flip it round: we and the victims we support have no issue with remand being used for individuals who need it—in order to keep victims or the wider public safe and secure—and with having that as a key focus. Victims' voices should be heard by criminal justice social work in a way that they are not currently and heard by decision makers prior to any decision being made on remand or bail. Victims and complainers should be consulted on bail conditions as that will have a direct impact on them.

To answer your question, the safety of victims and the wider public should be the primary consideration in decisions on remand or bail conditions, which is not exactly how the bill is worded at the moment. Also, in answer to your earlier question, robust action should be taken to protect victims of crime when bail conditions are breached and, crucially, that information must make its way back to sheriffs and judges in a way that it does not currently, because that impacts on the decisions that they are able to make.

We are well aware that we are discussing remand and bail, so we are talking about people who have been accused of crimes as opposed to convicted of them. Removal of people's liberty at that stage is not to be taken lightly. In Scotland, you can still be bailed when accused of any crime, including murder, which is worth bearing in mind.

It is important that victims of crime and complainers are kept up to date with any changes in bail terms and conditions and that they can request changes to conditions. Sometimes, default conditions are applied that are completely inappropriate for the individual circumstances. The justice system in Scotland does not afford victims the same ability to influence bail conditions that accused persons have. That could be addressed with regard to your questions, Jamie.

The last point is about what we have been discussing with regard to ensuring that information is passed to the right people and that there are clear protocols in place for that, particularly for victim support organisations. At the moment, information sharing between statutory organisations and criminal justice agencies and institutions, and third sector organisations, is not done well at all.

Jamie Greene: That is fascinating. I appreciate that time is tight, convener, but there is so much to cover and I have not even started on part 2 of the bill. Thank you for your time. The problem is that section 1 only suggests that input from criminal justice social work will inform decisions on bail. We have not even delved into the implications on resource and time and what effect those will have.

There is nothing that I can see in section 1 that says that victims have to be consulted or that their voices or views will be heard. Are the witnesses aware of Kay's law, which has been introduced in other jurisdictions? It flicks the emphasis on to consultation with the victims of the crime of which the person is accused as a primary factor in consideration of whether bail is granted and then the perpetrator's circumstances and needs are taken into account. Is that a better balance?

Kate Wallace: We certainly think that victims should be consulted and that information should be sought from them. If bail conditions are breached, information should be shared with them, too.

Emma Bryson: We hear time and again from victims that, when it comes to making statements, giving evidence and providing information that is necessary for the prosecution to go ahead, they feel that they are an active part of the criminal justice process and their experiences are being taken into account. However, once that side of things has been dealt with, they more often than not feel completely surplus to requirements. A lot of that feeling relates to information not being passed on in a timely fashion, which happens time and again. However, it is more generally about the fact that the purpose of a victim in a criminal justice process is to provide the relevant information for charges to be made or a prosecution to go ahead, but their wider wellbeing and their importance to the process are not considered.

Victims should be held at the heart of the process. Criminal justice procedures go ahead because they have given of themselves by making statements and talking about the things that have happened to them. They do that for many reasons. Victims often report offences not just because something has happened to them but because they recognise that, by reporting an offender, they are protecting other members of the public. Then, for them to be treated as if their experiences are no longer important because they have given their statements, for their concerns not to be addressed or for their safety not to be considered is really damaging.

The experiences and voices of victims ought to be at the heart of decisions, certainly on bail and remand.

Jamie Greene: That is a nice summary. The evidence that we have taken from survivors is quite horrific on the way that perpetrators are flouting and abusing the system, even while they are on bail, to further traumatise their victims. That is not being dealt with.

Convener, for the benefit of time, rather than my asking lots of questions on part 2, would it be more suitable for us to write to the witnesses? I feel like we are eliciting a lot more information than we would get in written submissions.

The Convener: Yes, I am content with that.

Jamie Greene: Thank you. I will leave it there.

The Convener: That is the back of 11 o'clock, so we will draw the evidence session to a close. I thank Kate Wallace and Emma Bryson for their contribution.

We will have a short suspension to allow the witnesses to leave.

11:08

Meeting suspended.

11:11

On resuming—

The Convener: Our next panel of witnesses consists of Dr Hannah Graham, senior lecturer in sociology, social policy and criminology in the faculty of social sciences at the University of Stirling; Professor Fergus McNeill, professor of criminology and social work at the University of Glasgow; and Professor Lesley McAra, professor of penology at Edinburgh law school, University of Edinburgh, who joins us online. I extend a warm welcome to you all.

We move straight to questions, for which we have around an hour. I will open with a general question in reference to the joint submission from Dr Graham and Professor McNeill in which you comment on the grounds for refusing bail. Your joint submission says:

> "The proposed two-part test for grounds for refusing bail, centring on public safety and risk of harm, is reasonable. It is constructive that safety considerations of complainers are acknowledged within this."

We have just heard evidence from Victim Support Scotland, which is keen to put victims' voices at the heart of the process of considering bail. In the context of the comments that you have made, do you have further comments given what we have heard this morning? Perhaps Dr Graham could start, followed by Professor McNeill, and then I will bring in Professor McAra.

Dr Hannah Graham (University of Stirling): Thank you for having us. I guess that we would contextualise our written evidence by saying that the proposal is a step in the right direction. We express the belief that a test of public safety can be developed that understands both public safety and risk of harm, including the safety of and risk to complainers.

In the first paragraphs of our submission, we also said that suggesting that the bill as put to the Parliament is "sensible and constructive" and going in the right direction of travel certainly does not negate the need for more focused scrutiny and thrashing out of the detail of what is being proposed. On the public safety test, in what we have already heard from multiple panels of witnesses last year and this morning, people are making the sensible point that we need to have a better understanding.

The written submissions from the judiciary also point out that there might need to be more clarity. It has been pointed out that appeals might need to be made if there is a lack of clarity or, potentially, that decision making could go in a direction that is risk averse—I say that with empathy. If you are not sure what could be going too far because it is not clear, you might make a decision in a way that has a counterproductive outcome in relation to the policy intent of the bill. That might not necessarily result in reductions in remand and might increase bail refusal.

Clarity is therefore precious. My personal view—Fergus NcNeill can add to this—is that more detail is needed. The public safety test question is a legal question, but it has real consequences for people with lived experience, for the accused, for victims, and for the wider community in Scotland. More detail on the parameters would therefore be helpful, because that is a potentially restrictive aspect of the bill. For the bill to achieve its policy intent, that needs to be clear for the courts to interpret.

11:15

Professor Fergus McNeill (University of Glasgow): I listened carefully to the earlier session, and a lot of that evidence is compelling. I find myself most strongly in sympathy with the comments that were made about information and communication. Those strike at the heart of the question of victims' interests in and need for procedural justice that takes them seriously, that attends to their interests and concerns, and that does not just use them as sources of evidence for the purpose of securing criminal convictions. On

all those considerations, I align myself with what was said.

However, I would add two caveats as reflections on the previous session, and more broadly having looked at the committee's deliberations to date and read the *Official Report* and some of the submissions. First, an unintentionally false dichotomy is created when we start talking about victims and offenders as though they are two separate groups of people. I am sure that Lesley McAra could speak to that from her research better than I can but, compared with the general population, the prison population has disproportionately high rates of victimisation, trauma and violence inside prisons, rather than outside. We should therefore be really careful when talking about the interests of victims, because we need to think about them in a broader sense, and I want to resist that false dichotomy.

On bail decisions and remand, it is important to remember that we are largely talking about accused persons not offenders, strictly speaking, when we consider remand prisoners. It is also worth remembering that imprisonment, whether it is for remand or, in particular, short sentences, is not a magic box that removes or eliminates risk and keeps us safe. Imprisonment is actually more likely to serve as an incubator of risk, so it stores up problems of harm that might come later.

To get to the point about public safety tests, if I read the intention behind the bill correctly, it tries to draw a distinction between the current system, which asks judges to think about the risks of reoffending and which involves a judgment of likelihood but does not take into account gravity, and a system that is more preoccupied with gravity and seriousness. Much of the evidence that was discussed in the earlier session was about serious harm in relation to gender-based violence, sexual offending and so on. The bill does not aim to reduce the use of remand in cases in which those kinds of risks exist.

It is important to be clear about the shift from likelihood to gravity. Maybe the committee could ask the cabinet secretary or senior civil servants about that later, but my understanding is that the bill would shift the judgment from being about the mere likelihood of an offence to involving consideration of the likely gravity of reoffending and its potential impact. I will stop there.

The Convener: I will go straight to Lesley McAra to pick up on that. Perhaps you could pick up on the points that Fergus McNeill made, Lesley.

Professor Lesley McAra (University of Edinburgh): I very much welcome the intent behind the bill. Listening to Kate Wallace in particular, who talked about the need for robust decision making that will enable safety and not harm others, I think that the intent is good. The notion of having strong information and robust risk assessments as part of bail decisions is very welcome, and I welcome those aspects of the bill.

Of course, the devil is in the detail with regard to how the bill, and public safety, will be interpreted and how it will work in practice. I agree with Fergus McNeill that the intent to shift more towards looking at the gravity of the offence and the potential risk in a more robust way in bail or remand decisions will, in a sense, take forward the wishes and intentions of the witnesses who have previously given evidence to the committee. In my view, however, there are big question marks around whether justice social work will have the time and resource that are needed to furnish those robust risk assessments and provide robust supervision, and whether electronic monitoring is appropriately resourced. There will be fewer remands, but there will be a need for more resource.

The Convener: To follow on from those responses, I note that a key part of the decision-making process is the information that is provided to the court, on which decisions are based. The provisions in the bill put criminal justice social work front and centre of that process. In their detailed submission, Hannah Graham and Fergus McNeill articulate their views on other contributions to the bail decision-making process and elsewhere—for example, on release from custody and in the third sector.

I will come back to Lesley McAra and then bring in Hannah Graham and Fergus McNeill. Perhaps you could outline your thoughts on the proposals specifically as they apply to criminal justice social work, and your feelings on the practicalities around resourcing, for example, which we hear about time and time again.

Professor McAra: With regard to putting the proposals into practice, I note that the timing of making a bail decision is sometimes quite tight, and some of the risk assessments that need to be done will take a bit of time. There needs to be an immediate capacity to respond at that point. That is really important.

From previous research that has looked at reasons for the judiciary not choosing social work-supervised bail, we see that there is sometimes a belief that resources are scarce, even where the resource actually exists. We need to ensure that there is immediate capacity to respond. With regard to supervision, resource, services and support need to be mobilised rapidly, certainly to provide access for those people who are accused who have quite complex needs. That is also the case with electronic monitoring, which is a

welcome aspect of the bill, in order to ensure that that can be put in place and monitored carefully.

We know that social work can do extremely robust risk assessments; the Care Inspectorate has always praised its risk assessment capacity. However, it needs to have the time to be able to do that and to provide supervision, and the time and resources to mobilise quickly. Those are things that need to be put in place.

We know from earlier research on bail supervision that, although it is resource intensive, it is cheaper, in a sense, than sending people on remand. It is a cost-effective way of doing things, but it needs resource, some of which involves time and the capacity to mobilise quickly. The intention behind the bill is really good; the question is whether there is resource in place to enable what is being proposed to happen. Social workers would be competent to do all the supervision—there is no question about that.

Dr Graham: I agree with what Professor McAra said. In our written evidence, we draw attention—as it is the career calling of criminologists to do—to the potential for unintended or collateral consequences.

There are acute time pressures at the point of bail and remand decision making. Then there are time pressures for justice social workers, and workload and workforce considerations. I emphasise the evidence that has already been heard from Social Work Scotland, and its reports on workforce pressures and turnover of social workers. I also emphasise evidence by Alison Bavidge to the Health, Social Care and Sport Committee about social work needing to be a sustainable profession that does not burn out.

I give the example of the implementation of electronically monitored bail, which is in the early stages. That component was authorised by the Management of Offenders (Scotland) Act 2019 and is available across a set number of local authorities but not all of them. There could be differences in forms and procedures in each of those local authorities, and that is not even taking into consideration courts and court areas, which might overlap different local authority areas. Then there is the need to balance quick decision making with good decision making.

I very much underscore the professionalism and skill set of justice social workers, but I would be attentive to their fairly earnest concerns about their availability and whether they have access to the court. As we said in our submission, there are interim findings from a small Scottish study of decision making on bail and remand. The judiciary and Crown Office and Procurator Fiscal Service practitioners who participated in that said that there are resource implications and questions around time and availability.

We have drawn attention to the number of people who are on remand for between one and seven days—it is not always an either/or situation. When that that happens to someone, it affects their children, partner and work responsibilities. There is also the gravity of weighing up that issue—the judiciary would not take that decision lightly. Is the one, four or five days to get the required information and assessment appropriate, when weighed against the prospect of a lengthy wait on remand, if remand is indeed opposed? I am not unsympathetic or unaware of the pressures that are there.

I briefly draw attention to one other thing. I declare an interest, in that I am a member of the Scottish Sentencing Council, although I am not speaking on behalf of the council. The council carried out a consultation with the judiciary on judicial perspectives of community-based disposals. Because of our remit, that would relate more to sentencing than to the bail and remand stage of proceedings. However, there is some relevance in judicial perspectives on availability. The Kate Skellington Orr research and the Sentencing Council research found that the judiciary was open to informed views on risk assessment, to professionals who are qualified to assess and give a view about vulnerability of need, and to the continuity and availability being consistent across Scotland.

The judiciary has views on that at the point of bail and remand decision making, which is echoed in wider work that is being done, not only on how we support community-based supports and measures but on decision making on what is available if we are to move away from bail refusal, in some cases, and remanding people. There are quite a few factors in there, but I would certainly commend the place of justice social work and emphasise the importance of its contributions to the court.

Professor McNeill: I will try to be brief. I have just calculated that it is a quarter century since I was a justice social worker. If I were a justice social worker asked to advise a court on a bail decision under this legislation, I would want clarity about what the public safety test means, so that I can give appropriate information and advice. That is important.

In doing that, I can imagine a process where there might be two stages. I do not want to overstep here—I am not a practitioner and have not been one for a long time, so my capacity to make constructive suggestions about the detail of practice is limited—but it seems to me that you could triage, and then select the cases that need closer examination under the public safety test.

11:30

If someone comes to court and bail is being opposed, but there is no indication from the index offence or from previous records that there have been violent or sexual offences or behaviour patterns that give rise to public safety concerns, a triage might be enough to say that, on the face of it, the public safety test suggests that bail might be possible. We would then have to ask what we would need to provide in the form of bail supervision and support to manage that person safely and effectively in the community and how that might contribute to risk reduction. If we put them in jail to await sentence, there is a risk that they will lose accommodation and contact with substance misuse services, they will have family disruption and so on, making their situation worse and so incubating risk.

I can well imagine justice social workers doing an excellent job at the stage of putting together constructive advice for judges to make appropriate decisions in such cases, but that would require resourcing, specifically in court social work units. Just to make a connection with the discussion in the previous session, court social work units also have responsibilities towards victims and witnesses. By virtue of their position in the court, they are better able than community-based social workers to undertake such communication in the flow of court business. I can therefore imagine ways in which significant additional investment in court-based social work might address a range of concerns simultaneously.

The Convener: Thank you for that. I will open up the questioning. Fergus, I think that you wanted to come in. I am sorry—I meant Fulton; I am getting my Ferguses and Fultons muddled up. Then Jamie Greene has a question. In fact, Jamie wants to ask a quick follow-up question now, after which I will bring in Fulton MacGregor.

Jamie Greene: I will keep my substantive questions until later, convener.

Good morning to the panel—I am checking; it is still morning. I am intrigued by something that you said, and I also want to pick your brains on another point.

It is widely expected that if bail is unopposed it will be granted, and that if bail is opposed and the prosecution seeks to maintain such opposition, the judge has a protocol and a process to follow. Is it your understanding or belief that opposition to bail is being overused? By that I mean the following. Clearly, bail is being opposed for good reason, based on the information that is available to the Crown and the prosecution. Why are we seeking to resolve the problem by limiting the judge's discretion in the scenario where bail is opposed, rather than by educating the Crown on the parameters that it should use to oppose bail? There are two sides to the coin, but which is the better way to address the issue?

Professor McNeill: I wish that I could give you a good answer to that question, but I honestly do not know. Hannah Graham or Lesley McAra might know better than me, but I think that prosecutors' decision making on case marking in general in Scotland is not the best understood or most researched of topics. I am not even sure of the reasons for the subject having been neglected. I cannot think of any significant studies having been undertaken for some time that would help us to understand where there is, for example, precautionary or defensive decision making in opposing bail, which might indicate a problem that needs to be addressed through education of procurators fiscal. I just do not know. I cannot answer that question.

Jamie Greene: Do you see my point, though? The bill seeks to address the problem from the other end, through the parameters on which the judge can base the decision whether to grant bail. However, if the primary source of the numbers of people who go through the bail decision system rests initially with the Crown and its opposition to bail—or not, as the case may be—is the better way not perhaps to see first whether there is a problem before restricting judges' discretion?

Professor McNeill: I do not think I see that as an either/or situation. You might want to ask more about this, but I think that we have enough evidence that we are using remand in ways that are out of line with norms in other western European countries. There is sufficient evidence to suggest that we need to think about structuring judicial discretion. That is what the legislation on criminal procedure and sentencing does. There is nothing inherently controversial about doing so. It might be a case of doing both rather than either/or.

Jamie Greene: I will perhaps come back to that question later.

The Convener: I will bring in Fulton MacGregor and then Collette Stevenson, Russell Findlay and Rona Mackay.

Fulton MacGregor: I want to ask about resources. I draw the attention of members and witnesses to my entry in the register of members' interests as, like Fergus, I was previously a criminal justice social worker.

For me, resourcing is the crux of the question. Having previously worked in the area, I know that, as Fergus referred to, there are community justice teams, and sometimes, as I think Lesley McAra said, there are different forms of bail supervision teams in certain local authorities, but that each has a community justice team. There probably would not be anything about this in the legislation,

because it would be for local authorities to decide, but I am not really clear about who would take on the work. Would it be bail supervision teams, and would they be enhanced? I think that that would be my personal preference. Alternatively, would the community justice teams have to pick it up and almost mirror what they are doing with people who are convicted and on community payback orders and so on?

I asked Social Work Scotland about that when it was before the committee, and I think that it said that we will just need to see where it goes and what sort of funding will be available. How do you see that working? What additional resources are we talking about? From an academic point of view, is that something that you have thought about?

I am okay with my question being answered in any order.

Professor McNeill: I will answer very briefly by saying that I cannot answer the question about resources. I have not studied it sufficiently to offer any informed guesswork.

The answer to the other part of your question is that there are 32 ways of doing justice social work in Scotland. I do not think that the Scottish Government could or would seek to impose a mechanism for the implementation of the responsibility that would be created. I am sure that it would justify that position on the grounds that it would need to allow each local authority to make arrangements that were commensurate with the needs of its area. As each area has different needs—the situation in Highland is different from the situation in Glasgow, and so on—there would be something reasonable about that.

However, there is always the dilemma with justice social work that justice by its nature needs to be delivered in a consistent way nationally for reasons of fairness. To my mind, therefore, it would not be appropriate not to have bail support and supervision available nationally if we implement legislation that seeks to alter the use of remand in Scotland.

There is a delicate tension between local responsiveness and national consistency in this area—I am sure that the committee is well versed in that in other areas.

Dr Graham: Again, I emphasise the interim report on research that we have, in which participants who are judicial or procurators fiscal emphasise that they are concerned about resourcing and availability. That is mirrored in the Scottish Sentencing Council's issues paper, with its judicial perspectives—predominantly shrieval perspectives—around time, availability and workload. If you get notice of something, there is then marking. You might not get the information from the police or the fiscals that you need and you have an hour or two to do a quick turnaround with the greatest of professionalism. If there are multiple cases in which bail needs to be considered, how do we triage or emphasise that?

With the joy of academic freedom, perhaps I can say that we do not do research on costings. It is for the Scottish Government, the Scottish Parliament and partners to do more on their budgets and spending. However, I acknowledge the considerable amount that is spent on prisons and prison building. The electronic monitoring contract could be something of the order of £44 million. There is an issue with the digitisation of the level of service case management inventory—it is on-going—and we can find £3 million quite quickly for an information technology fix.

My championing would be to echo the concerns expressed by Community Justice Scotland and Social Work Scotland in submissions to the committee on other fronts, as well as by local authorities. We know that funds are tight and that there is no magic money tree, but community justice ends up being what our colleague Gwen Robinson calls the Cinderella of the justice system, in that it is expected to quietly do a lot of work with diminishing resources.

We emphasise the importance of the service being able to do its work well. Accused people and complainers would want professionals to have the time to contribute to an informed decision. Justice social workers are central and pivotal to that. They have the ability to communicate with empathy and to inform decisions about risk in a way that a letter cannot.

We are not in danger of too much money being spent on justice social work or community justice in Scotland, relative to our other substantive commitments to clearing the court backlog, police and prisons. We are talking about hundreds of millions of pounds. My emphasis would be a plea to scrutinise what is available for justice social work.

Professor McAra: I will go back to the points that Fergus McNeill made about the need for some degree of uniformity or consistency of service across Scotland without undermining the local responsivity. That is needed.

Reflecting on what resources exist, it seems to me that you will probably need to have specialist bail supervisory teams and services—so an additional set of services. This work cannot just be added to current justice social work responsibilities. You will need to take that approach in order to have uniformity of service and the capacity to respond in the fast, responsive and mobilised way that will be needed.

I will mention another aspect of the tightness of resources and how justice social work is not

always the service that has the most money spent on it, as Hannah said. It is also important to note that some of the services that might need to be accessed, both under part 1 of the bill and under the proposed throughcare provisions, are third sector services. At the moment, third sector agencies have precarious funding, support, resource and capacity to continue to provide some of the fantastic services that they do. Therefore, there is a big issue about how we sustain high-quality services across the piece in justice social work and the services that it needs to mobilise. I refer to services such as community mental health—services that might need to be mobilised as part of the whole bill's offer but are deeply underresourced.

Very careful planning is needed, as is additional social work resource to support specialist bail supervisory teams, if the bill is going to work. The bill is trying to do something important. Remember that more than half of people who were remanded in custody do not end up with a custodial sentence. That is a really important figure to remember. We know that most of the people who were put on remand do not transition to a prison sentence.

The Convener: I make a plea for fairly short and succinct questions and answers. Members have lots of questions and I am trying to balance constructive responses with nice, neat questions.

Fulton MacGregor: I thank Lesley McAra for her response. She has articulated my thoughts on the matter pretty well. Although social work services were not able to commit to it when the various organisations met us recently, it would make sense for there to be a separate team. Therefore, we are talking about significant resource implications and the committee will need to take that into account when it speaks to the Cabinet Secretary for Justice. I would be happy to take that forward.

The convener said to be brief. My final question has the same basis but the witnesses might not be able to answer it. In work that the committee is doing separately, there is also discussion about the possibility of criminal justice social work going over to the national care service—I can see by some nods that the witnesses are aware of that. What impact might that have on the discussion that we have just had?

In light of what the convener said, I ask the witnesses to be as brief as possible.

Dr Graham: That is highly relevant. It is a fundamental structural proposal. I emphasise that there will not be an easy status quo for justice social work and community justice. Whether they are included in, or excluded from, the national care service, things will not continue to be the same.

If you just leave those services out, they will continue to work with people who may still need access to various other services and supports. Being outside a rather large institution that is supposed to mirror the national health service could have an impact, as could being inside and wondering how public protection considerations fit into the national care service.

11:45

In my submission to the Scottish Government's consultation on the national care service, I said that not enough thought, planning and detail had gone into considerations around the inclusion or exclusion of justice social work. We could offer a more informed view when we are provided with any detail beyond a few paragraphs, but I say now that the consequences either way could be far reaching.

Fulton MacGregor: That reflects other evidence that we have heard in that area, because the proposals are at a very early stage.

I am happy for the other witnesses to answer, convener, or to leave it at that, at your discretion.

The Convener: Thank you. I will bring in Collette Stevenson and then Russell Findlay.

Collette Stevenson: Thank you, convener, and good morning—I was going to say that I should check the time, but it is still morning.

I have a quick question about uniformity, which was mentioned. When I attended the youth court in Hamilton sheriff court, I found that the justice social work department is based in the court, which I think is relevant to what you were talking about in respect of each of the local authorities. What research have you carried out involving comparisons between local authorities to see what good practice there is and how that is working out? I found it helpful that the social work department is based in-house at that court.

Professor McNeill: I can answer that briefly. I have looked at that question historically in Scotland, and also comparatively in relation to European countries and different ways of structuring and organising probation and justice social work services.

There is no straightforward answer to the question of the best model, but there is instructive learning from different contexts and from our own history. In Scotland, in contrast with the situation in England, probation grew up in local services: not court-linked services, but services that were embedded in localities. There was a lively debate as far back as the 1930s about whether Scotland should move to a court-based model like the then English system, in which probation services were coterminous with court jurisdictions and closely

linked to the role of being an officer of the court and serving the magistrates in England. Those involved argued vociferously against it in the Scottish context, however, because of the importance of local connectivity, as they understood it, for rehabilitation and reintegration.

That debate comes and goes. Some European jurisdictions of a similar size to Scotland have a national probation service, and some have a single correctional service whereby prisons and probation functions sit together. Sometimes municipalities and local authorities are heavily involved in the delivery in different sub-national variations.

The only lesson that I can draw from all that is that you absolutely need clear, well-established and well-functioning relationships with courts and parole agencies, and with prisons. Probation work cannot function effectively without those relationships. However, if your end goal is the reintegration of people who have been through criminal justice systems so that they do not reoffend, you also need rigorous and effective integration with the work of local authorities or municipalities.

It is a bit of a fudge, but it is both/and. In addition, there is a third leg, which is the national element. Probation needs to be coherently linked to criminal justice and social policy at the national level—it is not just a criminal justice policy issue, because reintegration depends on health, housing, education and all forms of social welfare.

Whichever way we cut the cookie—or cut the cake; I am mixing my metaphors—and organise the system, we need the local element, criminal justice connectivity and national policy coherence and consistency.

That does not really answer the national care service question. In response to that, I was going to say only that I agree with Hannah Graham: it is almost impossible to comment meaningfully at the moment, because I do not understand what the proposal would entail.

Collette Stevenson: Does Lesley McAra want to come in on that?

Professor McAra: No—I agree with my colleagues on that.

The Convener: I hand over to Russell Findlay, and then I will bring in Rona Mackay.

Russell Findlay: My first question relates to bail. As we know, judges make the decision about whether someone should be remanded. The judiciary have expressed some opposition to the bill. They seem to be downright hostile to it, but it is difficult for us to interpret that, because they have declined our invitations to give evidence and answer questions, which is making our job a bit more difficult than it should be.

Hannah, you are on the Scottish Sentencing Council. You are not a judge, but you are perhaps the closest that we will get to hearing from that sector. I know that you are not speaking for the Scottish Sentencing Council, because you have already said so. Can any of you give me any sense of what the opposition to the bill is? Is it perceived to be meddling in judicial independence? Do you think that the judiciary should give evidence to the committee?

Dr Graham: The difference between me and the judiciary could probably not be more pronounced if we tried, but I welcome being asked to reflect on that.

It is the judiciary's prerogative to take that view and I would have been surprised if they did not oppose the bill. The judiciary are famous for their love of independence. Entire PhDs, including one by Fiona Jamieson at the University of Edinburgh, have been written about how the judiciary feel about themselves as decision makers. The Scottish judiciary are particularly infamous for wanting that discretionary decision-making power with regard to the law that they are enforcing.

The judiciary raised a few concerns and I found them to be interesting and apt, as might be expected from our distinguished colleagues. However, they are not necessarily persuasive enough for me to say that there is no justification for the bill.

I refer to comments that were made about the bill at a public conference at HM Inspectorate of Prisons for Scotland with the justice secretary, Joe Griffin and Teresa Medhurst standing alongside Lady Dorian, the Lord Justice Clerk, in a public forum. The judiciary place emphasis on trying to visit prisons and keep themselves acquainted with the realities and consequences of their decisions.

In her articulate and formidable remarks, which are reflected in the written submission from the senators, she asked some astute questions—I have them in my handwritten notes of the day—about what is meant by public safety, and about how precision and detail are important while still paying due regard to judicial independence. There were also questions about what would happen in instances where there is the prospect of or the potential for destruction of evidence that does not meet the public safety test. We could be asking for details, further discussions and questions that might mean interference in the administration of justice, such as when someone wants to destroy a device that might implicate them. How can we be responsive in cases where there could be things that are relevant to the fair administration of justice but they are not necessarily of a level that they

would pose a risk to public safety and to the safety of the complainer and the victim as such?

Russell Findlay: Should they come and see us?

Dr Graham: I would welcome that. Perhaps they could correspond with the committee. The judiciary are very skilful communicators. I note that, at the beginning of his submission, Lord Carloway emphasised consultation and engagement with the judiciary and how much the Scottish Government had or had not done that. Members of the judiciary are key decision makers. They have a lot of experience and expertise. Their reasoning has been captured by modest research and some data. I would support their engagement with the bill because they can speak to things that we can only ask about.

Professor McNeill: I will be brief and try to summarise.

The bill is trying to target reducing the use of remand for people who do not pose a significant risk to public safety but who are troublesome because of persistent offending. That, in effect, is the same population that previous legislation has tried to address through the presumption against short sentences. That legislation has been passed, it has been implemented and the ceiling has not collapsed. Crime rates have not shot through the roof.

I am pretty sure that sheriffs and judges had reservations about the presumption against short sentences on the same sorts of grounds that you raise in relation to the way in which the test in respect of bail is conceived. I understand why they would be critical of a move that might restrict their discretion. Any professional finds it irksome to have their discretion constrained. However, from a criminological perspective—this is not to criticise individual judges or their individual decisions—if I look at the Scottish data on the use of custody as a sentence and the use of remand, I see that we are out of kilter with comparable nations.

Something has to be done to change that and part of it is best achieved by passing legislation that structures judicial discretion appropriately in pursuit of legitimate public policy objectives that relate to the proper use of public funds. Prison is an expensive resource that we should use as sparingly as possible pre-trial and once people are convicted.

Professor McAra: It is important to engage the judiciary about all this. There were efforts in the past going all the way back to 1992, when I was working in the then Scottish Office evaluating the implementation of national objectives and standards for social justice services, which aimed to reduce the use of custody by changing sentencers' behaviour by increasing their confidence in what was happening in the community. That did not work, because it did not get the judiciary's confidence. Therefore, it is important to engage them if the bill is going to have an impact.

However, although the way in which the provision is framed in the bill narrows judicial discretion on one level, on another level it gives the judiciary enormous scope for decision making about

"public safety, including the safety of the complainer"

or preventing

"a significant risk of prejudice to the interests of justice."

A lot of interpretation can go into that so, on one level, the judiciary have a lot of discretion. Some of the cases in which there is a risk to the public and the concerns of the victims groups that gave evidence this morning will already be covered by those provisions in the bill.

You need to engage the judiciary. There is something to be discussed about how one might interpret public safety, but there is a lot of discretion that will go along with the way in which the bill is framed, so I do not think that the judiciary should be too precious about how much it narrows discretion.

Russell Findlay: The written submission from Dr Graham and Professor McNeill is 12 pages long and there is a lot of strong opinion in it. In the past, Dr Graham, you have been politically critical of me and my party. We are thick skinned and it is entirely your prerogative, but I wonder whether such political commentary risks undermining academic neutrality. I also wonder how that reflects our ability to assess the evidence that you have submitted. Is it personal opinion, academic research or something in between?

Dr Graham: I assure you that, with any piece of published research with which I have been involved on community justice, prisons, courts or sentencing, the rigour of the methodology and publishing of our studies and where we present evidence and findings is usually transparently accounted for. When, for example, I have done research on electronic monitoring, research with the courts through the Aberdeen community justice partnership and sheriff court or research in Australia, we cite evidence and say, "In this study, it was recommended that X". I hope that the committee could find those pieces of evidence to be of an academic standard. It has been released and published.

I have not had substantive queries about methodology or concerns about the quality of the academic evidence. I am a social scientist so I am unapologetic about drawing attention to social structures, inequalities and the harms caused

where institutions intend to do well but their powers might create unintended consequences.

12:00

Public criminology, which Lesley McAra, Fergus McNeill and others in our research centre are prone to work on in academia, often asks for our opinion. Writing opinion pieces requires careful scrutiny. I point out that I read and listen to nearly every speech that quite a few members of different parties in the Parliament produce.

It is important to understand that the politicisation of crime and justice can have an impact. It is not necessarily something that I would shy away from commenting on, but neither are academic quality and neutrality drastically undermined by highlighting that punitiveness or something that might be considered progressive can have certain impacts.

My career stands, and I am proud of it.

Russell Findlay: Thank you. Convener, have I time for another question?

The Convener: Might I—

Fulton MacGregor: On a point of order, convener. Although Dr Graham was happy to answer it, I am not sure that my colleague Russell Findlay's question to her was appropriate. The committee often hears from people who are councillors or who work with the Convention of Scottish Local Authorities and therefore have specific party allegiances. I have not formed my discourse on this point, but I am not sure that that was an appropriate line of questioning or build-up to the question. I therefore seek your advice or that of the clerk.

The Convener: Thank you for raising that point. I am happy with the question and I was happy to give Dr Graham a chance to respond. I do not intend to take any more questions relating to political views. I would like the session to come back to the bill. On that note, we will hear from Rona Mackay.

Rona Mackay: I go back to a point that Professor McNeill made at the start of the session, about gravity of risk. If I understood him correctly, he said that he did not believe that the bill is for serious or solemn offences per se. If that is the case, does the fact that there is only one public safety test for all offences not send out the wrong message—for example, to victims? Should the current exceptions on domestic abuse and sexual offences not still stand? Could I have his opinion on the specific nature of individual risk and public safety in relation to the bill?

Professor McNeill: I am not sure that I understand, or perhaps you might have misunderstood what I meant. Let me try to explain what I mean.

Rona Mackay: Sure.

Professor McNeill: The RMA can speak to this, as the body with specific responsibility for developing standards and practice on risk assessment and management in Scotland. However, from an academic perspective, whenever someone is engaged in risk assessment they consider two factors: one is the likelihood of an adverse event and the other is the degree of the adversity. It is easier to predict the first part, on probability, than it is to predict the severity or gravity part.

The tools that have been developed to assess risk in cases of gender-based violence, sexual offending, and violence in the domestic context and in intimate relationships are more sophisticated because they are not just trying to calculate likelihood.

To roll back slightly, the LS/CMI that Hannah Graham mentioned is a generic tool that tells us only how likely it is that any further offence might happen; it tells us nothing about severity or gravity if the offence does happen. Other tools are then used in appropriate cases, where we are concerned about violence of different sorts, to try to reach a more informed view and, going back to the point about judges, a structured discretionary judgment about what the risk and the gravity might be.

All I am saying is that the bill would require judges to take into account not a mere calculation of the likelihood of any offence happening when a person is on bail but rather whether such an offence would be so serious that it would pose significant harm. I am using that language; it is not defined in the bill. However, my point is that we need to clarify what the public safety test is. It applies first at the level of risk to individual complainers, which absolutely should be uppermost in the minds of sheriffs and judges when considering cases of crimes against individual persons. Clearly, a bail decision must seriously assess any risk to the safety of the complainer. However, the wider question of risk to others is another matter—and one that is complicated. The bill directs sheriffs and judges to pay more attention to that set of considerations and not merely the likelihood of any offence happening.

To put it in really simple terms, to my mind—please ask ministers and civil servants later whether I am right about this—the bill says that, in and of itself, persistent offending might not be a reason to refuse bail, but serious offending probably is.

Rona Mackay: You are saying that, to take it at a basic level, common sense should be used in domestic abuse cases. There has to be a pattern anyway before there would be a conviction, so surely that would come down to common sense without having to use specific parameters.

Professor McNeill: Yes, but I also agree with the previous panel of witnesses that, in respect of any form of gender-based violence, including domestic violence, clarity needs to be given, either in the bill or in guidance relating to it, so that both the social workers and others involved in informing judicial decision making about bail are clear about what they are assessing, who they are speaking to and how they gather evidence to inform their judgments. That is critically important.

To me, if there is a risk of violence—whether it be psychological, physical or sexual—or of coercive control, there is no question but that we need to have the most rigorous risk assessment processes before making bail decisions.

Rona Mackay: Thank you. That is really helpful. What is Professor McAra's opinion on that point?

Professor McAra: I agree completely with Fergus McNeill. I do not think that the bill's wording will mean that, in serious cases, careful decision making will not take place on risk to the complainer and others and on whether remand might be appropriate. The weighting on gravity is really important.

By taking that approach, I hope that the bill will both support victims of crime and, equally, help to reduce the remand population so that petty persistent offenders do not get caught up in the remand system but might have supervision that diminishes their risk of continuing to offend on bail. Then the services and support for people who have to be remanded in prison will work more effectively.

One of the issues about having so many people on remand is that their access to support is diminished. If we had a smaller but more seriously offending population within the remand group, we would have more capacity to work with them. There would therefore be a pay-off in that respect.

I am convinced that gravity is an important consideration here. If appropriate and robust risk assessment and good information input are given to the people who have to make decisions—that is critical—public safety would not necessarily be compromised by the bill.

Rona Mackay: Thank you. That is helpful, too. Dr Graham is indicating that she has nothing to add. It is good that you agree that perhaps more clarity is needed on that point.

The Convener: I will bring in Katy Clark and then Jamie Greene. We will run the meeting for as long as we need to, but it would be helpful if questions and answers could be succinct.

Katy Clark: It is not clear whether the effect of the legislation will be to change the number of people who are on bail, and it is not really clear how the public safety test will operate.

Fergus McNeill said that bail is used in Scotland quite differently from the way that it is used in other European countries. Proportionately, Scotland has the highest number of people in jail and, within that, the highest number of people on remand—the figure is now approaching 30 per cent, which is extremely high. I ask all the witnesses to comment, if they wish to do so, on the arguments for and against the approach that we take in Scotland, in which we send quite a lot of people into the prison system on remand. Are there lessons to be learned from other comparable jurisdictions?

Professor McNeill: My general point was simply that we have a high prison population, both in relation to the number of people on remand and the number of sentenced prisoners. As was discussed with the previous panel, that 30 per cent figure is slightly misleading, because it was the product of reducing the number of sentenced prisoners and the rising number of prisoners on remand. Therefore, it is probably better to look at the raw data on the number of people being remanded, which is rising and has risen precipitously during the past year or two.

It is important to dig deeper and to look at who is being remanded and for what kind of offence. It is true that the number of people on remand for violent and sexual offences has risen significantly. Other categories have fallen slightly, but perhaps not as fast as the Government might wish, as it pursues a reduction in the prison population.

I think that the bill is trying to further encourage a reduction in the use of remand for people who do not pose a serious risk to public safety. To me, that is consistent with international standards and with conventions and rules that we are subscribed to as part of the Council of Europe and the United Nations. In principle, it is absolutely the right approach, but we need to pay careful attention to the fact that there is a rise in the number of people remanded in custody for violent and sexual offences.

Even then, however, we need to disaggregate those headings further—that request might be best directed to colleagues in justice analytical services—because the category of crimes of violence is very broad in Scotland, and so is the category classified as sexual offences. Not every person who is remanded for an index offence that is categorised as a crime of violence necessarily represents a significant risk to public safety. We

need analysts to give us detail on which aspects of the current remand population have grown, which are falling and which categories they are in.

The bill aims to—and, I think, would—move us in the direction of coming closer into line with comparable European neighbours, and that is a laudable objective.

Katy Clark: I think that the committee would agree with you on the need for better data; we would find that extremely helpful.

Dr Graham, when you spoke initially, you mentioned the need for clarity and more detail on the public interest test in particular, but perhaps also more generally. Could you answer the part of my question about whether there are lessons to be learned from comparable European countries and jurisdictions? The Government's aim appears to be to reduce prisoner numbers and to ensure that the most serious offenders are in custody. Bail is given to people who have not been convicted of anything, yet. Do you think that there are lessons to be learned, given that the approach taken in Scotland appears to be different from the one taken in many other European countries?

12:15

Dr Graham: The policy intent of the bill, as expressed at a high level, deals with an issue that has been fundamentally highlighted as a concern and as needing to be changed since I was a teenager, and I assure you that I am not that any more. If you look at the views that have been expressed by the Sentencing Commission for Scotland, Audit Scotland, the Scottish Human Rights Commission and the McLeish report—the report of the Scottish Prisons Commission—as well as an important inquiry that was held by a previous iteration of this committee, you can see that there is a fairly well-established consensus that the rates are high and that there could be more community-based responses. Tinkering round the edges and making elemental changes have not produced the substantive change that at least some stakeholders have expressed a desire to see, given the gravity of the access to justice and human rights issues involved.

There are three major comparative studies on bail and remand: two in Europe, one of which I have with me; and one in Australia. Those studies explore the insights and lessons that can be learned from multiple jurisdictions. The one that I have before me looks at 10 countries, and the other European one, which was funded by the European Union, looks at the issue across borders. The Australian one compares the situations in Australian jurisdictions.

Those major international research projects often highlight that the legislative levers are one aspect. They note that limiting, expanding or defining the public safety test is one important aspect, and it will impact on judicial decision making, notwithstanding the importance of judicial independence and discretion, but they also document all the other factors that multiple members of this committee and previous panels of witnesses have raised.

The various pieces of legislation use statements such as "any material considerations", "have good reason" and "have due regard to". People who are familiar with judicial and court circles will be well aware of why such wording is there. However, in practice, the evidence that you will hear and which those research projects in Europe and Australia have found is that there is a gulf between law and practice, and that the causes of disparities—or what the report from Birkbeck, University of London calls "pre-trial injustice"—and questions on the implementation gap relate to a series of systemic factors around why a law might be applied or disapplied in a way that leads to disproportionate results.

If there is a need for a succinct and well-contextualised synthesis of those three major studies, we, as academics, would be happy to provide a summary of our understanding of them, if that would be of interest to the committee, or we could at least send you the credible international research that points to things that are relevant to Scotland and which I believe we could learn from, without doing a wholesale import, because there will be distinctive contextual factors here. My colleague Lesley McAra is an international authority on what makes Scottish justice distinctive.

Katy Clark: We would be grateful for the information that you refer to.

Professor McAra, it would be interesting to hear your thoughts on the issue that has just been raised. However, as a committee, we also have to grapple with the black letter of the law. With regard to the bill, we first have to ensure that we agree with the Scottish Government's overriding policy objectives, and then we have to decide whether what is in the text that will be put to the Scottish Parliament will deliver those objectives. Do you have thoughts on that, too? Do you think that the words that the legislation will contain are likely to be implemented by the courts in the way that the Scottish Government intends?

Professor McAra: On your first question, which was to do with whether there are too many people on remand, I would say that there are. That is really important, because all the indicators show that the crime rate is falling and has been falling for a long time. It has fallen by 57 per cent since its peak in the mid-noughties. The crime rate is dropping and convictions are dropping—

everything is going down—yet prison rates are tending to go up and remand rates are going up considerably. There has been a huge increase in remand rates, particularly over the lockdown, in relation to the numbers in summary cases.

As I said, more than half the people on remand do not end up being sent to custody once they are convicted, so that transition is not there. There are clearly too many people on remand. There is always a need to remand people who present a risk to others—that is absolutely the case. However, the rate of people on remand could be considerably lower, particularly in the context of the crime rate dropping.

On whether this will all work, one of the great success stories in Scotland has been what has happened in youth justice. The whole-system approach in youth justice, which has looked holistically at how people move through the system and how to divert people to meaningful alternatives at certain points, has really worked well. We have had a major reduction in convictions among 16 and 17-year-olds; the rate among that population has gone down by 90 per cent.

Offence referrals from the juvenile justice system to the Scottish Children's Reporter Administration have gone down massively—by about 83 per cent since the peak in the mid-noughties. There has been a real and meaningful reduction of people in the system. We are ending up with a much smaller group of young people that we can work with more effectively.

If we look at the bill as a whole, aspects of it are leading to a sense of a more holistic and systemic approach to adult justice. The Scottish Government wants to have a whole-system approach for women offenders as well as for young people. We should have such an approach for adult male offenders as well.

If you want to try to remove people from remand where possible and send them to bail supervision that might support them and their needs, that can only be a good thing in terms of managing risk, if it works and people end up on bail supervision, not remand, when they do not need to be on remand. We have not talked about the throughcare propositions very much—that is about trying to manage the reintegration process for longer-term offenders so that they reintegrate well back into the community. It is about looking at the whole process and linking in with other bits of the system. That could make a major difference to public safety in Scotland.

I really welcome those dimensions of the bill, but they will need appropriate resourcing. I keep going back to that issue—the most important thing for me is having the resources there. In terms of the legal aspects, there needs to be more definition of what public safety might be, but in terms of how legislation will work in practice, the devil is in the detail in relation to the resource implications. I hope that that helps to answer your question.

Katy Clark: That is very helpful—thank you.

Jamie Greene: To follow on from the conversation that we have just had, one of the difficulties that we are having is perhaps a keenness not to equate subjective assumptions or analyses with facts. It is quite easy to say that there are too many people on remand. That may or may not be true, but it depends on your definition of what is right and what is wrong in terms of remand decisions under the status quo.

Is it the case that there are too many people on remand or is it the case—I am throwing this out there, not taking a view—that the right people are rightly being held on remand but are wrongfully being held on remand for too long? Due to court backlogs, there is an inevitability to that—we have heard anecdotal evidence of people being held for longer than the end result of their custodial sentence would have been, even after conviction. It appears that there are simply too many people in prison on remand who should have been released much earlier because their cases should have been heard much earlier. That is off the back of the first evidence session that we had.

Professor McNeill made a point about the data—that we should look at not just the numbers but the context and the profile of those who are being held on remand and the types of offences that they are being held for.

I am just throwing that point out there to play devil's advocate, because it is quite easy to say that there are too many people on remand, and then it becomes seen as a truth without being challenged, so I am keen to make sure that we challenge it.

Professor McNeill: Maybe I can answer that. In a way, the answer applies equally to part 2 of the bill. I am conscious that we have not got to that part yet, but I think that this answer applies to it as well. It also goes back to Russell Findlay's question to Hannah Graham.

The area of policy that we are discussing unavoidably engages normative questions. There is no objective way to say what the size of a prison population should be. People can take a view on that depending on whether they want Scotland to be a country that complies with international standards in relation to human rights, or they can take a view that relates to another kind of ideology. That is fine—people can have different views on that.

Once you establish principles, you can ask criminologists to say whether they are being

applied effectively. In the evidence portion of our submission, where we cite all the studies, we basically argue about whether the goals that have been set for the system are being achieved. If the point of the criminal justice system and the processing of people through courts is to secure justice or to provide retribution, say, that leads to a certain conclusion. If the point is to provide public safety, that can sometimes point in a contradictory direction. If the point is to work for the eventual reintegration of people who have offended, that can point in another direction. It is a complex system with multiple objectives. Sometimes, the normative principles that are being applied and tested are somewhat contradictory, or they challenge one another.

I guess that all that I can say in response to your question is that, in relation to international standards, we have an unusually high prison population and an unusually high remand population at a time when we have not just low recorded crime rates, but relatively low crime rates reported through victimisation surveys. The things that are driving our prison population are not crime problems but policy choices and established cultures and practices in our system. I think—this is a normative opinion that is grounded in a commitment to certain principles that are reflected in international standards—that that is wrong for Scotland and that we should be trying to change it.

I am sympathetic to the bill only because I think that it points in the right direction. I agree with the comment that has been made in response to some lines of questioning that some of the ways in which it seeks to do that need to be ironed out and clarified.

Jamie Greene: I am interested in what you have said and the way that you have said it. You said that, overall, crime has reduced but the prison population has gone up. However, I want to look at what has happened when policy decisions have led to legislative change, for example with the presumption against short sentences, which you mentioned in a previous answer. In the year when that presumption was passed, there were 68,000 violent crimes. I know that that is a wide category but, under the same definition, that figure rose to 69,000 last year. Over the same period, the prison population fell from 8,200 to 7,400. Despite a rise in certain types of what are perceived to be more serious crimes, our prison population has actually been reducing.

I know that we can divvy up statistics in a number of ways in order to get what we want out of them, but that leads me to the importance of proper statistical and data analysis. I think that that has been severely lacking, and it probably still is. There are some massive gaps. Such analysis might help to inform some of the decisions that we make in future. Does anyone have anything to add on that issue or have I covered it? I do not think that anyone wants to comment.

I turn to the other issue that I want to raise. I appreciate that you have made your views clear. You think that it is completely appropriate for legislation to be used as a mechanism to narrow the grounds on which bail can be refused, but it is interesting that you state that that cannot be done in isolation. Views have been expressed on bail conditions, and we have heard that services around bail could be improved. Equally, however, alongside that, access to public services must be provided for those who are released on bail.

Perhaps Hannah Graham could explore that. It is easy to focus only on the bail aspect, which, in fact, is all that the bill does. It does not meaningfully address any of the other perceived failings in the system, but some of you, perhaps including the victims organisations, might feel that that is necessary alongside the proposed intervention.

12:30

Dr Graham: Indeed. In addition, the bill does not necessarily help to address the reasons for people continuing to break bail and bail conditions, which I know is an issue that members care about. In some cases, those breaches are harm and alleged offence related or crime-specific.

I read the committee's 2018 inquiry report on the use of remand and my colleague Neil Hutton's small-scale study on the reasons for bail refusal. Some of the rhetoric that comes through in comments from the judiciary and fiscals, and in research, is that there can be repeated causes of reoffending, but at a low level that is not as serious as some of the sensitive issues that we have already heard about.

Neil Hutton presented his research as evidence to the committee's inquiry. The McLeish report of the Scottish Prisons Commission emphasises that tackling, better supporting and responding to some of those issues will take a multidisciplinary and multisectoral approach.

A phrase that is commonly used is that the individual had "a chaotic lifestyle". The committee is tenaciously committed to understanding things such as trauma and drug-related harms. We can call it "a chaotic lifestyle", but when people fail to do things that they have been reasonably required to do, there might be alleged offence-related reasons for that, but it might also be because of issues of poverty, health, welfare and social care, where they need a range of support. That is not to condone offending; it is to say that compliance could be much better supported through a multidisciplinary approach, so that we can avoid

what the Scottish Prisons Commission called the warehousing problem, with remand being

"a place to hold the damaged and traumatised"

through the problematic and largely unnecessary use of prisons.

Fergus McNeill was an adviser to that commission, and I believe that it is very well regarded across professions and among those with different ideological or normative positions. I draw attention to the qualitative research by our colleagues. Emily Tweed and colleagues point to the fact that, if remand is used, it could result in much more acute mental health distress. I know that members are concerned about the use of custody and the fact that remand is implicated in a higher risk of self-inflicted death by drug overdose or suicide.

As well as getting to grips with the statistics and the reality, we need to recognise that action will be required on health and social care, employment/unemployment and housing/homelessness. What are prisoners bailed or released early to? I would not expect the committee to solve that on its own. Other committees will need to have due regard to the health, welfare and social issues that are coming through and whether those are adequately addressed by the provisions in the bill and through the resourcing of the multidisciplinary services. We very much have an empathy and a passion for fewer victims in future. I do not want us to be having the same conversation in 18 years' time as we have been having for the past 18 years.

The Convener: We have run well over time, but it has been an important and valuable session. I have a final question; I ask for succinct answers. As Fergus McNeill said, we have found it difficult to move away from discussing bail, but I would like to ask about release planning and throughcare support.

With the aim of supporting the successful reintegration of prisoners into the community, the bill includes provisions on release planning and standards of throughcare support. In your view, are the proposals in the bill helpful? What changes, if any, would you like to be made to the provisions that are outlined?

We will start with Fergus and then go to Lesley.

Professor McNeill: That is a big question. It is difficult to answer it briefly, but I will try hard.

Yes, the measures are helpful. Anything that enables progression through the custodial part of a sentence to the completion of the sentence in the community is to be welcomed. As with bail supervision and support, we must not underestimate the complexity of the task of supporting people in those transitions, whether that is instead of going into remand or at the point of coming out after a longer prison sentence. People need support in a huge range of areas.

Recent research that was undertaken at the University of Glasgow by Alejandro Rubio Arnal looked at post-prison reintegration in Glasgow. He used a dialogical method of inquiry with a group of people who had different forms of experience, including lived, practice, professional and academic experience. He argued in his conclusion that six key facets of reintegration must be addressed.

People need material reintegration, which means basic subsistence, housing and access to public assistance if they need that until they can get work. They need assistance with personal development to develop the skills and capacities to live well in the community. They need legal reintegration, through the restoration of their legal status. That relates to the question of how we deal with criminal records in this country, which is often problematic in allowing people access to the labour market.

People also need civic and political participation, including in the political life of our country. We are not good at supporting that in disadvantaged communities in general, and we particularly do not do that well for people who are processed through our criminal justice system, who are very disenfranchised politically. There is also moral reintegration, which relates to the restoration—or at least the mediation—of relationships with communities and victims.

Finally, social reintegration is about acceptance and belonging in a community and about dealing with the stigmatisation that people face as they try to move on from imprisonment, involvement with the criminal justice system or problematic substance use. In all those interlinked contexts, people are hamstrung in their efforts to change themselves and transform their lives by the reactions of people around them.

To support people's transition into, through and out of prison, and to support that for people who are bailed instead of being remanded, is no small thing. There are huge resource implications, which everyone has made clear. To finish, I say that the money exists: it is locked up, with people, in prison. If we want money to make the systems work effectively, we need to have the political courage to get the money out of jail, along with the people—unless, as politicians, you believe that there is a magic money tree to shake. If that is the case, shake the tree and spend the money on reintegration.

As a criminologist, setting aside normative questions, I have no hesitation in arguing that, on the basis of the available evidence about

reoffending and reintegration, imprisonment is a shockingly bad investment in the longer-term pursuit of public safety. Thinking hard about how we get our money—it is our money—out of jails and into communities should be at the heart of the reform efforts that we are discussing today. We should be looking not only at the technical and legal reforms in the bill, but at the wider project of developing a more evidence-based, progressive and coherent penal policy in Scotland that complies with international standards.

The Convener: Lesley McAra, if it is remotely feasible to give me a succinct answer to the question, I will bring you in.

Professor McAra: I agree with what Fergus McNeill has said. That could be the succinct answer.

I really welcome the fact that there is a robust research evidence base to support a focus on better reintegration for long-term prisoners. The bill is trying to enable that, and the robust evidence base would support efforts to make that process smoother and more supportive, which would lead to enhanced public safety.

Getting rid of throughcare support officers from prisons has been unfortunate and pre-release preparation in prisons could be very much enhanced, particularly as that relates to integration with the community-based dimensions of supervision and support. The suggestion that a new licence be created is a very good one.

The issue of people being reintegrated into the community is a hugely challenging one. The Edinburgh study of youth transitions and crime has been tracking a cohort of 4,300 people who are now in their mid-30s. The research evidence from that shows the complex needs that people have and reinforces other research that has been done around drugs, the need to support desistance from offending, the need to support relationship building and the need to provide support with regard to mental health issues. People's complex needs require a complex set of resources in the community that are not always there, particularly when it comes to community mental health support and adequate housing.

People need a whole range of things, so we need careful planning, good central decision making, and leadership around that decision making with regard to how we can support and mobilise services. Particularly for justice social work, there is also a need to recognise that the thing that really makes a difference to people who are on licence is the relationship with their key worker. From our research, we know about the importance of continuity, good relationships, advocacy and support, and empowerment of people. Those are the things that really make a difference, and that requires time, as well as well-trained, nurtured and well-paid staff.

Therefore, transferring resource from jailing people into community justice and the mobilised services that they need to support them would, in fact, be a tough way of dealing with crime in Scotland. It would enhance public safety, so I really support the intentions of the bill with regard to that integrative approach.

The Convener: Thank you very much indeed. On that note, I thank all our witnesses. We could probably speak for another couple of hours on this.

We will have a short suspension to allow our witnesses to leave.

12:41

Meeting suspended.

12:44

On resuming—

Public Order Bill

The Convener: The next agenda item is consideration of legislative consent issues with regard to the United Kingdom Government's Public Order Bill. I refer members to paper 3. You will see that the relevant provision in the bill is to extend powers similar to those currently held by Police Scotland to British Transport Police in Scotland for the policing of protests on railway land. The Scottish Government recommends that legislative consent be given to that provision.

I am happy to open the discussion to members now, and we will then consider what recommendation we want to make to Parliament on legislative consent. Do members have any queries or questions?

As there are none, the question is whether the committee agrees with the Scottish Government that the Scottish Parliament should consent to the relevant provisions in the bill as set out in the Scottish Government's draft motion. Are members happy with that?

Members *indicated agreement.*

The Convener: Are members content to delegate to me the publication of a short report that summarises the outcome of our deliberations on the legislative consent memorandum?

Members *indicated agreement.*

The Convener: The matter will now be dealt with in the chamber. All members will decide on the question, based on our report.

Priorities in the Justice Sector and an Action Plan

12:45

The Convener: The next agenda item is consideration of an update to our action plan. This item was delayed from our previous meeting. In the spirit of saving time, rather than considering the action plan page by page today, I ask members whether they are happy to let the clerking team know if they have any queries about, or additions or amendments to, the action plan. We can come back to the action plan at a future meeting. Do members agree to that?

Russell Findlay: What is the timescale for that? When do the clerks need to know about any queries or amendments?

Stephen Imrie (Clerk): We do not have a specific timetable. Members can send those over the next few days, but do so at your leisure because I am not sure when we will be able to reschedule consideration of the action plan, given the amount of evidence that the committee will be taking in the next week or two. Therefore, there is a reasonable timeframe for any responses.

The Convener: Are you happy with that, Russell?

Russell Findlay: Yes, thank you.

Jamie Greene: In essence, what we are doing is ditching the item from today's agenda, because we are out of time, but that does not mean that it should go completely offline. The action plan is one of the few documents that we share quite widely with the public and stakeholders on the progress that we are making as a committee, so we should revisit it—probably in great detail—but we need to afford it proper time. I would rather do that than it simply become a paper trail of correspondence between members and the clerks. For the purpose of updating people, we should have an open public session on it so that people can follow what we are saying.

The Convener: I agree. For clarification, I intend that, when we can put the item back on the agenda, we will absolutely do that. I agree—I do not want it to be a bit of email correspondence from now on.

Virtual Trials and Charges for Court Transcripts (Correspondence)

12:47

The Convener: The next agenda item is to consider correspondence from the Cabinet Secretary for Justice and Veterans on virtual trials and the current practice of charging for court transcripts. I refer members to paper 5. I thank the cabinet secretary for his letter.

First, I remind members that the committee recognises that the use of virtual trials is already provided for in the Coronavirus (Recovery and Reform) (Scotland) Act 2022. However, despite that and the practice note that was issued by the Lord Justice General, very few fully virtual trials have been held. The committee has been keen to see more take place, particularly for cases involving rape and other serious sexual offences. The question remains of how we can see more of such trials in order to build up an evidence base to inform whether they could become an option for prosecution of appropriate sexual offences cases.

Secondly, on the issue of the current practice of charging for court transcripts, I welcome the cabinet secretary's comments, and I note his support in principle. However, in his correspondence, he refers to the possibility that further consultation might be required. Members will recall that we have written to the cabinet secretary on the issue, because we are keen that it is considered prior to the introduction of the forthcoming criminal justice reform bill to enable us to consider such a provision as part of the scrutiny of that bill, which could provide a suitable legislative opportunity to resolve the issue.

There is quite a bit in there. Do members wish to make any comments on virtual trials?

Russell Findlay: About halfway through the letter, in the last paragraph on the first page, we learn that virtual summary domestic abuse trials have been taking place for three years. The cabinet secretary tells us that that has been at the direction of the Lord Justice General, which makes perfect sense, but I am somewhat surprised that he goes on to say that, if we want to know how many trials have actually taken place, he and the Scottish Government do not have that information. I find that surprising, because we have already had a bit of to and fro on the matter. It should not be this difficult to get such basic data. There has been some anecdotal suggestion that the numbers are very small.

The cabinet secretary goes on to say in the following paragraph that the powers will run for the next 10 months and then expire, but that they can be extended until 2025. In one breath, we are talking about not having the basic data but, in the next, we are talking about extending the powers without that basic data. It is really poor.

We have been battered around a bit on transcripts. We have not had a clear explanation from anyone of how much they cost. My understanding is that a private company provides the service. One thing that strikes me about Parliament is how quickly transcribed debates are online—it is incredibly efficient. I am not saying that the courts could do that easily or without cost, but we have not had an explanation as to why it cannot be done properly.

Collette Stevenson: I am keen to see the consultation responses in order to make a more informed choice. The letter says that they will be published in due course. I also note the research that has been carried out by the University of Glasgow and Ipsos MORI, which will give us more information on what the public thinks about virtual trials and the questions that have been put forward on the issue.

Jamie Greene: I will try to be brief. I welcome the cabinet secretary's opening position where he says that

"a greater evidence base should be developed before they were made a permanent feature of Scotland's justice system."

By "they", he means fully virtual trials. He goes on to say:

"I continue to agree with that approach."

I agree with his agreement, but I also share the concern that was raised by a colleague that we are being passed back to the Scottish Courts and Tribunals Service for data on something that has been taking place for three years. It seems unusual for the Government not to have kept a watching brief on that or to have the data that we have asked it for. Nonetheless, if the SCTS has that data, we should ask for it and for a report on the use of virtuality in trials and of fully virtual trials, because we are living off the back of other legislation, not legislation that deals with fully virtual trials.

There will be a lot of interest in the issue from many stakeholders, not just from victims organisations that are proponents of the further use of virtual trials in certain cases but from those who have reservations about it. I do not know what the end goal is here. Does the Government have a plan to move to a form of permanence in law or otherwise, or does it plan to say that such matters are for the courts and not for it to intervene on? I feel that we are in limbo on that. Although I look forward to the consultation responses being published, I do not think that they will necessarily

answer the question of what the Government's plans are.

The issue of transcripts is perennial. We seem to go round in circles: we ask for a resolution, but the Government pushes back and just keeps saying that

"there are several matters that we would need to consider".

We know that there are—we have been talking about the issue for a year now.

I would like to hope that 2023 will be the year of resolution, and one resolution might be that we get to the bottom of the court transcript issue. As Russell Findlay rightly said, we managed to transcribe 22 hours of robust chamber debate in a matter of 48 hours. If that can be done in the Parliament, I am sure that it can be done in courts.

Rona Mackay: I broadly agree with what Jamie Greene has said. It is important that we know what the situation is with virtual trials and that we have the data. When was the last time that we asked the Scottish Courts and Tribunals Service for that information? I cannot remember.

The Convener: It was during consideration of the Coronavirus (Recovery and Reform) (Scotland) Bill, which would have been earlier this year.

Rona Mackay: Earlier last year.

The Convener: Oh yes—last year. It would have been in 2022.

Rona Mackay: I suggest that we contact the SCTS again and stress that it is really important that we know. The SCTS obviously knows, and we need to know, too.

On the court transcripts issue, I do not know when we last asked for that information. We have been referred back to the SCTS, and we need to press it on that. Presumably, it is not that the SCTS is not getting that data—that is being done; we simply do not have access to it.

Katy Clark: On transcripts, I suspect that one of the issues is cost, but we really should be provided with that information. The committee is spending a huge amount of its time talking and asking about the issue, and there does not seem to be a willingness to share information.

As, I think, we will all remember, we discussed virtual trials at length during the bill process. We asked repeatedly for the kind of information that Rona Mackay is talking about, but it was not forthcoming. It took us an awful lot of time to get any information. I think that we concluded that far less was happening than was being presented, and I suspect that that is still the case.

As a committee, we should be concerned about being bounced into making permanent decisions when the evidence base is not there, so we should be robust in our correspondence with the cabinet secretary. We should outline the history and say that it is not that we would object to the proposed change in principle, but that it needs to be evidenced and subject to democratic scrutiny, given the serious and considerable implications for the justice system.

Whether we do that now or at a later stage, I think that we would want to put that in writing and go back to the point about why we are asking for that information.

The Convener: Does Jamie Greene want to come back in?

Jamie Greene: I am not sure whether it is appropriate to intervene, but I will make a comment. I feel that the previous comments are very relevant. It is about not just the quantity or scale of trials that seem to be fully virtual but the outcomes. The other side of the data would be far more useful in some ways, and that was the piece that we were missing during the passage of the bill. Knowing the volume will be superfluous if we do not know what effect that is having on outcomes. That data might address some of the issues that members have in that regard. It is that level of data that we need to see.

Katy Clark: The evidence that we got from the pilot was that a very small number of cases had gone ahead, but there was a very high number of acquittals. Far more people were found not guilty than we would normally have expected. That was a very small sample, so we could not take much from it. However, the evidence that we have had on domestic abuse cases in particular suggests that virtual trials are leading to more people being found innocent rather than more people being found guilty. The concern had previously been that the accused would not get a fair trial, but the evidence that we have had has, if anything, been surprising, which means that we need even more information before making any further decisions.

As Jamie Greene said, that reinforces the fact that we need to lay down a marker that we will not agree to permanent changes unless the evidence base is there, and that we want to see the evidence over a period of time, because the proposed changes would be permanent and could have major implications for cases.

The Convener: Does Russell Findlay want to come back in?

Russell Findlay: I want to respond quickly to what Collette Stevenson said about the two on-going bits of research. The letter specifies a completion date of spring this year for the Ipsos MORI research. For the other one, it simply says that the analysis will be concluded "in due course". It is perhaps worth seeking some clarity on that in

relation to the issue at hand regarding summary trials, as it could be useful to get a steer from the Scottish Government.

13:00

The Convener: That is fine.

I concur with the views that have been expressed. It would be helpful for us to seek up-to-date data from the SCTS on the number of fully virtual trials that have taken place since we got the previous figures almost a year ago, when we were looking at the coronavirus legislation. I am happy to take that forward on members' behalf.

In relation to the concerns about the role of defence agents in opposing virtual trials, there might be an opportunity for us to ask the Lord Justice Clerk why, despite the practice note that they issued, the practical reality is that very few such trials seem to be taking place.

Finally, in relation to the comments that were made about the cabinet secretary, I wonder whether members would agree that we should ask him to refer to the justice board and the governance group that is overseeing Lady Dorrian's report to get more clarity on why there are still very few virtual trials, despite the fact that there is provision for them.

Do members agree that I should take those tasks away?

Rona Mackay: I am wondering about the chronological order for that. If we are going to ask the SCTS how many such trials have taken place, perhaps we should wait until we have that information before we contact the cabinet secretary.

The Convener: I agree.

I agree with what members said about court transcripts. I suggest that we should clarify with the cabinet secretary whether there is a plan to undertake a consultation on the proposals in advance of the introduction of the criminal justice law reform bill, or whether his letter refers to the fact that that might be done at some future point. There is a lack of clarity about timescales, so I am keen that we get more detail about that.

Are members happy with that approach?

Members *indicated agreement.*

The Convener: Thank you. That completes our public business.

13:03

Meeting continued in private until 13:04.

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