



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 15 November 2023**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**30<sup>th</sup> 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)

\*Sharon Dowey (South Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

\*Pauline McNeill (Glasgow) (Lab)

John Swinney (Perthshire North) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Kirsty Anderson (Scottish Government)

Dr Arun Chopra (Mental Welfare Commission for Scotland)

Angela Constance (Cabinet Secretary for Justice and Home Affairs)

Jackie Dunbar (Aberdeen Donside) (SNP) (Committee Substitute)

Brian McNulty (HM Inspectorate of Constabulary in Scotland)

Craig Naylor (HM Inspectorate of Constabulary in Scotland)

Lucy Smith (Scottish Government)

Simon Stockwell (Scottish Government)

Heather Tully (Scottish Government)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Criminal Justice Committee

Wednesday 15 November 2023

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Audrey Nicoll):** Good morning, and welcome to the 30th meeting in 2023 of the Criminal Justice Committee. We have apologies from John Swinney. I welcome Jackie Dunbar to the meeting as a committee substitute.

Our first agenda item is to decide whether to take item 5 in private. Do members agree to do so?

**Members indicated agreement.**

## Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 1

10:00

**The Convener:** Our next item of business is to continue to take evidence on the Victims, Witnesses, and Justice Reform (Scotland) Bill. I remind members that we are at stage 1 of the committee's scrutiny of the bill. Today, we will focus on parts 1 to 3 of the bill.

I am pleased to welcome to the meeting the Cabinet Secretary for Justice and Home Affairs, Angela Constance, and Scottish Government officials. Heather Tully is from the criminal justice reform unit, criminal justice division; Lucy Smith is from the victims and witnesses unit, criminal justice division; Simon Stockwell is from the family law policy unit, civil law and legal system division; and Kirsty Anderson is a solicitor in the legal directorate.

I refer members to papers 1 and 2. I intend to allow around 90 minutes for this session.

I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** Thank you, convener, and good morning.

The Victims, Witnesses, and Justice Reform (Scotland) Bill puts victims at the heart of the justice system. Parts 1 to 3 of the bill are essential to the delivery of that ambition. I will briefly go over the aims of those parts.

Part 1 of the bill, on establishing an independent victims and witnesses commissioner, will give victims an independent voice to champion their views and hold justice agencies to account. Part of the commissioner's role will be to monitor how agencies are complying with the standards of service and the victims code.

There is long-standing and clear demand for the role from victims. The issue has been discussed at the victims task force for a number of years, and our public consultation revealed that there is strong support for the role. The bill delivers on a commitment that was made to victims and the wider public via our manifesto and our programme for government to establish such a post. The role will benefit victims and witnesses of crime by providing a statutory mechanism for their voices and experiences to be heard.

Part 2 of the bill aims to put trauma-informed practice at the heart of decision making in the justice system, to improve people's experiences of justice, and to help them to participate effectively.

I have followed the committee's scrutiny of those parts of the bill with interest, and I am pleased that there has been universal agreement among the committee's witnesses that the justice system must operate in a trauma-informed way.

The committee has heard from experts about the ways in which trauma can affect people, and victims and survivors have spoken powerfully about the lasting impacts of trauma and how the justice process itself can be retraumatising. We cannot remove all risk of traumatisation from the justice system, but the bill will put in place measures that aim to minimise that risk. If people are treated in trauma-informed ways, that can help to keep them engaged with the justice process, help to ensure that trauma does not prevent them from participating effectively, and help them to give their best evidence. As well as significantly improving the experiences of witnesses, that can improve the quality of the justice process for everyone involved.

The bill builds on work that is already being done by justice partners, and it aims to embed the principles of trauma-informed practice within our justice system. It includes a definition of trauma-informed practice to help to ensure a consistent understanding and a consistent approach. It requires justice agencies to make efforts to reduce retraumatisation and to publish standards on trauma-informed practice.

The bill also requires the judiciary to take trauma-informed practice into account when scheduling court business, and it empowers the courts to set rules that are designed to ensure that proceedings are conducted in trauma-informed ways.

Part 3 of the bill covers special measures in civil cases. Special measures protect people in court who might be vulnerable. The provisions are a reflection that domestic abuse can arise in civil cases as well as in criminal cases. The existing legislation on special measures covers civil cases as well as criminal cases, but there have been requests over the years to improve the legislation on special measures in relation to civil cases. The Children (Scotland) Act 2020 includes provisions to enhance special measures in some cases. That act was, of course, about just family cases. The bill is an opportunity to extend the provisions to cases generally.

The bill is central to the delivery of our vision for justice. It brings forward proposals for transformational change to the system, which have emerged from respected review processes and directly from victims. The Government is acting on the evidence and on what we have heard from people with experience of the system. It is important that the bill is the Government's response to what we have heard from victims.

I look forward to the committee's questions.

**The Convener:** Thank you very much, cabinet secretary.

We will move on to questions. I intend to invite questions on part 1 of the bill first. We will then move on to parts 2 and 3 in turn.

I will begin with a general question on part 1, which proposes the establishment of a victims commissioner. We have heard mixed views on that proposal. Some witnesses are clearly very supportive of it, but others have raised concerns about, for example, whether that is the best use of limited resources, whether we need another commissioner, and a possible conflict with the role of the Lord Advocate. I ask the cabinet secretary for her reflections on some of the concerns that have been raised.

**Angela Constance:** That is a good place to start, convener. In response to your question, I want to reiterate and expand on what I have said about the case for a victims and witnesses commissioner and the support for our proposition. I also want to acknowledge some of the concerns about costs and your point in relation to the Lord Advocate's powers.

We are all operating in a fiscal reality, of course, but there are provisions in the bill that enable the victims and witnesses commissioner to share back-office functions. A number of commissioners already do that.

The bill does not disqualify an existing commissioner from being appointed to the new role. Any commissioner would need to comply with the Scottish Parliamentary Corporate Body around things such as the office location. Many commissioners are located in shared premises in Bridgeside house in Leith, in the existing Scottish Government estate, or in the existing public sector estate.

On the case for a commissioner, the bill is about the need for an independent voice and a champion who will challenge criminal justice agencies. In my opening remarks, I mentioned that the role also brings an additional statutory mechanism that enables voices and experiences to be heard. A key role of the commissioner will be to monitor compliance with the victims code and the standards of service, including the requirement for agencies to actively demonstrate trauma-informed practice, and, in that manner, to monitor how the rights of victims and witnesses are being respected. The commissioner will, of course, be accountable to Parliament.

The proposition has been developed over a number of years through the work of the victims task force, which produced a paper back in 2020. Victim Support Scotland produced a paper entitled

“Making the case for a Victims’ Commissioner for Scotland”. Its case hinged on the need for victims and witnesses to be heard and to be able to influence systemic change and change at the strategic level.

I was also struck by the correspondence on the bill from Lynn Burns. She said that the role was an opportunity for a commissioner to represent all victims, which is different from the role of individual agencies, and that, in many ways, it would be a “first step”—that is probably why it is in part 1 of the bill. She described the role as a “conduit” at a strategic and systemic level between Government, justice agencies and people who are affected by crime.

With regard to the Lord Advocate’s powers, I am clear that there is nothing in the bill that in any way interferes with or disrupts the Lord Advocate’s constitutional powers with respect to prosecution decisions or her other functions. The bill simply acknowledges the role of the Crown Office and the fact that it has functions that have an impact on the treatment of victims. In my view, a victims and witnesses commissioner should be able to make recommendations, but only in respect of the Lord Advocate’s functions in relation to the treatment of victims, not in relation to those powers that only the Lord Advocate has the constitutional authority to undertake.

**The Convener:** Thank you—that is a really helpful update.

I have a couple of supplementary questions that I might come back to later if we have time, but first I will open up the session to members. I will bring in Rona Mackay and then Fulton MacGregor.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning, cabinet secretary, and thank you for that helpful overview—a lot was covered in that. I want to pick up on one part of it, for clarification. You said that it is possible that the role would be open to an existing commissioner. I wondered what you meant by that. Do you mean that another commissioner would take on that aspect as an additional role or as part of their portfolio, rather than having an individual victims commissioner?

**Angela Constance:** The legislation provides for a distinct role of victims and witnesses commissioner; it does not disqualify an existing commissioner from taking on that role. I ask our lawyer or perhaps Lucy Smith from the policy team to confirm that I have articulated that accurately for the record.

**Lucy Smith (Scottish Government):** The provisions in schedule 1 to the bill concern the appointment of a victims and witnesses commissioner, and state that it does not prevent an existing commissioner from having that

function. The function cannot be given to another public body, but it could be given to a commissioner. If the committee and Parliament so chose, that could be an option, rather than having a specific separate body.

**Rona Mackay:** Thank you. That is interesting.

**The Convener:** I will bring in Fulton MacGregor and then Sharon Dowey.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Good morning, cabinet secretary and officials.

To follow on from Rona Mackay’s question, we heard some concerns from the Children and Young People’s Commissioner Scotland about a “lack of clarity” and a potential “overlap” between its role and the role of the proposed victims and witnesses commissioner. Has the Government looked at that? Do you think that there might be a case for making that clearer?

**Angela Constance:** We have been conscious of that issue from looking at some of the policy areas in relation to improving the experience of, and the support that is available for, child witnesses. For example, the work around the bairns’ hoose is cross-portfolio work. The Children and Young People’s Commissioner Scotland role is a model of a commissioner working well.

10:15

It is correct to say that the victims code and the standards of service for which criminal justice agencies are held to account specify children. We have been working to ensure that the connectivity and links between the Children and Young People’s Commissioner Scotland and the victims and witnesses commissioner are appropriate and that there is no duplication. For example, section 10 of the bill gives the commissioner powers to carry out an investigation, but not to duplicate the functions of others. The bill is crafted to ensure that we have clarity instead of confusion and that the victims and witnesses commissioner cannot go into the functions and duties of another commissioner or, indeed, another body. However, section 6 empowers the victims and witnesses commissioner to engage with the Children and Young People’s Commissioner Scotland.

We want to ensure that there is as much clarity as possible. If there are other matters that, in light of the evidence, we need to resolve or if further detailed consideration needs to be given, we will certainly do that.

**Fulton MacGregor:** Thank you.

**Sharon Dowey (South Scotland) (Con):** Earlier, you said that the role will provide a statutory mechanism for the voices and

experiences of victims to be heard. You also said that it would give them an independent voice and champion and that it would monitor compliance. However, there are already many groups and organisations out there that could perform that same function. Rape Crisis Scotland, Victim Support and Scottish Women's Aid have all expressed concern that funding for the commissioner should not take funding from the front-line services that they provide. In the Finance and Public Administration Committee concern was also expressed that

"it is becoming regarded as a casual thing to suggest and implement the establishment of another commissioner, despite it being an expensive extension of our public sector."—[*Official Report, Finance and Public Administration Committee*, 10 January 2023; c 20.]

We all know that finances are finite. We will have to find the money from somewhere. Where is the money coming from? Can you guarantee that it will not be taken from existing front-line services?

**Angela Constance:** It is a completely different function from the role and purpose of the front-line services. Ms Dowey is right that investment in a victims and witnesses commissioner should not be taken from front-line services. Of course, we operate within a fiscal envelope. I understand and am respectful of the fact that people have a duty to test the costs and the detail in financial memorandums for any new proposal.

You quoted the finance committee. I can confidently say that the approach to consideration of a victims and witnesses commissioner has not been "casual". Work has taken place over a number of years, including work by the victims task force and Victim Support Scotland, as well as our consultation on the bill. I dispute any inference that our proposal to bring forward a victims and witnesses commissioner is, in any way, "casual". The proposal is a direct response to a direct demand from victims and witnesses.

The commissioner's role is designed to complement and not to duplicate the role of front-line services. I will give some examples. The commissioner has broad powers that front-line agencies do not have, including powers that will require agencies to provide information to determine whether they are compliant with the updated victims code and standards of service.

The commissioner will also have a duty to publish reports and recommendations and will have powers to require agencies to respond to any report that is made by the commissioner. The commissioner is also required to publish any statements that the commissioner receives from agencies in response to recommendations.

Therefore, the role of the commissioner is very much about structural and systemic change and is

distinct from the role of individual agencies that support individuals or provide front-line services.

**Sharon Dowey:** You said in your opening statement that all organisations are supportive of bringing in trauma-informed practices. Those organisations have highlighted all the issues that we have highlighted, so would the money not be better spent on fixing the things that we already know are wrong? The money is going to have to come from somewhere.

**Angela Constance:** The money is going to have to come from somewhere and, after the session that we had last week on pre-budget scrutiny, I think that we are all well apprised of the challenges that we face. I still contend that there is added value and, therefore, merit in investment in a victims and witnesses commissioner, because it will hold criminal justice agencies to account on how they implement and put into practice trauma-informed approaches.

**Russell Findlay (West Scotland) (Con):** I have a continuation of the line of questioning from my colleague Sharon Dowey. Police Scotland and the Crown Office have both written to the Finance and Public Administration Committee with concerns about the bill's financial memorandum, and the finance committee's convener has written to this committee's convener and to you about that.

Some of the biggest concerns relate to the cost of sex crime courts, which are mentioned in part 5 of the bill and are therefore a matter for another day. However, the cost of the commissioner is also cited as an area of concern. In that light, is the Scottish Government revisiting, reassessing or re-evaluating the cost of the bill?

**Angela Constance:** When a financial memorandum is produced, it is based on the detailed evidence that is available at the time. I stress that we have engaged extensively with our stakeholders and partners, who will ultimately have operational responsibility to deliver many aspects of the bill.

We were very transparent and up front about the financial memorandum. The costs are far easier to define for parts 1, 2 and 3, which we are discussing this morning. There are other parts of the bill—Mr Findlay is right to point to that—for which estimates and minimum costs have been given. That is in recognition of variables and operational decisions that have yet to be made.

**Russell Findlay:** Is the cost being re-evaluated or reassessed?

**Angela Constance:** That is an on-going process. I have received correspondence from the finance committee in that regard, and we will continue to engage.

**Russell Findlay:** In general terms, is the financial memorandum that accompanies a bill always a work in progress, with the capacity to change as the bill evolves?

**Angela Constance:** That has been my experience as a minister in a number of portfolios. I appreciate that you want to establish as much information about the costs as early as possible: that is in the interests of transparency and accountability to Parliament and committees. However, given the work that goes on in and around a bill—particularly around implementation—and the purpose of scrutiny and evidence, there are times when financial memorandums are revisited.

**Russell Findlay:** Thank you for that. In opening, you said that a commissioner would have the ability to hold agencies to account. The Law Society of Scotland has highlighted that the bill does not contain any enforcement mechanism in the event of any agencies failing to co-operate with the commissioner. In other words, the police and the Crown Office could, theoretically at least, ignore or not engage with the commissioner, and apparently there would be nothing that anyone could do about that. Will that gap in the bill be addressed by the Scottish Government?

**Angela Constance:** I would not articulate that as a “gap”, Mr Findlay, purely on the basis that the model for the victims and witnesses commissioner is in line with the model for most other commissioners. I may well stand to be corrected but, by and large, commissioners are accountable to Parliament, so if they are reporting on significant abdication of duty or non-compliance with legislation or standards of service, that information is made available to Parliament, and it is for parliamentarians to consider what further action would be appropriate.

**Russell Findlay:** So, Parliament would need to address any potential non-compliance—that would not be part of the bill, because that would be inconsistent with other commissioners.

**Angela Constance:** Yes.

**Russell Findlay:** Thank you. An extension of that is the view of the Crown Office and Police Scotland that the commissioner should not be allowed to become involved in individual cases. They claim that its doing so would potentially prejudice legal proceedings. Do you believe that it is reasonable and straightforward to empower the commissioner to act in certain cases without interfering with justice?

**Angela Constance:** Again, we have carefully looked at that, bearing in mind the operational independence of our courts and prosecutors, and that it is not in anybody’s interest for those processes to be interfered with. Ultimately, the

victims and witnesses commissioner is about amplifying the voices of victims and witnesses to ensure better and consistent system-level change.

The commissioner can engage with individuals and can consider the individual experiences of people, but that is to improve understanding of the national picture. Bearing in mind the discussions that we have had so far about concerns about duplication and costs, I am satisfied that the commissioner, as is the case with other commissioners, will not take on or intervene in individual cases.

**Russell Findlay:** Okay. I have had dealings with the Children and Young People’s Commissioner Scotland in relation to the specific case of a baby who died. I did not realise that they were perhaps going beyond their remit. I know that you cannot speak to that, but surely there will, due to the very nature of the criminal justice system, be cases that require the commissioner to engage and perhaps take action and make some form of immediate intervention.

**Angela Constance:** As I have said, the purpose of the commissioner, which—we can establish this—is not an uncommon model for commissioners, is to look at and engage with, although not to act on, individual cases with a view to wider system change. It is not uncommon for commissioners to call for a change in policy or legislation or to call for action, but that is done at a system-wide level, based on the knowledge about and understanding of an individual case or many cases.

**Russell Findlay:** Thank you.

**Pauline McNeill (Glasgow) (Lab):** Good morning. I will begin by stating what I have already said on record: I have never been keen on having a lot of commissioners. I struggle to see how the proposal would actually make any difference to victims. However, I am trying to keep an open mind.

10:30

My first question follows on from Russell Findlay’s. The rule of law dictates separation between Parliament and the courts. As you have said, the Lord Advocate has a statutory legal function and is independent. Therefore, it is not possible to create a commission that has powers to challenge those statutory bodies. If it did that, it would be interfering with the rule of law and the independence of the Crown. Is not that the first problem?

**Angela Constance:** As I outlined in my answer to Ms Dowey, the commissioner will have broad powers to require criminal justice agencies to provide evidence on investigations that the

commissioner undertakes. The commissioner could require agencies to provide clear information that they are compliant with trauma-informed practice and that they are adhering to the victims code and the standards of service. Like other commissioners, the commissioner would have a duty to publish reports and to make recommendations, which would all be on the public record. The commissioner could impose a requirement on agencies to respond to a report, and would have to publish statements on the responses that they have received to recommendations or reports that they have made.

That is a well-established model. The best example of where that has worked well is the Children and Young People's Commissioner Scotland, which has certainly been part of the dialogue and has contributed to many policy and legislative changes in the Parliament. Over the history of the Parliament, that commissioner has shifted and changed our dialogue on how we support children and young people. Victims and witnesses are seeking to achieve a commissioner that is on a par with the Children and Young People's Commissioner.

**Pauline McNeill:** Surely there is a big difference between a victims and witnesses commissioner and the children's commissioner, which does not deal with the court system or the Crown Office. Surely the distinction is that you want to create a commission that cannot interfere with statutory functions. I take your point about the children's commissioner being able to influence policy—on the definition of "child", for example—but I do not think that there is a straightforward comparison. We hear from victims about their experiences of long delays, of the failure of the Crown Office and the police to communicate properly and of the court system—the physicality of the court and issues with giving evidence. The bill is trying to deal with all that anyway, through trauma-informed practice and evidence on commission.

I struggle to see what the commissioner will do, other than saying, "Report to me on this," as you mentioned. The commissioner cannot go beyond that in any way.

**Angela Constance:** I point to the fact that the Children and Young People's Commissioner operates in an environment that is quite legislation heavy—for example, it involves the children's hearings system, and a small proportion of children and young people become involved in the criminal justice system. Therefore, it is a fair comparison. All the things that you mentioned, such as court rules and procedures, scheduling, the environment and pre-recorded evidence, have a direct link with trauma-informed practice and trauma-informed approaches. Although the operational delivery of those matters rests

elsewhere, the purpose of the bill, in cementing and placing duties on people to demonstrate trauma-informed practice, is to be a lever. It is not the only lever, but it is certainly a lever for changing how operational decisions are made and implemented.

**Pauline McNeill:** Does that not call into question the existence of a commissioner—and, I have to say, the excellent work that Victim Support Scotland has done? That organisation is Government funded and has been a champion for victims. It has appeared before the committee on many occasions. Does what you have said not compromise the funding of a third sector organisation that is already effective?

**Angela Constance:** Victim Support Scotland has been one of the biggest advocates for a victims and witnesses commissioner. It published a paper making the case for such a commissioner in 2021. I know that Victim Support Scotland's Kate Wallace has given evidence to the committee.

**Pauline McNeill:** However, do you not see any compromise having to be made between the roles of a commissioner and of a very effective victims' organisation?

**Angela Constance:** I do not, Ms McNeill. Those are distinct roles, which complement each other. I think that I have given some clarity about learning from how commissioners are established more broadly, and how we have made efforts to ensure that there is no inappropriate duplication. To be honest, in my experience as a minister, dealings with commissioners are always quite formal—a few times a year, at arm's length, and with an exchange of correspondence—but engagement with stakeholders and front-line organisations is always more intense and more frequent.

**The Convener:** Before we move on to part 2 of the bill, I have a final question that relates to the British Transport Police, which sent in a written submission. In relation to parts 1 and 2, it questioned why the BTP was not considered to be a justice agency in the same way as Police Scotland is.

You will be aware that BTP representatives were in the Parliament just the other week. They spoke about a range of things, including the BTP's railway guardian app, which enables travellers to report crimes and offences while travelling. In conversation with me, they were keen that the app be extended to women, and felt that it was relevant to safe travel for women.

Are there difficulties in and around that? If so, is the Scottish Government looking at ways to ensure that the BTP's status, if you like, does not hinder the objectives of the bill?

**Angela Constance:** The BTP does great work. As we all know—I am stating the obvious here—it works across these islands. It is important to stress that we will always have further discussions with agencies—the BTP and others—if they seek to do more, particularly in pursuit of the aims of the bill.

The purpose of our investment in the knowledge and skills framework for the justice sector is to provide practical guidance and support for the implementation of trauma-informed practice. It is clear that the BTP undertakes many initiatives to put that into practice, and we are happy to explore that more with it.

The bill builds on previous legislation. The agencies that have duties placed on them in the Victims, Witnesses, and Justice Reform (Scotland) Bill are listed in the Victims and Witnesses (Scotland) Act 2014. We are of course cognisant that the BTP operates in other areas, and our legislation can only apply to operations in Scotland.

Our door is open if there is more that we can do to work with the BTP and to work in partnership. I am also conscious that we are the first jurisdiction in the United Kingdom to legislate to put trauma-informed practice into the very heart of legislation and our justice system. We will want to share that with others and work with others.

**The Convener:** Thank you very much—that is a helpful open door. That response might help us to segue into considering part 2 of the bill, on embedding trauma-informed practice.

We heard some excellent evidence on trauma-informed practice a couple of weeks ago from Dr Caroline Bruce and from Professor Thanos Karatzias of Edinburgh Napier University. Professor Karatzias made a point in response to a question about the whole-system embedding of trauma-informed practice. He said that the principles of trauma-informed practice are quite general and involve

“safety, choice, collaboration, trustworthiness and empowerment.”—[*Official Report, Criminal Justice Committee*, 1 November 2023; c 2.]

However, different elements might apply in different parts of the justice sector. For instance, the principles of safety and choice are perhaps more relevant in a court setting, while principles of recovery might be more important and relevant in prisons.

Does the cabinet secretary consider that the provisions of the bill will support a whole-system application of trauma-informed practice—as set out, for example, by Professor Karatzias?

**Angela Constance:** In broad terms, yes. The provisions in the bill seek to do two things. We

indeed want systemic change, and we want to develop a shared understanding and consistency of approach. We want all that, on the one hand. On the other hand, there is a recognition that justice agencies will need flexibility to implement the provisions in a way that is tailored to their context, for the very reasons that you have outlined. The bill does that by creating a statutory definition of trauma-informed practice that requires agencies to have regard to trauma-informed practice in their work with victims and witnesses. The provisions are crafted in a way that empowers courts to set rules and procedures on trauma-informed practice in both criminal and civil business.

How trauma-informed practice is defined is informed by the trauma-informed knowledge and skills framework for the justice sector, although, as with any legal definition, that has to fit in with legislation. Some definitions, such as those used in the Victims, Witnesses, and Justice Reform (Scotland) Bill, are dependent on previous legislation. As with any legislation, we are not starting from scratch.

**The Convener:** To follow up that point, if the bill is passed and we have a whole-system embedding of trauma-informed practice, will some provision be put in place to support and embed the implementation of a whole-system approach? What early work might be required around that?

10:45

**Angela Constance:** We have started that early work. Colleagues will remember the debate that we held in the Parliament before the summer recess, in which we shone a light on the publication of the knowledge and skills framework. Members who took part in that debate—I am thinking of Ms McNeill, in particular—commented on the fact that that is a substantive document, which runs to about 250 pages. There is the toolkit and, as I am sure that the committee knows from the evidence that it has heard, many of our stakeholders and agencies are already running with that work.

That work does not depend on legislation. Legislation gives a permanency to change and cements change into the system. It imposes a duty on players in the system to demonstrate that they are meeting the trauma-informed objectives and are adopting that way of working.

**The Convener:** Thank you. Sharon Dowey is next.

**Sharon Dowey:** I was looking at the definition of trauma-informed practice. We have heard in evidence that many of the criminal justice agencies have started to bring in trauma-informed practice without legislation being in place. When

we heard from NHS Education for Scotland, it suggested that there would be benefits in extending the definition. What are your thoughts on that? If we do not get the definition right, will we run the risk of organisations only working up to the letter of the law and not going above and beyond that to keep finding new ways to improve?

**Angela Constance:** We will always have an open mind and an open door when it comes to engagement on the detail. The only caveat is that it is important that legislation brings clarity of meaning and purpose, and it is important that changing the letter of the law does not have any unintended consequences.

As I intimated to the convener, the legal definition is closely aligned with the knowledge and skills framework and all the work that NES and Dr Caroline Bruce have undertaken. The definition in the bill is not exactly the same, word for word, as the definition in the framework because the bill does not exist in isolation from other legislation. The bill is adding trauma-informed practice to the list of principles in the 2014 act.

**Sharon Dowey:** I come back to the issue of costs. Some of the justice agencies, including the police and the prosecution service, have raised concerns about limited resources. What conversations have you had with those agencies about resources? Once the legislation is implemented, is there a risk that compliance with it will have unintended consequences? You mentioned unintended consequences earlier. Is there a risk that the focus on the legislation will have unintended consequences, given that the money and the resources will have to come from other areas?

**Angela Constance:** I assure members that we have lots of discussions about resources with our partners on an on-going basis.

I think that the costs for parts 1, 2 and 3 of the bill are pretty well defined and clear. I am conscious that organisations such as the Scottish Courts and Tribunals Service are smaller from the point of view of overall budget and size of operation than the likes of Police Scotland, and that we must give some cognisance to smaller organisations.

However, it is appropriate for me to test any supplementary evidence from stakeholders about costs. It is important to remember that not all of what the bill seeks to do is about additional resource, although I do not demur from the reality that there is a cost to the bill.

Some of this is not about additional duties but about changing what we do at the core. I argue that, if we get it right and embed trauma-informed practice, that will support and encourage a more

efficient justice system. It will particularly affect how we schedule, in that the implementation of trauma-informed practice is a clarion call to organise the system to reduce delays. It is all interrelated. Some of this is about approach, culture and practice, as well as being about resources.

**Sharon Dowey:** I agree with that, but putting it into practice will have an initial cost. We have your letter that came to the committee last night, and all through that letter there is reference to financial constraints. Those are why a lot of previous legislation has not been implemented. I would be concerned that, because of the costs of implementing the bill, there could be unintended consequences from other things getting left on the side, and we could end up inadvertently causing more trauma to victims.

I have a final question, on the Parole Board for Scotland. The Parole Board said that it was not confident that the bill would change the traumatic experience of victims going through the Parole Board process. Do you have any plans to make more specific provisions relating to the Parole Board in the bill in order to change that?

**Angela Constance:** The Parole Board is a legal entity and has an interface with victims and witnesses. Therefore, like other criminal justice agencies, it will have to demonstrate its compliance with trauma-informed practice as per the provisions in the bill.

The other aspect of policy is the review of the victim notification scheme, which has a particular relevance to the work of the Parole Board. A review of it was undertaken, and that work was published in May, with around 22 recommendations. We are working through them, and I hope that we will be in a position to inform the Parliament of our response to that independent inquiry. Some of the recommendations are of particular relevance to the Parole Board.

**Rona Mackay:** Following on from your comments about changing practice and culture when it comes to trauma-informed practice, I want to ask you about floating trials in solemn cases. We have heard from witnesses and some women's organisations that floating trials prolong the trauma and anxiety of rape complainants. The Scottish Courts and Tribunals Service has defended their use, and there is nothing in the bill to address the issue.

What are your thoughts on floating trial diets? Can you understand the anxiety that it is claimed they cause victims?

**Angela Constance:** I acknowledge that there is a debate around that. In many ways, it is a live debate between different stakeholders and voices

in the legal establishment. I certainly acknowledge that uncertainty for victims is undesirable.

The Government's position is that we are supportive of reducing the use of floating trials. We have not introduced any measures to ban their use; in essence, that is because we are still tackling a court backlog.

Although the court recovery programme is making good progress and has reduced the backlog by a third, and there is a timetable of activity to move matters forward, the concern is that removing floating trials at this time could increase delays further and induce further distress.

We have taken a more flexible approach whereby courts would be required to consider trauma-informed practice when scheduling their business. However, we are supportive of a shift in culture.

**Rona Mackay:** Would the ultimate aim be, when the time is right, not to have floating trial diets at all?

**Angela Constance:** I certainly want their use to be reduced. I acknowledge that it is a matter of live debate just now, and that I need to be cognisant of a range of voices. I know that, for victims, uncertainty is a factor that causes real distress. I am being somewhat cautious because I think that, at this point in time, if we took a more inflexible approach, that would cause further harm and distress, and I therefore think that a more flexible approach is the appropriate response.

**Russell Findlay:** In its written evidence to the committee, NHS Education for Scotland says that the bill's definition of trauma-informed practice should align with its five-point definition, which was published this year. However, the bill does not include two of those five points. NHS Education for Scotland says that it is "essential" that they be included and that leaving them out

"may also hinder the effective implementation of other elements of the Bill."

It wants the Scottish Government to reconsider the issue. Will you?

**Angela Constance:** Our door is always open, particularly at stage 1. The purpose of stage 1 is to allow people to provide evidence, which is of benefit to MSPs and the Government.

I refer Mr Findlay to what I said earlier, which is that the definition aligns closely with the trauma-informed practice framework. It also adds to the existing list of principles that are contained in an earlier bit of legislation. However, if Mr Findlay or others want to be specific about what they think is missing, we can go and check the position.

**Russell Findlay:** I am putting to you what has been said in the written evidence, which, obviously, is available to the Government.

John Watt of the Parole Board has told us that we need

"a complete review of the system from the ground right up"—[*Official Report, Criminal Justice Committee*, 1 November 2023; c 29.]

and Chief Superintendent Derek Frew of Police Scotland told us that the trauma that is experienced by victims and their families through their experience of the justice system

"will not be fixed by what is in the bill"

because the bill will not

"solve the systemic issues."—[*Official Report, Criminal Justice Committee*, 1 November 2023; c 35.]

Given the evidence of Mr Watt and Chief Superintendent Frew, would a ground-up review not have been a much more sensible starting point than this costly and cumbersome legislation?

**Angela Constance:** With respect, I point to Lady Dorrian's review of the management of sexual offence cases, from which the bill is largely developed. That took a clean-sheet approach and it was a substantive piece of work that took place over two years.

It is always fair to acknowledge that no bit of legislation is ever the silver bullet but, although it does not come without its financial costs, this is a substantial piece of legislation that will make historic changes that will benefit victims and witnesses and, crucially, improve the experience that victims and witnesses have of our current court procedures in particular.

11:00

**Russell Findlay:** Does it not cause you some concern that a senior Police Scotland officer has told the committee that the problems will not be fixed by the bill?

**Angela Constance:** I have read John Watt's comments—

**Russell Findlay:** I was talking about Mr Frew's comments.

**Angela Constance:** I was about to mention Chief Superintendent Derek Frew's comments, Mr Findlay.

**Russell Findlay:** Sorry.

**Angela Constance:** The chief superintendent was talking about a local policing context and working with community planning partnerships, and he was reflecting on matters at a level beyond the bill; I am not sure that he was giving a direct comment that was specifically about the bill.

However, members who were present at the time will have their own views on that.

Having looked at the *Official Report*, Mr Findlay, and at your lengthy exchange with Mr Watt about the Parole Board, my understanding is that some of what he said was quite specific to how the Parole Board engages with victims or those who are registered under the victim notification scheme.

**Russell Findlay:** That brings us back to one of the questions that someone else asked about the Parole Board not being part of the bill's remit, which you have already answered.

**Angela Constance:** I have already answered that, and the Parole Board is part of the remit; the Parole Board, as a legal entity, is a listed agency.

**Russell Findlay:** When you were here seven weeks ago, I asked about the requirement for judges to be trauma-informed, but the bill says that it will be up to the Lord President to decide exactly what that will look like. If the bill is going to great time and effort to implement trauma-informed practice throughout the justice system, should it not be more specific about the judges? In the light of that point, which was raised seven weeks ago, is that provision being revisited, or are you happy with the bill as it is?

**Angela Constance:** I will ask officials to speak on that point, but in part 5 of the bill there is an obligation on all the actors and players in the sexual offences court to be trauma informed. We will discuss that part of the bill later. There is also a desire and a commitment for the judiciary to be trauma informed.

**Russell Findlay:** My question is specifically on the fact that the bill says that, once it is enacted, the judiciary will decide what trauma informed looks like. Should the bill not state what that looks like up front?

**Heather Tully (Scottish Government):** To add to what the cabinet secretary said, the committee heard last week from David Fraser and from Dr Caroline Bruce about the considerable training on trauma-informed practice that has already been developed and delivered by the judicial office that leads on training for the judiciary, and about the high quality of that training. It was perhaps the first organisation, or one of the first organisations, that Dr Caroline Bruce worked with quite extensively on the development of its own training. It has already put considerable resource and time into developing that. As the cabinet secretary said, in part 5 of the bill there is a requirement that the judiciary in the specialist court, like the other players in that court, will have undergone trauma-informed training.

**Russell Findlay:** Is that training provided by the Judicial Institute for Scotland?

**Heather Tully:** Yes, the Judicial Institute for Scotland leads on the development and delivery of all training for the judiciary.

**Russell Findlay:** Okay. Thank you for that.

**Fulton MacGregor:** We have covered quite a lot about trauma-informed practice already, so my question is quite general and touches on something that the cabinet secretary has already raised.

Clearly, we have heard evidence that a lot of good trauma-informed practice is already happening in the justice system, albeit that it perhaps happens in patches throughout different organisations. I think that everybody recognises—we have heard this from various people who have told us about their experiences—that the justice system often retraumatises victims. Is it the purpose of this part of the bill, which brings trauma-informed practice into legislation, to try to drive culture change and to look at the good things that are happening and try to replicate them across services quicker than would happen without legislation?

**Angela Constance:** In short, yes. There has been a series of reports, dating back to about 2017, including a thematic review of investigation and prosecution services, a close look at justice journeys and a review of victim care that was undertaken by Lesley Thomson KC, as well as other work. Then we have Lady Dorrian's work, in which she said that trauma-informed practice is a central way in which the experience of complainers can be improved. I believe that the bill will help to bring forward that system-wide change.

As I said in my opening statement, we can never remove risk entirely, because people will have to recount very difficult traumatic experiences, in some shape or form, as part of their going through the justice system. However, where we can, we will seek to reduce the risk of retraumatisation and ensure that people can continue to be engaged with the justice system and not fall out of the process by supporting them appropriately to give their best evidence. That is not compromising anybody else's rights, but it is in the interests of justice that complainers and witnesses can give the best of evidence. At the end of the day, we all just want to get to the truth in any individual case.

A cornerstone of our justice system is fairness, and it has to be run in a way that does not disregard the welfare of people who participate in it.

**Pauline McNeill:** You have partially covered the question that I was going to ask, but just for the

record, you said that there will be a certain element of risk and that the important thing is that we have a system that lets victims tell their stories and that, when they are in court, they can fully voice what happened to them. However, there is a fine line between that and cross-examination. Whatever you think of the system that we have, it is the system that we have and you are not proposing to change its adversarial nature. Have you had any discussions with the profession? Have any concerns been raised with the Government during the passage of the bill about the balance between trauma-informed practice and the process of cross-examination in court?

**Angela Constance:** Yes. Again, there have been lots of discussions with lots of stakeholders and people who operate in the courts on a daily basis. As you would expect, I have engaged with the Faculty of Advocates, criminal defence lawyers and victim support organisations. The purpose of Lady Dorrian's review was to look at how we could improve the experience of victims who are going through the justice system without compromising the rights of the accused. There is always a balance to be struck there.

I will not repeat what I said about the series of reports that make up a body of evidence about the system as a whole. We have had lots of powerful personal testimony about the emotional toll of being a complainer or a victim, as I am sure that the committee has.

There are criminal defence lawyers who have been absolute champions of the trauma-informed approach. I am thinking particularly of Iain Smith, with whom I had dealings when I was Minister for Drugs Policy.

Our system ultimately needs to be fair to everybody, and we need to have that balance.

**The Convener:** My final question before we move on to part 3 of the bill is on the role of the Scottish Prison Service with regard to trauma-informed practice. The committee has heard evidence relating to the treatment of prisoners in a trauma-informed way. However, I am interested in how the cabinet secretary envisages the provisions in part 2 of the bill further impacting the role of the Scottish Prison Service with particular reference to victims and witnesses—for example, in and around the victim notification scheme.

**Angela Constance:** The bill requires the Scottish Prison Service to comply with the new principles on trauma-informed practice in its work with victims and witnesses. The SPS mainly interacts with victims through the victim notification scheme, which has been subject to a full, independent review. The Minister for Victims and Community Safety and I will come forward with our conclusions and our response to that review either

by the end of the year or at the turn of the year. That review focused on communication with victims and how there could be a more person-centred approach, as well as people's rights to engage with particular processes.

Other work that is relevant in that regard includes a workstream under the victims task force on communication, specifically written communication. That is important for organisations including the Crown Office and the Scottish Prison Service because we will all have heard testimony about the nature of written communications which, at times, can be somewhat impenetrable. More broadly, the Scottish Prison Service is involved with the "people at heart" approach to communication. Although the trauma-informed approach for prisoners is not in the bill, which is about victims and witnesses, it is part of the SPS corporate plan.

**The Convener:** We will move to part 3 of the bill, which is about the proposal to extend special measures to vulnerable witnesses in civil cases.

We received evidence from Scottish Women's Aid, Rape Crisis Scotland and Victim Support Scotland arguing that the categories of witnesses who are deemed to be vulnerable should be broadened beyond what is in the bill and that special measures should be available automatically for those witnesses. Will the cabinet secretary consider amending part 3 of the bill in recognition of that evidence?

**Angela Constance:** I will always work with members and stakeholders to discuss their concerns. I am always in the business, I hope, of demonstrating that we will look at the art of the possible. That is quite a difficult area—and I say that for reasons of transparency.

Part 3 of the bill is about improving access to special measures. We have heard over a number of years that people in the civil courts have felt far less protected, particularly in and around where domestic violence or abuse is a feature of the case.

11:15

Our approach thus far has been that where civil protection orders are in place—an interdict or a non-harassment order—or where there are convictions or, indeed, live proceedings, those will trigger the special measures automatically. The court would have discretion in other circumstances. I am always happy to discuss and consider further. I am also aware of evidence that the committee got from the Family Law Association that expressed some caution.

**The Convener:** Do any other members want to come in on part 3? I will bring in Russell Findlay.

**Russell Findlay:** When you were here in September, cabinet secretary, I raised the issue of what some victims groups have described as “legal system abuse”. An example of that is when a domestic abuser uses connected civil and criminal cases to cause a further unnecessary delay. It was suggested that a single sheriff could deal with civil and criminal cases in tandem to help tackle that.

You said at the time that you saw the logic of that, that the Scottish Government would “take an interest” and that you would consider working on a possible way of amending the bill. It has only been seven weeks since then, but have you or your officials had any opportunity to explore that any further?

**Angela Constance:** I remember our exchange well, and I can indeed see the attraction or potential benefits of such an approach, bearing in mind that one of the core concerns is the lack of information and the lack of connectivity if different courts have different information and different procedures going on.

I have certainly discussed the issue further with officials. It would be a major and substantive piece of work—I am just being up front and direct about that. That does not mean that there is no merit in exploring it, but it might limit what could be achieved via an amendment. If you are talking about integrating courts in certain circumstances, that would certainly require full consultation with stakeholders and, indeed, with the Lord President, given his unique duties and responsibilities.

We are planning some workshops to look at the issue more fully. There is not the fullest of evidence. There is some evidence on this from the States, but there is not a wide range of evidence. We will continue to look at the issue with our stakeholders in the workshops, which will take place next year.

We would also have the desire to look at the issue in and around court rules. I know that more recent changes to court rules have focused on doing more to get the right information to support earlier action, particularly in family cases. Measures around initial and full case management hearings have been introduced. If there is further information, I would be happy to provide that to you separately.

**Russell Findlay:** To recap, the workshops that you mentioned are not specific to this legislation.

**Angela Constance:** They are not specific to the legislation, but they are specific to the issue of integrated domestic abuse courts.

**Russell Findlay:** Right.

I think that Scottish Women’s Aid told us that there had not been any meaningful research in

Scotland on this issue. There is research from elsewhere in the UK.

I noticed that you said that this would be a major piece of work, but I guess that the legislation is already a major piece of work, not least with regard to the controversial intent to have judge-only rape trials. Given that the issue would need to be consulted on, does that make any proposed amendment unrealistic at this stage? Is it too late?

**Angela Constance:** I am keen to manage expectations, Mr Findlay, bearing in mind some of the discussion that we have had about cost and the need to be in a position to implement legislation. What I do not want is for amendments to be agreed and then, once we have royal assent, for us to be left sitting with the issues of how to implement some of this in practice. It is about not putting the cart before the horse.

**Russell Findlay:** As a member of the Parliament, I am trying to understand the process, because you might lodge an amendment with good intent but, if the necessary work has not been done to assess the costs, it can potentially create more problems.

**Angela Constance:** Yes. I would be a bit nervous about an amendment on something so substantive, but that does not mean that there is not merit in pursuing that work further.

**Russell Findlay:** With the full weight of the Government behind it, we could get it done.

**Angela Constance:** We have a lot more work to do. You are a chancer.

**Russell Findlay:** Thank you. That is the nicest thing you have ever said to me. *[Laughter.]*

**Angela Constance:** We have a long journey to go on together, Mr Findlay. We will be pals by the end of it.

**Russell Findlay:** I do not doubt it. Thank you.

**Angela Constance:** I thought that you were going to say something else then.

**Sharon Dowey:** Three years on, the special measures in the 2020 act are not yet in force. When does the Scottish Government aim to have part 3 of the bill fully operational?

**Angela Constance:** There are two parts to my answer. I wrote to the committee in response to the convener’s letter. Those are fair points. I hope that I have managed to give some reassurance that intensive work is under way. We are living with the reality of a major global pandemic, which undoubtedly interrupted our justice system and the implementation of legislation. However, I want to give the committee the assurance that that is something that I will always test because, although it is true that we are still living with the

consequences of the pandemic, I am conscious that folk get a bit weary of hearing that. I will always want to absolutely test pace and progress, and I hope that I have given some reassurance to the committee on legislation that is still being implemented.

There are some complexities with regard to the timescale for special measures. Members will know the purpose of the special measures. One area—the creation of a register of solicitors—will require particular detailed work; it will require regulations, consultation and a considerable amount of work. The bill puts particular responsibilities on the Government with regard to who we engage with—for example, the Faculty of Advocates—and requires us to take certain actions.

We need to establish the register of solicitors and we need to recruit solicitors. Consultation would be needed on and round that, prior to any regulations being brought forward. That piece of work underpins the policy drive, with regard to special measures, to prevent people in certain circumstances from representing themselves or leading their case in the civil courts. That goes back to Mr Findlay's point about abusers being able to use civil courts as a platform to further torment people who have been victims, such as victims of domestic abuse and violence. If people are not able to represent themselves, they need to be represented. That is about fairness in the system; we cannot compromise the rights of any particular party.

With regard to part 3, we are probably looking at around two years. I put that on the record now.

**Sharon Dowey:** Thank you. You have actually answered one of my other questions—I was going to ask whether you are concerned that there is not a sufficient number of solicitors who are willing to be included on the register. You seem to be doing work to recruit solicitors, so that answers that question.

I go back to the cost. You referred to the letter that you sent to the committee last night, which says that

“there are budgetary pressures in relation to implementing the Act in full”

amounting to

“£15 million a year.”

It goes on to say:

“The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 ... has not yet been implemented beyond Phase 1”.

Again, in relation to implementation of aspects of the Domestic Abuse (Protection) (Scotland) Act 2021, the letter states that those

“all have associated resource implications.”

It also says that implementation was affected

“due to resourcing and other priorities following the Programme for Government”.

I wonder, therefore, whether we should look at some of the legislation that has not yet been fully implemented, rather than trying to batter on by bringing in even more legislation that will not be implemented unless we get the proper funding for it. The implementation of that previous legislation would have a huge impact on some of the trauma that victims and witnesses face.

As the letter notes, one aspect of the Domestic Abuse (Protection) (Scotland) Act 2021 was about allowing victims

“to remain in the family home”

by

“enabling a social landlord to transfer a tenancy to a victim/survivor”.

Again, ensuring that we have implemented some of the previous legislation would go a huge way towards making sure that we reduce trauma. Should we perhaps stop and look at some of the previous legislation, and put the funding in to get it implemented? As you have said, there is a will within the judiciary to undertake trauma-informed practice.

**Angela Constance:** We are riding two horses at once—

**Sharon Dowey:** Maybe more.

**Angela Constance:** That is sometimes just the way that life needs to be. We are taking this bill through Parliament in tandem with the work to implement previous legislation.

On some of the specifics, the bill before us expands the powers of the Children (Scotland) Act 2020. There is a good synergy between the 2020 act and this bill, in that we are essentially increasing the safeguards for vulnerable parties. Section 11 of the 2020 act contains special measures that are focused on family cases involving custody and disputes about contact. In this bill, we are taking the nub of that element and expanding it to cover civil procedures more widely. That is to be welcomed—it is what victims have been calling for.

Nonetheless, I would say that progress has been made with the 2020 act. There are other aspects of that act that do not relate directly to this bill—in and around child contact centres, for example. Ministers have had detailed discussions with the Care Inspectorate on that and hope to be in a position to lay Scottish statutory instruments soon. There is progress on that.

The bit of the 2020 act that is relevant to the bill that is before us is a good example of where we have undertaken a bit of movement in protecting people in civil proceedings and expanded that further, and we will make more progress in that respect.

The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 relates to the introduction of pre-recorded evidence in court, and we have made progress in that regard in the High Court. That work is phased and on-going. In later sessions, we will discuss part 5 of this bill, on the establishment of a sexual offences court, and there will be a presumption that pre-recorded evidence will be used in that court.

11:30

The Domestic Abuse (Protection) (Scotland) Act 2021 is an example of legislation for which there are practical issues relating to implementation. That is why I gave a note of caution in our discussion about amendments. Not all the issues with the 2021 act relate to finances. Some relate to how timescales that are set in legislation have an impact on the operational justice agencies, and there are some challenges in how the views of children can be gathered in ways that do not cause them additional harm or trauma. This is in no way an excuse, but our experiences in implementing the 2021 act are not dissimilar to some of the difficulties that have been experienced south of the border.

Legislation can be complex, and its implementation is sometimes more complex than anticipated. However, I assure the committee that I will seek to mitigate such issues as far as possible as we go through the bill process.

**The Convener:** For the record, I clarify that we received the letter that you sent earlier this week, which provides an update on previously passed legislation, including the Children (Scotland) Act 2020, the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 and the Domestic Abuse (Protection) (Scotland) Act 2021. That correspondence is now available online.

With that, I draw the session to a close. I thank the cabinet secretary and her officials for joining us.

There will be a short suspension to allow a changeover of witnesses.

11:32

*Meeting suspended.*

11:38

*On resuming—*

## **Policing and Mental Health**

**The Convener:** Our next agenda item is an evidence session on His Majesty's Inspectorate of Constabulary in Scotland's report, "Policing Mental Health in Scotland—A Thematic Review". I am pleased to welcome Craig Naylor, chief inspector with His Majesty's Inspectorate of Constabulary in Scotland; Mr Brian McNulty, lead inspector with HMICS; and Dr Arun Chopra, medical director at the Mental Welfare Commission for Scotland and HMICS advisory group member. A warm welcome to you all.

I refer members to papers 3 and 4. I intend to allow up to an hour for this session. I invite the chief inspector to make some opening remarks.

**Craig Naylor (HM Inspectorate of Constabulary in Scotland):** Thank you, convener and committee, for the invitation to speak to you this morning. The genesis of our report was work that Lady Elish Angiolini did about three years ago. One of her recommendations was that there should be a review of the system that deals with mental health crisis in Scotland. I would love to have done that collaboratively but, in the interests of getting something done, we went out on our own. However, recognising that we are not the experts in everything on mental health, we sought help and advice from people, such as Dr Chopra, who formed an independent advisory group. I pay tribute to that group, who challenged our thinking and our understanding and brought to the table real lived experience, as well as experience from research and professional capacity from across Scotland. Our report lists the advisory group members and groups like Pen Umbra, Includem, VOX Scotland, the Forensic Network and various other people, including Dr Chopra, hugely influenced how we thought about mental health crisis when looking at the policing side of things.

I will make a few short comments, convener, if you do not mind. We see crisis in mental health as a multifaceted, complex and challenging area. It is not one organisation's responsibility to deal with it; it is a whole system that needs to respond to make sure that the people who are facing challenges in their mental health, whether that is a mental health diagnosis and illness or a crisis in the moment, are dealt with in a way that improves their wellbeing in the long term.

My review team spoke with a large number of officers and heard the voices of people with experience, and we were aware that people with experience often see police officers as a safety net—people who can respond to them and provide an empathetic response. We were hugely

impressed by the officers and staff within Police Scotland who respond. They have to deal with people at their lowest point, in a way that tries to ensure that there is no worsening of their condition and puts them into the right place to get the right treatment. Many officers we spoke to believe that they are filling a gap and that gap causes us concern. It is a health, social care or wider societal gap that means that there is not someone to look after people in their moment of need.

I mentioned VOX Scotland, which produced a report on our behalf from people with lived experience of poor mental health. Reading that hugely influenced our thinking, particularly when people describe how police officers come and stop things getting worse, but then place them in the back of a police vehicle, often in handcuffs, often with a blue light on, often taking them to an accident and emergency department to sit for many hours. That did not improve their wellbeing or their mental health. It may have got them into some form of treatment, but what damage has been done in that intervening period between the crisis moment and the treatment occurring?

The Police and Fire Reform (Scotland) Act 2012, which established Police Scotland, sets out a remit for policing in Scotland that is slightly different to that in England and Wales, in that there is a requirement

“to improve the ... well-being of persons ... and communities in Scotland”.

Police Scotland holds that very dear. It works and strives endlessly to do that.

As part of our work, we looked at what is happening in England and Wales and at what is described as the “right care, right person” approach, which has been implemented by Humberside Police, the Metropolitan Police and many other police services across England and Wales. To my view, there is a lot of merit in some of the things that they do, but that approach does not meet the responsibility that Police Scotland has in terms of community and personal wellbeing.

As such, we have not recommended that Police Scotland follows suit and implements that approach, as England and Wales have done or are doing. However, we think that there can be some learning from it, particularly in understanding what responsibilities Police Scotland has and, rather than responding to every demand and every call for assistance that comes to it, being a bit more discrete in its thinking on that and responding more effectively in that space.

In a lot of the things that we saw, we found that police officers join policing on the back of an advert that shows them jumping out of helicopters, riding fast cars and so on and responding to crime. However, the reality is often very different in that

they spend a lot of time looking after people in crisis. We found that the training to support that is not as good as it should be, so that needs to be changed. The management structures that oversee that are often risk averse and concerned that something bad will happen that will lead to an investigation by the Police Investigations and Review Commissioner into what the officers have done.

We find that that paralysis—the terror of doing the wrong thing—causes officers to make decisions that are often about protecting themselves and the organisation rather than the long-term wellbeing of the individual. We totally understand why that happens, because that is the system that they operate in.

We are keen to see a different approach from Police Scotland, and, more importantly, a different approach across the whole system to understand how we break down the barriers to effective service and how we get people who are in crisis into treatment at a much earlier point, rather than being stigmatised by sitting beside a cop in a waiting room for a long period of time.

11:45

I have stepped out with my authority and made a recommendation to the Scottish Government to look at a whole-system review. Coming to this committee allows me to start that thinking again and start encouraging people to join up the dots between silos in Government and improve overall outcomes rather than just bits of the system.

We think that policing provides an effective catch-all service and that that should continue, but there should be better ways of getting people to the service and the treatment that they need at an earlier point, rather than staying with a police officer for a long period of time.

I reiterate my thanks to the independent advisory group. It gave us a lot of challenge and pushback on where we were, and it gave us an understanding that having a police officer deal with someone in a mental health crisis may not be the wellbeing improvement that we all think that it might be.

**The Convener:** Thank you very much for those opening remarks. I will kick things off by picking up on your comments about management structures and wanting to see a different approach across not just Police Scotland but the whole justice system. I will reference some of the key findings in your report under the heading of leadership and vision.

For the benefit of members, I will tease out some of your points in the key findings. You say that there is

“a perception among officers that senior leaders focus”,

as you have outlined,

“on safe outcomes, seeking to minimise every possible threat, risk and harm. This is normally achieved by police officers remaining with the person in crisis until they are either accepted into the care of the NHS or a family member. This approach to organisational and reputational risk results in a lack of focus on reflection and opportunities for improvement, often to the detriment of the individual concerned.”

You go on to say that

“Police Scotland cannot wait until a review of the whole system is undertaken before developing and implementing its own mental health strategy. We believe the current situation is unsustainable.”

In the following paragraph, you say that

“Police Scotland must now develop and implement a mental health strategy and seek to understand its legal and moral position and role within the whole system”.

I think that we all understand and relate to those remarks. Will you expand on the last point about understanding the legal and moral position and help us understand what you were thinking about in those comments?

**Craig Naylor:** The legislation around how police can intervene in a mental health crisis is all focused on public space. We very often find that people who are suffering from some form of immediate crisis are not in a public space but are in a private space—their home or somewhere similar. There is an expectation that the police can come along and take some action that will keep them safe, reduce the harm and improve their wellbeing in the longer term.

One difficulty that we find is that there are no police powers to enter a house, or to put hands on someone, or to take someone to a place where they can get treatment. That puts officers in a very difficult position, because they then have to use the powers of persuasion—non-coercive power—to encourage the individual who is probably not thinking as clearly as they would otherwise think to go somewhere other than where they may feel safe.

The legislation does not help in that space and it causes the officers to feel vulnerable because, if they leave someone who is suffering a crisis, which often leads to a suicidal-type situation, and that person then harms themselves or, even worse, takes their own life, there will be an investigation into the conduct of the officers and whether they did enough to mitigate that risk. Such investigations by the Police Investigations and Review Commissioner are good, thorough, balanced and proportionate, but it is difficult for any officer who has tried to save someone's life and is feeling guilty about what has happened to go through an investigation into the circumstances of what took place.

The issue is complex, difficult and challenging and, in our inspection, we found that the Police Scotland policy that sits around it, with regard to the roles, the requirements, the powers and the expectation on the officers, is not as clear as it could be.

**The Convener:** In our constituency and regional roles, we probably all speak to our local police officers and hear about the volume of calls of this nature that police officers are attending. Have you had any discussions with Police Scotland about how it will take forward the recommendations in the review, given the sheer commitment that officers and police staff are having to make to this particular policing challenge?

**Craig Naylor:** We have had a number of conversations, most recently when Dr Chopra and members of the independent advisory group came along to a meeting at St Andrew's house at which we introduced them to senior leaders in Police Scotland who are responsible for taking this issue forward. One of the recommendations is that Police Scotland makes use of the independent advisory group and the expertise that it brings. I will allow Dr Chopra to speak for himself, but it was a warm and positive meeting and many good ideas were set out around the table about what steps to take in relation to many of our recommendations.

**The Convener:** Dr Chopra, the Mental Welfare Commission published a report on “The role of police officers in mental health support: a review of repeated uses of police place of safety powers under the Mental Health Act”. In your key findings, you state:

“Rates of conversion from all s297 detentions to emergency or short-term detention are about 15%. This is about three times higher than the rate among those being repeatedly detained under s297 which is at 5.34%.”

I know from my past experience that recourse to a place of safety is not an uncommon course of action for police officers, so that figure of just above 5 per cent is incredible. Could you say a bit more about that particular finding?

**Dr Arun Chopra (Mental Welfare Commission for Scotland):** Good morning. I start by saying that it was a privilege to work with other members of the advisory group and colleagues from HMICS on that report. I found the HMICS team to be responsive to the discussions that we held to bring ideas forward, and the discussions were open and helpful.

Thank you, convener, for highlighting our finding about the use of section 297 powers, and specifically the issue of people who are repeatedly detained under section 297. Whereas we see people who are being detained under section 297 having subsequent detentions in about 15 per cent

of cases, when people experience repeat detentions, that figure is only 5 per cent. That suggests that those people who are experiencing repeat detentions under section 297 are much less likely to then require further admission to hospital. That illustrates one of the major problems that we have, which is that the 1983 act is designed around mental illness, whereas, actually, what police officers are often responding to is mental distress. That is a key distinction that ought to be brought through.

The second point that follows from that rather low number that the convener has drawn our attention to is that it probably means that the appropriate ways forward for that group of people are not available, and health professionals are left with a rather binary option of either admitting someone into hospital or doing nothing, which often means that police are responsible for taking the next steps.

One of our other findings with regard to the group of people who are subject to repeat section 297 detentions is the absence of care planning. You would expect that someone who is subject to more than one detention under section 297 would have a robust care plan that has been put together by the health professionals who have been working with them in collaboration with Police Scotland, so that the crisis does not happen again or so that, if they are presenting in crisis, there are alternative pathways for them.

What we found was that up to a third of people who had experienced repeat section 297 detentions did not have a care plan. For those who did have a care plan, Police Scotland had not been part of that work. Many of those individuals will be known locally to the police service and to health professionals, so there is a massive opportunity here for collaboration between officers and clinical professionals on the ground in those areas to produce trauma-informed person-centred care plans, so that, when people present repeatedly, the default process is not just to take them to a place of safety, followed by admission or nothing. Instead, there would be an alternative. That is the key finding from our report, and it sits nicely with the work of the HMICS thematic review, which calls for such collaboration and joint training. That is why those two reports segue nicely.

**The Convener:** I completely agree with that. I would like to ask lots of follow-up questions, but a good number of members want to come in.

**Russell Findlay:** I will rattle through my questions as quickly as I can, because there is a lot to go at. Page 31 of the report states that police officers who attend A and E with someone who needs treatment are often left waiting and that they suspect that they are

“deliberately being provided an unprioritised service so they could remain in the hospital and provide a visible deterrent to disorder”.

In other words, police officers are being treated like national health service security guards and are therefore being removed from the streets, where they should be. I find that shocking. What is being done to address that with the NHS?

**Craig Naylor:** That is one person’s view that we replicated in the report, but that was not the only time that we heard that view. A visible policing presence in an A and E department started many years ago, but we now often see many police vehicles parked outside A and E because officers are supporting individuals who are there for physical or crisis treatment for various reasons.

On what is being done about it, we have a structure across Scotland of a number of health boards and divisions. Getting one minimum standard across Scotland is difficult. One of the points that we make in the first recommendation is that mental health provision needs to be looked at as a system. That is not a system for Dumfries, Glasgow or Aberdeen but a system for Scotland. We need to establish a fair and acceptable way of doing business. We are calling for that whole system to be looked at to reach an understanding of where the blockages and difficulties are and whether there is evidence to support police officers’ assertions that they are used as a visible deterrent when they sit alongside somebody who is suffering a crisis.

**Russell Findlay:** You make 14 recommendations in the report. I do not know whether I understood your opening statement correctly, but I think that you said that the first recommendation might go slightly beyond your remit. Indeed, that recommendation calls for

“a strategic review of the whole system”

from start to finish. The question is whether the Scottish Government has welcomed that suggestion—whether such a review looks likely—and whether the other 13 recommendations are, temporarily at least, redundant until recommendation 1 is either accepted or rejected.

**Craig Naylor:** That is a very interesting question. Yes, I am going beyond my remit. I am entitled to make recommendations only to the Scottish Police Authority and Police Scotland, but I would much rather seek forgiveness than permission on some of these things. Therefore, we have followed up on what Lady Elish Angiolini said about taking a combined approach, because it is not one organisation’s responsibility to resolve mental health crisis and distress in the community. I do not think that the other recommendations are redundant until such a review is done, and I will

come back to your point about what the Scottish Government has said.

12:00

We say quite clearly in a number of places in the report that Police Scotland needs to get on and develop its own strategy and then review it once we come to a conclusion on the wider review. There is a lot of work and training to be done, and there is a lot of understanding needed on how police officers can work more effectively in communities to deal with distress in the first instance.

On the response to the recommendations, we had two members of the Scottish Government health department at the meeting with the IAG. Plans are being looked at and consideration is being given to what such a wider review should look like, but as yet we do not have any terms of reference or anything similar.

**Brian McNulty (HM Inspectorate of Constabulary in Scotland):** Just to follow up on that, an important theme that came through in our review was that there has been quite a considerable shift in the role of a police officer in that space. Craig Naylor and I could reflect back to when we were younger officers, when we were primarily dealing with crime, antisocial behaviour and we were being proactive in our local communities.

Going back to your point about accident and emergency departments, we heard a lot of frustration from officers who were sitting and waiting for considerable periods of time until the person they were with was medically assessed. All the while they could hear the radio going with things happening in their local community. There are things that can be done in the short to medium term while the whole-system review is waited on.

One of those things, which Mr Naylor referenced, is the right care, right person approach. A lot of good work is being done in terms of protocols around accident and emergency departments and, in the short to medium term, those could be looked at and tightened up. If officers arrive at what is essentially a place of safety—I recognise that it is not an ideal place of safety—they should then be able to hand over to NHS staff and go back out and patrol. That was a frustration that we heard.

**Russell Findlay:** There is another line in the report, on page 59, which really jumped out at me. It says:

“Police Scotland does not yet have a clear purpose, vision or strategy for its continued provision of mental health-related policing services”.

That begs the question: why on earth not, given that it has been such a big issue for such a long time?

However, instead of asking that question, I will ask one final question about what the report does not cover. It is 80 pages long and it is all about the policing of mental health in the community, but it does not address the mental health of officers. That is not a criticism, but we have been working with police officers who have had often life-changing, career-ending mental health problems, and the families of officers who have died from suicide. There is a sense that the report should have at least attempted to address some of those issues, but it does not. Is HMICS intending to do that as a standalone piece of work at some point?

**Craig Naylor:** We will publish our report on wellbeing in January. We are calling it “Frontline Focus”, because it is very much about the front line of policing and how police officers deal with their own mental health, how their supervisors support them and what support mechanisms are in place. We do not have a date yet, but sometime in January we will publish that report. We have done most of the fieldwork.

I sat in on some of your sessions with some of the officers and I thank the committee for that opportunity. You will not be surprised that we are very clear that officer mental health is a challenge, and that this part of dealing with the public can be incredibly challenging for police officers. The issues are absolutely interlinked.

**Russell Findlay:** Okay. That was fantastic. Thank you very much.

**Sharon Dowey:** My question might come under the topic of the need for a strategic review of the whole system. I have heard comments that the police are running an out-of-hours service, because it seems that, after 9 to 5 and at the weekends, a lot of their time is taken up in dealing with mental health issues. Did you recognise that when you were doing the report? Is enough work being done with other agencies to address that issue so that they can give police the support that they need out of hours?

**Craig Naylor:** There are some pockets of good practice across Scotland where that does not happen, and where there is more of a 24/7 capability. Police Scotland has taken action to have health advisers in its control room and to have pathways that can direct people into the appropriate service. Those have all been driven by policing, with good collaboration from local partners. However, there is no national standard that fits the whole of Scotland, and it is in that regard that we need to get better.

We have heard those anecdotes. When I was a detective inspector many years ago, at half past

four on a Friday afternoon, we would get four or five phone calls from partners. Those would be along the lines of their saying, “We’re a bit concerned about Jimmy—we’ve not seen him for three days. We’ve been trying to find him, but we can’t find him. Can you take him as missing? There might be a mental health issue.”

The issue is not new—that was 20-plus years ago—but we are seeing a growth in people being aware of concerns for individuals and trying to get a service when their service is no longer in place. It is difficult to know how else to deal with the issue. There has to be different thinking. We cannot solve today’s problems with yesterday’s thinking.

**Sharon Dowey:** Brian, do you want to come in?

**Brian McNulty:** I want to address your question but, first, I return to Mr Findlay’s point. He said that he was not asking us to answer it, but it was a really important point. We heard a lot about demand shift—that is how it was described to us. Predominantly towards the end of the working day, the end of the working week or over holiday periods, Police Scotland experienced a lot of demand from agencies that were not able to deal with matters out of hours. That was an important theme.

I go back to Sharon Dowey’s point about the whole system. Reflecting back on the work that we did, I do not think that we have arrived here by design. We have, incrementally, year on year, got into a position in which we are asking the police to do something that is fundamentally different from what they were asked to do 20 or 30 years ago. That is why some of the legislation really is not in sync with what we are asking of police officers.

Mr Findlay’s point was about the purpose of what Police Scotland asks of its officers and staff. There was a lot of confusion around that among officers and staff to whom we spoke. Some people felt that they were there to fill in any gaps in the system; others felt that they should be dealing only with high-end threat-to-life incidents. Those were not just the views of operational officers; some very senior officers had different views as well. That is why we think that, in the short term, Police Scotland needs to articulate what it expects officers and staff to do, whether that be in a written-down strategy or in a communication to the organisation. For me, the piece of paper is less important. It is about Police Scotland ensuring that it articulates to officers and staff what it expects them to do and then training them in line with that expectation.

**Dr Chopra:** I will build on Craig Naylor and Brian McNulty’s points in response to Sharon Dowey’s observation about out-of-hours work and the fact that the police service often becomes the

service of default at that point. Some really good work is taking place in the redesign of urgent care, and the Scottish Government convenes and is responsible for the unscheduled care network. One mechanism to address Craig Naylor’s point about the fact that there is no single national way of ensuring consistency of response would be to align the psychiatric emergency plans that each health board has with the Police Scotland mental health and place of safety protocol. If the psychiatric emergency plans and the protocol for dealing with those situations were aligned, that might provide a degree of consistency and would be a mechanism to scale up some of the good practice that Craig Naylor has just mentioned.

**Sharon Dowey:** Thank you. Brian McNulty mentioned the enhanced mental health pathway. However, I think that your report mentions that not enough calls are referred by the contact, command and control teams. Is anything being done to train people in CCC to ensure that they send calls in the right direction, to try to relieve police officers from getting involved?

**Brian McNulty:** We interviewed service advisers who operate in the control room where calls from the public are received. The enhanced mental health pathway has fantastic potential to get better outcomes for people earlier. However—this goes back to the seeming risk aversion and lack of confidence among service advisers—many of the advisers that we spoke to felt that they would benefit from more training on and understanding of mental health. I have taken that forward with the commander for the contact, command and control division, which is already, as part of the pathway, looking to refresh training.

One way in which we really benefited from the work of the advisory panel was hearing about lived experience. We have asked Police Scotland to bring in people’s lived experience when it is developing the training. The evaluation report shows that the pathway has done some fantastic work. It has great potential, but one area where it could improve is in giving confidence to service advisers.

**Sharon Dowey:** I wrote down earlier that training is an issue. People are scared of doing something wrong—they want to protect themselves and the organisation. Is more work still to be done on training, not only for police officers but for command and control staff, so that they know the right pathway and have the confidence to take the right action?

**Brian McNulty:** That is an important point. Mr Naylor mentioned how impressed we were with the officers and staff that we spoke to. What came across strongly was how much they care. They want to do their very best for people. On a human level, if they have been spending quite a bit of time

with somebody, they do not want something bad to happen to that person.

The other part is that there is also the potential for a PIRC investigation, although I would say, based on the interviews that I did, that that is secondary. The issue is more that, on a human level, they do not want something adverse to happen to the person. That has led to situations where officers remained with a person despite having been told by mental health professionals that that was detrimental to the person's health and went against their care plan. Training is really important to empower people and give them confidence.

**Sharon Dowey:** Will the police be able to implement that, or is there a cost implication?

**The Convener:** Quite a number of members want to come in. I know that that is a crucial issue, but perhaps I can bring in Jackie Dunbar and then Fulton MacGregor.

**Jackie Dunbar (Aberdeen Donside) (SNP):** I have a quick question on the delivery of mental health services in policing. I am fully aware that Police Scotland is a national force, but I am also aware that some initiatives appear to be based locally, which I think is the best way forward. I am a former Grampian police board member, so that is probably the reasoning behind my thinking, but do you have any evidence to show that the practice of local divisions working with NHS services is being shared across Police Scotland? How would you expect such practice to be shared?

**Craig Naylor:** That is a good question. A lot of the practice is shared through the division in Police Scotland that has responsibility for mental health response, which is called partnerships, prevention and community wellbeing. It is the sort of hub of the wheel, with all the divisions as the spokes.

The difficulty is not so much the willingness of Police Scotland to take good initiatives that work well, get better outcomes for individuals and reduce demand on the front line; it is more the partners that Police Scotland needs to persuade to do things differently. I am not denigrating any of the partners; I am just saying that, sometimes, the partners are not as willing to have the conversation, because they are busy doing other things.

The approach of, "It wasn't invented here," can be a difficulty in some places. That is why I am saying that, although I recognise that local capability is really good, and that having that capability is where we want to be, there needs to be a national minimum standard. That would set the minimum that we can expect, and people could then consider how that could be enhanced

with local initiatives that take account of geography and capability.

**Jackie Dunbar:** Just to be clear, I am keen on that, but I am also aware that one size does not fit all and that we need a national approach.

I think that Brian McNulty wants to come in, convener.

**The Convener:** I beg your pardon. Sorry, Mr McNulty.

**Brian McNulty:** I welcome your comments on that. I would not like a whole-system review to stifle excellent local initiatives such as the neuk in Perth. The unscheduled care network, which Dr Chopra mentioned, is one way of sharing good practice, and we heard of good practice in Forth Valley, Edinburgh and Perth. There are lots of good things happening out there without, it seems, strategic oversight or co-ordination, so we would not want to stifle that.

12:15

**The Convener:** I apologise for my lapse. I bring in Fulton MacGregor.

**Fulton MacGregor:** Good afternoon to the panel. I have two questions. The first is on the issue of missing people, which was mentioned a couple of minutes ago. I did a wee bit of work on that in the previous parliamentary session after a very tragic incident in my constituency, not long after I was elected in 2016.

The police were going through a review at that point of how they dealt with missing people. We will all be familiar with information being shared on our social media feeds very early in the process, which was well fought for. It is very good that the police engage the public in those searches. Did the mental health component of missing people come up in the review? Did that issue come up when you spoke to officers about missing people? How do the police manage that component of a missing person inquiry?

**Craig Naylor:** I will touch on a couple of things and then pass over to Brian McNulty. As part of our scrutiny plan, we have committed to doing an inspection on missing persons, and we will publish terms of reference on that next week. That follows on from the comments that I made in my annual report this year; based on Police Scotland statistics, dealing with missing persons, on average, takes up 900 full-time equivalent officers per year.

From recollection, around a third of missing person demand is people who have a mental health diagnosis, so it is a massive—absolutely huge—problem. We are committed to trying to join up a number of bits of the system; mental health is

one of them and missing persons is the next bit of our journey. We seek to look at the process for dealing with missing persons to understand how vulnerability is built into that and how that is shared with partner organisations to make sure that there is more upstream preventative activity with people who have gone missing and then been found and who had a mental health reason behind that.

**Brian McNulty:** A number of issues associated with missing persons arose throughout our review. I have been sharing those with my colleague who is starting the missing persons review. The issue was deliberately left out of the terms of reference for the review of policing mental health in the knowledge that we were going to do a thematic inspection of missing persons.

To go back to the accident and emergency department, one of the reasons that officers give for remaining with somebody until they are assessed is that, if an officer leaves that person and they walk out of the hospital, the hospital often reports them as a missing person, which leads to a lot more demand on the local police services.

We found that protocols are being tightened up in the right care, right person approach in England and Wales, because on most occasions the reason why somebody leaves A and E is that they decide to go home, so they are not technically a missing person on most occasions. The protocols around that are very important, because missing persons investigations are so important. One of the risks is that, if you have too many investigations, you need to consider how to prioritise them. That was another theme that came out of the review.

**Fulton MacGregor:** That is interesting. I will be interested in the findings of your future work on missing persons, as I am sure the rest of the committee will be.

My second question is about the recommendation for Police Scotland to produce a mental health strategy, which you have spoken about at great length. Was any thought given to embedding health professionals within the police structure? I know that some work has been done on that.

The unfortunate nature of the situation is that, although there is a multi-organisation approach, the police are the first responder for many people and organisations. Was any thought given to or were any discussions had on embedding mental health professionals as direct employees of Police Scotland to assist, or is that just a pie in the sky idea of mine?

**Craig Naylor:** It is an interesting concept. In previous organisations that I have been responsible for, we had mental health

professionals working with police officers in the response to the mental health crisis. That can work very well, but it sometimes blurs the boundaries between what is a policing response and what is a health response. I am not saying that that is a bad thing, but the question is how you govern that and ensure that a health professional's clinical responsibility is not compromised by sitting in a car with a police officer, sharing information and all those sorts of things.

I do not feel that we should be telling Police Scotland to employ mental health practitioners. We should be saying what we expect the outcome to be, which is an effective strategy to guide police officers and Police Scotland staff on how they deal with people in crisis and distress. If Police Scotland employs someone who is a mental health professional to guide it on that, I would have no difficulty with that, but I do not feel that I should tell it who to employ or how to employ.

**Fulton MacGregor:** Fair enough. Thank you.

**Rona Mackay:** Mr Naylor, you used a phrase way back in your opening statement that intrigued me a bit, and I wonder whether you could expand on it and put it into context. I think that you said that the officers responding should be "discrete" in their thinking. What did you mean by that? Was that in response to inquiries? Would they have to take a more nuanced position? Is that what you were saying?

**Craig Naylor:** We ask a lot of our police officers. We train them, hopefully well. We guide them and coach them in the first two years of their service, after which we basically let them off the leash to make decisions in critical and difficult situations.

We want them to be thinking about the best outcome for the individual, and we want them to be challenging all the options that are available to them when faced with something that is developing in front of them. One of my former colleagues used to call it the "strategic police officer". I am not the person who sets the strategy for policing; it is the person at three o'clock in the morning who makes a decision, who is often the most junior member of staff on duty. That decision can often lead the service into difficulties or to great outcomes. We want them to be great outcomes every time, but it is very difficult.

We want officers to have clarity of thought, clarity of purpose and clarity of training, so that they are able to make good decisions when they are faced with something that they have probably never seen before.

**Rona Mackay:** It goes back to what Mr McNulty and everybody else has been saying about the

importance of good, thorough training to give officers confidence, and so on.

Has there been a change in the nature of crisis calls? Are you finding that there is more need to respond to issues that are related to drugs, alcohol and homelessness? Has that been increasing over the years, or has it pretty much always been like that?

**Craig Naylor:** It is many years since I was a response officer in policing. Maybe I am wearing rose-tinted glasses, but I remember responding to crimes. I remember trying to lock people up for breaking into houses, dealing drugs and things like that.

What we are seeing and what we are told on a regular basis is that the majority of the incidents that officers are sent to nowadays involve a crisis rather than a crime. Officers are having to go to accident and emergency or places of safety much more than Brian McNulty and I ever recall doing.

Do I think that that is a societal change? It probably is. Certainly in the past three or four years since the pandemic, we have seen more people who are in crisis and not able to deal with the situation that they are facing, and are turning to the service that they know will come, which is either an ambulance service or a police service.

Do I think that that is right? The legislation has set Police Scotland up to do that—to improve wellbeing. If people seek that support, that is what they are going to get, but it has moved officers away from dealing with housebreaking, people breaking into cars and so on, which was our bread and butter when I was a young cop.

**Brian McNulty:** One of the challenges that we have highlighted in the report is that we heard anecdotally from all the officers and staff to whom we spoke that demand is increasing. We also heard that from members of the advisory group and other agencies. Everybody is saying that demand is increasing, and we do not doubt that. However, one challenge is that Police Scotland does not fully understand the demand at the moment. There is more work to be done around that, because demand is very complex and different systems are involved. Whether it is more to do with drugs, as you asked, is a piece of information that would be really helpful for us to understand.

**Rona Mackay:** Yes—I just wondered whether you had that information. Clearly, that work could be on-going to find out—

**Brian McNulty:** The demand and productivity unit in Police Scotland has done a lot of good work to try to better understand the demand, but it recognises that it is on a journey and that more needs to be done.

**Rona Mackay:** Sure. Dr Chopra?

**Dr Chopra:** On demand, very clear data is available that shows that demand has gone up. Ten years ago, there were maybe about 600 place of safety incidents, and now there are about 1,345, so the rate has more than doubled.

I want to make a point about training, in response Craig Naylor's point about decisions being made at 3 o'clock in the morning. It would be really helpful for that training not to occur in a silo—for just the police officers on their own—but for it to take place jointly with health professionals. One way to do that is for the Royal College of Psychiatrists in Scotland, along with stakeholders, to produce a series of vignettes or case studies and road test them with Police Scotland officers and health professionals who will be involved at those times and at other times to see how they would respond. That would take away some of the difficulty that is related to risk aversion that we spoke about earlier, because there will be a shared sense of how to proceed in those cases.

**Rona Mackay:** By working together.

**Dr Chopra:** Yes.

**Pauline McNeill:** Thank you for the quality of your evidence and for how loudly you are voicing what I think is probably the most serious operational issue for Police Scotland. The work that you have done is critical. I suppose that the way forward is not that easy.

Craig Naylor, I was really struck by what you said about individual officers being terrified to make these decisions. At that moment, they are trying to save a life and carry out their duties, but then there is an investigation of whether they did the right thing. That seems grossly unfair to me.

What will prevent that from happening? Does it lie in what you say on page 11 of your thematic review that

“Demand is passed to Police Scotland from partner agencies towards the end of the working day and working week.”?

I think that Sharon Dowe asked you that question. I cannot see any way around this other than other agencies changing the way in which they work. Am I getting it right?

**Craig Naylor:** You have got to the nub of the issue that we are all trying to deal with. I do not think there is one simple answer—there is no silver bullet that we can fire that will answer all the problems.

An awful lot of this is about people recognising what their duties are in this space. Sometimes, because of the fear of investigation, Police Scotland will go the extra mile because it is fearful that something bad will happen. It does that for

very good reasons, and often because it does not want people to become more unwell or to take their own life for example.

The difficulty that we have is that it is written into law that, if there is death or serious injury within, I think, 48 hours following police contact, there will be a mandatory referral to PIRC for an investigation. If there is a death for which the police are seen to be responsible, there will be a fatal accident inquiry. That level of investigation can last many years. It puts people under pressure and affects their mental wellbeing during the period of investigation.

Police officers and staff do not want that. The result that they want to get is that people who are in distress get the treatment that they need very quickly and effectively, without worrying that something bad will then happen.

**Pauline McNeill:** Can I intervene on that point?

**Craig Naylor:** Certainly.

**Pauline McNeill:** Does PIRC take into consideration in its investigation that police officers are not trained as mental health officers? Do you have any examples of that?

12:30

**Craig Naylor:** I am not here to justify anything about PIRC, but it is in a very different position to where it was about seven or eight years ago. Its work is very much about meeting its statutory responsibility, and then investigating what is appropriate. It will bring into that the evidence of the other parties that have been involved. Therefore, PIRC covers that, but it still has a statutory responsibility that it cannot walk away from—

**Pauline McNeill:** Yes, I understand that.

Dr Chopra, in answer to another member's question, you talked about aligning psychiatric emergency plans. Will you elaborate on that? That seems to me to be part of the answer. Do you mean aligning staffing as well, or just the plans?

**Dr Chopra:** Staffing is part of it because you cannot deliver without it. Staffing has been a key issue across the mental health sector in relation to some of the problems that people are facing.

On alignment, I was suggesting that the protocol that the police use for responding to emergencies and dealing with situations ought to be placed in the context of the psychiatric emergency plan, so that the health board and Police Scotland are singing from the same hymn sheet. Aligning that bit would make things work better.

I thought that your previous question was really helpful. We have spoken about some of the fear

that police officers experience, but I want to say that one of the things that we at the Mental Welfare Commission for Scotland hear from patients who contact us—we saw it in the VOX Scotland report as well—is how compassionate police officers are in responding to these situations. They are often described to me as the most compassionate part of the system and I think that that needs to be recognised.

Today, we have also spoken about the right care, right person approach. One of the things that is particularly good about HMICS's thematic review is the balanced approach that it has taken to looking at that approach. Rather than setting out what it thinks is the way forward, it has looked at areas for which there is some evidence that that might be helpful in Scotland, and it has also considered the fact that some data is not quite there yet, in relation to what the outcomes will be in Humberside, the Metropolitan Police and other places. It is really important to point out that the data is not fully out there.

The short answer to your question is collaboration. The key aspect is greater collaboration, both at an operational level and at a strategic level, between health and policing. That is the way forward, and that includes training, which is the example that I have given already. Increasing collaboration will prevent some of the huge demand that is currently falling to the police.

**Pauline McNeill:** Thank you.

**The Convener:** Before I bring in Katy Clark, I will pick up on the comments that you have made. I am really glad that Pauline McNeill asked a question about psychiatric emergency plans. Having been part of the review of the Grampian plan many years ago, I know about the spirit of psychiatric emergency plans in underpinning that collaborative approach to poor mental health, whatever end of the spectrum that might be.

Should we be looking to develop the role of psychiatric emergency plans to underpin all the challenges that we have been discussing today? I am interested to hear your commentary on that. Am I right in thinking that psychiatric emergency plans sit within mental health legislation? Should we be using them much more robustly?

**Dr Chopra:** Yes, to all of your points. I think that it is mentioned in the HMICS report that the code of practice has a clear reference to the psychiatric emergency plans. I do not want to get too operational, but one aspect could be that the psychiatric emergency plan requires that a care plan is created for someone who has come through Police Scotland and has accessed healthcare through that mechanism. That would not prevent something from happening, but it

would ensure that, the next time that that person presents, a plan is in place for them.

Little ideas like that that could be embedded in the psychiatric emergency plan would make a wholesale change. That would also build on the work that the Scottish Government is already doing on the redesign of urgent care, and build very closely on the recommendations that Craig Naylor, Brian McNulty and the team have made. It would provide a really good mechanism to build on what we already have, rather than starting from scratch, which I do not think that we need to do.

**The Convener:** Thank you. That is most helpful.

**Craig Naylor:** I echo Dr Chopra's comments. His thinking on this is exceptional. I will take the point a step further. When care plans are put in place, Police Scotland should be notified of them and the contacts within them—in particular, the kinship and family care that can be brought into them. Having a mechanism to build in a family member or someone else that could assist would be a long step forward towards stopping people from having to go to places of safety.

**The Convener:** Were you referring to psychiatric emergency plans or individual care plans?

**Craig Naylor:** To individual care plans.

**Katy Clark (West Scotland) (Lab):** I have a brief question about data, particularly in relation to assaults. We are very aware of assaults on officers. Last week, Unison Scotland published a survey that has been on-going since 2006. It has captured information about 55,000 assaults on public sector workers in Scotland in 2022-23, which was a 31 per cent increase from the previous year. In relation to civilian police staff, whom Unison Scotland organises, will you point us in the direction of, or share with us, the data that you have on abuse and assaults? Perhaps you could also share with us any roles that face particular issues. I know that there has been a trend for a variety of different roles to move from officers to civilian staff.

**Craig Naylor:** I certainly do not think that we have any data that could answer your question, so I apologise for that. I suppose that the roles that are relevant to your question are probably those in the custody space. Police custody support officers interact with people who are generally there on criminal matters and less so on mental health matters. That is where there is likely to be an increase in recorded and reported assaults.

**Katy Clark:** Could you look into that and share with us any information that you are able to get? Obviously, civilian police staff carry out a range of public-facing roles. Perhaps you could come back to us on that.

**Craig Naylor:** I am sorry, but I do not really understand what you are asking me to come back on.

**Katy Clark:** You were speculating. Is that as far as you can go? Is that the level of the organisation's knowledge?

**Craig Naylor:** If you were to look for crime data on assaults on police staff, that would have to come from Police Scotland. We do not have data on it.

**Katy Clark:** Thank you.

**The Convener:** I will ask one final question, then we will have to bring the session to a close. It is about where we go now. Many issues that we have discussed require to be addressed across organisations—the third sector, the public sector and, potentially, the Scottish Government. I will come to Craig Naylor first, then to Dr Chopra. How do you see that collaborative work going forward, and should it be done at Government level? You might want to just answer yes or no.

**Craig Naylor:** We made a recommendation to the Government to look at a whole-system review. I am ambivalent about what that review should look like, but I want people from health, mental health, social care, policing, the third sector and others to sit round a table to consider what it could look like.

We have started that process. In our IAG's introductory meeting with Police Scotland, all those members were present and the conversation was incredibly positive. The conversation has started. However, if we do not hear very much more by the end of January, we will start jaggging people about how else we can encourage that conversation. At the same time, we know that Police Scotland will be coming forward with an action plan to address the other recommendations that we have made.

We are very happy to come back to you at some point to give an update on how things have gone and what that piece of work looks like but, rest assured, we will have our sharp elbows out and will seek forgiveness rather than permission in asking the Government and others to do what we think is right.

**Dr Chopra:** I agree with what Craig Naylor has just said. The collaboration needs to be at the strategic, operational and training levels. It also needs to build on the existing mechanisms, which are good and are working but need to be built on.

There may be a role for a review in looking at some of the aspects that were picked up in an earlier exchange around what is happening locally. Brian McNulty gave examples of some areas of good practice. What is the mechanism for ensuring scalability from those local practices,

which we know are good, to make them national? Where is that discussion taking place? That might be a helpful aspect on which to have collaboration, which the Scottish Government might be in a good position to convene and to scale.

**The Convener:** Thank you to all of our witnesses. The session has been really informative. I am sure that we could have continued to ask questions.

That concludes the public part of our meeting. Next week, we will review the evidence that has been taken so far on the Victims, Witnesses, and Justice Reform (Scotland) Bill, consider a draft report on our pre-budget scrutiny, and consider correspondence that has been received about deaths in custody and about the Domestic Abuse (Scotland) Act 2018.

12:41

*Meeting continued in private until 12:57.*



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