JUSTICE 2 COMMITTEE

Tuesday 2 September 2003
(*Afternoon*)

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 2 September 2003

JUSTICE 2 COMMITTEE
† 4th Meeting 2003, Session 2

CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Scott Barrie (Dunfermline West) (Lab)
*Colin Fox (Lothians) (SSP)
*Mike Pringle (Edinburgh South) (LD)
*Nicola Sturgeon (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Shona Barrie (Crown Office and Procurator Fiscal Service)
Peter Beaton (Scottish Executive Justice Department)
Barbara Brown (Scottish Executive Justice Department)
Barry Jackson (Victim Support Scotland)
Merlin Kemp (Scottish Executive Justice Department)
David McKenna (Victim Support Scotland)
Lesley Napier (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Gillian Baxendine
Lynn Tullis

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

† 3rd Meeting 2003, Session 2—joint meeting with Justice 1 Committee.

Scottish Parliament

Justice 2 Committee

Tuesday 2 September 2003

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:30*]

Vulnerable Witnesses (Scotland) Bill: Stage 1

The Convener (Miss Annabel Goldie): I welcome members to the fourth meeting this year of the Justice 2 Committee. The purpose of this afternoon's meeting is to take evidence at stage 1 of the Vulnerable Witnesses (Scotland) Bill, for which we will be joined by various witnesses.

I want first to welcome Betty Businge, who is an assistant editor of *Hansard* in the Parliament of Uganda. She will be shadowing our official reporters at today's committee meeting. I wanted to let members know who Betty is and to extend a very warm welcome to her—I hope that she finds the proceedings interesting.

We are fortunate to be joined by Shona Barrie, who is head of the victims, witnesses and vulnerable accused team in the Crown Office and Procurator Fiscal Service. Members will be genuinely pleased to have her as a witness and I am sure that we will find her information extremely helpful.

I have asked members to be as comfortably brief as possible in their questions to ensure that we get as much information as we can. In turn, I am happy for Shona Barrie to make an opening statement if she wishes. On the other hand, it would be equally agreeable to us if she would rather we pressed ahead to ask questions and elicit information.

Shona Barrie (Crown Office and Procurator Fiscal Service): Thank you for the invitation to appear before the committee; I am pleased to be here. The agenda sets out for members my job title and the areas that I examine in the policy group, which include children as witnesses and offenders. As a result, the work on the bill fell to me and my team. The Crown Office is very supportive of the bill and its enhanced provisions. We think that it will be a useful tool for presenting evidence to courts.

The Convener: That is helpful.

I will set the ball rolling with a general question. Are there any existing provisions for vulnerable witnesses? Do court acts or court proceedings attempt to accommodate such witnesses or is that left to individual courts?

Shona Barrie: There are a number of aspects to that question. Provisions exist under section 271 of the Criminal Procedure (Scotland) Act 1995, which is the current legislation. The bill seeks to amend that section to extend the definition of the word "vulnerable".

The Lord President's memorandum on the treatment of child witnesses in court sets standards for judges with regard to convening parties around a table, the removal of wigs and gowns and so on. The memorandum contains rules on best practice for the conduct of cases involving children.

Section 271 is limited in its application and narrow in its scope, as it applies to children under 16 and those who have certain mental disorders that are recognised by court orders. Members might also be aware of common-law applications that permit vulnerable adults to use screens. In the recent case of Her Majesty's Advocate v Hampson and others, the Crown sought the common-law powers of the court to make whatever arrangements were deemed suitable.

The Convener: The judge had discretion to make a determination.

Shona Barrie: Yes. The case ended up in the appeal court, which was happy with the application. The fact that vulnerable adults were deemed at common law—if the case is made out—to be permitted to use screens was a slight innovation.

Scott Barrie (Dunfermline West) (Lab): I have a question on current practice. What sanctions, if any, are available if the Crown feels that a witness has not been able to give their evidence satisfactorily because of limitations of the court environment? Perhaps the court might not have screens or a video link. Can the Crown ask for a trial to be moved to more suitable premises or does a case have to go ahead in the court in which it is cited?

Shona Barrie: At present, the availability of screens, closed-circuit television and so on is an issue—those matters are catered for by the Scottish Court Service. If a case falls within the jurisdiction of a procurator fiscal in which there is no access to CCTV, existing legislation provides for the case to be transferred to another sheriff court where the facilities are available.

Jackie Baillie (Dumbarton) (Lab): The bill gives children under 16 an automatic entitlement to be treated as vulnerable witnesses, but other potentially vulnerable witnesses are given only an almost discretionary entitlement. Why is there such a distinction? Does the bill cater for all potentially vulnerable witnesses as well as it might do?

Shona Barrie: I do not want to stray into the bill team's territory. The bill takes a two-pronged approach to vulnerable adults. A witness must be deemed to be vulnerable and the bill lists criteria in that regard. The party who makes the application for a witness to be deemed vulnerable will have to gather and assess information in view of those criteria. Thereafter, the question is which special measure is to be used.

I assume that Jackie Baillie is interested in giving automatic entitlement to special measures to vulnerable adults. The bill tries to entitle anybody who would suffer from distress or intimidation through giving evidence in court to have an application for special measures made on their behalf. Obviously, the bill does not give an automatic entitlement to such people, but it entitles anyone in that category to make an application to have special measures invoked. I am not sure whether that answers the question.

Jackie Baillie: It provides an answer, although it might not be the answer for which I am looking. The Law Society of Scotland suggested that, given the vulnerability among a cross-section of adults, perhaps there should be an opportunity for people to self-refer. Would that be welcome?

Shona Barrie: I understand the sentiment behind the view that self-referral would be helpful. However, the strict legal position is that a witness is not a party to proceedings and does not have the locus to make the application themselves. Therefore, it falls to the parties who call the witnesses—the Crown or the defence—to consider whether a witness is vulnerable and requires special measures. The bill will allow the court to make inquiries of its own volition to find out whether special measures should be invoked for someone who is vulnerable.

Jackie Baillie: I have one further question about the impact of the bill. You have experience of the present system. What is the key difference that the bill will make, if it is passed?

Shona Barrie: Over the past few years, there have been a number of attempts to put in place pragmatic and practical support measures such as the witness service. The bill will provide practitioners such as me, who engage with vulnerable witnesses, an early certainty that, if those witnesses fall within the right categories, the trial process can be managed in a different way. I hope that that will enhance all the other support measures that people are working to put in place and that it will make people feel more secure about the process.

Nicola Sturgeon (Glasgow) (SNP): I will approach Jackie Baillie's question from a slightly different angle. Children's automatic entitlement to special measures under the bill can be overruled by the court, albeit only in two circumstances. Does that cause you any concern? Courts that are steeped in a system whose tradition is adversarial may be only too prepared to see potential prejudice to a trial and to view that as a reason to overturn the right. Is there a concern that children might lose that automatic entitlement?

Shona Barrie: To give credit to the courts, they have become used to screens, CCTV and so on being used with children. That is fairly routine now. What might be called the escape clause in the bill sets a high standard. It mentions

"prejudice to the fairness of the trial"

in relation to the accused. That is something to which the court always has to have regard anyway. Members may wish to raise that matter with the bill team. I suspect that there might be a requirement under the European convention on human rights for such a safeguard. That reflects the status quo. In any case, I am not aware that the issue that Nicola Sturgeon describes has been a problem in practice.

The Convener: I will come back to Nicola Sturgeon, but Colin Fox has a related question.

Colin Fox (Lothians) (SSP): I wish to follow up on Nicola Sturgeon's point about the adversarial character of the court. Do you think that the measures in the bill impact on the rights of the accused in such a way as to reduce their opportunity to give a full and thorough defence? Are there any measures that might detract from that right?

Shona Barrie: Under article 6 of the ECHR, the accused must have every opportunity properly to test the evidence that is led against him. As I see it, the bill provides for witness support measures to be introduced that do not counter the basic rights of the accused. The special measures of screens and CCTV are already available. When they were developed, anxieties were expressed about the accused being able to see the witness, who was behind a screen. I do not know whether members have seen screens in operation: there is a television screen for the accused to see the witness behind the screen. He is not prejudiced by not being able to see the reaction of the witness and gauge their general conduct; he does not just hear a voice in a vacuum, as it were. Practical arrangements to secure the accused's article 6 rights are therefore already in place.

Nicola Sturgeon: It is fundamentally important that evidence is tested in a criminal trial, but some of the written evidence that we have taken has said that it is the adversarial system and all that goes with it that makes giving evidence in court hard and unpleasant for all witnesses, not just vulnerable ones. As well as legal changes to protect vulnerable witnesses, there has to be a

cultural change in the system to make the whole process of giving evidence less intimidating, without compromising the need to test that evidence. In your opinion, is that cultural change continuing in the Crown Office, which you are representing today? Does any such change adequately complement the proposed change in legislation?

Shona Barrie: The people in my department tend to be the ones who lead the vulnerable witnesses and not the ones who conduct the cross-examination. From my point of view—dealing with the co-operation of witnesses, bringing people to court and seeing justice done—there is no difficulty with that culture on the Crown Office side.

On the nature and conduct of cross-examination, there are common-law duties on the prosecutor to object to harrying, abusive or aggressive cross-examination. The judge also has a responsibility to intervene. That the trial context is intimidating goes without saying. Practical support has been put in place and the bill might assist people while their evidence is being tested by allowing them to have a supporter sitting next to them, for example. Nicola Sturgeon is right to say that there is an issue to do with a general cultural change in the treatment of witnesses in the courts, but that change is well under way.

14:45

Mike Pringle (Edinburgh South) (LD): The concern is the identification and protection of vulnerable witnesses. How do you envisage that the Crown Office will decide on who is a vulnerable witness and who is not? That brings us back to the arbitrary cut-off point of a child who is aged 12. Who will decide who is a vulnerable witness and what procedures will there be for that process?

Shona Barrie: There are a number of aspects to that. To identify child witnesses and therefore those who have automatic entitlement, we have fields in the electronic police reports that are submitted to procurators fiscal in which the date of birth of the witness is inserted. That means that, when the procurator fiscal receives a report from the police, child witnesses are highlighted. We run a programme on our computer system to ensure that the fact that there is a child witness is highlighted in the entry of the case in our database, so that the involvement of a child witness is known about throughout the handling of the case.

In relation to adults, the bill provides a degree of guidance on who would be deemed vulnerable and therefore eligible for consideration of special measures. There will have to be engagement with the support groups in identifying who is vulnerable. We will also have to work with the police to capture that information at the earliest stage in a case's life. A review exercise is being conducted on the fields in the standard police report. We have already adapted our information technology systems to ensure that we can capture details about vulnerability. We must develop that work with the police to ensure that if they have information from when they attended an incident, they can convey it to us at the outset. That will make matters as automated as possible.

The review of the standard police report also impacts on the wider integration of Scottish criminal justice information systems, which all the criminal justice agencies share. It will ensure that information about vulnerability can be shared by all the agencies interacting with the witness.

Mike Pringle: One of the problems to do with the intimidation of people who come to court is the length of time from the calling of the case through to the intermediate diet and the trial diet. Are there any measures that could help the vulnerable witnesses who have been identified in that process, who will be anxious about attending court? Often, the period between when it is identified that they will have to go to court and when they actually have to go to court can be protracted. Can anything be done to shorten that period?

Shona Barrie: The work that is being carried out as part of the High Court reforms and the McInnes review of summary procedure will no doubt produce interesting recommendations about the delays that can be incurred once matters arrive at court. The provision of information is the best form of assistance that we can give to vulnerable witnesses in that process. People need to know about adjournments and new court dates.

Perhaps this is a timely point at which to refer to victim information and advice, which the Crown Office established to fulfil that purpose. We have identified categories of vulnerable witnesses with VIA, which provides a head start in identifying such witnesses—I can provide the committee with any information that it requires on that matter. Such victims and witnesses are invited to opt in to receive case progress information, which is an important aspect of coping with any delays that may occur.

Scott Barrie: Is the Crown Office and Procurator Fiscal Service supportive of the call by the Lord Advocate's working group on child witness support to set up a child witness support service?

Shona Barrie: The Crown Office was represented on the implementation group that was established to act on the Lord Advocate's recommendations. I think that there was cross-

agency involvement in the Lord Advocate's working group, too. Its recommendations have been around for some time. A range of recommendations are being taken forward by the implementation group and the Crown Office would support all aspects of that work.

Scott Barrie: Are you aware of the document "Justice for Children"—I have it here—which was produced by a number of children's organisations?

Shona Barrie: I recognise the cover, but I cannot say that I am totally intimate with the document's contents.

Scott Barrie: I wonder—

The Convener: In fairness to our witness, Mr Barrie, you should explain whether there is a specific area that you want to ask about.

Scott Barrie: I was going to say that if Shona Barrie cannot answer my question just now, I would appreciate her getting back to the committee as that would be useful.

In section 7 of "Justice for Children", there is a flow chart that envisages how the service would work. I would appreciate your comments on how your service views the proposed model. The model is specific and it would be useful to know whether you think following it would be worth while.

Shona Barrie: Do you know whether that document has been put before the implementation group?

Scott Barrie: I understand that it has been.

Shona Barrie: Perhaps I could raise the matter with the convener of the implementation group.

Scott Barrie: That would be useful. The document sets out a clear model and the Scottish Child Law Centre's written evidence clearly supports it. It would be useful to know whether other organisations also support it.

The Convener: Would it be possible for you to get back to the committee with that information?

Shona Barrie: Yes. I will raise the matter with the convener of the implementation group.

The Convener: Thank you very much.

Colin Fox: My question pertains to VIA and case progress information, which you mentioned. What other roles do you envisage VIA filling for witnesses?

Shona Barrie: Do you mean in relation to the bill?

Colin Fox: Yes.

Shona Barrie: I see a role for VIA in identifying vulnerability and in engaging with those who are reported to us and who are going to be cited as witnesses, such as children and their guardians, about the special measures that would suit them.

Jackie Baillie: I want to pick up on a number of points. A clear model is emerging for how the bill would operate for children who are under 16, but I am concerned that there is much more mist around how vulnerable adults will be dealt with. You mentioned the police picking up and identifying vulnerable adults early enough, but that would work only if there were specific and tightly set criteria, which there are not in the bill. I am desperately worried that there will be inconsistencies in the application of the bill in relation to vulnerable adult witnesses. Do you have any comments to make about that?

Shona Barrie: I regret if I left you with the impression that we would simply rely on the police to pick up on aspects of vulnerability. I intended to portray the fact that we will be looking to identify such aspects as early as possible. The police are a source of information. We have held discussions with them on this matter, and I understand that they are content.

I spoke about the role of VIA once matters are reported to the procurator fiscal. Our service is already engaging with a wide range of vulnerable witnesses and we hope that VIA will be able to engage with them too. All that should be prefaced with the understanding that detailed guidance would have to be provided to all practitioners and everybody else who deals with vulnerable witnesses. Substantial training will be required across agencies and I envisage a multi-agency approach being taken towards that to ensure, as you say, that all vulnerable adult witnesses are identified and given the opportunity that the bill affords them.

Jackie Baillie: I want to press you on that point. Is there a danger that there will be inconsistencies because one power is discretionary and the other is automatic?

Shona Barrie: I do not understand the term "inconsistencies". The bill makes a clear distinction when it comes to children who, by right, are deemed to be vulnerable and are entitled to use the provisions in the bill. The bill requires an assessment of vulnerability to be made. We have to ensure that we engage with people and gather as much information as possible across agencies to ensure that we can make that assessment and therefore make applications where necessary.

Jackie Baillie: The inconsistencies that I referred to are specific, in the sense that determining whether an adult is a vulnerable witness is open to interpretation and can be interpreted differently in different circumstances in different geographical areas. The inconsistency is

found in the entirely different way in which children are determined to be vulnerable witnesses, because that is the automatic interpretation.

Shona Barrie: Yes, that happens automatically rather than in a discretionary way. You may wish to raise that point with the bill team as, obviously, that is how the provisions are currently drafted. We are one of the criminal justice agencies that will be implementing the provisions when they are finally enacted, so it would be for us to ensure that we had trained people, issued guidance, and were seeking to ensure that a consistent approach was being taken.

Mike Pringle: A supporter often comes with a witness, and some people have suggested that that supporter could also be a witness. Is there any reason why that provision should not be available to vulnerable witnesses, so that they have support in giving evidence?

Shona Barrie: I understand the point. As drafted, the bill would exclude the supporter being cited to give evidence as a witness. It is already the practice in cases involving child witnesses that if a guardian is cited, whether for the Crown or the defence, they will give evidence first, so that they can be present when the child gives evidence.

The Convener: For clarification, there is a technical issue about the purity of evidence that is available to a court, which can properly come only from a witness, in the technical sense of the word. Is that what you are alluding to?

Shona Barrie: Yes. There would be scope for questions of impropriety. The tradition in Scottish courts is that witnesses do not sit in and listen to evidence until they have given evidence, so the order in which witnesses are taken can be important. The parties who call witnesses try to manage that as best they can.

The Convener: Do you think that a supporter is, in a sense, analogous to an interpreter, where the interpreter becomes not a witness but the facilitator for the provision of information from the witness to the court?

Shona Barrie: Yes, that would be a fair analogy. The bill is quite clear that the supporter's role is not to intermit in the witness giving evidence in any way.

Nicola Sturgeon: Could I clarify that point? I understand why the bill has been drafted in that way. Is it your view that, if supporters could also be witnesses in the case and if they were called first, there would be no inherent problem with them sitting through the trial with the vulnerable witness? There is a way that allows supporters to be called as witnesses, if that is otherwise appropriate.

Shona Barrie: We have examples of that happening.

Nicola Sturgeon: So it is not absolutely necessary that that provision in the bill stays as it is to preclude supporters being witnesses in any circumstances.

Shona Barrie: I would be interested in the views of the Faculty of Advocates and the Law Society of Scotland on that matter, but all I can say at the moment, based on my practical experience, is that such situations are managed by calling the witness ahead of the victim, so that they can then sit in and provide support for the victim.

15:00

The Convener: At the moment, however, the qualifying criterion is that the supporter is a witness in his or her own right anyway, is it not?

Shona Barrie: Yes, and that he or she has given evidence.

Scott Barrie: What training and guidance do you think would be required to implement the bill, not just for prosecutors but for other players in the court procedure?

Shona Barrie: I can see myself getting into trouble if I were to suggest what the training for the Law Society should be. I can speak only on behalf of my own department.

The Convener: We do not mind you getting into trouble.

Shona Barrie: There will certainly have to be a detailed training programme for COPFS staff on the bill's provisions, the practicalities of the support measures and the mechanisms for applications and notices. That will be supplemented by changes to our IT system to ensure that there are automated procedures and that the styles for applications and notices are available. We tend to turn to support agencies for help with awareness raising on vulnerability issues, and I am sure that I will approach them yet again to assist in training COPFS staff along those lines.

Scott Barrie: I note your reluctance to talk about other players in the court procedure, but I remember some of the discussions held by the previous Justice 2 Committee during the passage of the Criminal Justice (Scotland) Act 2003. Different organisations representing people involved in the court procedure had assumed that it was other people's responsibility to protect certain witnesses. We certainly heard some persuasive evidence from the Sheriffs Association which suggested that sheriffs expected the prosecutor to be able to jump up and say that a line of questioning from the defence was wrong. If all parts of the process do not get together and

join everything up, we are in danger of replicating such artificial divisions, and we would fail in what we are trying to achieve.

Shona Barrie: Looking further down the line, there will be judicial interpretation of those aspects of the process and of the provisions in the bill. That will lay down standards for what is expected of all agencies, never mind the legal requirements that the legislation will impose on them. We must bear it in mind that the process will be tested in the courts, and that will set standards for the defence, for the Crown and even for the judiciary as to how the legislation is to be implemented. That is our tradition.

I am aware that the Judicial Studies Committee for Scotland has a comprehensive training programme. It is alive to those issues and has approached other support agencies to come and train the judiciary. If you were to raise that question with the other players in the criminal justice system, they could give you more information than I can. I should say that I believe that there is hope for multi-agency training, as I mentioned earlier.

Karen Whitefield (Airdrie and Shotts) (Lab): How do you anticipate the provisions of the bill being implemented? Will that have practical implications for the Crown Office and Procurator Fiscal Service?

Shona Barrie: There will be great practical implications for how we go about our business, which is why it will be crucial to preface the changes with a comprehensive training programme and guidance for our staff. The bill will change the way in which we prepare for cases and the way in which we engage with victims to identify vulnerability and discuss options with them.

I said earlier that we will require adjustments to our IT system to ensure that indictments, complaints, applications and notices that we make conform to and fit the bill—literally. There might be additional hearings to discuss and settle on the appropriate support measures for individual victims and witnesses. There will be profound practical considerations for us.

Karen Whitefield: Given that there will be so many practical implications for you, do you think that, as detailed in the financial memorandum, there will be sufficient resources for you to be able to fulfil your obligations?

Shona Barrie: Your previous question was about implementation and I understand that an implementation group will be established. It is important not to lose sight of the fact that the bill will be contemporaneous with High Court reforms, which will provide procedural hearings and greater judicial management of cases. The implementation group, along with the agencies involved, will decide on the proposals for implementation. The financial memorandum states that the Crown Office believes that the phased implementation costs can be absorbed.

Karen Whitefield: The infrastructure of and circumstances in courts around Scotland vary. Do you believe that, for the implementation of the bill, there will have to be additional infrastructure in courts? If so, what additional support will be required?

Shona Barrie: Are you referring to the basic hardware in courts, such as screens and closed circuit television connections?

Karen Whitefield: Yes.

Shona Barrie: The capital programme for the Scottish Court Service envisages a lot of work in that regard in any event. I am probably not best placed to talk about that; the bill team might be more familiar with the subject. There are plans to roll out the special measures, which will be a crucial part of the implementation programme.

The Convener: Are we talking about sheriff courts and the High Court?

Shona Barrie: Yes.

The Convener: One of the observations made to the committee is that the provisions should apply to all criminal courts in Scotland, which presumably would involve district courts. Is there a view on that? Is there a feeling that the need for protection of vulnerable witnesses is to be found principally in the higher courts—sheriff courts and the High Court? Is there no perceived need for it in the lower criminal courts?

Shona Barrie: A number of factors feed into that. Child witnesses cannot be cited in district courts for example, so that aspect of need is not reflected in the district court profile. Many cases in district courts tend to relate to statutory offences. Court buildings can vary greatly. The witness service is not available in the district court—it is a question of what business takes place there. I have not taken a view on the availability of protection measures in the district court.

The Convener: That is fair enough.

Mike Pringle: Are you saying that child witnesses are never called in the district court?

Shona Barrie: They are never called for the Crown.

Mike Pringle: But they can be called for the defence.

Shona Barrie: Yes. I have limited experience of that.

Mike Pringle: They could be vulnerable witnesses just the same. Vulnerable witnesses will

not necessarily always give evidence for the Crown—they could sometimes give evidence for the defence. Surely they should be treated in exactly the same way. Perhaps the provisions should apply to the district court when child witnesses are called.

The Convener: I do not think that it is fair to ask Shona Barrie to express an opinion on that point, because she is here in a technical capacity to comment on the areas of activity covered by the bill as drafted.

Would Shona Barrie like to say anything else in conclusion?

Shona Barrie: No, unless the committee requires any further information from me.

The Convener: On behalf of the committee, I thank you for coming before us this afternoon. Your evidence has been extremely helpful.

I welcome to the meeting David McKenna and Barry Jackson. David McKenna is the chief executive of Victim Support Scotland and Barry Jackson is a policy officer. You are both welcome. If you wish, you may make a preliminary statement; alternatively you might be happy to go straight to questions from committee members, who have had the benefit of your written submission.

David McKenna (Victim Support Scotland): Thank you. We are delighted to have the opportunity to give evidence to the committee.

I will say a few words by way of introduction. The Vulnerable Witnesses (Scotland) Bill is probably the most important and substantial piece of legislation in living memory in relation to victims and witnesses in the criminal justice system. We have not only welcomed the proposals; we have welcomed them warmly.

The bill is important in three key ways. The first is in relation to the public interest and the interests of justice in Scotland. We have substantial evidence that witnesses are unwilling to come forward. Witnesses who have been through the system say that they would not do it again. Our process of justice suffers as a result of the increasing lack of participation by key players—witnesses in the court setting.

Secondly, the bill provides opportunities to bring additional evidence before the courts and to ensure that evidence that comes before the courts is the best possible.

Thirdly, the bill recognises the importance of the witness and the victim in our criminal justice process in the 21st century by affording them dignity and respect within the court setting. It recognises that they are important players.

I appreciate that some commentators and observers will say that the bill goes too far, but I do not agree with that view. Other commentators will say that it does not go far enough. Perhaps that is true, but I think that the bill is of such substance that it meets the needs of witnesses in our court system and will continue to do so for the foreseeable future.

I do not imagine that this will be the last piece of legislation that comes before the Scottish Parliament on the subject of witnesses and victims, but I hope that the lessons that will be learned from the bill, which will introduce substantial changes to our justice system, will enable us further to improve the situation in the years ahead.

I hope that the Justice 2 Committee and the Parliament will support the bill, which will bring about great changes to the justice system that will meet the needs of justice and of witnesses.

The Convener: Thank you. We will proceed to the question-and-answer session. One of you might have greater expertise in certain areas than the other, and you may make your own determination as to which questions are answered by whom.

David McKenna: Yes, and I have brought along my witness supporter.

The Convener: I am sure that he will support you ably.

15:15

Jackie Baillie: For me, the heart of the matter relates to definitions, so I would like to probe whether the bill goes too far or not far enough.

A child under the age of 16 is automatically entitled to be treated as a vulnerable witness whereas an adult has only a discretionary entitlement related to a number of eligibility criteria. Do you agree with that distinction?

David McKenna: In an ideal world, everybody would have special measures, as people have differing reasons for why they should be due them. I reserve judgment on the issue until I am able to consider the situation after the bill is implemented. The bill proposes a major change that is probably big enough for the time being. It would be useful to see how that pans out before suggesting further changes.

Jackie Baillie: Let me press you on that. Some people have suggested that the Disability Discrimination Act 1995 should be used for definitional purposes. Others wonder whether it should be necessary for a general practitioner to give evidence of the existence of a mental disorder and whether we need to assume that special measures might not be necessary in

certain cases of mental disorder. Equally, some people have said that, while somebody with a mobility problem clearly does not require a special measure to help them give evidence, someone with a chronic heart condition who is under a great deal of stress would, although the problem would not be visible.

There is concern that there will be inconsistencies in interpretation across various geographical areas and professions. Will those inconsistencies be ironed out over time or will they develop into continuing problems?

David McKenna: It would be possible to prescribe conditions that would automatically entitle people to special measures. However, the unintended consequence of that might be that many people who would get access to special measures under the bill's proposals might end up not getting it.

On inconsistencies, the approach of the judiciary, the prosecution service and others to ensuring that there are national standards for assessment is an issue. At the end of the day, it is for the judge to decide whether special measures are appropriate. I do not want to speak for the Crown Office, but I suspect that it will have to consider the processes that will enable judges to make decisions about when special measures are appropriate. Judges might have to be given evidence to enable them to make a decision.

Jackie Baillie: Given that part of the desire is to identify a vulnerable witness as early as possible, often the decision will not be left to a judge to make at a late stage. Is there room for self-referral? Would that ensure that absolutely every gap was plugged?

David McKenna: I might be misreading the bill, but I find it unlikely that a witness who wanted to be considered for special measures would not be. If a witness explained to a procurator fiscal the nature of their disability or the adverse impact that giving evidence would have on them and asked for special measures to be considered, I cannot imagine that the procurator fiscal would say no.

Jackie Baillie: That assumes that the witness has the ability to communicate their disability to the fiscal.

Do you think that the bill gets the balance right between the rights of child witnesses and the court's ability to overrule or waive that automatic entitlement?

David McKenna: The bill has got the balance right. However, we say in our submission that it will be important to monitor outcomes in court. The bill is intended to protect witnesses and to promote better evidence. We have to ensure that that happens in practice.

The Convener: Are you content with the facilities for identifying vulnerable witnesses that are in place from the police stage onwards? That goes back to the question about when communication between witnesses and procurators fiscal takes place, which can happen only if identification of vulnerable witnesses takes place at the police stage.

David McKenna: All the justice agencies and many voluntary sector organisations are far better at identifying vulnerability at an early stage. That goes for the police service, the fiscal service and the courts. However, more work has to be done to ensure that proper systems are in place to identify vulnerability across the diverse group of people who come into contact with the police service at the earliest stages and to ensure that account is taken of that vulnerability throughout the process, from the time that a crime is committed, and in and out of court.

Mike Pringle: Your submission says that court proceedings are

"of an adversarial nature. The court environment is formal and intimidating. Often the sight of the accused or the conduct of a defence agent may be particularly distressing."

You do not go on to say how that might be changed.

David McKenna: Barry Jackson wrote those words, so I will let him say a few words about that.

Barry Jackson (Victim Support Scotland): That statement was made with particular reference to children. It is true that the court environment is one with which children are not familiar and that it can be distressing for them for that reason. People have also commented that, because our legal system is of an adversarial nature, defence agents might have to try to undermine witnesses' credibility. It might not go that far, but we have heard witnesses say that they feel like they are being put on trial. The purpose of the special measures will be to enable witnesses to be taken out of that environment if they are feeling vulnerable. For example, if evidence will be taken on commission, witnesses will not necessarily have to bear the same brunt of the adversarial nature of defence agents' questioning.

David McKenna: We recognise that the form of justice that we have in Scotland is adversarial in nature. In recognising that, we also acknowledge that there will be an element of testing the evidence. That is quite right—not all witnesses tell the truth.

However, we are also coming to recognise that the system does not always work for the witness. Barry Jackson touched on the issue of attempts to undermine the character of witnesses. That is fair enough if there are grounds for it—it is part of how the system works. However, we must bear in mind

the fact that victims do not understand the nature of the process and that, often, what happens in court in relation to them is very personal. What might be described by a judge or a sheriff as assertive cross-examination might be described by the victim or witness as aggressive questioning. People take it personally and feel that they are being accused of lying or that their credibility is under attack.

Colin Fox: Victim Support Scotland's submission calls for training for criminal justice professionals so that they are aware of the circumstances that vulnerable witnesses can find themselves in. What kind of training do you envisage and who should provide it?

David McKenna: There is a need across the whole criminal justice arena—and, for that matter, the social justice arena—for improved understanding and awareness of the impact of crime on individuals and their families. That should be taken into account in the training processes of all the agencies concerned. In my view, everyone in the criminal justice arena who comes into contact with a victim or a witness should be required to have undergone basic training to understand their needs and the issues arising from being a witness to a crime.

That does not happen. There is a lot of understanding and sympathy, and I know that colleagues throughout criminal justice want to do more to improve the lot of victims of crime, but the training is nowhere near being up to scratch. There needs to be an understanding of what vulnerable witnesses go through and of what the issues for them might be. It is about being sympathetic to the victim or witness and, where possible, looking out for them.

A good example is what is happening right now in this room. I am giving my evidence sitting down, not standing up. I do not have to ask to sit down. If I want, I can take a drink of water from the glass of water provided. In a court, I would have to ask for it. Simple things could be done, such as providing water in the court in advance, where that is appropriate, or making provision to allow the person to sit down. If people are not aware of the perspective of the victim or witness, they will not think about those things.

If you see a police officer of 20 years' service giving evidence in court, you will see the beads of sweat appearing on his forehead. If giving evidence in court is a distressing experience that makes even a professional police officer nervous, what must it be like for someone who has never seen the inside of a court in their life?

Colin Fox: Who would provide the training for the professionals?

David McKenna: A number of agencies have the potential to provide such training. Victim Support provides external training, but the issue for us is that, although we have the knowledge and understanding, and we have the modules, we do not have the resources. To be candid, I have never seen much evidence that agencies want to buy in or pay for training on the wide-ranging scale that is needed to bring about the culture change that we would like to see.

Colin Fox: Perhaps a better question is what the measure of success would be for whatever agency that provides the training. How would you measure whether the training was valuable, effective and successful?

David McKenna: We have been working to consider how independent standards can be set for the quality and content of the training that we provide. For example, when we train a volunteer to support a victim of crime, the content of that training is at Scottish vocational qualification level and people must meet the occupational standards. Any training that we would deliver on how to deal with vulnerable witnesses would be independently verified.

Nicola Sturgeon: You said that it is important to assess vulnerability as early as possible in the process. When we start to talk about how that happens, we quickly run up against some of the bill's limitations. The bill deals with the support that is to be given to vulnerable witnesses when a case is in court, but before vulnerable witnesses are in court, they are often vulnerable victims. Sometimes, the things that make people vulnerable as a witness also make it difficult for them to report a crime in the first place. What support could be made available to victims at an earlier stage, whether by way of legislation or otherwise, to help to complete the process that the bill is trying to achieve?

David McKenna: Obviously, the bill does not stand by itself. Mention has already been made of the court reform bill, which will also strengthen the proposals in the bill. The Executive has produced a number of other policy documents that increase awareness among the other agencies of the need to support people in the aftermath of crime.

From our perspective, as one of the key agencies that work with people who have been affected by crime, it is important to have a joined-up service. We need to ensure that people know what service we provide and how to access it. Then, once people access our services, we need to be able to provide support all the way through the process, from when the crime was committed right through to court and out of court again. That is the key element. At the moment, we have a community-based victim service that works in our communities and a very successful witness service that works in our sheriff courts and now

the High Court. As part of a Government review, Victim Support Scotland is considering how we can join up those services so that, from witnesses' or victims' perspective, there is a seamless service that people can access at the earliest point.

There is no doubt that if people are provided with practical and emotional support at an early stage their overall experience of the criminal justice system is improved—there is plenty of international research to support that. The further down the road that people are provided support, the less satisfactory their experience and the outcomes for them.

The Convener: I have just realised that the committee members, never mind people in court, have no water.

Scott Barrie: I return to Colin Fox's point about training and guidance. The Victim Support Scotland submission talks specifically about special measures being vital tools in enabling vulnerable witnesses to present best evidence. The paper goes on to say that it is important that proper training is provided in that area. What training is necessary, who would undertake it and what would such training achieve?

15:30

David McKenna: The content of the training would include a basic victim awareness element, but it would also be about understanding from witnesses' perspective what the needs of witnesses are and being sensitive to those needs in a range of areas. It is not just about special measures; it is about understanding the needs of people from a different background, culture and ethnicity. The diverse nature of our communities should be encapsulated in our approach to supporting people, so that their needs are met at an early stage.

We want witnesses to be able to give evidence because that is what they tell us they want to do. However, most of them say that the whole system works against them. They can be called as a witness once, twice or three times and have it cancelled each time. When they turn up at court, they do not get information about what is happening with their case. Recently, a witness whose case finished at half past 10 in the morning was told at half past 4 that they could go home. That is not unusual. It is about understanding, from the witness's perspective, what needs must be met, and doing that on an individual basis. It involves making an assessment of individual need and following that through. From the point of view of reporting crimes, it is important to identify what the issues might be and to build on that all the way through the criminal justice process. Whoever is responsible within the court setting for the needs of the individual then has the information they need to ensure that the individual's situation is catered for.

The Convener: There is provision in the bill for the accused to be present when evidence is taken on commission. Does Victim Support have a view on that?

David McKenna: Ideally, we would not want the accused person routinely to be present while evidence was being taken on commission. We recognise that there are potential human rights issues for the accused. The bill team can perhaps explain this better, but my assumption is that the possibility that that might be required on occasion is not being ruled out. I cannot imagine any circumstance in which a commissioner would rule that the accused should be present, but there might be circumstances in which it could happen. That is another area that we would want to monitor closely.

Mike Pringle: On supporters who come with vulnerable witnesses, a number of people have suggested that provision should be made so that a witness can also be a supporter. How do you view that conflict?

David McKenna: Again, that is not my area, but I will give you my best guess. I would assume that if a witness had not given evidence, they could not support another witness. However, if they had given their evidence and were no longer a witness, I cannot see any difficulty. My colleagues should be able to clarify that.

The Convener: I think that the issue is that there is a possibility that someone who is a supporter but not a witness in a case—who has not been involved in the case at all—could occupy the role of witness in a case. Do you have a view on that?

David McKenna: I did not catch the last part of that.

The Convener: Sorry. A view is emerging that it might be possible for a supporter who is not a witness in a case nevertheless being included as a witness in the case to better support a vulnerable witness. Do you have a view on that?

David McKenna: To be honest, I am not sure what that would achieve.

Nicola Sturgeon: I just want to clarify what you said because you gave an interpretation of the bill that differs from mine. Are you saying that the bit in the bill that says that a supporter cannot be a witness would not preclude a supporter who had given evidence in a case—and who was therefore excused and no longer a witness—from giving evidence at a prior stage of a trial?

David McKenna: Yes, that is right. That is my

understanding of what I read.

Nicola Sturgeon: I think that I will have to clarify that with the bill team.

Karen Whitefield: I have a few questions about implementation. You are obviously passionate about the bill, Mr McKenna. How do you expect the bill to be implemented? Do you agree with Shona Barrie, who gave evidence to us earlier, that the bill is likely to be phased? If so, do you believe that phasing could have a detrimental effect on the outcomes and success of the bill?

David McKenna: To be honest, I am not up to date with the Executive's current proposals for the bill's implementation. I am sure that a number of groups will consider that issue and that Victim Support will be invited to participate.

I think that phased implementation would be a sensible approach. The bill will make a huge change to the provision for witnesses and to the delivery of evidence in Scottish courts—certainly in the High Court and the sheriff courts. Undoubtedly, lessons will have to be learned. I think that phased implementation of the bill would allow lessons to be learned and would ensure that the bill's provisions work in the interests of both justice and witnesses.

Karen Whitefield: In earlier evidence you indicated that you might be called upon to offer training. Do you think that the bill's implementation will have implications for Victim Support Scotland in relation to training and other aspects? If so, will you have sufficient resources to be able to fulfil your obligations?

David McKenna: It would take me four hours to give an answer on the question of resources. There is no doubt that the bill has implications for our workers. We are beginning an assessment of how the bill will impact on our work and we will obviously alter the organisation of our services to meet whatever is in the eventual act. I hope that the necessary resources to meet the bill's provisions will be made available not only to Victim Support Scotland but to all the agencies that will have to change their working practices substantially. The resources must be made available to allow them to do that effectively. I would like a strong commitment to be made to training in relation to the bill and to the provision of the resources to make that happen for Victim Support Scotland and other agencies.

Karen Whitefield: Have you had an opportunity to look at the financial memorandum that accompanies the bill? If so, do you think that the proposals outlined in the memorandum will provide sufficient resources?

David McKenna: That is obviously a difficult issue for me to comment on in as much as I was not involved in putting together the memorandum. It seems to me that the bill's financial framework is generally okay, but time will tell.

The Convener: Is Victim Support satisfied with the extent of consultation on the bill?

David McKenna: Yes. We responded to the white paper and we had a meeting with the bill team to go through the bill bit by bit and put across our views. This is one of those ideal situations for a voluntary organisation when, without too much prompting, the Government delivers something that is close to what we were looking for.

For many years, I have been involved in campaigning for changes to the way in which witnesses are treated in the courts. That goes right back to the famous—or was it infamous?—report called "Towards a Just Conclusion", which began this whole process seven or eight years ago. I am pleased with the Government's proposals and support the Government in bringing about these changes.

The Convener: Is Victim Support Scotland satisfied with what the bill says about the district courts? The bill's provisions can be applied to the district courts through subordinate legislation if Scottish ministers so decide.

David McKenna: It was mentioned earlier that there is a witness service in the High Court and in the sheriff court, but no witness service in the district court. District courts have seemed a little like Johnny-come-lately—or is it Janice-come-lately? The district courts are often missed out when we consider improvements to the system. In due course we will have to consider the district courts, but I am a little reticent about saying too much at the moment because the summary justice review group is likely to make proposals that will change the structure of summary justice. We should wait until we hear the outcome of that and then see whether, as part of the review, we can bring the district courts—or whatever they are going to be—up to scratch and up to speed with the other courts in Scotland.

The Convener: Is Victim Support involved in the support of witnesses in the district courts? Is that a large part of your work?

David McKenna: In our experience, the district courts are where witnesses experience the vast majority of intimidation, harassment and threats. That is because of the nature of the courts: they are high-volume and the buildings are generally older and harder to police. They can be a very hostile environment for witnesses and we feel that there is a need to support people. If someone who is going to a district court comes to Victim Support to ask for support, we will ensure that they get it. However, that is the exception rather than the rule.

The Convener: So your service is more likely to be provided in the sheriff courts or the High Court?

David McKenna: Yes—certainly in the sheriff courts and the High Court.

Mike Pringle: I endorse what Mr McKenna said about the district courts. We will have to address that issue.

I want to ask about something that we have not covered, concerning children under the age of 12. In your submission, you say:

"Victim Support Scotland strongly supports the Executive's view that no child under 12 in cases involving sexual or violent matters should have to personally give evidence in court."

Do you think that 12 is the right age?

David McKenna: To be honest, I am not sure what the right age is. In our organisation, we have a cut-off point at 14—people over 14 and people under 14 have different types of access. I presume that 12 has been chosen to fit in with Scottish law. In other instances, the age limit is set at 12, so I presume that that is why 12 has been chosen.

Mike Pringle: Do you accept that the figure is perhaps arbitrary?

David McKenna: I suspect that it is, although I know that the Executive is giving some thought to why it should be 12. I am not saying that the issue is not important or that, three years from now, we will not be arguing that the figure should be changed, but, for the moment, we are satisfied that the bill is a start.

The Convener: There seem to be no further questions. Do Mr McKenna and Mr Jackson wish to say anything in conclusion?

David McKenna: Nothing at all. Thank you for being so kind to us. Welcome us back any time.

The Convener: On behalf of the committee, I thank both of you very much for attending. Your evidence has been very helpful indeed.

Members, you have been so good and succinct with your questions and responses that you are being rewarded with a coffee break.

Members: Hooray!

The Convener: The bill team is already here to give evidence, so we will reconvene shortly.

15:43

Meeting suspended.

15:55

On resuming—

The Convener: I welcome the Executive bill team, which comprises Barbara Brown, Lesley Napier, Peter Beaton and Merlin Kemp. We are pleased that you have been able to join us today.

There are a number of subjects about which we would like to ask questions. It might be that one of you will have a greater expertise or experience than the others in each of those subjects, so I will leave it to you to determine who is to respond—the two men can nudge the women on the shoulder or the women can glare at the men, as the whim takes you.

Is there a comment that Peter Beaton or the team would like to make? You might prefer to get down to answering questions—it is entirely up to you.

Peter Beaton (Scottish Executive Justice Department): We are in your hands, convener. Following our earlier informal discussions, we are pleased to be at the committee today. At the time of those discussions, we made an initial statement that is sufficient for the purpose. We are happy to follow the committee's order of questioning and will try to organise ourselves as to who deals with each question.

The Convener: Thank you. That is helpful.

Scott Barrie: We have received a number of submissions, not least of which was from the Scottish Child Law Centre and Justice for Children, in support of the establishment of the child witness support service that was envisaged in the Lord Advocate's working group's report. Will you comment on the report—I think it was published about four or five years ago—and on whether the Executive has considered the establishment of such a service?

Barbara Brown (Scottish Executive Justice Department): Yes, the Executive has carefully considered the Lord Advocate's report. The committee might be aware that we issued a consultation document some months ago; the establishment of a child witness support service was one of the issues out for consultation.

Scott Barrie: The submissions that we have received suggest that the operation of the bill and of such a service would be quite closely twined; indeed, some of the evidence suggests that the two would be intertwined. Notwithstanding the fact that a policy development is awaited, do you go along with that assertion?

Barbara Brown: The bill is about the legal framework. The support services around that are important, but I cannot at this point comment on whether there is to be a child witness support service.

Mike Pringle: In its submission, the Scottish Human Rights Centre calls for the definition of children to be brought into line with the international legal definition of a child as someone

who is under 18 years old. It also proposes that the protection that is afforded to children under 12 should be extended to all children under 18. How was 16 arrived at as the age for a child who would be eligible for special measures under the bill?

Lesley Napier (Scottish Executive Justice Department): The current position is that 16 is the age for discretionary eligibility under the Criminal Procedure (Scotland) Act 1995. We consider that to be a good age; it is in line with other legal ages for children, such as those for leaving school or getting married, so it seems to be sensible. We are also aware that the younger the child, the more serious would be the cases in which he or she might be called as a witness. It therefore seems to be more appropriate for the age for special measures to be 16, because 17 or 18-year-olds could be called in less serious cases and therefore might not be so vulnerable.

Mike Pringle: Would not it be up to the court to decide who was a vulnerable witness?

Lesley Napier: Very much so. We wanted to aim the automatic entitlement for children at the most vulnerable because, to a degree, the situation is inflexible—such entitlement will be a right for them all. A 17 or 18-year-old could still be considered as being a vulnerable adult. As you will be aware, one of the factors to be considered in that regard is the age of maturity. That could be relevant for 17 or 18-year-olds.

16:00

Mike Pringle: Have you considered extending to all children under 16 the provisions that would be available to children under 12?

Lesley Napier: We gave very careful consideration to the age limits at which we arrived. We chose 12 because a lot of research evidence suggests that 12 is an age of maturity for a child, at which they are able to give their views and opinions. A number of presumptions also back up the choice of 12. As I said earlier, children under 12 tend to be called in the most serious cases—cases in which they really are necessary as witnesses. The general rule for children under 12 is that they will give evidence outwith the court. That is quite a major step. We think, therefore, that it is appropriate for the most vulnerable children.

Merlin Kemp (Scottish Executive Justice Department): The bill does not say that a child of under 16 but over 11 years old would be excluded from the special measures that are available to those under 12; there is simply a different presumption about what special measures they would get. Obviously, each case would be considered on its individual merits; if an older child witness was especially vulnerable, he or she could still end up giving evidence on commission or through a closed-circuit television link from a building outwith the court.

Mike Pringle: Whether or not you meant it to, that leads neatly on to my next question. A number of witnesses have requested that all evidence from children be given on commission as a matter of course and that only under exceptional circumstances should children be required to give evidence in court. Have you considered that? In doing so, you would have to consider the rights of the person on trial. How would you square those considerations?

Lesley Napier: The general way in which evidence is given in Scotland is in an open court in front of the accused. When we make exceptions to that, we obviously have to have good reasons for doing so, which is why we decided that an automatic entitlement was appropriate for only the most vulnerable of children. As my colleague Merlin Kemp indicated, that does not mean that special measures are ruled out for other witnesses, but that there is a general presumption that they are most appropriate for younger children.

Mike Pringle: You ruled out the possibility that all children who had been deemed vulnerable witnesses by whichever authority could give their evidence on commission regardless of their age, but you did not see fit to say that.

Lesley Napier: All children under 16 are considered to be vulnerable witnesses. That is an automatic entitlement regardless of what type of case they are involved in. All children under 16 will get the help and protection that they need to be able to give their evidence to the court. In deciding what special measures are most appropriate, the party calling them—and, indeed, the court—will have to decide what is in the child's best interests, including taking into account the child's views. We think that those are important safeguards to ensure that those children's needs are met.

The Convener: Let us turn to a slightly more technical aspect: the taking of evidence on commission. At the moment, when evidence is taken on commission in a criminal case, is the accused present?

Lesley Napier: Under special measures, the accused could be present by leave of the commissioner. However, there is a presumption that the accused will not be present. The accused would have to ask to be present and I imagine that there would have to be a good reason for their being there. That is what we are following on with our provision. It is not the general rule that the accused would be present—there are obvious circumstances in which that would not be appropriate. However, the accused could be present by leave of the commissioner if, for some reason, that was deemed necessary.

The Convener: You used the phrase

"by leave of the commissioner".

Is that an appealable exercise of function? Can the accused challenge that?

Barbara Brown: We have not written any specific appeal provisions into the bill regarding the decision about special measures. There is no specific appeal for that.

The Convener: Would there be a danger of contravention of the ECHR if an accused were to be denied the right to be present when a witness was giving evidence on commission?

Lesley Napier: We feel that none of the special measures in the bill is prejudicial against the accused. They all allow the accused to see and hear the evidence that is brought. We are satisfied that all the special measures are ECHR compliant.

The Convener: Some of the submissions that we have received have expressed concern at even the potential for the accused to be present when a vulnerable witness gives evidence on commission. The natural questions are whether that right has to be stated in the bill or whether there is any intention to remove that right.

Lesley Napier: We understand those sentiments. The reasoning behind that provision is that it might be that evidence on commission is chosen not because the witness is in any way intimidated or in fear of the accused. It could even be a defence witness giving evidence on commission. There may be perfectly good reasons for the accused to be in the room, which would not cause any difficulty. That is why we think that it is reasonable, as a general rule, for the accused not to be present but for them to have the possibility of being present if it is appropriate.

The Convener: I presume that the various agencies that are involved before the procedural step to take evidence on commission is arrived at will co-ordinate to ensure that a witness giving evidence is informed of the likelihood of the accused's seeking to be present, and that appropriate support will be put in place.

Lesley Napier: That is reasonable. Any special measure that is chosen has to be in the best interests of the witness. If there is a possibility that that could be undermined by the accused's presence, it may not be the most appropriate special measure. The general rule will be that the accused will not be present; therefore, the onus will be on the accused to state why his presence is required, rather than the other way round.

The Convener: Another technical aspect relates to district courts. In relation to criminal cases, the bill does not expressly extend the provisions to the district courts but provides a facility to do so by exercise of Scottish ministers' discretion through a statutory instrument. It might help the committee to know the reasoning behind that. People who have made submissions to us have asked why the provisions are not available through all courts.

Barbara Brown: We thought carefully about the extent of the provisions and whether we should include the district courts. Members may be aware that the current provisions, under section 271 of the Criminal Procedure (Scotland) Act 1995, do not cover the district courts. We were not given any evidence to suggest that there was a significant need for special measures to be available in district courts across the board. Given that—as has been mentioned—the review of summary justice that is being conducted under Sheriff Principal McInnes has not yet reported, we did not feel that it was appropriate to change the status quo. However, as you say, there is a power in the bill to extend the provisions if to do so is considered to be appropriate. We will monitor the situation and, if there is a real need to extend the provisions to the district courts, we will consider that in the fullness of time.

The Convener: Is it the case that, having regard to the physical nature of district courts throughout Scotland, there would be practical implications concerning infrastructure and the courts' ability to provide facilities for vulnerable witnesses?

Barbara Brown: Such issues will be examined in general terms in the McInnes report and we will take note of the report's recommendations when it appears.

Nicola Sturgeon: The bill allows for the automatic entitlement of children to special measures to be overruled in certain circumstances. Some written submissions to us have suggested that, strictly speaking, that means that the entitlement is not automatic. Will you talk us through the reasons for the provision to allow the entitlement to be overruled?

Lesley Napier: We consider the entitlement to be automatic. It is an automatic entitlement to special measures, which are chosen according to circumstances and what is most appropriate for the child. There are two main exceptions under which a child could give evidence without special measures. The first is when the child wants to give evidence in open court. That exception is important for empowerment of children—if they want to give evidence in that way, it is possible.

The second exception is subject to a high test of whether a special measure would create a

"significant risk of prejudice to the fairness of the trial".

That risk would have to be significantly higher than the risk of prejudice to the witness. That high test means that if there were a risk that the

accused would not have a fair trial, and that risk outweighed the prejudice to the witness, the possibility would exist for the witness to give evidence in open court. Because that is a high test, it would be applied only in exceptional circumstances. However, it is an important safeguard, because the accused's right to a fair trial is fundamental. Anything that would prejudice that right would have to be taken into account. We are satisfied that the test is high, so it does not diminish the automatic entitlement. It is just a safeguard.

Nicola Sturgeon: Nobody would object to the first exception. If somebody wants to give evidence in open court, I do not see why they should be prevented from doing so. To the extent that concern was felt, I suppose that it was about the fact that the courts and the people who practise in them are steeped in the adversarial system, so too much willingness might be felt to see prejudice to a trial that does not exist in reality. Will any monitoring take place?

Lesley Napier: Yes. The test specifies "significant risk", so it is a high test. As I explained, courts will not consider only the test. The interests of the witness will also be paramount in the minds of judges. If the bill is passed, we will monitor how all the provisions work in practice. We are certainly satisfied that the safeguard is subject to a high test, so it will also protect vulnerable witnesses.

Jackie Baillie: The bill specifies that the right to be treated as a vulnerable witness is automatic for a child under 16 and discretionary for all other categories. What is the reason for the distinction? That question is not surprising from me. As others have suggested, might that distinction lead to inconsistent interpretation and application of the bill?

Lesley Napier: An important element of the bill, particularly for vulnerable witnesses, is its flexibility to consider every witness as an individual and to examine the facts and circumstances of the case, so that witnesses can receive the help that they need. We concluded that children are particularly vulnerable because of their age and level of maturity, so they need that automatic entitlement as a right. However, it is also important to look on vulnerable adults as individuals and to give them consideration.

We are satisfied that the bill provides legal duties to ascertain whether vulnerable witnesses are involved in a case and to ensure that their needs are met once they are identified. That should be sufficient. If we gave specific adult witnesses automatic entitlement, we might exclude individuals who did not fall within the categories. Making eligibility flexible and discretionary means that each witness can be considered as an individual.

Jackie Baillie: How do you ensure that interpretation is consistent? Some evidence—including a submission from the Law Society of Scotland—suggests that unless the criteria are clearly defined and comprehensive, unfairness will be built into the system.

Lesley Napier: That is why the bill sets out a list of factors that the courts must take into account. That list will help to encourage consistency in dealing with matters. If the bill were too stringent, people might fall through the gaps because they might not fit into strict categories. It is better to have factors that the court must consider in determining vulnerability, instead of categories that might not catch all vulnerable witnesses.

Jackie Baillie: There is a suggestion that, as a result of that provision, too much emphasis will be placed on the circumstances of the case or the quality of the evidence, rather than on the impact of the experience of giving evidence on the potentially vulnerable witness. Has the Executive given further thought to how that issue could be teased out?

Lesley Napier: With most vulnerable witnesses, it is likely that, if they do not get the help they need, their evidence will be diminished. That issue is at the heart of the bill—it is about enabling vulnerable witnesses to speak up so that all the evidence is put before the court. The test of whether the evidence will be diminished will enable vulnerable witnesses who need help to get it.

16:15

Peter Beaton: It is important to understand that one of the principles behind both the bill and our general approach to witnesses is that we want to sustain as much as possible the autonomy of the witness. Clearly, vulnerability has a number of characteristics, some of which relate to identifiable characteristics of the witness. However, some of the factors that are listed in the passage of the bill to which my colleague Lesley Napier referred relate to the circumstances of the crime or to behaviour perpetrated towards a witness on behalf of or by the accused.

There is a balance to be struck. It is important to realise that none of those factors is individual—they are collective—and that there is not a hierarchy. Just because the passage to which Jackie Baillie referred is the first in a list, that does not mean that it will be given precedence. The court will be under a duty to take all the factors into account, while having regard to the autonomy of the witness and the general overall purpose of the bill, which is to facilitate, in the interests of justice and witnesses, the giving of evidence by people who otherwise might be unable to, or deterred from, doing so.

Jackie Baillie: I assure Mr Beaton that I understand that whether something comes first or last in a list might be irrelevant. I gave the interpretation that has been put on the bill by organisations from which we have received evidence. It would be enormously helpful if we had clarity about the Executive's intentions.

I will move on to test further issues of definition that have been raised with us in evidence. The Disability Rights Commission in Scotland asks that the definition of disability in the Disability Discrimination Act 1995 be used in the bill, which is eminently sensible. What is the Executive's view on that?

Lesley Napier: We will certainly consider that issue further. One of our concerns is whether that definition might be more restrictive than the present provision. However, we note the Disability Rights Commission's response and we will consider it.

Jackie Baillie: The Scottish Association for Mental Health has concerns about witnesses with mental disorders on which it seeks clarification. Will additional medical evidence be required for people with a mental disorder? Will a witness's mental condition be made public?

Lesley Napier: If a mental disorder is the main reason for an application for special measures, it is likely that that will have to be backed up by a medical report. On whether the reason would be made public, under the bill at present, the application would be served on the court and the other party, so it would be a court document. We note the matters that SAMH raised in its submission and we will consider them.

Jackie Baillie: I have one final question, to which I assume you will give a similar answer. The Law Society of Scotland made the interesting suggestion that the bill should have a catch-all provision that allowed for self-referrals. Will you consider that suggestion?

Lesley Napier: Yes. We have met representatives of the Law Society. One of the difficulties with self-referrals, which was probably elaborated on by the earlier witnesses to the committee, is that witnesses are not a party to the proceedings. There are other difficulties, such as the fact that because vulnerable people will be involved, self-referrals might be difficult. We consider that, given that under the bill the parties must take into account the best interests of the witness and ascertain their views, there are clear ways in which witnesses' views can be channelled to judges so that their needs are met. We are content that the bill has sufficient safeguards and that self-referrals are not necessary.

Colin Fox: I turn to civil proceedings. A lot of submissions have raised concerns about the peculiarity of the proposal to make the party who wishes to call a vulnerable witness pay for special measures. Has the Executive considered amending the bill so that the Scottish ministers, for example, would pick up the tab for that?

Lesley Napier: My colleague Merlin Kemp will answer that question.

The Convener: He is the one who has just gone white.

Merlin Kemp: The Scottish ministers' view is that, in line with the nature of civil proceedings, parties should instruct and pay for their own cases—there is party autonomy in civil cases, unlike in criminal cases.

Colin Fox: So the answer is no.

Peter Beaton: The answer is no because it is a matter of principle that in civil proceedings, parties organise witnesses in accordance with their needs. It has to be borne in mind that for certain civil proceedings, legal aid is available and would normally cover issues such as special measures. We also have to remember that costs might be hidden. The provision of equipment will not necessarily be an on-cost if it is available in the court. The Scottish Court Service is unlikely to charge a fee for the use of equipment that is available in the court. If the special measures in civil proceedings involve equipment that is available in the court, there should be no on-cost as such. There is already a charge for parties' bringing witnesses to the court in civil proceedings so there is no change in the law in that respect.

The Convener: Is it the case that evidence is more likely to be adjusted by a joint minute of admissions in civil cases than in criminal cases?

Peter Beaton: For many of the proceedings that we are talking about, the current trend in civil justice is a major decline in the taking of evidence to resolve issues. For example, in family actions involving parental responsibility, in certain courts there is rarely, if ever, a proof. Family sheriffs in Glasgow have set themselves the objective not to have proofs in relation to parental responsibility, which is an area where vulnerable witnesses are likely to be found.

The other main area where vulnerable witnesses are likely to be found in civil proceedings is in relation to proof hearings for the establishment of grounds of referral for children's hearings. Special measures are already available there, because when the Children (Scotland) Act 1995 was implemented, the opportunity was taken to build on common-law powers, which the Court of Session reasserted following a petition to the nobile officium by the principal reporter to the children's hearing, indicating that special measures could be granted as a matter of inherent

power of the court. Rules of court support proceedings under part 2 of the act, which have been in place since 1996. The rules cover proceedings such as the establishment of grounds of referral. The experience has been that the rules work perfectly well. In such cases the situation is slightly different to other civil cases. It is more akin to the situation in criminal proceedings, because the main party is a state institution, namely the Scottish Children's Reporter Administration.

Nicola Sturgeon: You commented on self-referral a few minutes ago. What recourse do you envisage being available to witnesses first, where they think that they are a vulnerable witness, but the party calling them does not agree and secondly, where they believe that the special measures that have been granted are not appropriate for their needs and they would prefer other such measures?

Lesley Napier: The first example that you give is probably quite unlikely. It is obviously in the interests of the party calling the witness to get them the help that they need to be able to speak up in court. The party has a duty to ascertain whether a witness is vulnerable and I hope that they will take that duty seriously.

I understand your second point that there could be a disagreement between the party calling the witness and the witness over which special measure is most appropriate. To a degree, that is why the witness's views on that will be stated on the notice and application. It will therefore be quite clear that the party is seeking a special measure that is different from what the witness wants. We would certainly envisage that, in such circumstances, it might be appropriate for the court to ask for a hearing on the special measure application and notice, rather than just grant it in chambers. Consideration could then be given as to why the special measure sought is different from the one that the witness requires or wants.

Nicola Sturgeon: Is the court's decision at that stage appealable?

Lesley Napier: No. We are satisfied that it should not be appealable because the court and the party have the duty to take into account the best interests of the witness, including their views.

Nicola Sturgeon: Most court decisions in the process of a trial or civil case are appealable at any stage. Is there any particular reason why this sort of decision would not be appealable?

Lesley Napier: One reason is that we want the court process for dealing with vulnerable witnesses to be as efficient as possible and to be without further delays. That is why we think it important to build in safeguards as to what must be taken into account when deciding what is appropriate for a vulnerable witness rather than to provide for further appeals. Appeals could also be made against a special measure for a witness. Appeals could lead to further delays in the process.

Nicola Sturgeon: I appreciate that we are getting into theoretical territory, but what if a witness thinks that the judge did not take their best interests into account and believes that, if he had, he would have made a different decision? Most other decisions that a judge makes in the course of a trial are in themselves appealable. Apart from the need to avoid delays, I do not see why in principle the decision on special measures should not be appealable.

Lesley Napier: I am not aware that the particular issues relevant to witnesses are as a general rule appealable.

Barbara Brown: A decision has to be made. The view is that the court has the duty to take the best interests of the witness into account and decide what the appropriate measure is. That should be the end of the matter at that point. Otherwise, there is scope for delay.

Nicola Sturgeon: One could say that a judge has a duty to decide whether somebody is guilty or innocent and that a decision has to be made. However, the decision is still appealable if the person who is found guilty does not agree with it. The provision strikes me as being out of kilter with other court decisions.

Lesley Napier: Another factor within the bill that may slightly alleviate your concerns is the review provision, which allows for an application for a vulnerable witness to be made even if it has not been made before the trial. If it becomes apparent during the trial that the witness feels vulnerable—the witness may even say so themselves—there is provision for a special measure to be applied for and used at that time. The court can also do that of its own accord. There is another opportunity, even close to the time at which the witness has to give evidence, for such things to be taken into account. That could be an additional help on that matter.

Peter Beaton: The bill will have implications—although they perhaps lie more in the margins of the bill than in the bill itself—for interagency and intra-agency working, which will be required in order for the bill to function. In other words, one of the bill's implications will come through the implementation strategy. It must be remembered that the bill is part of an overall move towards making the processes in the formal courts rather more person centred than they were in the past. Those processes have been the subject of tensions and, one might say, justified criticism. On that issue, the Scottish ministers are clearly moving on several different fronts.

One implication of that is the culture change to which David McKenna referred in his evidence earlier. One part of that is that the person-centred nature of the processes will start long before the formal court proceedings. Theoretically, the question may have some merit in it, but the point is that in practice it will be ensured that, to the greatest extent possible, the arrangements focus on the individual witnesses, whose interests and views will be taken into account at a much earlier stage of the process than is the case at the moment.

The spine policy of the bill intends to achieve that and it involves a good deal more than only creating the legal framework, which we do in the bill. When push comes to shove, a balanced decision must be taken as to what is best for witnesses. We think that, realistically, the instances where it is likely that there will be a major disagreement between the witness and the interests bringing them will be so rare that it would create a major imbalance if an appeal provision were included in the bill. Such an appeal provision would imply a good deal of procedural infrastructure, which we think would tilt the balance against efficacy and practicability.

16:30

Mike Pringle: The bill suggests that a supporter cannot be called as a witness. Is that correct?

Merlin Kemp: I will try to give a slightly less succinct answer than the previous one. I will clarify what was said earlier. As the bill stands, a witness in proceedings cannot be a supporter. We have had representations about the matter from various agencies, as has the committee. In the light of that and what has been said earlier in the proceedings, we are prepared to consider the issue again. We will have to go back and give more thought to it.

Lesley Napier: I will explain why we reached the decision not to allow witnesses to be a supporter. We were working on the basis that there could be concern and objections if a supporter had already given evidence in the case against the accused and was then supporting the witness. Part of the defence could be that the supporter had coached the witness; it could appear to be prejudicial. That was the basis of why we thought in general that witnesses should not act as supporters.

Mike Pringle: Take as an example a serious case where a young child of 11 has been raped and the only person to whom she has turned is her mother. The mother has witnessed the rape and is called as a witness prior to the child being called. You are suggesting that in that situation the one person who might give some stability to the child when she is giving evidence could not do so. The person who is the supporter would be made aware of the proposed section 271L(3), which states:

"The supporter shall not prompt or otherwise seek to influence the witness in the course of giving evidence."

It would surely only be right for the mother to be able to sit and offer some comfort in the court while proceedings were being taken.

Barbara Brown: The danger in such a situation, which is why we decided on the wording that we did, is that, as Lesley Napier said, it can easily be exploited by the defence, which can say that the child has been influenced or coached by her mother. When we were trying to decide how to define a supporter, we thought carefully about whether we should list people who should or should not be allowed to be supporters. We were aware that the question of a supporter being a witness was the most sensitive area where there might be cause for dispute in a case, so we thought that it was appropriate to exclude witnesses. That signals that in general other types of individual should be allowed to be supporters in most circumstances.

Having heard what has been said today by our colleagues in the Crown Office and elsewhere, we will consider the matter again and see whether a modification needs to be made.

Mike Pringle: If somebody is close to the person who is giving evidence—in the scenario that I mentioned the mother—is it not assumed that they will probably have discussed the case before they came to court anyway? The person has already given their evidence and, having given their evidence, might be at the back of court and not influencing anything at all. The thrust of the bill is to help vulnerable witnesses. In a situation such as the one that I have outlined, someone might not give evidence because the person whom she wants to have as a supporter is not allowed to be there because they have already been called as a witness.

Barbara Brown: We take that point. We are concerned not to get into a situation in which the existence of a particular supporter undermines the effectiveness of the individual witness's evidence by being used as a way to exploit what has happened but, as I said, we are open to reconsidering the provision.

Mike Pringle: Good.

The Convener: Does Nicola Sturgeon want to comment?

Nicola Sturgeon: In the light of the commitment that Barbara Brown has made, I will let the matter lie and come back to it at another stage.

The Convener: I will turn to some practical aspects and to implementation in particular. How

does the Executive propose to put the bill's provisions into practice?

Barbara Brown: It is obviously early to plan implementation in any detail. We will have to find out what the final shape of the bill is. However, as Shona Barrie indicated earlier, we are planning to set up an implementation group, which will include representatives of all the various agencies that will need to be involved in implementation. That will include the Crown Office, the Scottish Court Service, the police and social work agencies—all the different bodies that will have a role to play. We will consider everything that will need to be done. It is clear, as you have heard in evidence this afternoon, that a lot of guidance needs to be prepared and a lot of training needs to be planned. We will have to work closely with all the agencies that will be involved to find out how best to do that.

The Convener: Is there a time scale for that and is there a framework for guidance?

Barbara Brown: We do not have a firm time scale yet for what we can implement at what stage. That will depend very much on talking to the agencies and finding out what is practicable for them as far as getting training in place and guidance drafted is concerned. The Executive is committed to bringing the bill into force as soon as is practicable.

The Convener: So the bill is viewed with a degree of urgency.

Barbara Brown: Yes.

The Convener: Are there are any practical considerations to do with the implementation of the bill? Will any barriers need to be overcome? I refer principally to barriers in infrastructure. The bill will require certain physical changes to courts and facilities and perhaps changes to personnel resource. Are those being quantified at the moment?

Barbara Brown: We will talk to colleagues in the Scottish Court Service and the Crown Office about those matters. We are aware that there are equipment needs in the Court Service, which will have to put into place additional facilities for closed-circuit television, for instance. However, we think that sufficient facilities are in place in various places around the country to allow us to start implementation in phases and, we hope, roll it out as more equipment and other things that are needed become available.

The Convener: You talk about phasing implementation. The bill either comes into force or it does not. If it comes into force, it is presumably the right of any vulnerable witness or whoever represents that individual to seek to invoke the provisions of the act.

Barbara Brown: We say in the financial memorandum that we will probably implement the bill in phases, which means that different provisions could be brought into force at different stages.

Merlin Kemp: There are timing issues over how quickly certain parts of the bill can be implemented. Certain elements can be implemented fairly quickly; others will require greater infrastructure and training and will take longer. That will inevitably lead to a phasing of implementation. We want to implement procedures for monitoring as soon as we can so that we can constantly gather information about how implementation is working. Perhaps implementation will have to be revised constantly as processes are developed and implementation goes on.

The Convener: Who will be charged with responsibility for the monitoring?

Barbara Brown: We will obviously want to monitor how effective the bill's provisions are. We will need to work with the agencies involved in implementation to find out how best we can build monitoring systems into the processes that they are putting in place. Monitoring will be a joint responsibility, but we will be keen to gather information about implementation as the plans roll out.

Karen Whitefield: On resources, is it the Executive's intention that every court in Scotland—all the sheriff courts and the High Court—will eventually be able to provide for special measures?

Barbara Brown: That would probably be the ideal situation.

Karen Whitefield: What would be the ideal time scale for that?

Barbara Brown: I am not in a position to answer that question at the moment. You might want to come back to that issue at a later stage.

Karen Whitefield: What would be the minimum requirement for courts in Scotland to allow you to implement the bill?

Merlin Kemp: We have had a good deal of discussion with the Scottish Court Service about what equipment is already in place and what is likely to be required as the bill's provisions are rolled out. The minimum requirement is that we ensure an adequate geographical spread, regardless of the number of vulnerable witnesses who are dealt with. There should be a bare minimum that avoids the need to transfer cases from one end of Scotland to the other. We have had discussions with the SCS and we are confident that that can be achieved fairly quickly. It is then a matter of beefing up the available equipment further down the line.

Karen Whitefield: Has that bare minimum been achieved already or will we have to work to reach it? If so, is there sufficient money to allow us to reach it?

Merlin Kemp: At present, we have not reached the bare minimum in every respect, because we envisage that certain elements—for example, the use of a remote live television link—will require the preparation of rooms outwith court buildings. To date, that method has not been used much, so there is work to be done in that area.

The courts have an on-going programme of technological advancement, which we think will be sufficient to enable them to meet the bare minimum requirements for implementation.

Karen Whitefield: On the financial memorandum, what assurances can you give the committee that there are sufficient resources not only to provide for the bare minimum in relation to special measures in courts, but to provide for the training that Victim Support Scotland might be asked to provide to allow for implementation of the bill. As we have heard, the witnesses from VSS believe that money would be required for such training. The Crown Office's computer and IT services will be the subject of additional resource demands. How can you assure us that sufficient money will be available to allow the bill to be implemented?

Merlin Kemp: IT equipment for the Crown Office is one of the elements that is costed in the financial memorandum. We worked closely with all the relevant agencies when we drafted the financial memorandum, so I am fairly satisfied that that point has been covered.

We have had preliminary discussions with agencies about what training is already provided. For example, we have had discussion with police colleagues and the Association of Chief Police Officers in Scotland about the training that is provided. A significant amount of existing training can be modified or added to; it is not simply a question of providing brand new training programmes. At the moment, it is difficult to say how much new training will be needed and how much it will cost. We will have to work closely with the agencies to ensure that such training is provided. We undertook close consultation with those colleagues when we prepared the financial memorandum.

Karen Whitefield: The Association of Directors of Social Work's submission to the committee suggested that it thinks that the resources stated in the financial memorandum will be insufficient to allow the bill to be implemented. It believes that that there will be insufficient resources to support the other agencies that will be relied on to make the bill's provisions workable and to allow vulnerable witnesses to be identified. Do you agree that that is the case?

Barbara Brown: We undertook some consultation with the Convention of Scottish Local Authorities and we thought that we had accounted for all the costs that we could identify. If people come to us and say, "That is wrong", we will have to re-examine the issue.

Merlin Kemp: We have spoken to the ADSW and we would be happy to speak to it again about its concerns. The ADSW was helpful in discussing relevant agencies that will be affected and providing us with contacts. We would be happy to speak to those agencies about their concerns as well.

Karen Whitefield: How much of the financial memorandum relies on the phased implementation of the bill? Is phased implementation essential to allow the bill to be workable?

Barbara Brown: The financial memorandum states that all the costs "assume full implementation". We are saying that phasing will allow us to meet the costs that arise to April 2006—therefore, there must be some phasing. However, it is important to remember that the matter is not just about money; it is about people learning to do things differently and adopting a different culture, which takes time. New ways of working are required, which is as much a reason for phasing as resource issues.

Jackie Baillie: Could the Scottish Legal Aid Board be included in your further discussions, as it has raised concerns?

Barbara Brown: Certainly.

Jackie Baillie: In addition, would you share with the committee information about baseline provision and your intentions vis-à-vis roll-out? There seems to be some interest about such matters.

On a separate matter, we have received a number of representations, one of which is from a Donald MacKinnon. His representation is supported by ChildLine Scotland and Justice for Children. Will you clarify the position? Is the issue that he raises one for another bill? If so, when is the legislative opportunity likely to arise?

Barbara Brown: The matter is not one for the bill in question, as the law of defamation is not within the bill's scope. I am afraid that we are not in a position to answer your final question.

Jackie Baillie: Can you find out when a legislative opportunity is likely to arise? The matter has been raised before with Cathy Jamieson when she was the Minister for Education and Young People.

The Convener: I am sorry, Jackie, but I must

intervene. I do not think that the matter is germane to the purpose of the committee, the meeting or our questioning of the witnesses. You should properly raise the matter as an MSP directly with the Executive.

I thank Mr Beaton and his team for attending—their input has been extremely helpful.

In the interests of the convener, I declare a brief comfort break of three minutes.

16:46

Meeting suspended.

16:49

On resuming—

The Convener: We move on to item 2 on the agenda, which is the committee's requirement to consider the written evidence that we have received at stage 1 of the bill. By way of background information for members, the Parliamentary Bureau has agreed that stage 1 should be completed by 21 November, so it is planned that all evidence will be gathered by the October recess, with a view to a report being agreed by the beginning of November. That is a fairly tight time scale. The clerks have produced a helpful paper outlining a summary of the responses to the call for evidence. In addition to that, we have now received responses from the Law Society of Scotland and from the Association of Directors of Social Work.

Members will be aware that we are due to take further oral evidence on 16, 23 and 30 September, with the minister giving evidence on 30 September, so there is some time available for the committee to hear from a further five individuals or organisations during stage 1. If the committee wants, we can also schedule additional meetings to take further evidence. I invite members to consider the summary of evidence. It is suggested that, in order to hear a broad range of views, the committee might consider inviting a further five organisations to give oral evidence. The organisations suggested are Scottish Women's Aid, the Scottish Child Law Centre, Justice for Children, the Faculty of Advocates and the Scottish Human Rights Centre. Collectively they represent a pretty broad spectrum of experience and background. I ask members to consider that suggestion and to indicate whether they agree that we should call those organisations to give us further oral evidence.

Scott Barrie: I have no objection to the five organisations that are suggested, but I would like to pick up on Jackie Baillie's point, which she has laboured quite extensively this afternoon, about the difference between the legal position of children and that of other vulnerable witnesses. Should we consider hearing evidence from another organisation about the latter group? I cannot think of one instantly, although I wonder about the Scottish Association for Mental Health or a similar organisation. That would give us some balance, so that we are not hearing just the same evidence again.

The Convener: I am certainly sympathetic to that view. Would you like to add something, Jackie?

Jackie Baillie: I was going to say something slightly different—that I think that the Law Society of Scotland could have a valuable input. Although its evidence was received later than the rest, I believe that it merits an invitation. I would obviously support the inclusion of an organisation such as SAMH, as that would ensure that we had tested the bill robustly.

Karen Whitefield: I do not want to prolong this discussion, but in the light of Jackie Baillie's questions today I think that it would be helpful to hear from an organisation such as SAMH, which could contribute to our evidence taking. Although I have no problem with the Faculty of Advocates, if we had to limit who we were to hear evidence from, it might be more appropriate to hear from the Law Society of Scotland than from the Faculty of Advocates.

The Convener: That is helpful.

Nicola Sturgeon: As somebody who is not yet persuaded—far from persuaded, in fact—by Jackie Baillie's point, despite her extensive labouring of it, I wonder whether she has views on the right organisation to invite to give evidence on that point. I am not sure, to be honest.

The Convener: She is suggesting the Scottish Association for Mental Health.

Jackie Baillie: There are probably other organisations that we could invite, but we have not invited SAMH to give evidence at all and perhaps it is not up to speed with the proposals. Despite labouring my point, my concern is consistency.

Nicola Sturgeon: I know what your concerns are and I do not think that we should rehearse the debate here. I would be interested in hearing more evidence, because I am not persuaded by the point that you are making. If SAMH is the best organisation, I am happy to go along with that.

The Convener: There is consensus among those of us who are present that we would be willing to include SAMH. I have no problem with inviting the Law Society of Scotland. I should declare an interest, as I am a member of the Law Society, but that is incidental.

In terms of time scale, I do not think that we

need to cut anybody out. I think that we can accommodate the list of five. The questions might arise whether, if we ask the Faculty of Advocates, the Law Society of Scotland is duplicative or, given the mere fact that we have asked the Faculty of Advocates, we should in all fairness include the Law Society of Scotland, because it will come at the issue from a slightly different standpoint. If time permits, and I understand from my consultation with the clerks that it does, do we agree to take the five organisations that are listed in the clerks' paper, and to add to it the Law Society of Scotland and the Scottish Association for Mental Health?

Members *indicated agreement.*

The Convener: That is helpful. As members will see from the paper, we also have the specific component of our desire to seek the views of individual vulnerable witnesses. A questionnaire has been circulated, and information has been available on the Parliament's website over the recess. We have a deadline of 15 September. The clerks tell me that so far four responses have been received, which I think are from individuals.

Perhaps we need to consider organising a suitable interview forum for individuals who may come within the definition of a vulnerable witness. Clearly, it would have to be a sensitively structured interview. I wish to consult the committee on the desirability of taking that forward. If the committee agrees that we should try to structure an interview or interviews with individual vulnerable witnesses, it might be sensible for the committee to agree that a member of the committee should be a reporter or an interviewer with a remit, in conjunction with the clerks, to attend to that matter and, in due course, report back to the committee. Does the committee agree?

Members *indicated agreement.*

The Convener: I ask for a nomination for someone, in conjunction with the clerks, to be the interviewing member of the committee for this purpose. If she agrees, I was going to suggest Jackie Baillie, because she has experience in the general field, which might commend her to the task, but I am entirely in her hands.

Jackie Baillie: Thank you very much, convener.

The Convener: I do not think that it will be time consuming.

Jackie Baillie: If there is an absolute guarantee of that, I am happy to oblige.

The Convener: Is that agreeable to the rest of the committee?

Members *indicated agreement.*

The Convener: I will leave the clerks to liaise with you, Jackie, on the arrangements that will be put in place.

That is as far as we can take matters today. I thank committee members for attending, and extend a personal note of appreciation on the exemplary questioning. I must tell the committee that it took all our witnesses by surprise. Not only did we keep to the schedule, at one point we were actually ahead of what we were trying to do. The real test is that we have elicited a lot of information this afternoon. I am grateful to members for their co-operation.

Our away day is on 8 September, and the next meeting of this committee will take place on the afternoon of Tuesday 16 September, when we shall be taking further oral evidence on the bill.

Meeting closed at 16:58.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Monday 15 September 2003

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0131 348 3415

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178