JUSTICE COMMITTEE

Tuesday 3 March 2009

Session 3

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JUSTICE COMMITTEE
7th Meeting 2009, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Angela Constance (Livingston) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*Paul Martin (Glasgow Springburn) (Lab)
*Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 3 March 2009

[THE CONVENER *opened the meeting at 10:47*]

Interests

The Convener (Bill Aitken): Good morning ladies and gentlemen. I formally open the meeting by reminding everyone to switch off mobile phones. There are no apologies—there is a full turnout of members.

Item 1 is a declaration of interests, which enables me to welcome Stewart Maxwell to the Justice Committee. In accordance with section 3 of the "Code of Conduct for Members of the Scottish Parliament", I invite him to declare any interests that are relevant to the committee's remit.

Stewart Maxwell (West of Scotland) (SNP): I am not aware of any interests that I have that are relevant to the committee, but I point members in the direction of my entry in the register of members' interests on the Parliament's website.

The Convener: Thank you. The committee will now move into private session.

10:48

Meeting continued in private.

11:56

Meeting continued in public.

Subordinate Legislation

Victim Statements (Prescribed Courts) (Scotland) Order 2009 (Draft)

The Convener: The committee re-enters public session to deal with agenda item 6, which is consideration of subordinate legislation: the draft Victim Statements (Prescribed Courts) (Scotland) Order 2009, which is subject to the affirmative procedure.

I draw members' attention to the terms of the order. The Subordinate Legislation Committee has not drawn to the committee's attention any matter in relation to the order. Prior to the formal procedure on the motion on the order at agenda item 7, this is an opportunity for members to ask questions of the Cabinet Secretary for Justice, Kenny MacAskill, and officials Bill Hepburn, who is head of the victims of crime branch, and Rachel Rayner, who is a lawyer in the solicitors, criminal justice, police and fire division. I welcome them. Mr MacAskill, do you have anything to say in opening?

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you, convener. It may be helpful if I begin by explaining how victim statements work, and give the background to their introduction.

Victim statements are designed to allow victims to tell the court how the crime has affected them emotionally, physically, financially or in any other way. In Scotland, the victim writes a victim statement, which the prosecutor hands to the court after a finding of guilt but before sentence is passed. The defence is given a copy of the statement at the same time. Making of such statements is entirely voluntary and no inference can be drawn from their presence or absence.

Victim statements are administered by the Crown Office and Procurator Fiscal Service, which identifies eligible victims, invites them to participate, considers statements that are submitted in case there are disclosure issues, and presents the statement before the court once there has been a finding of guilt. Victims are normally invited to make a statement only after a decision has been made to prosecute the case, in order to ensure that they are not asked to go through the process of making a statement until there is a definite prospect that the case will go to court.

It is worth saying a few words about the steps that were gone through before it was decided to introduce victim statements in courts of solemn jurisdiction across Scotland. The "Scottish

Strategy for Victims", which was published in January 2001, called for victims to be given greater participation, information and support. Victim statements are part of the drive to improve victims' participation in the criminal justice system, and they allow victims to articulate their feelings and thoughts—which can be therapeutic in some cases and can allow victims input that helps to improve victim satisfaction with the criminal justice system.

A consultation paper on victim statements was issued in November 2001, and a report was produced in March 2002. Overall, although there was support for a victim statement scheme, it was thought that it would be sensible first to pilot the idea before a final decision was made. Consequently, a pilot ran from November 2003 for two years in Edinburgh, Ayr and Kilmarnock and a full evaluation was undertaken and published.

Key findings from the pilot were that, although take-up rates in other jurisdictions averaged around 30 per cent, the take-up in Scotland was quite low at just under 15 per cent, which was partly because the Scottish pilot included many relatively minor crimes. Response rates varied from nil for fire-raising, to 60 per cent for murder and causing death by dangerous driving, and included 46 per cent for rape and 51 per cent for sexual offences excluding rape. Of those who made statements, 86 per cent thought that doing so was probably or definitely the right decision, and only 5 per cent thought that it was probably or definitely the wrong decision. Although 39 per cent of respondents found that making a statement was upsetting, 61 per cent felt better for having made a statement, and some respondents who found the process upsetting also felt better afterwards, which highlights the therapeutic benefits of victim statements.

12:00

It is clear that some victims, particularly victims of serious crimes, find victim statements to be beneficial. We therefore aim to introduce victim statements throughout Scotland on 1 April this year. Statements are, for a number of reasons, being introduced only in courts of solemn jurisdiction. The main reason is that the independent evaluation of the pilot has indicated that take-up rates for minor offences would be very low.

There would also be a disparity between the cost of administrating statements in solemn cases only and administrating statements in solemn and summary cases. The cost of administrating victim statements in solemn cases will be about £85,000 a year, which will be met from within the Crown Office and Procurator Fiscal Service's current resources. The inclusion of summary cases would push up the costs to more than £500,000 a year for the Crown Office and Procurator Fiscal Service, so money would have to be found from the justice programme. As I said, the take-up rate for less serious cases was found to be low, so most of that £500,000 would be spent on inviting victims to participate—although, on the basis of the pilot evaluation, it is likely that very few would take up that invitation.

Extending victim statements to summary cases would result in a substantial increase in the workload of the Crown Office and Procurator Fiscal Service. Using 2007-08 as a benchmark, we see that there would be around 5,500 solemn cases, but potentially more than 50,000 summary cases. Although victim statements are being introduced in solemn cases only, we will keep their use under review and may extend them to other courts, if evidence suggests that our doing so would be beneficial to victims.

Robert Brown (Glasgow) (LD): I am grateful to the cabinet secretary for his statement. I just want to clarify how all this fits together and want to deal first with the position after a plea of guilty or a finding of guilt. The document, "Making a Victim Statement" says that the victim statement

"will normally be given to the court if the accused either pleads guilty or is found guilty".

Are there circumstances in which a victim statement would not be given to the court after a plea of guilty or a finding of guilt?

Kenny MacAskill: No. If there was a particular problem with disclosure, the statement would have been sifted out by the Crown before that stage. At the imposition of the sentence, the procurator fiscal will hand up a schedule of previous convictions and will, in due course, also hand up a victim statement, if that is appropriate. That process will be formalised. The statement will be part of the Crown's body of papers, along with the schedule of previous convictions, if that applies. On disclosure, in any situation where the statement would have been inappropriate for whatever reason, I presume that it would be sifted out. Such situations would be few and far between. We hope to have a holistic approach, in which the statement is ingathered and is with the Crown. At the conclusion of the case, the Crown will put forward matters of relevance to the court—any previous convictions and the view of the victim, which has been ingathered.

Robert Brown: At that stage, would the defence always get a copy of the statement?

Kenny MacAskill: Yes, the defence would get a copy, just as it would get a copy of the schedule of previous convictions.

Robert Brown: Would that happen only after a plea of guilty, in the normal way?

Kenny MacAskill: Absolutely—because it would be prejudicial to put it before the presiding judge or sheriff before such time as there had been a conviction. As with the schedule of previous convictions, the statement could not go before the bench before a conviction. That trigger is necessary.

Robert Brown: I just want to be clear about this. Page 4 of "Making a Victim Statement" states:

"The Procurator Fiscal will keep your victim statement with the case papers".

That is fine. It then goes on to say that the procurator fiscal

"will arrange for copies to be given to the Sheriff/Judge and the defence … The defence will not usually see the victim statement until after the accused has pled guilty or been found guilty."

That rather suggests that there is a different position for the court—that is, for the judge or sheriff who is involved. Can you make it clear that that is not the case?

Kenny MacAskill: The only circumstances I can think of in which it would be inappropriate to give the statement to the bench would relate to disclosure. Matters might have to be discussed briefly in the margins with the defence, because of something that had arisen. There is some flexibility in that. In the main, the statement will come to the attention of the court only following a conviction. When the accused is acquitted, the victim statement will be superfluous and will not be handed anywhere. There might be issues with disclosure, which is why the Crown has to check such matters. Clearly, we want to try to minimise the difficulties that go with running the court for all those involved, and the difficulties for witnesses in particular, which is why we seek to have statements as part of the process.

Section 14(5) of the Criminal Justice (Scotland) Act 2003 says that

"A prosecutor must—

(a) in solemn proceedings, when moving for sentence as respects an offence"

lay a victim statement before the court. The logic is that it will assist the court in determining a sentence. Just as previous convictions are relevant, the court has to take account of the victim's perspective.

Robert Brown: I follow that, but I am trying to be clear about what goes to whom, and when. You seem to be saying that, except in exceptional circumstances, the court would not see the victim statement until after arriving at a guilty verdict.

Kenny MacAskill: The court would not see it until such time as a sheriff or judge had made a finding of guilt. At that stage, as Robert Brown will know from experience, the fiscal or advocate depute will jump up to produce a schedule of previous convictions; they will, in due course, be able to produce a victim statement, if one has been submitted.

The Convener: I will correct you slightly there. The jury makes the finding of guilt. We are talking about solemn matters.

Kenny MacAskill: That is quite correct.

Robert Brown: In that case, why does it say on page 3 of "Making a Victim Statement" that

"You may be questioned about the information that you give in your victim statement during or after the trial."

It is the "during … the trial" aspect about which I am concerned. It is not necessarily that I object to any of it; I just want to know what the process is. Are there circumstances in which victim statements can become appropriate? What is the background to how they are brought into proceedings?

Kenny MacAskill: If the statement came up through disclosure, that would bring it to the defence's attention, and there could then be an element of questioning. The only circumstances in which we could imagine that happening would be something exculpatory or which might raise questions, but such situations are few and far between. In the main, the victim statement is more likely to relate to the consequences than to the incident, and the court would not go there. However, there could be instances when something might be in the victim statement that could be subject to disclosure.

Robert Brown: I have a final point. Page 3 of "Making a Victim Statement" also states:

"If you decide not to make a victim statement, the case will still go to court and your decision will not affect whether the accused is found guilty or not guilty."

If people only read that far through the document, they might think that there is a suggestion there that they do not have to give evidence in court as a complainer if they do not make a victim statement. I do not want to make a big issue of that, but I wonder whether the cabinet secretary would reconsider the phraseology.

Kenny MacAskill: That is a valid point that I am more than happy to raise with the Crown. We are trying to build up incrementally ways of providing information to those who give evidence in court in solemn trials. It is my experience that procurators fiscal make a great deal of effort, especially where the complainer is likely to give evidence, so we must ensure that the information sheets that are available to witnesses—especially victims—are

adequate. Given the nature of the defence in a case in which there has been loss of life, or in which someone has been the victim of a sexual offence, a meeting with the fiscal depute would, in the majority of such cases, take place in the well of the court, so the victim who is coming to give evidence must be aware of the nature of the territory into which they are going. We can certainly undertake to speak to the Crown to make sure that there is no misunderstanding, and so that people realise that the statement is not an alternative to giving evidence, but an opportunity to make the judge aware of what the offence has done to the victim and how they and their family have been affected by the consequences of the action.

The Convener: It might be preferable if that was sorted out at the precognition stage rather than in court. That would be much tidier.

Kenny MacAskill: Absolutely. When we are dealing with solemn cases, it is my experience that there will be a precognition, especially in more complex cases such as sexual offences, but usually some sort of meeting takes place in court to allow people to understand the bear pit that they are going into, especially if they are not used to criminal court procedures.

Stewart Maxwell: The third sentence on page 9 of "Making a Victim Statement", under the heading "What sort of information should not be included?", says:

"Only describe how the crime has affected you and don't include any information about how the crime may have affected other people, such as your children."

Could you provide some clarity on that? I am thinking in particular about crimes of violence against women, which have an impact not only on the victim of the violent crime—the woman—but on her family and her children: in such cases they, too, are victims. Why is specific reference made to not including the impact on the children?

Kenny MacAskill: That is because separate statements can be made on behalf of children under the age of 14 by their carer, who could be the woman who was attacked or someone else. It is a question of allowing people who have been affected by a crime to be heard individually, so to speak.

Stewart Maxwell: Is it therefore the case that a woman who had children and who was violently attacked by her partner, for example, could make a statements on her own behalf and, if she was the children's carer, on their behalf? Rather than being part of her statement, they would be separate statements.

Kenny MacAskill: That would be the position if the children were mentioned in the complaint.

Stewart Maxwell: Would that be the case only if the children were victims in the sense that they were part of the offence—if they had been attacked in some way? In other words, the impact on the children of the attack on the mother could not be included in her victim statement.

Kenny MacAskill: The children would have to be part of the libel.

Stewart Maxwell: Why is that the case? Much of the work that has been done on violence against women is about the impact on children. I would have thought that, as well as the impact on the woman, the impact on the children, which can be quite severe and long lasting, would be relevant information for a victim statement.

Kenny MacAskill: I accept that, but the logic behind the proposal—which applies to the laws of evidence and to what can be led as evidence and what is tangential—is that it is meant to be the victim's statement. Clearly, the victim is the person who is described in the libel. I accept that there are consequences and knock-on effects for others, but one must draw a line somewhere when it comes to how far the causal link goes. Under our proposal, the individual or individuals who are identified as victims in the complaint or libel will have the opportunity to make victim statements.

The Convener: In the example that Stewart Maxwell gave, in which a woman was seriously assaulted in the presence of her child or children, surely it would be perfectly appropriate for the victim to say in her victim statement that the assault had impacted heavily on her because her children had been upset by it.

Kenny MacAskill: Absolutely. That seems to be the logical way in which victim statements would operate. If the children were mentioned as victims in the libel, they too could make statements, but you are quite correct to say that the victim could indicate that the crime had affected her ability to deal with her children or her relationship with them. It is not simply a matter of phraseology; it is a question of how far the causal link can go. There would be difficulties in drawing the line. As I said, we face the same issue in a variety of situations that relate to the rules of evidence.

Stewart Maxwell: I accept the logic of what you say. You say that it is question of where one draws the line, but my problem is that, in the example that I gave, a victim's children are extremely closely involved. We are not talking about a second cousin or the people next door. We are talking about children in front of whom one partner in a relationship has physically assaulted the other, perhaps very violently. The children are directly involved. I would have thought that it would be reasonable to allow a woman to describe the impact on her children, which can often be

traumatic and long lasting, in the sense that they might be unable to carry on at school and their exam performance could be affected, as could their ability to have relationships with other members of the family and, perhaps, with the opposite sex.

Kenny MacAskill: I accept the logic of your position. The problem is that that takes us into the realm of hearsay. It is a fundamental aspect of the law of evidence in Scotland that we do not have hearsay evidence. If such evidence were to be led, it would be led from the primary witness—the child. The primary evidence in a victim statement must come from the victim. That is the difficulty that we face. It is the individuals who have been affected by an offence, not others, who should describe the effect that it has had on them. Otherwise, we would be dealing with hearsay evidence, not best evidence.

Stewart Maxwell: I am not trying to be difficult. I am interested in such situations because of my recent experience as a minister who was responsible for this area of policy. I am slightly concerned, because the victim statement is not evidence. As you described earlier in response to Robert Brown's question, the victim statement is considered post the guilty verdict. I am not sure that I understand how it would impact on the evidence.

12:15

Kenny MacAskill: In a court of law, we have to have some cognisance of the clear rules, and we also have to recognise that, ultimately, we do not want to get into a situation where matters are challenged. We can consider how wide we can go, but there have to be clear rules when we move from a victim's comments on what has happened to them—as in the victim statement—to their comments on what has happened to someone else. It is for either that individual or their carer to comment on that.

In family or sexual matters, there are probably some grey areas in which we need to ensure an element of flexibility. As I said, at some stage it is fundamental that matters are no longer dealt with in terms of an individual's comments on how they think somebody else was affected, because it would be for that other person to comment on that.

Stewart Maxwell: Okay. Thank you.

Angela Constance (Livingston) (SNP): Cabinet secretary, I note from the bottom of page 4 of the booklet "Making a Victim Statement" that victim statements

"will not be passed to other Criminal Justice agencies."

From my professional experience in years gone by, before I became an MSP, I would argue that it is important for those who are involved in a reception into prison and for statutory criminal justice agencies, such as criminal justice social work, to get a copy of the victim statement. Those who provide support and rehabilitation to offenders should get the statement, because the core of their work with offenders is about creating safer communities and it is important for them to have an acute awareness of what happens to victims.

Much of the individual and group work that is done with offenders involves assessing them and helping them to understand more clearly the impact of their actions on the victim. I appreciate that you do not want to send out copies of victim statements willy-nilly to all and sundry, but there are strong arguments for statutory criminal justice agencies, such as the Scottish Prison Service and criminal justice social work, that write parole reports and supervise people upon release, to get victim statements.

Kenny MacAskill: I have a great deal of sympathy with what you are trying to achieve. In relation to the Parole Board for Scotland, the view of the victim is clearly fundamental. There are two points here. First, the victim is told, "Your victim statement will go to the presiding judge or sheriff for them to decide upon." In that sense, it is focused. The victim is told clearly the purpose of the statement. Secondly, the statement must be viewed as a snapshot of a particular time—it gives the victim's perceptions at a particular stage. That might not be their perspective by the time that the statement goes to the Parole Board.

You are correct that we must ensure that victims' views are taken on board by the criminal justice agencies, but our position is that that is a question of ensuring that those agencies take account of the victim. They will not necessarily see the victim's statement to the court, but they must ensure that, whatever other matter they deal with, they are aware of the victim's position. As I said, the victim statement is produced for one particular purpose. It could be misleading, not as relevant and perhaps dated by the time that it gets to the Scottish Prison Service or, perhaps more important, the Parole Board.

Angela Constance: I appreciate that a victim statement is a snapshot of a particular time, but so is an offence. Part of the work that is done with offenders is about what they have done in the past.

Are victim statements available to probation officers in England and Wales?

Kenny MacAskill: I do not know, but I am happy to check that out. We certainly have the victim notification scheme in Scotland. We have to view what we are discussing in the round, and not in the context of one specific matter. Victim

statements are one specific way in which to deal with the rights of victims.

Mr Brown asked how the Crown Office makes information available. That must be addressed, as must the issue of how the Prison Service deals with information. That is part of a totality of actions started under the previous Administration, led by the then Solicitor General for Scotland—the current Lord Advocate—related to treating victims with the dignity and respect that they deserve.

Should the victim's position be taken into account by other agencies? Absolutely. Should it be done by means of the victim statement? Our view is that it should not. There should be other methods by which the victim's position is dealt with, because the statement is given for one particular purpose at one particular time. Both before and after trial the Crown should be taking on board the interests and rights of the victim. Afterwards, it is down to social work, the Parole Board and the Prison Service, and other means, such as the VS scheme.

Angela Constance: I understand that if the victim has died, the relative who is eligible to make a victim statement can be only a spouse, cohabitee, son, daughter, father or mother. Is that not unduly restrictive? If the victim was not in a relationship, their parents were dead and they had no children, it could be argued that their siblings should be eligible to make a victim statement.

Kenny MacAskill: Point (e) on page 9 of the booklet lists "Brother or sister". The list is quite wide. We are more than happy to consider, in due course, whether people are not being dealt with. To some extent, the list is based on what already happens in the judicial system, for example in representation at fatal accident inquires. We have recognised that people cohabit—they do not necessarily have to be formally married or in a civil partnership. The list goes up, down and along; for example, nephews and nieces are listed. The vast majority of family relationships are covered.

Angela Constance: On page 9, the booklet says:

"If a victim has died, the 4 relatives listed highest can make a victim statement."

That implies only the first four relatives listed—or have I read it wrong?

Kenny MacAskill: It is the first four available relatives. Without meaning to be flippant, it would be in descending order.

Angela Constance: At the risk of embarrassing myself, I suggest that it could be written a bit more clearly.

Kenny MacAskill: We would be happy to consider how we make the information available.

Tragically, these cases can sometimes cause stress within the family. We do not want unseemly spats between people who have suffered. It is about getting the balance right.

The Convener: I do not think that Ms Constance should apologise, because I, too, found the wording misleading.

Paul Martin (Glasgow Springburn) (Lab): In respect of the quality of the victim statements, it must be recognised that there will be some victims who are able to make a sophisticated written statement, and others—no disrespect intended—who are not in a position to submit that kind of statement. What support is provided to ensure that victims are given the opportunity to make a sophisticated statement? The document talks about a victim being physically unable to complete a victim statement. What is meant by that?

Kenny MacAskill: You are right—victims come in all shapes and sizes, and with all kinds of educational attainments and health or other difficulties. That is why Victim Support Scotland has undertaken to assist in this matter. If someone feels confident and wishes to press on, they can. However, Victim Support Scotland will work with anyone who has difficulties and does not feel capable of articulating.

Paul Martin: Did the pilot experience confirm that a less sophisticated submission is not taken any less seriously than one that is more sophisticated?

Kenny MacAskill: That was not capable of being evaluated. I do not know whether the bench was privy to such matters and we cannot look behind the sentence that was given. Beyond ensuring that those who have difficulties are able to express their views, it is a matter for the bench as to how it interprets a submission.

Paul Martin: It is obvious that the evidence that the judiciary receive from the defence and prosecution is usually of high quality, and that they expect statements to be of that quality. Sometimes the statements can be dealt with forensically. I wanted an assurance that, if someone is not in a position to make such a submission, Victim Support will support them—I am happy with that response.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Following the publication of the pilot evaluation, did you consult Victim Support Scotland to learn about—and perhaps influence—the expansion and how the administration would work?

Kenny MacAskill: A working group, which included Victim Support and other organisations, oversaw all that. Victim Support has been involved

in bringing the matter through from the pilot to the Scottish statutory instrument that is before us.

Cathie Craigie: Most of my questions, like those of other members, are on the wee publication, "Making a Victim Statement". Who was responsible for drawing it up? Was it the victim statement steering group, or was it the Crown Office?

Kenny MacAskill: It was the Government, with input from stakeholders, so we are happy to take on board any views on it.

Cathie Craigie: With respect to whoever wrote the booklet, it is confusing—as is shown by the questions that have been asked. It is written quite clumsily in parts and is open to different interpretations. I could make a lot of points about that.

Kenny MacAskill: We are more than happy to take that on board. We will, to some extent, sit down with VSS to work it out, because VSS is instrumental and we have been engaging with it. Governments north and south of the border are conscious that inappropriate language is sometimes used. We will happily reflect on that and ensure that we do what we can to get the balance right between providing the information and doing so in such a way that everybody can understand.

Cathie Craigie: That would be good. With regard to Stewart Maxwell's point about what sort of information a victim statement may include, I, too, am concerned that a statement may not include information on how a child has been affected, particularly in relation to domestic violence, which affects not only the victim—the woman or the man—but the whole household. I ask you to have a look at that. You said that it might be sub judice.

Kenny MacAskill: No. As I said, there are problems with flexibility in some areas—

Cathie Craigie: Hearsay evidence—sorry.

Kenny MacAskill: We are happy to go away and examine the flexibility in that area. It is clear that there has to be a dividing line—the defence could legitimately object that such a person was completely tangential to proceedings. We acknowledge the issue, but we want to make it clear that—to refer back to Paul Martin's point—we have to ensure that everything is covered. Some of it comes down to the particular phrasing of a victim's statement.

We can give you an assurance that we will go away and work on it. It is about trying to ensure that victims have their say. We must remember that the accused—or by that time, the convicted—has rights, and that certain matters could be prejudicial. The last thing that we want is a mini-trial afterwards to decide what can possibly be allowed to be part of the statement. It is about getting the balance right, which I am sure that we can do. Your points are valid, but by working with Victim Support Scotland and the Crown Office, we can get there.

12:30

Cathie Craigie: The procurator fiscal will read the victim statement to see whether anything in it should be heard at the trial. If the accused person were found guilty, I assume that the judge or sheriff would look at what was relevant.

We hear at our surgeries from constituents who are distressed because their children have become withdrawn and started to wet the bed, for example, as a result of witnessing violent episodes of domestic abuse. That would be relevant to a mother.

Kenny MacAskill: I accept that as a valid point.

The Convener: We have to be careful about possible unintended consequences. As the paper sets out, if the victim statement in so far as it relates to impact on a child were to be disputed then, in accordance with the law, a proof in mitigation may be involved and that could be even more distressing to the child. In the circumstances that Cathie Craigie cited, the happiest way of dealing with things is for the woman—or the man—to state the impact on them, as an individual, and then to show the impact on their children by citing instances of withdrawal or whatever. That might be the best way of getting round that.

Cathie Craigie: Okay.

I turn to the list of nearest relatives on page 9. Should civil partners not be included or are they included in another category such as cohabitee?

Kenny MacAskill: That is dealt with under spouse and cohabitee.

Cathie Craigie: Where does it say that?

Kenny MacAskill: I am sorry. I understand that the list has been amended to say "spouse or civil partner".

Cathie Craigie: I fully support victim statements and am pleased that the Government is working with Victim Support Scotland. The booklet says:

"If you want extra help and advice on making a victim statement, you can contact Victim Support Scotland".

The financial memorandum says that the Crown Office and Procurator Fiscal Service will have to develop new information technology and administrative systems to deal with the information. Has the Government made provision in the budget to support Victim Support Scotland

and the other organisations to which it will direct people who seek advice and support?

Kenny MacAskill: We have given significant funding to Victim Support Scotland to upgrade its IT systems to allow it to deal with a variety of provisions that result from the legislation. We fund Victim Support Scotland as a norm, as we do organisations such as People Experiencing Trauma and Loss—PETAL—which works in the Lanarkshire area. We are ever vigilant and on the case to see what we can do to work towards that.

As I said, we are on a journey. As others have mentioned, a variety of provisions are involved, including the victim notification scheme. We are also working towards how the Crown Office and sheriffs will deal with them. As the member said, the way in which sheriffs interact with witnesses, particularly in difficult cases that involve victims of crime, is important. We have come a considerable way, but there is still a journey to travel.

Cathie Craigie: As I said earlier, every member who has spoken today has had a comment to make on the booklet. Will you agree to bring the revised booklet back to committee?

Kenny MacAskill: We are more than happy to ensure that the committee sees the revisions and alterations.

Robert Brown: I am grateful to the cabinet secretary for saying that the committee can look again at a booklet for which a degree of revision and re-examination is needed.

I return to the point on including a child's statement in a victim impact statement. I do not see how such a statement—whether it is made by way of recounting an episode of violence or any other incident—can be said to be hearsay evidence, as I think the convener might have suggested.

Kenny MacAskill: It would not be, if the child could give the evidence themselves, directly or through a parent or guardian. Such things are a matter of balance. We are happy to consider the issue, because things sometimes go agley in the judicial process—as well as in life and politics. An element of common sense is needed. If a child is clearly distressed and has been a victim, it would be more appropriate to hear about that from the child or their representative than from another victim. It is a matter of considering the particular offence and dealing with the individual.

The Convener: It is also about the interests of the child.

Stewart Maxwell: I do not want to labour this point, because we have gone over it fairly extensively. Am I right in saying that in the vast majority of cases the victim statement would not be available during the trial and would be available only after the accused had pled or been found guilty?

Kenny MacAskill: Yes, that is absolutely right.

Stewart Maxwell: Therefore, in the vast majority of cases a statement about the impact on the victim's child would not be relevant to the trial. However, if such a statement were relevant and had been released in the circumstances that are described on page 4 of the leaflet, the evidence could be led and challenged, if that were appropriate. It would be perfectly possible to include in the statement information about the impact on the victim's children—I am talking only about minors. In the vast majority of cases, the statement would be dealt with only after the guilty verdict and therefore would have no impact on the trial. If the statement was provided during the trial, it might well be that the information in it was relevant and should be questioned during the trial. I do not see that there is a problem.

The Convener: It would be for the prosecutor to raise the issue during the evidential part of the proceedings.

Kenny MacAskill: We should remember that an aspect of the approach is the provision of an element of therapy, in that it enables the individual to have their say, even if they have given evidence—sometimes they will have given evidence; sometimes they will not have done so. That emerged from the evaluation.

As the convener said, some of the evidence might have been led by the Crown from whoever gave evidence for the prosecution. However, if a guilty plea has been tendered the statement can be made available if the individual wants it to be heard. In some circumstances information will come out during the trial; in others it will be in the statement. There will be instances in which it would be better if information came from the child or their representative—

The Convener: Or indeed an agreed narration.

Kenny MacAskill: Common sense and discretion will be needed.

The Convener: If members have no more questions or comments, we move to item 7, which is formal consideration of the motion to recommend approval of the draft order. I invite the cabinet secretary to move motion S3M-3501—I take it that you do not want to wind up the debate after doing so.

Motion moved,

That the Justice Committee recommends that the draft Victim Statements (Prescribed Courts) (Scotland) Order 2009 be approved.—[*Kenny MacAskill*.]

Motion agreed to.

The Convener: I thank Mr MacAskill and his officials.

I remind members that at our next meeting, on Tuesday 10 March, we will consider an approach paper on the forthcoming criminal justice and licensing (Scotland) bill. I also remind members that stage 3 of the Damages (Asbestos-related Conditions) (Scotland) Bill will take place on the afternoon of Wednesday 11 March.

Meeting closed at 12:38.

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