The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 16 April 2013

Session 4

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JUSTICE COMMITTEE
11th Meeting 2013, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Colin Keir (Edinburgh Western) (SNP)
*Alison McInnes (North East Scotland) (LD)
David McLetchie (Lothian) (Con)
*Graeme Pearson (South Scotland) (Lab)
*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Cliff Binning (Scottish Court Service)
Sandy Brindley (Rape Crisis Scotland)
Superintendent Grahame Clarke (Police Scotland)
David Harvie (Crown Office and Procurator Fiscal Service)
Louise Johnson (Scottish Women's Aid)
John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) (Committee Substitute)
Lewis Macdonald (North East Scotland) (Lab)
David McKenna (Victim Support Scotland)
Peter Morris

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 4

Scottish Parliament

Justice Committee

Tuesday 16 April 2013

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

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the Justice Committee's 11th meeting in 2013. I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with the broadcasting system even when they are switched to silent. Apologies have been received from David McLetchie, and John Lamont is attending as his substitute.

Item 1 is a decision on taking business in private. Do members agree to take in private item 6, which is consideration of the Scottish Court Service's proposals on a future court structure?

Graeme Pearson (South Scotland) (Lab): Can we record why we want to take the item in private?

The Convener: The item includes consideration of potential witnesses who may be invited to give evidence to the committee. I would also like the clerks to be able to talk about the processes in Parliament and in committee for dealing with issues if members feel that the committee is not agreeable to some of the proposals. That is quite difficult to discuss if the clerks cannot speak; I thought that such an approach would be useful.

Are members agreed?

Members *indicated agreement.*

Graeme Pearson: On a point of information, convener, you will note that I wrote you a letter about the legislation in connection with sectarianism and football grounds. I am grateful that you can put the issue on the agenda for next week's meeting, but could we have some indication of the cut-off point for intimating to the clerks that we want something to be included in a current agenda?

The Convener: I saw the letter on Friday and I was happy to accommodate your request. As you know, any member can raise any matter with the clerks, who will raise it with me as convener so that we can decide whether to put it on the agenda. Whether we include items that have not previously been agreed as part of the work programme is a matter for my discretion.

I do not want to disregard the views of any committee member, and I certainly did not disregard yours—I was just striking a balance with what we already had on the agenda. I have gone through the timings for today's agenda, and it is clear that time is tight.

I felt that we must put the issue on the agenda at the earliest opportunity. Had the matter been really urgent—I have to say that I submitted a question on it for First Minister's question time and it was refused, so obviously the Presiding Officer does not think that it is urgent—I would certainly have tried to include it today. However, I was thinking of members who might not be able to access their papers or who might not look at them until late and who would therefore not be prepared.

As you know, there is also a separate issue. I am seeking guidance on what the position would be with regard to sub judice if we started to discuss the recent case and the Crown put in an appeal. However, the item will be on the agenda next week, and I fully intend to hold that discussion in public.

Graeme Pearson: So if we get an item in on a Thursday morning, it can at least be considered.

The Convener: That is far better. Of course, it was recess last week, and I was aware that members might not be back in time to look at the papers. As you know, the item is now on the agenda for next week, which is timeous.

Jenny Marra (North East Scotland) (Lab): All members have received a lot of correspondence about the issue and the policing in relation to football over the past couple of weeks. I wanted to put on the record the fact that we are concerned about that and want to discuss it at the first opportunity.

The Convener: That is what we are doing.

Graeme Pearson: Thank you.

The Convener: Not at all.

Victims and Witnesses (Scotland) Bill: Stage 1

10:04

The Convener: Item 2 is our first evidence session on the Victims and Witnesses (Scotland) Bill. We will hear from two panels of witnesses today. I welcome to the meeting our first panel: David McKenna, chief executive of Victim Support Scotland; Cliff Binning, executive director of field services at the Scottish Court Service; David Harvie, director of serious casework at the Crown Office and Procurator Fiscal Service; and Superintendent Grahame Clarke from the safer communities team in Police Scotland. Superintendent Clarke, I have to say that I love how you spell your first name. My name is always misspelled—is yours?

Superintendent Grahame Clarke (Police Scotland): Always.

The Convener: Good—we are in the same team then.

I thank you all for your submissions. We will go straight to questions from members.

Roderick Campbell (North East Fife) (SNP): Good morning. My question is for David McKenna and is on reviewing a decision not to prosecute. Section 3 of the bill provides that victims will be able to ask for information about a decision not to proceed with a criminal investigation and any reasons for it. Are you contending that the European Union directive goes further and saying that, having been provided with that information, victims should somehow or other be able to challenge a decision? Is it not the case that the Crown must, in the public interest, take a decision at the end of the day on whether to proceed with criminal charges? Perhaps you could expand on that issue a bit.

David McKenna (Victim Support Scotland): We are saying that the European Union directive on victims requires that they have the right to have a prosecutor's decision not to prosecute reviewed. I believe that the Crown Office and the Lord Advocate intend to introduce such a measure here in Scotland.

The Convener: Rod Campbell screwed up his face there.

Roderick Campbell: David McKenna is giving me information of which I was unaware. Where did you get the information about the Lord Advocate?

David McKenna: I understand that it is information that has been provided to the committee.

The Convener: I am not aware of that information being provided to the committee. However, it is now on the record, so we can put the question on it.

Roderick Campbell: I will not follow that through. My question was just to open things up.

The Convener: That put your gas at a peep a wee bit, did it not? [*Laughter*.] We are just out of recess—I ask the witnesses to go easy. We have been working, but not in committee.

Colin Keir (Edinburgh Western) (SNP): Good morning. Mr Binning might be able to help us with my question. One issue that came across in our round-table meeting with witnesses and victims a wee while ago concerned the structure of court buildings and how those people are treated once they get to court. In some instances, people who had been victims of a crime were shown into a waiting room or area where the alleged perpetrator was sharing the same space. That proved to be quite difficult emotionally and in terms of space, as victims tried to keep clear and they felt quite intimidated. Perhaps you could enlighten us as to what steps have been taken to avoid such situations arising in courts. Is there an on-going plan to avoid similar situations happening in the future?

Cliff Binning (Scottish Court Service): It is certainly true to say that there are unfortunate instances in which that situation occurs, but thankfully they appear to be few and far between. The reality is that, certainly in the High Court and the main sheriff courts, the level of accommodation provision makes it a matter of course to ensure that there is segregated provision for Crown and defence witnesses, so a degree of safety and assurance can be derived from that.

It is probably more of a challenge to provide that level of segregation in the smaller courts, but I assure the committee that we take all possible steps to ensure that such an occurrence does not arise. We undertake a combination of actions—through, for example, being alert prior to a trial to the potential for the situation, giving notice to reception and court officer staff and ensuring that, in the conduct of business, the court precincts are patrolled so that such an eventuality does not occur. We seek to do everything that is practically possible to avoid such an occurrence.

Colin Keir: You said that there are only a small number of examples. There is obviously a fairly high turnover of court cases in the High Court and the senior sheriff courts. When you talk about a small number, what number are we talking about?

Cliff Binning: The number of instances of which we have received reports is probably fewer than five a year, to be honest with you. We

become aware of them through representations that are made at the time of the occurrence or through later representations in the form of complaints. As I said, the number of reports that we have of such occurrences is—thankfully—very small. There are less than a handful a year.

Colin Keir: Does the situation happen only in the smaller courts or has it happened in the High Court?

Cliff Binning: I am aware of one instance in recent years in which there was such an unfortunate circumstance in the High Court. In the main, the number of occurrences is a very small proportion of the number of cases that are dealt with, and it certainly does not indicate to us that there is a systemic or systematic problem. As I said, we take all practicable steps to ensure that the eventuality does not materialise.

David McKenna: I agree that, in recent years, the situation in relation to the propensity for prosecution and defence witnesses to be mixed has significantly improved. However, our experience is that there are still inconsistencies in the policy's delivery in practice.

We regularly have reports of witnesses not being separated. A couple of places where that seems to be particularly obvious are Falkirk and the annexe in the Aberdeen court complex. I do not know whether Cliff Binning is aware of that.

The Convener: Did you report those issues to Mr Binning?

David McKenna: We routinely draw all our concerns about the care and treatment of witnesses to the attention of the Scottish Court Service's chief executive, and we have a meeting with the new chief executive tomorrow.

Cliff Binning: As a matter of course, we invite David McKenna's organisation and other organisations to raise such matters with us when they occur.

Colin Keir: Considering the adversarial nature of many of these situations, I find it astonishing that such instances are not always avoided and that people can be in the same room together. That seems rather odd. I hope that the matter is dealt with.

Cliff Binning: I want to ensure that I make my position clear. Incidents in which victims and the accused or the accused's witnesses find themselves in the same room would be exceptional. There can be occasions on which they are in the same place at the same time in the precincts of a court building, but we take studious steps to avoid that, particularly in cases of vulnerability, where, on request and in consultation with the Crown, we take strident steps to ensure that segregation occurs at all times of the day.

The Convener: I do not want to put Mr Harvie on the spot, but I let it slip past when the remark was made that the Crown Office is considering having a review of cases on the call, as it were, of witnesses when a decision not to prosecute has been taken. Can you assist us with that? If not, that is fine, but I thought that I would ask, as you are representing the Crown Office.

David Harvie (Crown Office and Procurator Fiscal Service): I am happy to assist, convener, and I welcome the opportunity to do so. The Crown's perspective is that the current arrangements that we have in relation to the procedures that are available to victims and witnesses to challenge decisions that have been made already comply with the directive. Having said that, we think that there is always room for improvement, so the Crown Agent has commissioned further research to establish whether further improvements can be made and whether a system of formal review would enhance the current position.

The Convener: There we are—you have cleared it up. Are you happy now, Mr Campbell? [*Interruption*.] He was not listening! That was for his benefit.

David Harvie: Shall I repeat my answer?

The Convener: The last line will do, for Mr Campbell's assistance.

David Harvie: We are already compliant, but we are looking at enhancing what is already there, so the Crown Agent has commissioned a review.

The Convener: There we are. That is your embarrassment over for the day, Roddy.

10:15

Graeme Pearson: I have three or four areas to cover, if we have time. The first is on victims and witnesses. At a previous session, which we held in private, we took evidence from people who have been involved in the system and who have first-hand knowledge of it. The strong message that was passed to us was not only that they were concerned about their security in the courts when they were there to offer evidence, which Colin Keir covered, but the separate issue that they felt that they were treated like a parcel being passed between various services. The police dealt with the first line, then passed the case on to the procurator fiscal, and then Victim Support or the Crown Office's victim information and advice service sometimes got involved.

The people from whom we heard felt that there was no continuity of knowledge and no feeling that something was in place to manage their needs and interests. They were left adrift as they passed through the system. Some of the cases were very

serious ones that involved a great deal of stress. Anyone handling those people could be in no doubt that the case was serious and that they were under tremendous pressure. However, our witnesses felt that the system was distant from them. Will the bill resolve that issue and enhance the service, or are there other matters that the committee should bear in mind when trying to improve the circumstances for victims and witnesses?

David McKenna: That goes to the heart of the greatest concern about the experience of victims and witnesses in the formal criminal justice system. There is a widespread sense that the justice system does not provide recognition of the individual's experience and does not demonstrate respect or treat the individual with dignity. Critical to that is the fact that people who come into contact with victims and witnesses in the justice system need to be properly trained to understand the impact of their behaviours on such individuals.

We all know how to show respect and give recognition to the judge, prosecutor and other officials in the court, but we are not as good at showing that respect or giving that recognition to the witnesses and victims for whom the system is actually in place. As we mention in our submission, everyone who comes into contact with victims or witnesses needs to be trained.

David Harvie: At different stages in an investigation and subsequent prosecution, different authorities have the most up-to-date and relevant information. Initially, that is law enforcement when the matter is being investigated; thereafter, there is the prosecution phase; and, towards the end, the Court Service is involved. To pick up on Mr McKenna's point, the primary interaction from the Crown's perspective is through VIA, which has fully trained and professional staff.

I am aware that there is consideration and exploration of the possibility of an online case information hub, for want of a better phrase, to which agencies would contribute and which would become a one-stop shop. One key issue is the multiplicity of agencies and individuals with which people have to deal throughout the process. As with all online services, that is not necessarily the solution for every individual and particularly some vulnerable people. However, that hub would present an opportunity to provide up-to-date information throughout the process, with the various authorities contributing. The Crown is certainly keen to support further work on that.

The Convener: Does anyone else wish to comment? What about the police, who were mentioned? You are all aware of what is happening but, for some people who are involved in the justice system, it is a foreign land. They are there to assist the prosecution but, from the examples that we heard, some people are still very traumatised years on.

Superintendent Clarke: When that happens, it is indeed regrettable. The bill presents Police Scotland with an opportunity to provide standardisation and consistency. We have good practice out there in each of the eight legacy forces and we provide victims and witnesses with information. When that fails or when people do not feel that they have enough information, the bill will mean that they will be able to ask for information and it will create the footing for them to get the information. Moreover, the bill will compel us to come up with standardised levels of service that we will deliver. To do that, we will take all the good practice out there. I think that the vast majority of practice is good practice.

Some of the recent work done by Her Majesty's inspectorate of constabulary for Scotland certainly indicates that, on the whole, victims and witnesses are content or satisfied with the information that they get from us. However, the task is to drive that forward, recognise witnesses' needs and—as David McKenna said—their dignity and treat them with respect. We must try, where possible, to ensure that they do not feel that they are being parcelled up and passed on to the next person in the process. My view is that the bill goes a considerable way in trying to make that happen.

Graeme Pearson: To go back to David McKenna, my question at the end was: will the bill make the difference? Will you give us your response to that?

David McKenna: The bill has the potential to make the difference. Again, we are talking about putting in place systematic processes to ensure that all victims get access to support services, which are the principal means through which victims get advice and support and understand their rights in the criminal justice system.

Most victims will tell you that they have to tell their story time and again. We think that they have to tell their story about 16 times. Everyone tells them that everything will be all right. Well, it will not be—it will not be all right for many people. The experience of victims tells us that they need to be treated with recognition and respect and to have access to effective support services.

It does not matter who in Scotland works with victims and witnesses, because they will not be properly trained to support victims and witnesses—not even the victims organisations, including my organisation. We need to invest more money to ensure that any such training is the best possible training and that it is effective in delivering not just for victims and witnesses but for justice in Scotland.

Graeme Pearson: I have three specific questions, one of which is for Mr Harvie. The victim notification scheme is mentioned in our paperwork. Can you tell us how many people have accessed that scheme since its inception and give us some idea of how it is working and how successful it has been?

David Harvie: I am sorry, but I do not have that information to hand. May I come back to you with an answer?

The Convener: You can do that later in the proceedings or you can write to us with the information.

David Harvie: I am obliged to you.

Graeme Pearson: It seems to me that the victim notification scheme is important. One would have thought that we would have a clear view of how well the scheme has been received by victims, how many people have accessed it and how much success they deem has resulted from it.

On the surcharge concept in the bill, can any of the panel members give us insight into whether it would be proposed that all offenders would pay a surcharge? For example, as has been mentioned elsewhere, would people such as road traffic offenders pay a surcharge?

David McKenna: Our position is that everyone convicted of an offence in Scotland should be asked—or required—to contribute to the fund to help victims. I appreciate that there are arguments about what the charge might be and how it might be applied, but it is certainly our position that it should be applied as widely as possible.

Graeme Pearson: Motorists would be involved in it too.

David McKenna: We propose that it should be applied as widely as that.

Graeme Pearson: Mr Harvie, have you a point of view on that?

David Harvie: Not on that perspective.

Cliff Binning: Just to clarify, I understand that the surcharge will be applied to court-imposed penalties. I am not aware of any limitation on the court-imposed penalty.

Graeme Pearson: Can I have one final question, convener?

The Convener: I think that you are scooping up everyone's questions but, if you want to be unpopular, go ahead.

Graeme Pearson: You know me—I like being unpopular.

The Convener: Yes, I think that that is your modus operandi.

Graeme Pearson: The bill introduces restitution orders, which are a new departure. To play devil's advocate, can I ask whether Police Scotland sees any conflict of interest there, given that police officers may be prosecution witnesses in a court case whose outcome may result in a restitution order, from which the facilities and services provided to police officers will be paid for by the accused at the end of the court case?

Superintendent Clarke: As an organisation, we broadly support the proposal for restitution orders, but that support is subject to having more information on how they will operate. I agree with you that, unless such orders operate in a manner that establishes a firewall between the court proceedings and how the restitution is made, they may leave police officers open to the accusation of a conflict of interest.

Having spoken to the Government, I understand that the moneys from restitution orders will be placed in some form of fund that will be administered on officers' behalf. Whether that is through the police welfare fund or something else, as long as that happens at arm's length and we avoid the conflict of interest that you have highlighted, we would generally support the proposal. However, I feel that we need slightly more information on how restitution orders will operate before giving a conclusive answer.

The Convener: I see that the relevant section requires the Scottish Government to lay reports, so there will be a watching brief on what is happening.

I do not know whether there are any questions left now for Sandra White, but she is welcome to go ahead.

Sandra White (Glasgow Kelvin) (SNP): I got an answer to a couple of my questions—that was very kind of Graeme Pearson.

Before coming to my more substantive question, I have a supplementary to Graeme Pearson's original question on the standards of service. Several witnesses who have given evidence on the standards of service—I think that Mr McKenna also mentioned this—have said that a duty on how witnesses are treated should be included in the bill rather than that being left to the open-ended interpretation of judges or sheriffs. In your opinion, should such a duty be included in the bill?

David McKenna: That is a complex area, but the issue is really whether the standards ought to be in the bill or in some form of regulation. Certainly, the evidence from England and Wales and other parts of the world is that, other than when procedural rights are involved, such standards are mainly provided for in regulation. I think that it would be a good first step for Scotland if the standards were in regulation. Putting them in

the bill may be writing things in concrete when you do not want concrete.

Sandra White: Do any of the other witnesses want to respond?

David Harvie: Regarding sections 1 and 2, which set out the general principles and standards of service, the Crown has already published our commitment to victims and witnesses, our customer feedback policy and so on. Therefore, those are matters that we have already taken into account. I appreciate that that is a different issue from including the standards in the bill, but we are certainly comfortable that the ethos behind the bill is being approached in the correct manner and that our commitment to the levels of support that should be on offer is publicly available.

Superintendent Clarke: Likewise, I share the view that the ethos of the bill is correct. We will shortly publish the standards that we will achieve and deliver, which I think will be in line with the ethos of the bill. My view is that it is not required to put the standards in the bill.

David McKenna: Let me be clear that I do not believe that the present arrangements for ensuring standards of service to victims of crime by the statutory agencies in the criminal justice system in Scotland actually work. The standards need to be included in regulation and there needs to be a reporting mechanism. Most victims do not know that the standards exist and they do not know how to complain if they believe that the standards have not been met. Even if they could complain, it is not clear what the remedy for that complaint might be. I believe that there should be a requirement for regulation and that it should be made in such a way that it is agreed by the Parliament.

10:30

Sandra White: I completely understand that. Witnesses have said various things on the matter. Some have said that those provisions should be set out in the bill, but others have said that they should not. I wanted to get a feel for what the panel thinks, and I will perhaps ask the next panel the same question—if Graeme Pearson does not come in first.

Graeme Pearson: I will say nothing.

Sandra White: Graeme covered the bit about restitution orders. The point was answered very well and to my satisfaction.

I turn to my more substantive question, which is about the victim surcharge. We have received a number of representations from people who say that they do not think that it would be workable as a fine and that it might be better if the money went to the community.

Mr Binning, you have said that there has been an improvement in respect of court fines and so on. What are the panel's views on the victim surcharge? Is it workable? Would we be able to get the money in?

Cliff Binning: At the Scottish Court Service, we are confident of our capacity to recover financial penalties. The position on financial penalties is strong across the board. The recovery level of sheriff court fines after imposition is reaching 86 per cent, and there is evidence of improvement for justice of the peace court fines, where the recovery level is now at 81 per cent.

I emphasise that we are not complacent about that by any stretch of the imagination. In addition to what we regard as creditable performance, we have a number of steps in hand to make improvements, including gateways to information systems that are held by other organisations. We are in dialogue with the Department for Work and Pensions in that regard, and we are in dialogue with the Driver and Vehicle Licensing Agency regarding driver information. We have a number of process and technology improvements in hand to make financial penalties easier to pay. In the round, we are confident with those arrangements as we proceed and on an on-going basis. We do not think that the surcharge would in any way be an impediment to the whole process.

David McKenna: I agree with Cliff Binning. The international experience is that, when a penalty is introduced that involves returning something to the victim, recovery increases. The rate should go up from 86 per cent to 90 or 95 per cent.

The Convener: The amount recovered does not go to the individual victim.

David McKenna: No, it does not.

The Convener: I say that just for the record. Otherwise, people following the meeting—some people actually pay attention to the committee, strangely enough—

David McKenna: It will go to an individual victim, but not directly from the offender.

The Convener: Exactly, yes. Are you happy now, Sandra?

Sandra White: Yes, I am fine.

John Finnie (Highlands and Islands) (Ind): I am interested in how the present system deals with individuals who have literacy issues and how the proposed system will deal with them. One difficulty concerns people who identify themselves as such. Given the volume of paperwork that any system invariably generates, I invite your comments on how literacy issues are dealt with.

The Convener: Who wants to start on that? The police are one of the first ports of call for working

out whether someone is able to understand what is happening.

Superintendent Clarke: Absolutely. As an organisation, Police Scotland will try to identify any vulnerabilities with any victim early on. The sooner we can identify any vulnerability attached to a victim, the sooner we can take steps to address it. That might involve literacy issues, the safety of the individual or their wider vulnerability in the criminal setting. We can put steps in place and share information with partners.

We are well into the routine of picking up vulnerabilities so that any assistance that is required—be it interpreting or help with literacy—is flagged up early in a police report. That report makes its way to the Crown, which can take the appropriate measures. That does not fall within special measures under the legislation, but the victim's wider vulnerability and safety are considered early doors by police officers when they compile a police report.

The Convener: I will move on. Mr Harvie, when you receive such a report at the Crown Office, do you always have that information? Do you sometimes get surprises?

David Harvie: As with all systems, there will occasionally be a surprise if a particular issue has not been raised by an individual at the time or it has not been apparent to the officer concerned. An issue might well arise at a later stage in the process when we have the initial interaction with the victim or witness. At that stage, it is a question of putting in place measures to ensure that there is appropriate oral communication with the individual and ensuring that they have the necessary reassurances.

Therefore, there is an understanding that there is not just an automatic reliance on the information that the police provide and staff are aware that, if further vulnerabilities are identified that were not in the original police report, they need to be considered and addressed in relation to how the individual gives evidence. That might be of less significance in the majority of cases; it is much more to do with all the other processes around appearing as a witness, such as the completion of expenses forms. They would have to be gone through by the individual and the member of staff concerned.

David McKenna: Again, I will probably disagree with my colleagues. Our experience is that many vulnerabilities and needs of victims and witnesses do not get picked up in the formal process. To be perfectly honest, our view is that the police service, the prosecution service and the courts are probably not the best means to ensure that those assessments are undertaken.

We believe that there should be a single point of contact from the beginning that provides a continuum of support and care and assessment of need across a broad range of areas, such as social, economic, financial and justice issues and the relationship to the offender, to ensure that the victim does not have to tell their story again and again every single time, that we have a joined-up picture of the individual's needs, and that their preparation can take place in advance of their interaction with the justice system at its various stages. Our view is that there should be a formal and wide-ranging assessment process that follows the victim through the whole process.

John Finnie: I thank the panel for those answers.

One principle that is set out in the bill is that

"in so far as it would be appropriate to do so, a victim or witness should be able to participate effectively in the investigation and proceedings."

Will the panellists tell us what that means for each of them, their organisations or their overall view? I am particularly interested in the phrase

"participate effectively in the investigation".

Superintendent Clarke: I have often heard Mr McKenna speak. Each of the criminal justice organisations asks a lot of victims. We ask them to do a lot and we ask them to do things many times. I suppose that it is about ensuring that the individual feels respected and supported, that they have a voice, that they understand what is happening to them, and that they are confident to go forward, perform their civic duty in a liberal democracy and give evidence in a court of law that will lead to a conviction.

David McKenna: We do not know what that means, either, and we think that the word should be struck from the bill.

John Finnie: As the convener said, people pay attention to what takes place in the committee. Does Mr Harvie have a view? Would he solicit the support of victims or witnesses to assist with any investigation?

David Harvie: Forgive me. I was looking back at the original directive to see whether that is where the wording came from.

The answer to the question is, of course, yes. Of course we would look for victims or witnesses

"to participate effectively in the investigation and proceedings."

Without looking in detail at the directive, I can only think that the issue may be something to do with situations in which there may be a tension in relation to a wider public interest decision. Sometimes there may be a perceived issue between an individual's view and the view that is

finally taken. That is the only situation that I can think of in which there might be any qualification.

The Convener: I did not know what that meant either, and I did not understand your explanation, although I was paying attention.

David Harvie: Indeed. I suppose that, when there are situations in which a variety of victims and witnesses perhaps have different perspectives on what the outcome should be, for example, some of them may feel that they have not participated as effectively as others, depending on the nature of the outcome. Beyond that, I find it hard to know what that wording means.

The Convener: I am more confused than I was when we started. Thank you for that, John. Which section were you reading from?

John Finnie: I am reading from the fourth bullet point on page 7 of the Scottish Parliament information centre briefing, which is on the statement of general principles of the bill.

The Convener: Mr Clarke, did you want to come in?

Superintendent Clarke: I took a much more simplistic view of that statement. It is a statement of empowerment for victims. The fact that there is confusion might be worthy of reflection, especially if not everyone understands what it is intended to mean.

The Convener: Yes. It just sounds like soft words that do not mean much. We will challenge that.

John Finnie: Thank you, convener.

The Convener: Thank you, John.

John Lamont has a question, and he will be followed by Alison McInnes, Jenny Marra and Roderick Campbell.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): My question is about the victim notification scheme—Graeme Pearson has already touched on the issue. In its evidence, Victim Support Scotland suggests that more information should be routinely and proactively offered, and that that offer should be extended to all victims of criminals who have been given a custodial sentence. Will Victim Support Scotland give us a bit more detail on the types of information that it would expect to be made available routinely? Mr Binning and Mr Harvie, will there be a resource implication as a result of that additional information being made available?

David McKenna: We appreciate that it is challenging to ensure that victims are provided with appropriate information at every stage of the criminal justice process, but we know how important it is to victims and communities that are affected by crime to have information about what is going on in their case.

We want victims to be aware that an individual has appeared in court and been bailed or not bailed, or that they have appeared in court again for any reason or been released from prison for any purpose such as to attend a funeral, for integration back into the community or for work purposes. Basically, we want to ensure that victims are kept informed all the way through the process up to and including parole.

The Convener: I cannot understand the bit about a victim not being told when someone is bailed when a condition of bail would be that they do not approach the victim or that they do not go into a certain area.

David McKenna: If you go to a sheriff court and sit and watch the process, you will see that a hearing takes approximately 45 to 50 seconds. The victim does not know that the hearing is taking place and no information is made available to the court about the risk, threat or security issues in relation to the victim because that information has never been gathered, so the court is unable to take account of it. The least that should happen is that the court or the appropriate agency should advise the victim that the individual has been bailed or not bailed.

The Convener: You are making a different point. If a condition of bail is that the offender does not approach the victim or go into the same vicinity, surely the victim or witness would be told about that condition.

David McKenna: No.

The Convener: How would they then know to report a breach of the condition?

David McKenna: That is exactly the point that I am making. The ideal situation is that the safety, security and concerns of the victim should be taken into account when bail conditions are set. That does not happen at present.

The Convener: I do not think that we knew that. Mr Harvie, can you take us any further?

David Harvie: With respect, that is a somewhat sweeping statement. If material is available about a particular vulnerability or a risk that has been identified, the court is invited to apply particular conditions. If the risk is known to the prosecution, its nature is shared with the court so that it can take an informed decision on how to manage the risk through tools such as bail or remand. If the information is available, it is placed before the court.

10:45

The Convener: Yes, but is the person then told if that becomes a condition of bail? Is the witness told that the person who has been bailed is not to approach them or that it is a condition of bail that they must not be in a certain street or whatever?

David Harvie: Those are special conditions of bail. They should be intimated to the individuals concerned.

Superintendent Clarke: That is particularly the case for domestic or violent crime. We have a relationship whereby we are informed of special bail conditions on the day of the court hearing, and that information is delivered to the victim on the same day to advise them and cater for the victim's safety planning. If we have highlighted that somebody poses a risk to a particular individual and they are back out on the street, we need to begin to look at how we can plan for that individual's safety.

David McKenna: Convener, I think that you should invite the Crown Office and the police service to give you information about the level of information that is routinely provided in sheriff courts in relation to bail cases. My experience is that, unless the crime is a very serious violent or sexual crime, it is unlikely that anything will be said in court about bail conditions. It is with double respect that I say to David Harvie that, although it is not the case that that does not happen, it rarely happens.

The Convener: We have invited the people you mentioned.

David Harvie: I am not quite sure what we are being asked to do, but I am certainly willing to explore the issue further and explain the position as it stands.

Superintendent Clarke: We are making a supposition that every case has a bail condition, but that is not the case.

The Convener: No. I homed in on a bail condition that is applied to a witness or a victim.

Superintendent Clarke: In many cases there will be no bail conditions to keep an individual away from the victim.

David McKenna: There are standard bail conditions for every case.

Superintendent Clarke: Yes.

David McKenna: Every case has standard bail conditions about not interfering with witnesses.

The Convener: We will ask you to expand on what is said to victims and witnesses—as we know, one person can often be both victim and witness—and on what happens when bail conditions are imposed. Victims and witnesses should know about them so that they can tell if they are breached. They should also have a sense of security from knowing that an individual who is out on bail cannot come up their street.

David Harvie: Convener, in the return that we will make, we will also explain the process whereby, if a particular risk is highlighted, the court is made aware of that. As the public authority, the court has a responsibility not only to the accused but to victims and the wider public, so it is crucial that it has information about risk. We fully accept that, if such information is available, it should be placed before the court.

David McKenna: One might argue that such information should always be put before the court and that a victim safety assessment should be done for the court papers that are provided when bail decisions are made. I appreciate the complexity of that and the short turnaround time for it. All that I am saying is that, in general, victims and witnesses do not know whether an individual has been bailed and they do not know about the standard bail conditions, never mind any special conditions.

The Convener: We will leave it at that for now.

John Lamont: My second question relates to sentencing and transparency in sentencing. I appreciate that sentencing is a very complex issue, but I am also conscious that, from the perspective of victims of crime, it is an issue that is often raised. Certainly, from my perspective as an MSP, constituents express a lot of frustration about how sentences are handed down and about the practice of automatic early release. Is the bill a missed opportunity in that regard? What are your thoughts on sentencing and how it could be dealt with more effectively?

David McKenna: We would say what we have said for a number of years: we have called for a sentencing commission in Scotland that would set out what can or should be expected in our courts in terms of sentencing. We do not comment on individual sentences; we would never comment on the sentencing of convicted individuals.

However, what we would say is that, although we will never necessarily get a victim to agree with a sentence—for example, when it comes to families of murder victims, I have never spoken to a family that agreed with a sentence, no matter what it was—surely all victims have the right to understand how the sentencing decision was arrived at. We ask that victims be supported and informed, so that even if they do not agree with the sentencing decision, they understand how it was arrived at.

Alison McInnes (North East Scotland) (LD): To follow up on John Lamont's earlier question, could you provide the committee with information

on where responsibility lies? It would be useful to know whether there is a single responsibility to provide notification in relation to bail conditions, and whether it lies with the police or the Crown.

The bill provides for special measures for vulnerable witnesses, but also allows the right to object to those. I would be interested to hear the panel explore why there should be a right to object and what problems that will bring for witnesses.

David McKenna: Victim Support Scotland—in common, I believe, with all victim organisations in Scotland—strongly objects to that proposal. We believe that it will undermine all the good work that was delivered through the Vulnerable Witnesses (Scotland) Act 2004; that it will present a substantial barrier to witnesses accessing special measures; that it will further distress them and lead to a reduction in the quality of evidence that they give; and that it will possibly even result in witnesses not being willing to participate in our justice system in the future. If there is one provision in the bill that we believe should not be there, that is it.

David Harvie: I would echo David McKenna's comments, to an extent. The extension of the provision of special measures is most welcome—in particular, the extension in use of notices, as opposed to applications. However, I will pause to reflect: if notices are to be used, and if the bill is attempting to create a level of expectation and certainty for children and others who are deemed to be vulnerable, it seems to be odd that there is that right to challenge in respect of those who are going through that notification process.

That is not to say that there should not be an opportunity for the court to review how a particular measure is working once it is running on the day, which would be different from the right to challenge. The efficacy of the measure is always subject to the court's assessment, but beyond that—from the Crown's perspective—the right to challenge, especially in relation to people who are deemed to be vulnerable, seems to run contrary to the intention of the bill.

Alison McInnes: That is helpful. Thank you.

The Convener: Can I be difficult and ask, "What about the defence?" There is the presumption that the accused is innocent until proved guilty beyond reasonable doubt. Victims are alleged victims, in terms of court procedure, and witnesses are not all nice people. For example, there might be people who are part of the proceedings and who are criminals themselves.

I will challenge David Harvie's point. Is not it appropriate for courts to have at least a right to challenge whether someone should have security as a vulnerable witness, and to test it? In terms of the European convention on human rights, I would be a bit concerned if they did not have a right to test. I can see the point of testing. Many people who now work for the Crown have worked as defence advocates at some point in life. Without putting you in a difficult position, is not there a balance that we must remember in court?

David Harvie: I have worn both hats in my career and regardless of what chair one happens to be sitting in, compliance with the ECHR is crucial. Both sides of the table should regard themselves as human rights lawyers.

From the Crown's perspective, the situation is different when we deal with a notice as opposed to an application. In a situation in which we are looking for additional special measures, or in which there are people who have not been deemed to be vulnerable, under the current system the Crown expects to have to justify why the special measure is necessary, so it seems to be sensible to have a corresponding right to challenge that.

However, on the key right that is being protected for the accused persons in proceedings, I return to the point that I made earlier: in the end, it is the public authority—the judge in court—who has responsibility for ensuring that the proceedings are article 6 compliant and fair. Therefore, once the proceedings are up and running, there is always the opportunity, through the review process, for the court to say that the way in which things are working on that day will not be effective and that there is an issue that might prejudice the trial. That would be in truly exceptional circumstances.

Separate from that, the bill gives vulnerable victims and witnesses certainty and confidence that special measures will be available for them in giving evidence in court. One key issue in any justice system is surely to ensure that anyone who gives evidence, whether it is an accused person, a victim or another witness, is comfortable in doing so to the extent that they can give a true and accurate account of their recollection of events. The proposal, in so far as it relates to the notification scheme—and, as I say, subject to the removal of the right of challenge in respect of those notifications—goes a long way to achieving that aim.

Roderick Campbell: Mr Harvie's written submission touches on a case that had human rights implications. I am not entirely sure whether you think that the right to object to special measures in section 9 should be removed. Is it possible to amend that section and save it to provide the balance that you are talking about?

David Harvie: I am talking about the difference between notices and applications. In situations where an application is made for additional special measures, the Crown would have to be able to

justify its position, so the application could reasonably be expected to be subject to challenge under section 9. However, as the bill is framed, section 9 allows for a right of challenge in respect of measures that, even at present in respect of child witnesses, are, in effect, routine and are not subject to challenge.

David McKenna: We appreciate that it is important to ensure that the way in which evidence is presented to the court does not lead to an unfair trial for the accused, but it must also promote the best possible evidence. In practical terms, in the 21st century we are talking about people being able to give their evidence from behind a screen, in the witness stand in the court or from a closed-circuit television room in the court building.

If such measures promote delivery of best evidence and there is no evidence that they affect the fairness of the trial for the accused person, I do not even know why they should be called "special measures"—they should simply be measures through which people can give evidence in court in Scotland. We work with 80,000 witnesses a year, and we find that most people want to go in, give their evidence and then get out. Our view is that the answer is to allow everyone to use the existing measures—screens, CCTV or the witness stand—and that should be the end of the story.

Jenny Marra: What will be the impact on victims and witnesses of court closures?

Cliff Binning: It is important to put a number of considerations in context. One important point is that the redistribution of business that is consequent on the proposed sheriff court closures amounts to 5 per cent of the overall business of the courts. On the proposed jury trial reforms, it is important to reflect on the fact that 86 per cent of court business already takes place in the centres that are recommended in those reforms.

11:00

That implies two things. One is that the impact is very confined and the other is that the business is redistributed to the remaining courts. As far as resourcing or capacity is concerned, the main elements of activity that derive from the bill relate to the extension of special measures—the notice and the consequent handling at various stages.

The procedure around the notice and approval by the court is a quick administrative procedure that is dealt with by the sheriff in chambers. In that respect, no real resource implications derive from the bill.

From the court's perspective, the next stage in the process concerns the availability of measures. It is important to bear in mind the level of demand at the time of the trial. There is the potential for 18,000 applications to emerge, but there are important points to bear in mind. One is that the proportion of trials in respect of which evidence is actually led is between 15 and 20 per cent of the cases raised, and the other is that, in any event, the concentration of business will be in the busiest courts, which is why we have made provision for additional screens in the busiest courts. We are confident that under whatever regime emerges, we have the capacity to deal with the special measures.

David McKenna: In responding to the consultation exercise, we said that we believed that court closures would further inconvenience witnesses and victims, and we were concerned about additional travel. I do not know whether members are aware of this, but if you take your car to get to court as a witness, you do not get your parking charges paid, which can be £10 or £15. We knew that court closures could mean additional travelling time. We were also concerned that the accused and the victim could end up travelling to court on the same bus or train.

We are 15 years on from the witness service being introduced in courts; it is time to look at what has been learned about looking after witnesses. That does not start just when we sneak them in the back door of the court. It is time to look at how we support witnesses in the home and in the community and then as they go into court and back out again.

The possibility of a court closure programme has led to a meeting, which I think is taking place tomorrow, with the chief executive of the Scottish Court Service.

The Convener: I do not want to go into detail, because we will deal with that matter and we will be calling witnesses.

David McKenna: Okay. We are going to consider how we can mitigate the potential impact.

Jenny Marra: Can I put my question to Mr Harvie as well?

The Convener: Of course.

David Harvie: We have been involved from the outset in consultation with the Court Service. On Mr Binning's point about the volume of case work that is conducted within the courts, the other courts would be in a position to cope with that without significant increases in delays in the processes. Witness expenses would continue to be available and would be paid as per the existing guidelines, until such time as they are changed. That is the position at the moment.

On the point about travelling to court, the same would apply in all the courts at the moment. Whether witnesses are coming to Glasgow,

Edinburgh or wherever—whether to a city court or a small town court—there is always the risk that when the court is dealing with a local incident people will travel on the same bus. That is true regardless of where the case is being heard. Those are the kinds of issues that need to be addressed in relation to witness safety and security.

The Convener: I want to focus on isolating of witnesses from each other, with the court closures discussion; I do not want to go into it too much now. We can do so next week, but as Mr Binning, Mr Harvie and those of us who have practised law know, in some old court buildings it is almost impossible to separate people. There are things that assist neither witnesses nor victims, and there are instances where potential closures would be to the detriment of witnesses and victims.

I want to leave that matter—if you will forgive me for that, Jenny—because we will take evidence later on the subject from, we hope, three panels. It is not closed down.

Jenny Marra: Thank you, convener.

In our private session, we heard from victims of crime about delays in court. Having sat in sheriff courts, I have seen that at first hand, and colleagues have put a number of questions to the Scottish Government on the cost impact of delays in court. We heard from one victim that her case was delayed six times. Delays have an impact through lost days at work for both victims and witnesses and there is severe inconvenience. How can such delays be avoided now, and how might they be reduced under the bill?

Cliff Binning: Set in the context of delay and the need for expeditious handling of prosecutions in the court processes, there is currently an unprecedented energy across a range of fronts to ensure that delays are kept to an absolute minimum. Under the making justice work programme are a series of projects that are designed to ensure that, for example, all measures are in place to ensure that witnesses appear on the appointed day.

From the courts' perspective, we are absolutely determined to ensure that we optimise programming of court business in order to avoid delay. In the context of sharing information and approaches, and optimising our processes, strong efforts are being made to ensure that delays are kept to an absolute minimum.

As a matter of course, there is now reporting on a wide range of information, and specifically on the overall time lag from case initiation to disposal, to ensure that we all, collectively, keep our eyes firmly on the ball in ensuring the expeditious delivery of justice.

Jenny Marra: Has your organisation done any work on the cost impact of delays? We are told that the Scottish Government does not hold that information; I presume that your organisation does.

Cliff Binning: We are guided by a number of sources. One of the most instructive recent sources was the Audit Scotland report on the criminal justice system, which was a very instructive document from the perspective of all agencies as it highlighted the costs to the system at the various stages of the process. The Scottish Court Service and, I am sure, colleagues are alert to that, and it is one reason why there is a determined effort to bring about systematic improvements to the whole process.

Jenny Marra: Do you have any targets for that—

The Convener: Excuse me. I want to get back to the bill, which is the Victims and Witnesses (Scotland) Bill. I want to know the impact—

Jenny Marra: Absolutely, convener, but—

The Convener: No, Jenny. I am sorry. I want to get back to the important question that you asked about the impact on witnesses and victims who turn up time after time and find that they are losing their wages and the case is not going ahead. Why is that happening? How can the situation be improved? What are they told at the time when they turn up? That is what we would like to know in considering the bill.

Jenny Marra: If you will let me explain, convener, what I am trying to elucidate is whether there are measures in place to reduce the inconvenience for victims and witnesses.

The Convener: That is fine. That is exactly what we want to find out, along with why the delays happen and how we can get rid of them. Mr Harvie, you must have experience of this.

David Harvie: Indeed, convener. Thank you for the opportunity to comment.

Mr Binning has already mentioned the making justice work programme, and there are a number of activities under that heading precisely to deal with what is classically called—it is a somewhat derogatory term, I have to say—churn. I see Mr McKenna rightly smiling at that. That term is obviously used from a system perspective rather than the individual's perspective, and that is why I made that comment about it. When we look at the system, that is the way in which we address it, but with the imperative of trying to improve the experience of victims and witnesses to try to get cases resolved as early as possible.

Witnesses might lose citations or not attend for other reasons. An measure that has been very

successful is texting witnesses in advance of their court appearance to ensure that they are aware and are reminded of the need to attend court. Very often, witnesses' attendance at the trial can be the very thing that focuses the mind of the accused person on deciding whether the matter will proceed to trial or can be resolved. Getting witnesses there can be crucial.

Equally, with a court that is too heavily loaded, you do not want to invite too many witnesses to whom you will never get. There is significant work to study the optimum weighting of a court in order to make sure that there is a prospect that the witness can give evidence. If the accused appears and all witnesses appear, there is the prospect of a case proceeding.

The Convener: Who tells witnesses, "This is going ahead today", "It's 4 o'clock—the sheriff is going home", "There is another case going ahead—your one is postponed", or whatever? Who explains what is happening?

David McKenna: It is very important to know that a lot of activity is going on around getting witnesses to court, and we support that agenda. The real challenge for us is witnesses who manage to get to court but do not manage to take part in the criminal procedure in that court.

We are regularly made aware of witnesses who are called time and again. Do you know how soul destroying that is for an individual? Do you know how difficult it is to keep trying to get through on the phone to find out whether you have been countermanded or not and whether you have to go in tomorrow, and then to go to court only to find out that your case is not going ahead? We need to understand the huge burden that is being placed on witnesses in our criminal justice system and we need to do everything possible to alleviate it. I believe that a lot more could be done.

Perhaps what is most wasteful is the number of witnesses who turn up to give evidence in court, but sit there all day and are told to go home at 4 o'clock in the afternoon, when they could have been told to go home at 11 o'clock in the morning. We experience that regularly. [*Interruption*.] Cliff Binning will get a chance to say something in a minute.

The Convener: Perhaps he will get a chance if he goes through the chair. Do you want to take over as chair?

David McKenna: No, thank you; it is too hard.

We experience regularly that, because the court is so busy, no one finds the time to go down and discharge the witnesses. That is another issue about which we want to talk to the Scottish Court Service.

Jenny Marra: I am just trying to get an answer to my question. What David McKenna said is exactly why I asked whether there are targets to reduce churn. Are there targets?

The Convener: Before we get to targets, we should let Cliff Binning answer why people are not told at 11 o'clock in the morning, and instead sit until 4 o'clock.

Cliff Binning: There are a couple of points. One point that I want to deal with is the number of occasions on which cases are adjourned because of pressure of court business or lack of court time. We have a performance measure for that and we monitor it rigorously. The position is that less than 5 per cent of cases that are set down for trial are adjourned because of lack of court time. I am not suggesting that it is a model of perfection, but it is very important to put the issue in its proper context.

It is clearly unfortunate when, for whatever reason, trials are adjourned on the day. My understanding of practice is that when a trial is adjourned, steps are taken on two fronts: first, to advise witnesses who are in court, and secondly, to get information on witness availability. I take David McKenna's point that it may not always be the case that that is communicated properly and effectively to witnesses.

On the question of whether it is appropriate to adjourn a case at 11 o'clock or 4 o'clock, a decision would be taken at the earliest opportunity. There is an inherent unpredictability in the conduct of court business, and we all have to make our best judgments in the best circumstances. There may well be occasions on which the preferable course of action is to allow more time, during which, for example, negotiations on a plea could take place. It is not always cut and dried and there is not a conscious effort to keep people waiting until 4 o'clock. As a matter of routine, usually at the mid-point in the day, a judgment is made in consultations between the Crown, the bench and the clerk, as to whether it is appropriate for the loading to be maintained.

I do not say that the things that have been described do not happen, but it would be quite wrong to say that we do not make serious attempts to manage what is an uncertain situation.

The Convener: I thank you for your oral evidence and your written submissions. We will have a little break for a few minutes.

11:15

Meeting suspended.

11:23

On resuming—

The Convener: I welcome our second panel of witnesses, who sat and listened to the first panel. Feel free to comment on what you heard; I am sure that you will, and that is what we want. We have Sandy Brindley, who is the national co-ordinator at Rape Crisis Scotland; Louise Johnson, who is a national worker, legal issues at Scottish Women's Aid; and Peter Morris, who submitted petition PE1403, on improving support for victims and witnesses, and has campaigned on that issue for a number of years. We agreed to consider your petition, Mr Morris, as part of our scrutiny of the bill, so there you are—persistence pays off.

I thank you all for your written submissions. I ask members for questions. Does Sandra White want to start? Graeme Pearson has a self-denying ordinance to wait to ask questions until after three or four others.

Sandra White: Good morning. I will perhaps leave the victim surcharge issue to Graeme Pearson and pick up on something else that I wanted to ask regarding the vulnerable witnesses provisions. Most people who have put in a submission have said that although the provisions are great, they are available only in the criminal justice system. People are asking for them to be available in cases in the civil justice system—in particular, cases relating to domestic violence, rape and stalking, as well as children's hearings. Will the panel comment on that?

Louise Johnson (Scottish Women's Aid): First, thank you very much for the opportunity to address the committee. We are quite concerned that the provisions to extend automatic entitlement to standard special measures for victims of sexual assault, rape, stalking, domestic abuse and trafficking are not going to be extended to civil proceedings.

We have set out our concerns in our submission. Being vulnerable does not stop just because you go into a different arena. The submission from the advice, support, safety and information services together project made a good point that a criminal case can sometimes take 38 weeks. At the same time, a woman can be involved in a contact hearing, for example. Those proceedings may be concurrent or separate.

You will not be any safer just because you are in a civil arena. In fact, you are likely to be less safe because the criminal issues are considered in a completely different way. You are likely to be even more vulnerable because of the nature of the case. In domestic abuse, contact and residence cases, some very personal and probably sensitive information is being thrown at you, but you have to sit there and face the person whom, in another arena, you perhaps did not have to sit and face. That is not in the interests of justice, and it is certainly not in the interests of evidence being given freely.

We mentioned children's hearings proceedings because the Children's Hearings (Scotland) Act 2011 provides domestic abuse and forced marriage as grounds for referral. If the grounds for referral to a children's hearing are being disputed or there is a proof about them, it is incredibly important that people who are more or less engaging in the system because they were referred—and so are not necessarily there of their own volition—are protected.

Sandy Brindley (Rape Crisis Scotland): I echo Louise Johnson's point. To date, we have not had a civil case relating to rape, but it is likely that we will have at least one in the near future, and we are concerned about what protections are in place if somebody goes down the civil justice route. Particularly in the case of rape, people who go down the civil justice route consider doing so because they feel that they have been failed by the criminal justice route. There are concerns about the lack of protection deterring people from feeling able to pursue a civil route.

It is broader than just special measures because there are real privacy issues. We do not have any legislative protection in terms of anonymity for rape complainers in Scotland, and it is unclear whether anonymity would apply in the civil courts. There are a number of issues around privacy that it would be helpful to consider as part of the bill. Those issues are linked to special measures but they go above and beyond them.

The Convener: Can you explain how you can bring a civil action for rape? I got a bit lost.

Sandy Brindley: It would be an action against the perpetrator—a civil case for damages against the perpetrator.

The Convener: That clarifies it. Thank you.

Peter Morris: One of the things that struck me about the vulnerability provisions in the bill is that when I watched the debate on the issue last June in the chamber, there was some discussion as to the interpretation of a vulnerable witness. I tend to go along with the view of David McKenna from Victim Support that any victim or witness has the potential to be vulnerable. I also think—and recent cases have highlighted this—that some victims and witnesses can become vulnerable during the process. I quote the obvious example of the tragic figure of Frances Andrade in Manchester. When she was questioned, she said that she was fine to go into the witness box, but because of the

strength of the cross-examination from the defence lawyers, she became vulnerable.

I quite agree that special measures should be available to all victims and all witnesses, bar none. Rather than trying to say that a certain group of people are particularly vulnerable, if you just classify everybody under the scheme, you will not go too far wrong.

The Convener: Even crooks with criminal records who are appearing as witnesses?

Peter Morris: If a crook is giving evidence in circumstances in which he did not commit a crime, why should he not be vulnerable?

The Convener: Some witnesses are pretty tough. I am not saying that there are no extremely vulnerable witnesses, but there are pretty tough ones.

11:30

Peter Morris: I am trying to say that special measures, such as giving evidence behind a screen, should be available to everybody. What is it about that that you do not like?

The Convener: The credibility of a witness must be tested, which sometimes means relying on body language, behaviour or the manner in which they give evidence. Many things can happen.

I am not parking people who are deemed to be vulnerable in all circumstances, but it is not the case that all witnesses are somehow frail little eggshelly people. In some of the criminal courts in Scotland, pretty tough guys and women can be up as witnesses, and their evidence must be tested. There are circumstances in which they deserve to be seen as well as heard.

Peter Morris: Yes, but we are talking specifically about rape victims and stalking victims, for instance.

The Convener: You said that special measures should be available to all witnesses.

Peter Morris: I know that I did. The point is that, if somebody appears on a video screen, it is still possible to interpret their body language in a cross-examination.

The Convener: I will leave that issue. Does Sandra White have a question?

Sandra White: I am happy with the replies that I got. I may come in later, but I will leave it at the moment.

Graeme Pearson: It would be fair to say that the system—if we can describe it as such—has spent a considerable declared time dealing with cases that involve sex crimes and domestic abuse. Two of the panel members in particular are in a good position to report on witnesses' and victims' experiences of the alleged additional support that they have been offered as they go through that part of the system.

The panel members heard the first panel's evidence. Given your situation and experience, do you think that, if the proposals in the bill are enacted, witnesses and victims with whom you have been in contact and whom your organisations support will be better placed in the future? If not, what weaknesses do you identify in the provisions?

Sandy Brindley: The proposals will make a positive difference. The key element for us in the provisions is the ability to give greater certainty to sexual offences complainers. Automatic entitlement to special measures would mean that a victim would know further in advance what will happen when they go to court. Given how nerve-wracking the prospect of giving evidence on a sexual offence is, that is to be welcomed.

I hope that that provision is relatively uncontroversial. However, I do not think that, in itself, it will significantly reduce the documented trauma that sexual offences complainers experience in going through the judicial process. Giving evidence of such an intimate nature will always be a traumatic experience.

There is far more that we could do, not least—as I highlighted in my written evidence—by re-examining the issues connected with sexual history and character evidence and the increasing use of complainers' medical records in rape trials. Medical records are not used in any other crime. If somebody reports a burglary, nobody will look for their medical records to find out whether they have a mental health issue.

Significant privacy issues are still at play in relation to sexual offences and definitely act as a deterrent to complainers coming forward. The bill does not address those issues, and they require urgent attention.

Although there have been significant and very welcome attempts to improve legal responses to rape in particular, nobody has spoken directly to rape survivors to ask them what their experience was and whether those provisions have made a difference for them. There is a dearth of research in which complainers have been directly asked what would have made the experience okay or bearable for them. Anecdotally, we still hear that the experience is extremely difficult.

Louise Johnson: I will echo a number of Sandy Brindley's comments.

First, the extension of the automatic right to use special measures will certainly be of great use. We know from women's experiences that such

measures are not used routinely and would be of great help in supporting women to give evidence.

Secondly, with regard to the proposed standards of service and the other reforms, we know that information on bail and bail conditions is not routinely and timeously given to women. I have already mentioned the need for assessments for vulnerability—almost from the word go—in relation to protection and the use of special measures, and there is a need for information on delays and churn, and on actually appearing in court.

The standards of service are a great opportunity to address those issues, depending on how the standards are used. We can have a lot of nice shiny standards that just sit on the shelf, or we can have standards that have the capacity to change things. There is commitment at the highest level, but it does not permeate down to the people at the sharp end who deal with victims and witnesses day to day. That is why we said in our submission that the monitoring conditions should be in the text of the bill.

On the duty to consult victims and witnesses, as Sandy Brindley said, there must be much more consultation with people to ask, "How did this work? Did we do things when we were supposed to? Did that have the effect that it was supposed to have?"

We engage with various criminal justice and statutory organisations on training, but there should be much more of a duty in that regard. It is not just about dignity—those people need to recognise that they are dealing with a person. Dignity and respect are quite nebulous concepts, but we are talking about the person in front of them whose information is being shared. They should think about what is going to happen to that person. Really sensitive and controversial information on which the person will be judged is being sent out into the public arena in front of a whole array of people whom the victim has never seen before. The people involved must be treated as individuals and as human beings. That is the most important thing.

Graeme Pearson: On access to case-specific information, the bill makes no mention of timescales and when that information should be passed on. Should there be a timescale in the bill? If, as you describe, people do not receive the information timeously, it will be useless to them a fortnight, three weeks or a month later. Is that too onerous a responsibility to place on the Crown and others?

Louise Johnson: If they have the information, they could pass it on. They can pass on only what they have, so there is a question of how and when they get the information to pass on. As soon as they have any information, whether it involves trial dates or witness callings and citations, a message to say, "Do not turn up", or whatever, it should be passed on probably within 24 to 48 hours.

We have situations in which women are saying, "I've just found out he's got bail conditions"—in fact, sometimes the man has just turned up—or, "I'm turning up to give evidence and I haven't got childcare". There are systems in place for passing on information, but there is perhaps an issue with information technology. How is information conveyed to people who cannot pick it up via their computer or who do not have a mobile phone? How do we ensure that people get that information? It might be sent out timeously, but how do they receive it? The vehicle by which the information is conveyed is an issue.

The Convener: What do you suggest for those who are not technological or who do not have the technology?

Louise Johnson: In some cases, they could get letters or phone calls. In certain cases, the police or the victim information and advice service are supposed to let the person know about bail conditions in relation to domestic abuse. [*Interruption*.] Does Mr Morris want to come in?

The Convener: No, you finish. Everybody wants to chair, but that is not a problem.

Louise Johnson: I am sorry—I thought that I had interrupted Mr Morris.

Peter Morris: No, you have not interrupted me at all.

Louise Johnson: I have lost my train of thought now.

The Convener: We will come back to you once you have found it.

Graeme Pearson: Before we go to Mr Morris, while we are still on the theme—

The Convener: Oh, now you are chairing too. That is all right; it does not matter. [*Laughter*.]

Graeme Pearson: I want to get the best out of our witness. You have put me off my train of thought now.

The Convener: The tactic worked. Mr Morris wants to come in now.

Peter Morris: I seem to have caused all that.

I just wanted to make the point that what has been said reinforces completely my idea—which I have been propagating for some time—that there should be a case companion or single dedicated point of contact. On a point of language, I would rather use the term "case companion", because in my view the term "single dedicated point of contact" means a victim talking to a robot, and there must be an emphasis on personal contact.

The solution to the problem that has just been mentioned is to have a dedicated point of contact—someone who will disseminate information and act as a go-between.

Graeme Pearson: The point that I was going to make to Ms Johnson is that, as I said earlier, the system is deemed to give the client group whom you represent an enhanced service because of perceived threats. If the victims and witnesses whom you deal with face the frustrations that we have talked about, do you think that the service received by those involved in mainstream court business is no better and in fact may be less supportive?

Louise Johnson: I suppose all that you can do is extrapolate from the information that I have given you that the particular approach that is required in specific cases is not happening and ask what is therefore happening in mainstream cases.

Graeme Pearson: But you do not know.

Louise Johnson: I do not know about that. As I said, we can speak only from our experience, which shows that some of the required process is working and some is not. Part of getting it to work is about having information on time, passing it on, and letting other people know about it. Women should not have to phone up to find out when a case is being heard or what is happening about it. Our local groups have to phone up the Crown Office to find out what is going on with a case and whether there are bail conditions—that should not be happening.

Sandy Brindley: It makes sense that, to get the best evidence, we should keep witnesses informed and support them, particularly in sexual offence cases.

Graeme Pearson: I have a final question for Mr Morris. You referred in your submission to case companions and so forth. Were you disappointed that that idea was not reflected in the bill?

Peter Morris: Absolutely. I was extremely disappointed.

Graeme Pearson: Were you also disappointed that there was no mention in the bill of a victims commissioner? Would that have helped?

Peter Morris: I thought that those were two central planks that absolutely had to be in the bill. Louise Johnson just referred to rape victims having to ring up to find out when they will have to appear in court. I would much rather that that information went to a single, dedicated point of contact in an organisation—a case companion—rather than the victim being caused grief or emotional distress. It would be much more preferable for whoever does the advocacy or provides the support—such as Rape Crisis or Victim Support Scotland—to have the problem of getting through or trying to make contact about the case. They can then give the information to the victim, rather than the victim or witness having to get the information for themselves.

Aside from the bill not taking the case companion concept on board, the most disappointing thing is the lack of empathy shown for individuals' experiences. The case companion concept is based on the principle that prevention is often better than cure. Although the crime against the victim cannot be prevented, the bill shows a lack of understanding that what can be prevented is the angst that can come from going into the criminal justice system. I therefore agree with the point made by the chief executive of Victim Support about training in providing professional support being required. There should also be communication between all parties, including the police and the courts. We would then start to have a big, joined-up, co-ordinated system.

The point was made to the previous panel that victims are passed along in the system like parcels, and it is absolutely true that a certain section of the criminal justice system deals with victims in that way. Without wishing to be disparaging, that was reflected in the panellists' answers. The gentleman who represented the police force said that the police are trying to follow best practice and what have you, and I have absolutely no doubt that they are. However, one has to remember that the primary purpose of family liaison officers is to collate information for the police rather than to support the victim. They do their job in a sensitive and family-friendly way, so I am not criticising them at all, but if we had a single, dedicated point of contact—the case companion—they could do more.

I was involved with family liaison officers for three years, because that is how long my case took from investigation to court, and I remember that quite often it could take a month to get an answer to a simple question. Having reflected on that, I think that that probably happened because the family liaison officer already had the information, statement or whatever it was that they needed. Although they were trying to follow best practice, answering my questions was not their primary concern or interest.

11:45

The Convener: I do not think that you answered the point about the victims commissioner. Louise Johnson looked as if she is not in favour of a victims commissioner. Did I read you properly?

Louise Johnson: Yes.

The Convener: That shows the importance of body language. I could see that.

Louise Johnson: You would probably feel it, if I were not here. [*Laughter*.]

We are not in favour of a victims commissioner, and we would probably echo the comments that Victim Support Scotland made in its response. Like other organisations, we already have very good links with the Scottish Government, and we have direct links to people at very senior levels in the Crown Office and the police, for example. We do not think that another body's intervention would help us at all. Why should we have to go through an intermediary? We know what we are talking about, so I do not think that that would be a particularly positive move.

On the comments about a case worker or support person, that is down to support organisations being there. In our submission, we said that the standards do not mention the terms of the EU directive on the provision of support services. Our local groups have dedicated case workers, and there are moves with Police Scotland to standardise procedures in relation to domestic abuse across Scotland, with multi-agency risk assessment conferences, multi-agency tasking and co-ordinating groups and all that business looking at those who are affected by domestic abuse and ensuring that they have a response and someone to go to. Before we do anything nationally, we must look to see what is already in place.

Sandy Brindley: We would need to see the detail of any proposal relating to a victims commissioner before we could say whether we would support it.

Peter Morris: I understand the point that has been made, but my argument is that victims would possibly disagree. They would think that they should have a representative, powerful voice that can lobby the Parliament and co-ordinate the police, the court services and all the other organisations that are involved—in other words, co-ordinate the system. Many victims to whom I talk feel that they are not listened to, that they are not heard, and that they do not have representation. Organisations may feel that they have the proper access to the authorities that they need, but I know quite a few victims who do not feel that.

Louise Johnson: That is why it is important that the standards should include a duty to consult victims of crime and organisations that support them and a mechanism through which people can feed back regularly, not just now and again via an intermediary. There should be timed and prescribed review periods and there would be feedback to the Parliament on the standards—I think that that has been suggested elsewhere—covering the feedback that was sought and received and how that was sought to ensure that a wide spectrum of people responded.

The Convener: We will leave those two opposing arguments sticking to the wall, as people say.

Alison McInnes: I have a supplementary question on special measures. The extension of special measures has been welcomed, but you will have noted that I asked the previous panel about the right to object to their use. I am interested in your views on why that particular provision is in the bill and the difficulties it will create for the people whom you represent.

Sandy Brindley: A limited right to object to special measures is already in place under the current system, and I am not aware of that limited right causing significant problems. However, I cannot say what the impact might be when there is a more general right.

Louise Johnson: Our concern is about routine challenges if there is an automatic category of witnesses who are deemed to be vulnerable. We are talking about sexual offences, domestic abuse, trafficking and stalking, which are very emotive crimes, and we know that the defence utilises certain procedures, if I can put it that way. We would not like to see such objections being raised as a matter of course. If someone is deemed to be vulnerable, that is it.

John Finnie: I had a number of questions for Ms Johnson, although the bulk of them have been answered comprehensively.

I will focus on two small points, Ms Johnson—and other panel members may wish to contribute, too. This concerns your evidence on section 3, disclosure of information and the right to request but not to receive. You highlight in your evidence the fact that the bill was developed prior to the EU directive. You suggest that there should be a statement of reasons for non-disclosure, and you give examples. Could you expand on that evidence? Why would that be important?

Louise Johnson: That derives from a translation of the requirements of the EU directive. The directive says that victims should have a right to receive the information and I think that, in the interests of justice and probably in the interests of the prosecution—or not, as the case may be—they are perfectly entitled to receive information or to be told clearly why they cannot get information to which they are legally entitled. We do not want an attitude of "We can't be bothered" to develop, such that the information is just not given. If the reasons for not providing information that someone is legally obliged to receive must be justified, there will be much more focus on ensuring that the information is provided, as opposed to the default position, which is, "If we

can't get it, we just won't do it." People must be accountable.

John Finnie: Who would provide the information? The term "qualifying person" covers the police, the Lord Advocate and the Scottish Court Service. Who do you anticipate providing it? Could it vary?

Louise Johnson: It could be all of those or any individual among them, depending on the type of information that is sought. It might relate to court times, the reason why a case has been delayed or the reason why a case is not proceeding.

The directive is different from the bill as regards decisions not to prosecute. The directive says that victims shall have a right to review a decision, not just to get information. Article 11 of the directive goes quite a bit further. We would like that right to be enshrined in the bill.

John Finnie: What would you mean by reviewing a decision?

Louise Johnson: That is as opposed to simply being told, "We are not prosecuting" or "We are going to change the charge." The question is why. Suppose that the answer is that there is no evidence. Why not? Was that down to a failure in process? Was the evidence not collected? People might think that they have not been believed. Why will the case not be prosecuted? Questions can be asked about whether X, Y and Z were spoken to or whether certain information was obtained, and the whole evidential and investigative trail can be followed. That gives certainty to the investigating and prosecuting authorities and to the victim.

John Finnie: That would mean having clearly different standards of service.

Louise Johnson: Indeed. It ties back to that, too. Does that answer your question?

The Convener: You heard what was said by the Crown in respect of that.

Louise Johnson: Yes.

The Convener: The matter is being considered.

The wording has changed, but I think that letters are now issued, saying that the Crown is taking no further proceedings unless further evidence comes to light. At one point, they just said that they were taking no further proceedings. I had a case where evidence did come to light, but it was no longer possible to prosecute. At least that caveat is now in place, and the proposed measures would add to that.

Louise Johnson: Yes. That is especially important for women and children and young people who experience domestic abuse, who are being told that they will not be believed—they are victims of crime who are being told that nobody will believe them and it is all nonsense. If that decision is made in a bald, frank way, without any justification or explanation, that does not help victims at all.

There is a twofold benefit here: one for the victim and one for the process and ensuring that standards are complied with.

Sandy Brindley: I agree. It is an omission that the bill does not provide for a right to request a review of a decision not to prosecute. That particularly impacts on rape complainers. Only 25 per cent of rapes that are reported to the police lead to a court case. The majority of rape complainants get a decision not to prosecute, and that can be incredibly distressing. Having an explicit right to request a review of decisions not to prosecute could be very helpful, and it provides a certain level of accountability for those decisions.

Peter Morris: One of my compatriots—Action Scotland Against Stalking—advocates that independent legal representation should be available because the procurator fiscal is there primarily to promote the case for the Crown. Independent legal representation for victims is the right way to get the victims' rights recognised within the system.

The Convener: For what purpose?

Peter Morris: Well, to consider whether a case needs to be reviewed and whether a victim can challenge a decision.

Sandy Brindley: We have been researching how independent legal representation works in other jurisdictions in relation to sexual offences. They have it in Ireland in very specific circumstances around sexual history applications. We are interested in looking at how it would work in Scotland, particularly in relation to medical records and sexual history applications, which are very contested areas. You could say that the Crown is acting in the public interest, but who is representing the complainer's interest? There is a potential conflict of interest in terms of disclosure obligations. Often we hear from complainers that they do not feel that they have a direct route for protecting their privacy in these areas. There is a strong argument for legal representation for complainers. How else could they defend or assert any privacy rights in these contested areas?

The Convener: How would that enter the court process in a trial?

Sandy Brindley: It would not form part of the trial at all, because these matters would be decided pre-trial. Sexual history and character applications are dealt with at the preliminary hearing. There is a process that could incorporate a representative.

The Convener: I understand now what you mean by representation.

John Finnie: I have another brief question for Ms Johnson, which is on section 5, which relates to the right to specify the gender of an interviewer. You have suggested that the present wording might lack some clarity that would be beneficial, as it refers to

"an offence consisting of domestic abuse."

You say in your submission that there have been preliminary discussions about that. Can you update us on those discussions? Perhaps it is too soon. If so, will you keep us updated on how they go?

Louise Johnson: Yes, certainly. The issue with section 5 is that it refers to

"an offence consisting of domestic abuse."

There is no specific offence of domestic abuse. I met the Government bill team to say that that could be problematic and suggested that the bill be amended to refer to "an offence involving domestic abuse." Obviously the best arbiters of that are likely to be the Crown Office and Police Scotland. They will give you an idea of whether what I have suggested would be workable. We told the Scottish Government that there could be a problem with the definition and wanted to see whether the Crown Office or the police thought that it might be an issue. If you say that someone has a particular right where the specific offence of domestic abuse has been committed, but there is no specific offence of domestic abuse, you are really torpedoing the whole intention of the bill, which you would not be able to give force.

The Convener: That would apply to men or women who might be victims of domestic abuse. It would apply to children, grandparents or whomever.

Louise Johnson: Yes. It would apply to anybody.

Roderick Campbell: My question is also aimed at Ms Johnson. In your submission, you comment on section 20, which is on the duty to consider making a compensation order. The bill seems to make that a statutory requirement. It is something that already exists. Quite often in cases of fraud or dishonesty an accused might have repaid sums that he has misappropriated, which might impact on the nature of the sentence that he is given. I am not quite sure that I understand the logic of your position that a compensation order could not be considered as an alternative to custody. Is that not trying to shackle the judiciary slightly in its approach to sentencing?

Louise Johnson: The issue is the victim's right in respect of sentencing. In cases where there is no domestic abuse, rape or sexual assault, considering or making a compensation order might be appropriate. However, we would be very concerned if in every case, particularly cases of the nature that I have just outlined, the court had to consider making a compensation order without taking the view of the victim into account. We know that there are women who would want absolutely nothing to do with the abuser. Obviously, they have fled the abuser, they are living somewhere else and they would not want what is essentially blood money. There are cases when compensation would be appropriate, but what is important is to ask the victim. If they are told that a compensation order will be made—perhaps in addition to or instead of something else—they should be asked whether that would be an appropriate disposal or whether that would revictimise them.

The opportunity for the courts to make a compensation order instead of something else is a bit of an affront to victims of crime. For example, in a case of domestic abuse in which the victim does not want compensation, it would be wrong to do it anyway and say that it was the only disposal that the court is going to give out to someone who will possibly deliberately string out payment, in effect to re-abuse the victim.

12:00

Peter Morris: Would I be right in saying that the issue touches on the victim surcharge? I have been arguing for some time that compensation should be an automatic right in serious cases. The fact is that one has to apply for compensation. However, that is another thing that the next of kin of a murder victim, for example, does not want to do when they are going through a court case. The last thing that I was thinking about when I went through my court case was how much money I could make out of the situation. However, next of kin have needs following a conviction—sometimes they have basic needs prior to a conviction, such as funeral costs and what have you. In my particular case, I would have liked to have met the cost of therapies for the anxieties that I have gone through and to meet the needs of my mother. People's needs are as individual as people are. There is certainly an argument for awarding automatic levels of compensation after conviction. That would make the process a lot less stressful for the victims.

The Convener: I am not quite clear on when compensation orders are paid. However, the bill refers to section 249 of the Criminal Procedure (Scotland) Act 1995, so there are specific cases in law in which a compensation order may be made. There is judicial discretion for that, but there are also particular constraints on that discretion under

that act. We must look at that to consider what impact that has on what you referred to.

Louise Johnson makes a clear case—I certainly understand why someone might not want to have anything to do with their abuser. However, the position on compensation to which she referred may not apply. I am not quite sure about that, so we will need to look at the previous act to see whether that would apply in the cases that she was referring to.

Louise Johnson: Let me clarify that. Courts have the option to consider compensation. However, section 20 of the bill would make that obligatory in every single case: courts would not have the option to sidestep the matter and the issue would have to be discussed.

The Convener: Section 20 of the bill states:

"In section 249 of the 1995 Act (compensation order against convicted person), after subsection (4) insert—

'(4A) In any case where it would be competent for the court to make a compensation order, the court must consider whether to make a compensation order.'"

I am not sure how far that reaches, so we will need to look at that. It suggests that compensation does not appear to be appropriate in all cases, but I do not know.

Before I conclude the evidence session, is there anything that I omitted to ask the previous panel that we should have asked? You are taking a deep breath, so the answer is yes.

Louise Johnson: That is not a bad sign—I am just catching my breath.

We would like the committee to give serious consideration to civil proceedings and to be aware of the fact that children's hearings can be dealt with separately from the rest of civil proceedings.

I am glad to hear that the committee will look at the Scottish Court Service. We are concerned that the intention behind and the impact of the Victims and Witnesses (Scotland) Bill will be lessened; that victims and witnesses will be disadvantaged by the proposed court closures and reorganisations; that protection, safety and access to justice will be compromised; and that there will be inconvenience as a consequence of longer travel times and higher costs, which will impact adversely on victims and organisations.

The Convener: You will have your opportunity to comment on the proposed court closures when we deal with that, but I want to keep to the bill for now.

Louise Johnson: Sure—thank you.

Sandy Brindley: I have two quick points. One is about the right of people to choose or have a say in the gender of their forensic examiner straight after a rape or sexual assault. The bill recognises people's need or right to choose the gender of their police interviewer. If we accept that, it would make sense to consider provision for someone to be examined by a female doctor after a rape or sexual assault. That issue has been raised with us for at least 20 years, and it is a considerable source of distress. Most women and men in Scotland are examined by male doctors. The bill gives us a good opportunity to consider how we can get a basic level of care that meets the needs of complainers.

Another point, which I raise in my written submission, is about closed courts becoming a discretionary special measure. We are keen to ensure that that does not lessen the current provision, which is that closed courts happen automatically in rape cases. Complainers need certainty that the court will be closed. We do not want an inadvertent impact of making closed courts a discretionary special measure to lessen the certainty for rape complainers. That is something to consider when the committee is thinking about special measures. We want to ensure that the bill does not lessen certainty around something on which we want to give more certainty.

Peter Morris: I have a couple of quick points. First, with the previous panel, the committee discussed the issue of victims and accused occupying the same space in a court house. I hope that that discussion can be extended to examples that I have been involved with in which victims or relations of murder victims and the accused have had to live in and occupy the same space. I was recently made aware of a victim who, for 18 months, had to live in the same road as the person who was accused of her brother's murder. Although I fully accept that one is innocent until proven guilty, I just think that the issue needs to be considered. I do not accept the comment from, I think, the Court Service witness that victims and perpetrators occupying the same space is an infrequent occurrence. In my four months in Glasgow, on four or five occasions I had the accused murderer—who was later convicted—next to me in the canteen queue. I find it distressing that that level of emotional stress can be put on people during what can be a lengthy process.

Members will have to correct me if my second point does not relate to the bill, but I have the impression that there is not much difference between the proposals that went out to consultation last June and the bill. I want reassurance that funding will be available for new and innovative projects. I refer specifically to a case companion project that has been designed not by me but by ex-Procurator Fiscal Service people and ex-policemen in Ayrshire, who are

looking to get off the ground with fairly minimal funding. They are certainly under the impression that no funding is available and they are having to go cap in hand round various trusts. I am keen to support that project, which supports my proposals for case companions. Frankly, if no further funding is available for new ideas, why was that not made clear before the consultation process?

The Convener: Obviously, the Government consults before it drafts a bill, and we then challenge the bill that comes before us. Obviously, if something on case companions is inserted in the bill, funding would have to be available for that. We cannot put in something saying, "There shall be a case companion blah blah blah," if the funding does not follow. The other issue is that, if that is not in the bill, funding is a matter for policy, rather than legislation, as you will understand from your organisations in the voluntary sector. There is Government funding, charitable funding and so on. I will leave it at that. Mr Morris has made a good argument about case companions, which the committee will consider, as indeed we will consider the argument about a victims commissioner. We have not missed those ideas.

I thank our witnesses for their evidence.

Subordinate Legislation

Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)

12:09

The Convener: In the interests of time, we will move straight on to the agenda item 3, under which we have three negative instruments to consider, the first of which is the Police Pensions (Contributions) Amendment (Scotland) Regulations 2013.

The Subordinate Legislation Committee has drawn the instrument to the Parliament's attention on the ground that it was not laid within the required timescale, at least 28 days before it came into force. [*Interruption*.] Could I ask people to leave quietly please?

The SLC sought an explanation from the Scottish Government for the omission and was content with the explanation given. However, this committee is required under standing orders to consider the letter to the Presiding Officer on the breach of laying requirements. That letter is on page 6 of paper J/S4/13/11/1.

Do members have any comments on the statutory instrument or on the laying of the letter to the Presiding Officer, or are members content to make no recommendations in respect of the instrument?

Graeme Pearson: It would be fair to comment that the Government did have an opportunity if it so wished to change the increase indicated in the pension contributions for police officers in Scotland. The Scottish Government has made a major case of indicating that it is treating the police service in Scotland differently from its colleagues in England and Wales. It was certainly within the Scottish Government's gift, should it have wished, to take a different approach, but I note that it has chosen to maintain a standard approach across the United Kingdom. I feel that that comment must be made as the alternative view is peddled out day and daily.

The Convener: You are very good at putting such comments on the record.

John Finnie: It will not surprise you, convener, that I will give that alternative view. The Winsor imposition south of the border was absolutely atrocious and has had a terrible effect on police morale there.

The Convener: I will let you finish your point so that it is on the record and then we will get back to the business.

John Finnie: I welcome the assurance that the Cabinet Secretary for Justice gave in respect of that. I also regret that the Chief Secretary to the Treasury, my own MP, threatened action were any changes to be made to the pension. Graeme Pearson makes his point for his reasons but I do not think that it accurately reflects the feeling out there.

The Convener: There we are—tit for tat.

Roderick Campbell: I will briefly say that if we had taken the alternative view, it would have had consequences.

The Convener: Having put that on the record, do members agree to make no comment or recommendation in relation to the instrument?

Members *indicated agreement.*

The Convener: You are happy chappies.

Scottish Fire and Rescue Service (Framework and Appointed Day for Strategic Plan) Order 2013 (SSI 2013/97)

The Convener: The second instrument is the Scottish Fire and Rescue Service (Framework and Appointed Day for Strategic Plan) Order 2013 (SSI 2013/97). The Subordinate Legislation Committee was content with the instrument.

Do members have any comments? Are members content to make no recommendation in relation to the instrument?

Members *indicated agreement.*

The Convener: Excellent.

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2013 (SSI 2013/100)

The Convener: The third instrument is the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2013 (SSI 2013/100). The Subordinate Legislation Committee was content with the instrument.

Do members have any comments? Are members content to make no recommendation in relation to the instrument?

Members *indicated agreement.*

The Convener: Thank you.

Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 (SSI 2013/91)

The Convener: Agenda item 4 is consideration of an Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 (SSI 2013/91), which is not subject to parliamentary procedure. We would not normally consider no procedure instruments, but the Subordinate Legislation Committee has drawn this one to the Parliament's attention on a number of drafting grounds. The SLC was particularly concerned that the drafting of this instrument is unclear because it governs lay representation in the sheriff court and is therefore directed at people who are not legally qualified.

Do members have any comments?

Roderick Campbell: I take on board the SLC's point about the ease of understanding the instrument, particularly for somebody who is not legally qualified, but I also take the point that the whole area is to be reviewed by the new civil justice council. I do not agree with the conclusion of the SLC and the interpretation that it gives of the instrument, therefore I do not want to endorse the conclusions that it makes in paragraph 15.

The Convener: Do members agree to note the instrument?

Members *indicated agreement.*

Budget Strategy Phase

The Convener: Agenda item 5 is on the budget strategy phase. The Finance Committee has written to all subject committees to invite them to identify spending priorities from the spending review 2011 on which they would like to receive an update from the Scottish Government. The Finance Committee will collate responses from subject committees and ask the Government to provide an evaluation of performance on the identified priorities, which we can consider as part of our budget scrutiny later in the year.

A number of issues that we might like to receive progress updates on are listed in paragraph 8 of paper J/S4/13/11/3 and relate to the committee's previous recommendations arising from budget scrutiny. Members can of course come up with their own suggestions, and no doubt will.

Do members have any comments on any particular areas in which they would like to receive progress updates?

John Finnie: I am particularly interested in the third bullet point in the list about community penalties. There is a lot that we could glean if we got some information on that.

12:15

Graeme Pearson: Paragraphs 11 and 12, on page 10 of the paper, mention churn of cases and urgency in relation to the use of video conferencing and so forth. It would be useful to get an update on the work that has been done on reducing churn and its success or otherwise and on what resulted from the urgency 18 months ago and where we are now.

The Convener: Those are two good points. Is there anything else?

Alison McInnes: I thought that paragraph 8 captured all of the things that we should be pursuing and I was content with that.

The Convener: Okay, we are happy. The committee will now go into private session.

12:15

Meeting continued in private until 12:29.

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