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Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 30 April 2013

Session 4

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JUSTICE COMMITTEE
13th 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:

Tam Baillie (Scotland's Commissioner for Children and Young People)
Kate Higgins (Children 1st)
John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) (Committee Substitute)
Chief Superintendent David O'Connor (Association of Scottish Police Superintendents)
David Ross (Scottish Police Federation)
Chief Superintendent Craig Suttie (Association of Scottish Police Superintendents)
Alison Todd (Children 1st)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 30 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 13th 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 switched to silent. We have received apologies from David McLetchie, for whom John Lamont is attending as a substitute.

Agenda item 1 is a decision on taking business in private. I invite members to agree to take in private item 3, which is consideration of a Public Bodies Act consent memorandum in respect of the Public Bodies (Abolition of the Administrative Justice and Tribunals Council) Order 2013. I propose that we take the item in private because the paper includes a draft report and to allow officials to give us some understanding of the process. Do we agree to take item 3 in private?

Members *indicated agreement.*

Victims and Witnesses (Scotland) Bill: Stage 1

10:01

The Convener: Agenda item 2 is our third evidence session on the Victims and Witnesses (Scotland) Bill. Today, we will hear from two panels of witnesses. I welcome our first panel: Tam Baillie, Scotland's Commissioner for Children and Young People; Alison Todd, children and families service director at Children 1st; and Kate Higgins, policy manager for Children 1st.

I advise members that we invited the Association of Directors of Social Work to participate in the panel, but it declined our invitation on the basis that its committees have not considered the bill in any detail. However, the ADSW said that we should get in contact if any issues arise from our evidence session that we would like it to address. I will park that issue for the moment.

I thank the witnesses for their written submissions. I think that they have all appeared before the committee before, so they will know that if they want to answer a question that has not been directed straight at them, they should indicate to me and their microphone will come on automatically. We will move straight to questions from members.

John Finnie (Highlands and Islands) (Ind): The Children 1st submission comments that the provisions in the bill appear to apply only to criminal proceedings; civil proceedings are not included. Is sufficient attention given to the needs of children in identifying them as witnesses in the initial police contact?

Alison Todd (Children 1st): We would like the same standards to apply to civil proceedings as are laid out in the measures in the bill, which we welcome. Sorry, will you clarify the last part of your question?

John Finnie: Forgive me. I asked two questions that were overlapping, so let me park the question on civil proceedings for the moment. For someone to be a witness, they need to be identified as such—as a witness to a crime. We know that young people are frequently the victims of crime. In the initial police contact, is enough consideration given to the rights of children?

Kate Higgins (Children 1st): First, Children 1st has long-standing experience of working to support children as victims and witnesses, particularly through justice for children. Over the past 10 to 15 years, things have certainly moved on apace and children are now generally better supported, but there is still a long way to go.

On the police's role in identifying children as potential witnesses, practice is probably quite patchy and inconsistent, as the decision comes down to individual officers and individual application of people's innate resources. As far as we know, no training is provided to police recruits on how to engage with children and young people directly. Training would help to address the issue. We know that the joint investigative interviewing techniques that are being rolled out—the guidance for those is put on a statutory footing in the bill—have improved the experience of child victims of sexual offences and serious crimes. That is making a big difference, but there is still some way to go on how children are treated by all aspects of the justice system.

For example, an unhelpful, inadvertent consequence of our justice system taking domestic abuse more seriously is that children have become more involved as witnesses, because they were in the place and can speak to what happened. We are not convinced that that is necessarily a good thing. We accept that there is a need to gather all the sound forensic evidence that makes the case and that, in some situations, that will involve a child acting as a witness, but in others that might not necessarily be in the child's best interests. Where there is other sufficient, appropriate evidence to support the case, on balance it might be in the child's best interests not to be involved as a witness.

I am sorry if that is a bit convoluted, but the issue is not clear cut.

The Convener: No, that was a helpful explanation.

Tam Baillie (Scotland's Commissioner for Children and Young People): There are two parts to the issue, as far as I am concerned. If my understanding is correct, we miss an awful lot of children who are victims of crime. We need only look at the report published yesterday about those who suffered abuse as children to see that we are still in that position. We do not know how many children we miss, but we know that we need to look at how readily children think they will be believed as victims of crime in our justice system. All the coverage of the Savile case, the Rochdale case and the reopening of the Welsh case signals that we need to get much better at listening to and trusting children and young people who are brave enough to come forward. We also need to create circumstances in which they are able to feel comfortable telling about the traumatic things that have happened to them. One issue is that, time and again, we are missing children.

The second issue is about how well supported children are in the justice system, how well resourced agencies are in providing them with support and how well attuned the people are who play different roles in the justice system. As I will probably say later in the evidence session, I think that there is a real need for training and awareness, so that people can see the world through the eyes and with the perspective of a child. We have a long way to go in that respect. That would help people to have a better understanding of the potential role that children can play as witnesses to offences that have taken place in their vicinity.

John Finnie: Let me ask then about civil proceedings. Should the same considerations apply to civil proceedings as to criminal proceedings?

Alison Todd: We call for that to happen. As Tam Baillie and Kate Higgins have alluded to, people who deal with children need to have proper training. We need to consider what the core skills are for dealing with children and young people and how those apply to people who work in the system.

In civil proceedings, it is important that the standards for dealing with children and young people also apply. Children can end up giving evidence in many civil proceedings, such as divorce and custody cases. Quite often, those can be quite complicated, given the different adults who play a part in a child's life, and that can cause conflict and challenges. To get the best from children and to ensure that their needs are met, we should apply the same standards right the way across.

The Convener: Having been a civil practitioner in family law, I thought that we had come a long way: children can have their own representation; sheriffs can come down off the bench and take their wigs off; sheriffs can sometimes hear evidence in private; and children can have their own reports. I thought that we had come a long way in allowing children to feel relaxed in what can be very difficult circumstances involving parent versus parent. Are there still issues there?

Alison Todd: Yes, I think so. We certainly have come a long way, and there is evidence of very good practice right the way through the system, but some practice is not always in the best interests of children and young people, who do not always get the opportunity to give the best evidence. In particular, they are possibly constrained by some of the conflicts that might exist between parents. We need to consider the bill in that light.

I refer in particular to section 10. As the law currently stands—and I know that this is not directly related to civil proceedings—all under-12s would be exempt from appearing in court. We would like that exemption to remain. To remove it could mean that more children and young people

end up in court, depending on who decides whether or not they should be there.

Tam Baillie: On standards, one of the problems is consistency of practice. Some examples of progressive practice have been given, but the opportunity through the bill is to have a requirement for standards—I would suggest that we even need to go beyond that and consider how we monitor and report on those standards. If the bill provides an opportunity to have that across court systems, the question should be: why not do it? Whatever legislation the Parliament produces must include something to address standards of practice. We have the opportunity, so the simple answer to John Finnie's question is yes.

Alison Todd: Although things have improved, and although we have special measures, I agree with Tam Baillie that we have an opportunity to get something into legislation under which people are trained and must apply all the standards and guidance consistently, which is not the case at the moment, despite the improvements.

The Convener: There is nothing about training in the bill.

Alison Todd: The bill could be stronger. The issue is having clear standards and how those are applied. We should be referring to the common core skills, in particular for people who are dealing with children and young people.

The bill does not cover the fact that we would have a child witness support service, which is where much of the training and awareness raising could be applied so that children and young people know what is expected and are treated consistently in the process.

Tam Baillie: When it comes to putting together standards, it would be helpful to have something about the best interests of the child, which would chime with the requirements of the United Nations Convention on the Rights of the Child. It would be useful to check the views of children and young people on the kind of things that would assist them. I would always suggest that we engage with children and young people when setting up standards of practice and so on. We could usefully consider that as a requirement under the bill on agencies or organisations with responsibility for setting and adhering to standards—they should always check with children and young people.

The Convener: Perhaps that could be in guidance or something—we cannot consult on it now if we want to put it in the bill.

Tam Baillie: If it is in guidance, people will have the opportunity either to follow it or not; if it is in regulations, it is much stronger. If such a requirement is included in the bill, it is much more contentious, however. In any case, there should be something that ties public bodies or other organisations with responsibility to engaging with children and young people regarding their views. I will probably repeat that point in respect of other evidence later.

Roderick Campbell (North East Fife) (SNP): I have a supplementary point on what Alison Todd said about section 10 and children under 12 giving evidence in person. My reading of section 10 is that children would be required to give evidence only in very exceptional circumstances. There are safeguards in place. Will you expand on what you said, Alison?

10:15

Alison Todd: We would say that there are already safeguards in place. It currently says in legislation that a young person should not give evidence in court unless under exceptional circumstances. We think that that is strong enough. To move it the other way might have the unintended consequence of other people—the defence—deciding that the young person should be in court. We have talked about the complex relationships in children's lives. A parent might think that appearing in court would be in the child's best interest. We think that the current legislation protects children well enough, but there needs to be training and awareness so that it is implemented properly. We do not think that there is a need for change.

Roderick Campbell: So you would just keep the Criminal Procedure (Scotland) Act 1995 as it is in that respect.

Alison Todd: In that area, yes.

Kate Higgins: The bill goes a long way towards completing the work started by the Vulnerable Witnesses (Scotland) Act 2004 around special measures for vulnerable witnesses, in that there is almost an automatic entitlement there. It is much clearer, and entitlement is raised to the age of 18 for children and young people. Provision is made so that new measures can be piloted, which was missing, and the standard measures have been tidied up. However, we feel that section 10 pulls the rug out from under that.

While you see safeguards, we see complex tests to be satisfied. We can see defence solicitors having a field day around proving the case. It just opens up so many questions around when and how the child expresses a wish and who is going to ensure that the child does not feel under duress to be a witness in a case involving their parents or is not being put under pressure by someone else. Where the child has expressed a wish, the court must take account of that unless it is not appropriate. How do we define what is appropriate and what is not? There is huge scope for

discretion there. The bill does not lay out in what circumstances it would be appropriate.

Even if a child is absolutely adamant that they do not wish to be present in court to give evidence, that can be got round. The child's wishes and interests then become subject to a test about what is in the interests of justice as well as what is in the interests of the accused. We have years of experience of working to support children as victims and witnesses through the court system in some quite horrible cases. Even in those cases—even today when we have moved on so far—children's interests are quite often paid lip service to. We fear that the bill undermines the entitlement to special measures when the 1995 act is fine as it is. What is needed is training on and awareness of how best to apply it.

The Convener: I just want to correct you a bit. You said that there would be no idea of when it would be appropriate for the child to be in court. The wording of proposed new subsection (6) of section 271B of the 1995 act, which section 10 will insert, is:

"the giving of evidence by the child witness in some way other than by being present in the court-room for that purpose would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order were to be made."

So, there is a test. There must be "significant risk". As you know, in law quite often a case establishes the ambit of what is "significant risk". Provision is there in the bill. I take on board what you said, but there is a test.

Kate Higgins: We would be quite keen to hear about the relationship between the significant risk of prejudice to the fairness of the trial or the interests of justice and what is appropriate for the child. From our experience, the two are quite far apart in terms of where the child sits in that deliberation. There should be quite clear guidelines and regulations on how the bill is to be applied—but then you would start to interfere with the discretion of the court.

The Convener: You saw my face there.

Kate Higgins: Absolutely. It is using a sledgehammer to crack a nut. You just need to make the existing legislation work a bit better.

Alison Todd: If a trial could be prejudiced because a child does not give evidence in court, that would undermine the use of special measures and be a backward step. Our thinking should be that special measures will allow children and young people to give the best evidence.

The Convener: Sandra White has a question.

Sandra White (Glasgow Kelvin) (SNP): I think that Mr Baillie wanted to come in.

The Convener: Is yours a follow-on question?

Sandra White: Roderick Campbell has posed my question, but I have another to ask. However, I want to hear Mr Baillie's comments on that because they will be entirely different from those of Children 1st.

Tam Baillie: My reading of section 10 is similar to Roderick Campbell's—children would be required to give evidence only in exceptional circumstances. What is key are the views of children and young people, which I have mentioned. That places an onus on the court to ensure that it has an informed view of that child or young person.

I welcome the opportunity for children to express a view. You have heard evidence from other organisations about circumstances in which it is just as distressing for a child to be separated from who else might be in court. The underlying presumption that children do not appear in court is key. There will be exceptional circumstances when flexibility will need to be built in, in which case it will be key to listen to the views of children and young people.

This is about not only asking children and young people for their views, but making sure that our systems are sensitised to elicit and confidently take due account of those views. There is a challenge in framing the legislation to ensure that that is properly attended to. That takes me back to my comments about how the views of children and young people figure in the legislation, particularly if the change is in emphasis rather than in what I think will be the substance of the legislation. We all know how difficult and traumatising the circumstances are for the child and how difficult it can be to reasonably get their views. I therefore welcome the court process waking up to the fact that we must get their views on those terrible circumstances.

Sandra White: Can I ask my question now, convener?

The Convener: Kate Higgins wants to come in first.

Kate Higgins: We hear all the time from children and young people whom our services have supported through court processes. One of the most traumatic things for them is going into an open court in order to give evidence without the benefit of special measures; they liken it to going through the trauma of the circumstances that have taken them to court. Indeed, there is a recovery process for those giving evidence in open court. We welcome anything that can be done in law to minimise the risk of children having to appear in

open court to give evidence without the support of special measures.

We are well aware of the circumstances through which these situations come about. We have huge empathy, because we also work with women and children and young people who have been affected by domestic abuse. We argue that the special measures that are already in place for women who have been victims of domestic abuse and who have to go to court as vulnerable witnesses outweigh the need for section 10.

What should be happening is that women and children who have been victims or are witnesses do not give evidence in open court and are entitled to use special measures, such as using a microsite or giving evidence by videolink. Because we have augmented special measures, which we are going to make more available precisely for women who feel very vulnerable about going into court to give evidence as victims of domestic abuse, we can be assured that they will be together—or at least in the same place—with their children and young people while they give their evidence.

Sandra White: I want to ask about the objection notice because I note that all the witnesses have concerns about it. Mr Baillie has concerns about how it will affect child witnesses, and Kate Higgins and Alison Todd have concerns about how it will work. Can you expand on what you said about the issue in your submissions?

Tam Baillie: The issue is about automatic entitlement. For me, there are two points about the capacity to lodge objections, one of which is about when an automatic entitlement is not automatic. The second one is that I think that the default position for those who would want to undermine a case would be to lodge objections.

I agree with the extension of the definition of a child to include those up to the age of 18. That will mean that it is clear whether someone is a child or is not. Therefore, where would an objection come from as to whether someone qualifies as being considered a child? There is a similar argument about the nature of the offences, although certain nuances might be involved in that. However, I do not understand how an objection could be raised on the basis of age, because someone would be either a child or an adult—it is quite simple.

The Convener: I know, but it seems such an odd definition of "child", given that people in Scotland can marry at the age of 16, which means that we are now saying that children can get married. We are all over the place with definitions.

Tam Baillie: That is another debate.

The Convener: I know, but it is just an odd thought. Does anybody else wish to say something about objection notices?

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I want to pursue the issue. The Law Society of Scotland and the Faculty of Advocates said at last week's meeting that they are very much in favour of the objection notice. Do panel members believe that the objection notice provision should be removed from the bill?

Tam Baillie: Yes.

Kate Higgins: From what we understand, there is a human rights or rights of the accused aspect involved in the appearance of the objection notice provision in the bill. Our biggest concern is the widening of the right to any party to object, which would mean that anybody involved in the process could object to the application of special measures. If the objection notice provision can be removed from the bill, we would like it removed.

Tam Baillie: Can I just qualify that for the case of children? Other circumstances, especially in the assessment of a vulnerable witness, might be subject to challenge. However, if the use of special measures is automatic for people under a certain age, the objection notice provision should not apply.

Alison Todd: I echo what everyone has said on the matter. If we believe that special measures will allow children to give the best evidence and tell the truth in court, that is a good reason for removing the ability for anyone to object to their being used. The point is to get the best evidence from children and young people.

John Lamont: Given that the views on the issue that we have heard today conflict with views that we have heard previously, is there any compromise position that you might accept that would amend the objection notice provision in the bill as it stands? If we could not remove the provision completely, would you be willing to accept a compromise position?

Tam Baillie: I suggest that there should be an exemption for children on the basis of age. I am sorry, but I cannot put it any simpler than that.

John Lamont: I am thinking more about the timetable, which is a seven-day period. If there was a shorter period in which an objection notice could be lodged, would you find that more acceptable? You suggested in your submission that it would create anxiety for a witness, so perhaps having a shorter period for the notice to be lodged would make the provision more acceptable.

Tam Baillie: The operation of the notice is for the committee to decide, but I am coming from a position of principle. If we automatically have

special measures for children because of their vulnerability, I cannot see what the grounds of any objection would be. The committee might have to take advice as to whether that approach is competent under rights legislation, in which case I would be happy to come back and argue the case again. However, if you want children under the age of 18 to be able to give the best-protected evidence, for which they automatically get special measures, I do not see where an objection could come in.

The Convener: I am looking at proposed new subsection (4B) of the 1995 act, which says:

"The court may, on cause shown, allow an objection notice to be lodged after the period referred to in subsection (4A)"—

the seven days. I seem to remember that we took evidence that said that, even in the middle of proceedings, someone could lodge an objection notice and ask for that protection to be removed. Am I wrong?

10:30

Kate Higgins: We are in very technical waters, convener. A number of lawyers and members of the committee who have been involved in the justice process can probably dissect the issues better than us. However, we agree with your interpretation.

Our other question is: if an objection has been lodged in the original seven days and has fallen, can another party—if there are multiple offenders, for example—lodge an objection after that?

We hear from children and young people that they want to be kept informed. They want to know what is happening, they want certainty in the process and they do not want any delay in proceedings. It can often take years for a court case to begin and be concluded, which can be a huge amount of time in a young child's life. The kind of provision that we are talking about can undermine all three of those things.

We welcome absolutely the duty to provide information, but every time that there are incidental objections it becomes harder to keep on communicating and to ensure that child victims and witnesses are properly informed.

Again, the whole thing is almost an instance of the rug being pulled from under the application of special measures. Although limits can be applied with regard to the impact of objection notices, if the provision stays in the bill it will add to the case for a specific child witness support service in Scotland, so that children are informed about what such objection notices mean and what can be done about them.

We agree with the commissioner that there should just be an exemption for children and young people from all objections under section 9.

John Lamont: I am sorry to pursue this, but the Faculty of Advocates said that the quality of evidence can be improved by having the witness in the courtroom. If that resulted in a conviction, surely the witness or victim would find that more advantageous than the special measures. I accept that it is not ideal, but we have to make a difficult decision. The choice is between the courts getting good-quality evidence and the vulnerable witness being protected. We have to get that balance right.

Alison Todd: We must act in the best interests of the child, and we must communicate with the child and explain that to them. I think that there are exceptions. For example, older children can make some decisions and we could go down the route of objections to special measures if the child fully understood what was expected of them and was able to make a decision. When objections to the use of special measures come at a cost to the safety and wellbeing of the child, however, there should not be such objections.

The situation is different if the child is going to give their best evidence in court. That is a conversation that can be had with the child. It is a conversation that could be had if we had a child witness support agency or someone who was trained to support the child. We know that many workers will be able to do that, but it should definitely be on the basis of getting the views of the child and explaining the situation as opposed to the result of a third party objection.

Tam Baillie: I understand the committee's difficulty in trying to weigh up conflicting evidence from its witnesses. You may want to look at how assertions about the quality of evidence in court and the quality of decision making are backed up—that may be a reasonable request of the bodies that are making those arguments. Although there has not been a lot of research on the impact of the 2004 act, those bodies may be aware of other evidence that backs up their position.

Kate Higgins: The argument goes back to the debate—which has always existed—about the role of special measures. We would always argue that using special measures to support children in giving evidence and to remove them from the possibility of having to go into open court allows those children to give their best evidence. We know that, where additional special measures have been used, such as with the intermediaries that have been piloted by the national sex crimes unit, they have worked to enable children to give best evidence and cases have been more likely to result in a conviction.

We agree that there is a need for evidence and research in the area. We have been calling for that and pursuing the issue for some time. The idea that a child or vulnerable witness has to appear in open court in order to meet the best evidence rule goes against the grain of what special measures exist to achieve. We commend the work of Joyce Plotnikoff and Richard Woolfson on how special measures can support children to give their best evidence. We see the issue in an entirely different way from the Faculty of Advocates.

Graeme Pearson (South Scotland) (Lab): Good morning. I will stay on the issue of special measures and best evidence. Children 1st has presumably had a great deal of experience of the reality of taking witnesses along the route to court. As John Lamont mentioned at a previous Justice Committee meeting, the legal community seems to be indicating a preference for seeing a witness in court, noting the body language and so on.

I want to hear about your experiences of dealing with vulnerable witnesses and children. How do they feel about offering their evidence from a remote location? How have they experienced that? From their perspective—forgetting about the technicalities of best evidence—did they feel that they had been given the opportunity to unload properly what they wanted to share with the court? In your experience, was there a better outcome all round in terms of delivering justice?

Alison Todd: As you are aware, Children 1st has worked for a number of years with young people who have been vulnerable witnesses. We run the justice for children work group that has been battling for special measures. We know just how abusive the court system has been to children and young people, as they have told us horrific tales about their experiences in court.

The ability to use special measures has certainly made that experience less traumatic. However, we must make it clear that that is due not just to special measures alone but to the support that is given to young people and the steps that are taken to ensure that they know what is going to happen in the process.

It is really important that children and young people are heard and listened to, and it is not just the videolink—if that is the special measure that is used—that allows that to happen. Those young people would say that not having to appear in court and face the person who may have abused them and not having to face some of the questioning that they might have had to face, while still getting to tell their story, has had an enormous impact.

Although the bill states that other special measures can be considered, we would like intermediaries to be mentioned, because the inclusion of trained people who are able to elicit the story from the young person—the truth, in that interpretation—would make the bill even stronger. From what children and young people have told us over a long time about their experiences in court, we believe that special measures are the best way to get the truth from children and young people. Such measures are about support.

Graeme Pearson: Earlier, one member of the panel said that the system pays lip service to children's wishes. Is that because of a lack of empathy on the part of individual people in the service? Is it about the culture of courts? Why are children's wishes only being paid lip service in the current environment?

Kate Higgins: The best way in which to explain the situation would be to give a recent example, which concerns a young person with learning disabilities who was sexually abused.

The young person and her family were well supported in the early stages. They had a visit to the court, during which people were hugely empathetic. They got to see the room that they would be in for the videolink, they were able to understand what would be going on, and they were able to take that away and process it. However, when they arrived at court, the room in which they were expecting to give evidence had changed. To you or me, that would not be a big deal, but to a young person with learning disabilities, who has come to court expecting one thing, it is a different matter.

The new room was very enclosed and made the family feel claustrophobic. The videolink did not work at first, which was a problem because the young person does not like engaging in conversation with people whom she does not know. At one point, the defence advocate and solicitor, the procurator fiscal and all the court officers appeared in the witness room at the same time, so there was a room full of strangers.

Basically, the young person would not speak. The court came up with a compromise, which was that she could write down the evidence. However, because of the way that she was spoken to and engaged with over the videolink, she just totally shut down and could not give evidence at all. What is all that about? It is one example of many such instances.

Courts are very busy places and have a huge pressure of work to get through. With the best will in the world, processes and procedures sometimes cannot come to fruition, so there is a need to understand the impact on somebody with learning disabilities of the changes that have to be made. There needs to be training to ensure that the culture of courts includes an awareness of how

to treat a vulnerable young person who is asked to come to court to give evidence.

Alison Todd: I do not think that people are deliberately choosing to pay lip service to children's wishes; I think that there is an issue with the culture of the legal profession and the fact that people are really busy and pressured.

The issue also relates to the fact that many people in the profession are not people like us, who have worked for many years with children and young people. In order to ensure that the proposals are implemented, we need to ensure that people in the profession have an awareness of the needs of children and young people. That is why we would like there to be provision of some kind of support service, even if it is a volunteer-led service, for children and young people who are going through the court system. Such a service would mean that people who have the skills to listen and support children and young people can do that and can support the professionals who are very busy making sure that justice is done.

We need to ensure that there is a balance and that people have all the skills that are needed to ensure that the system is much more rounded and better supports children and young people.

Graeme Pearson: Presumably, the person you identify who might operate in that fashion would need to have a status and some empowerment within the system. If not, they would be paid the same lip service as a child, particularly if they come from a voluntary background. You can imagine such a person swimming against the tide within the court environment when they try to advise the professionals about how to deal with a witness. It is a wonderful person that you have identified; I am just saying that I can foresee some problems.

Alison Todd: I would say, though, that if we have both systems that do not pay respect to children and young people and volunteers who are doing a job, we need to look at and change the systems and the culture, as opposed to getting lots of qualified people to do the job.

10:45

Graeme Pearson: I take your point entirely. You have hit the nail on the head for me.

Tam Baillie: I will just make a quick comment because Alison Todd and Kate Higgins have covered the ground.

There is no perfect solution, because we are talking about children who have lived through traumatising circumstances and we will not be able to make it not traumatising. What we have to do is to mitigate whatever additional stress and trauma they will feel as a result of going through the processes. Giving evidence is traumatising in most circumstances—I almost asked for special measures today.

The Convener: Come, come. We are so genteel.

The committee will remember that the evidence about body language was anecdotal, and the witnesses were good enough to say that. We have written to the Faculty of Advocates to ask for more information in that regard, as we cannot just have anecdotal evidence.

After Graeme Pearson's next question, I will call Colin Keir and then Alison McInnes.

Graeme Pearson: My next question might not be appropriate, but I would like to ask it and, if it is not appropriate, I can be ruled offside. I ask it given the latest exposure in the press of horrendous historical cases, and given the experience of the people that we have sitting here.

Over the past couple of days, I have struggled to get my head round why it is years after the event that we begin to get a perspective that there is some truth in allegations, and yet at the time they are made the allegations are passed by. Is it a matter of not trusting children and not believing that they are telling the truth, which you mentioned earlier, or is there some other mechanism at play that allows things to be reported but passed by? A decade later, we go back and say, "This is a terrible situation." What makes that happen?

Tam Baillie: There is a cultural aspect. It was said earlier that the debate is not just about court processes. For me, it is about the value that we place on children's views and opinions.

To continue in the vein of the discussion not being just about the bill, I add that we are at a critical time and place. I have never lived through a period when there have been so many allegations on top of each other. The revelations will continue to shock us as the court cases unfold. As a society, we have to take stock and consider the very question that you asked: why did children not come forward previously? Why is it that, right now, children who are suffering trauma are not coming forward?

I suggested to another committee that we have to look at whether our protection systems are tuned in to pick up things and give children and young people the confidence to come forward and tell what is happening to them. We are at a stage at which, if we do not make improvements and question ourselves, we never will. I genuinely believe that we are at the stage at which we will question ourselves.

The Convener: We will move on, as we must try to get on to the bill again.

Colin Keir (Edinburgh Western) (SNP): Good morning. My question is about the comments in Children 1st's submission on the human rights implications. Obviously, the European convention on human rights stuff is looked after, given that the legislation that the Scottish Parliament passes must be compatible with that. However, you also mention UNCRC compatibility—the submission discusses reporting duties and other things that you mentioned earlier. I am not an expert on UNCRC legislation. Is there anything in that legislation that could be difficult to bring into the bill?

Alison Todd: I ask Tam Baillie to answer the question, as he is probably the expert on that.

Tam Baillie: I would turn the question on its head and ask whether there are things in the UNCRC that can assist with the progression of the bill.

In fact, in our written evidence, we suggested that the committee might look at a children's rights impact assessment, which is a framework for assessing the proposals in the bill against the requirements and obligations under the UNCRC. That exercise would be useful—it would take up a whole evidence session to consider the implications of the bill proposals set against not only the UNCRC but any additional points that should be taken into account in considering those implications.

Our office could prepare a children's rights impact assessment on the bill to develop understanding of the rights impacts of the proposed legislation. If you want me to be here for the rest of the day, I am quite happy to do that.

The Convener: I am just mulling it over. That assessment would need to be done within the next couple of weeks; it would have been helpful if it had been done earlier, because we have a timetable to work to. We can stretch the timetable at times, but could you do that assessment within two weeks?

Tam Baillie: You have called my bluff.

The Convener: Yes, I have.

Tam Baillie: Okay—leave it with me.

Colin Keir: I do not have anything else to ask. I just wondered whether there was anything that made it impossible to integrate some of that with the bill. That was what I was after.

Tam Baillie: I commit to give an initial screening on the bill proposals—

The Convener: You are rowing back a little now, but there we go.

Tam Baillie: I will get something to you within two weeks.

Kate Higgins: Such assessments are quite complex things to do—it takes bill teams quite a long time to pull bills together because they have to do the different impact assessments. Children 1st and the commissioner both mentioned children's rights impact assessments in our written evidence because the Scottish Government has made a commitment in principle to start applying such assessments to appropriate legislation, but nothing has happened yet. That is why we raised the issue. With the best will in the world, two weeks is quite a short time in which to achieve that—

Tam Baillie: But we will do something.

The Convener: It is just that we have a deadline. We have the cabinet secretary on 14 May, so it would be handy if we had the assessment for that meeting. There you go—clear your diaries.

Tam Baillie: Thank you for that, convener.

The Convener: That is quite all right—any time.

Alison McInnes (North East Scotland) (LD): I have a supplementary that follows on from Graeme Pearson's exploration of the special measures issue. Is it not the case that what is wrong in the system is that special measures are always seen by at least some of the players in the criminal justice system as being second best, rather than as the best way to get the evidence—and probably as a hassle by other people such as court officials? How do we get special measures to the point where they are continually developed and enhanced rather than plugged in as and when we have to use them?

Alison Todd: I agree with your point. We have raised a couple of issues about the bill where it seems that special measures are being further undermined. I do not know whether there is any way of doing this but we need to try culturally to move to a place where all of us believe that special measures are used to get the best evidence from children and young people. It is only when we get to that stage that we will see special measures being implemented.

Special measures might be seen as a hassle, and that is why they need to be properly resourced, with people involved who understand the needs of children and young people. It is crucial that we get to a stage where everyone sees special measures as being equal—as far as evidence goes—to any other way of obtaining evidence.

The Convener: Can I be really naughty and suggest something? We are talking about children up to the age of 18. To take the defence position, someone is innocent until proven guilty, there is a presumption of innocence, and there is a duty—an

onus—on the Crown to establish its case. Let us say that a 17-and-a-half-year-old laddie—a child, according to the bill—is involved in a case. He is as tough as can be and has a bit of a track record and so on. Before the witnesses jump in, let me first ask why it should not be possible for the defence to argue, "We really want to test this person's credibility. They are a key witness against the accused, there is a bit of a track record between them and it might be a vendetta or something"? In exceptional circumstances, why should the defence not be able to put in an objection and have such a person up in front of the court? Why should it be an absolute ban?

Tam Baillie: This is not about the bill determining at what age a child is a child; it is following the UN Convention on the Rights of the Child as well as other measures such as the Carloway review, which accepted that definition of a child. This is partly—

The Convener: I am not tackling the definition of a child; I am talking about the ability to object to the use of special measures. Your comment was that the ban on the ability to object would be absolute. Once someone is deemed to be a child, the defence will not be able to say, "I want this person to appear in front of us in court. I want to test their credibility—to rough them up a bit."

Tam Baillie: But the issue is not the person's age; it is whether they meet the definition of a child. If we accept that someone who is under the age of 18 is a child, everything else to do with vulnerability, special measures and looking at that person differently from the way in which an adult would be looked at falls into place, regardless of whether they are 17 and a half or 15 and a half.

The Convener: But it will be possible to object. I am sorry, but I thought that your point was that it should not be permissible to object if someone is deemed to be a child. As the bill stands, it will be possible to object in exceptional circumstances. I am arguing that there are times when, to deliver justice, it is appropriate that such an objection be put and perhaps sustained.

Tam Baillie: In that case, why make the use of special measures automatic? The policy intention is for the use of special measures to be automatic. If there is capacity to object, regardless of how it is fettered or qualified, my view is that that would become the default position, which would undermine the intention of the bill—and of the committee, if it agrees with what the bill, as drafted, proposes.

The use of special measures is not just to do with whether the person is a child; it relates to other categories, although those other categories might well be defined not by the offence but by some form of assessment, which might lend itself to objection. For me, if the desire of the committee and the intention of the bill is that the use of special measures should be automatic, on the basis of the witness's age, I cannot see the ground for objection.

The Convener: I am just beginning to feel that we are swimming in the direction of saying that all children's evidence is good, that they never tell lies and that their evidence is never corrupted. However, we know that people perjure themselves in court.

Tam Baillie: But the reason for the use of special measures is not to say that the child's evidence is the truth; it is to maximise the capacity of the child to give evidence. That evidence must still be subject to scrutiny and to judgment; it will still be subject to all the court processes. The purpose of putting in place special measures is to ensure that the child's opportunity to give evidence is maximised in those traumatising circumstances.

The Convener: The circumstances might not be traumatising for them—that is my argument. I accept a lot of what you have said, but I think that we are all swimming in the direction of not looking at ensuring that there is a balance. We need to give the accused a fair trial. I wanted another member of the committee to ask about the issue, but no one did, so I got extremely agitated. Everyone seems to be moving in the same direction. No one has asked what would happen if the witness was a really tough cookie or if someone presented themselves as a vulnerable witness who was not vulnerable at all. It might be a domestic abuse case or something like that. In the event that someone is not really a vulnerable witness, there should be an opportunity to object to the use of special measures and to test whether they are telling a load of porkies.

Alison McInnes: I do not want to get into a debate with the convener—

The Convener: I was asking a question.

Alison McInnes: What you are saying presupposes that somehow special measures are especially protective and less testing. I think that the argument is that they can still be testing and that it is still possible to explore the evidence. In that regard, special measures are not some sort of extra protection.

The Convener: I do not quite know how a witness could be roughed up—if I can use that term—through a videolink, whereas it is possible to get the chemistry going across a courtroom when a witness needs a bit of that. Judges will intervene to stop that happening if they think that it is inappropriate.

I am beginning to think that we are coming to the view that every witness is a good person, but that is not necessarily the case.

Tam Baillie: In that case, you might have to think about what automatic entitlement means, because that is what you are debating.

The Convener: Yes, that is the problem.

Alison Todd: I also think that with any legislation in which there are cut-off points—whether they are financial or age based—there will always be exceptions or cases that teeter on either side of those points. The minute that we create an opportunity to make an objection, a judgment will have to be made about whether someone is a tough cookie or is hard and a decision will have to be made about their level of need. We know that children—particularly traumatised children, regardless of their age—will present in all sorts of ways, and we might think that they are not vulnerable.

I think that the age 18 guideline is the result of a lot of thought. If someone is a child, we need to treat them as such—if that is what the definition is—rather than trying to make a judgment.

11:00

Kate Higgins: I want to add to Alison Todd's suggestions. The issue of the credibility of evidence that is given under special measures is to do with a culture of people not keeping up with developments. Whether we like it or not, special measures are here to stay, but cross-examination can still be effective. People need to learn the techniques that they need to use to do what they need to do in the court process when special measures are used to test the evidence rigorously. Evidence that is given under special measures is not less credible and it should still be capable of being tested. People need to keep up with technology and shifts in the process.

Under existing legislation, the over-12s can still request to be in court to give their evidence. That is exactly the point that we are making: that provision is already there.

On the issue of children telling lies, Graeme Pearson made a point about the recent case of historical abuse, with children not being believed and not being seen, perceived or presumed to be credible by some parts of the system. We need training and awareness raising to get around that.

For some reason, the Crown Office decided that the policy in the Criminal Justice and Licensing (Scotland) Act 2010 about access to prior statements made when witnesses are precognosced by the police does not apply to under-16s. We would like that policy to be changed or the legislation toughened up a little bit to avoid that exemption for children and young people, because the evidence that they give in court, whether via special measures or otherwise, might be improved if they are given the same access as adults to what they said when the offence happened.

The Convener: That is interesting. We have the police in the next witness panel.

Jenny Marra (North East Scotland) (Lab): Kate Higgins talked about the impact of busy courts on child victims and witnesses. What does the panel think about the potential impact of court closures on child victims and witnesses?

The Convener: Brief answers, please. I let Jenny Marra ask that question last week so I will let her do so again this week, although the issue is not in the bill.

Kate Higgins: The matter goes all the way back to civil proceedings. The committee knows as well as I do how difficult it will be to keep up with all the changes and bills that are coming through on civil and criminal proceedings, including the current bill, as well as court closures and reforms. We are concerned that it is not all joining up, particularly for children and young people. There are many disparate elements, which is why some of the measures should apply to civil proceedings. A children's rights impact assessment needs to be done right across all the measures, including the Gill and Carloway reviews and the proposed court closures.

We are disappointed with what is being proposed because an invest-to-save approach is not being taken. Rationalising the current court infrastructure could realise money to invest in brand new, fit-for-purpose, 21st century courts. Our experience of supporting children and young people is that courts are not that great for children and young people because they are not child friendly. For example, in some of them, children are not able to keep apart from defenders, which causes problems.

We are also disappointed that the very early proposals to create specialist courts have more or less gone for financial reasons, although we understand why.

The only concern about the location of High Courts at three static sites around Scotland, if that is still what is proposed—

Jenny Marra: It is.

Kate Higgins: We have not caught up totally with the detail. We are concerned about the long distances that children and young people will have to travel. Some families do not always enjoy the sympathy of employers and, given the fact that court cases can last two or three years, it can be hard for people to get days off to go to court. The

practical arrangements around the proposals are of concern to us.

The Convener: Does Tam Baillie want to say anything?

Tam Baillie: I have not come prepared to take a view on that.

The Convener: That is all right.

I think that Roddy Campbell is still lurking in the undergrowth with a question.

Roderick Campbell: Lurking, yes.

The Convener: It is a metaphor.

Roderick Campbell: I have a small point that arises from the Children 1st submission; it is one that we can also address with the Scottish Government.

Kate Higgins referred to the fact that the Scottish Government does not hold data centrally on the use of special measures since 2004. That is an important point. Have you had any discussions with the Government that you might wish to tell the committee about? Alternatively, can you refer us to any other sources that the committee might want to take account of when we address the use of special measures both generally and with regard to children?

Kate Higgins: Are you talking about research sources?

Roderick Campbell: I am looking for anything that might be helpful. I appreciate that you might want to write to the committee about that.

The Convener: You can write to us later. It can be quite hard to come up with something.

Alison Todd: We could send you some research on special measures in different countries. We have been involved in justice for children in quite a lot of other countries, so we could provide some written evidence.

Kate Higgins: In particular, we could give information about how the hugely successful child witness support service works in Victoria in Australia. It was established with a specific purpose but has supported training, awareness raising and issues to do with best evidence in a much wider way, particularly through the direct feedback loop that has been established between children and young people and judges. That has worked really well.

Research has also been done on the application of intermediaries in South Africa, which is part and parcel of the system there.

A number of academics have looked at the application of special measures and we can pull that together for the committee.

The Convener: That would be useful. I should say that the committee will consider the draft stage 1 report for the first time on 28 May, so we will need that information before then. You came here to give evidence and now you have a lot of homework to do. If you do not want to get in trouble with teacher, your homework is expected before 28 May. Tam Baillie's homework is expected within the fortnight because he has a special exercise.

Tam Baillie: I feel very special.

The Convener: I hope you do.

Tam Baillie: I am being specially treated.

The Convener: There are no further questions. I thank the witnesses for their evidence and suspend the meeting for 10 minutes.

11:07

Meeting suspended.

11:16

On resuming—

The Convener: I welcome our second panel of witnesses. I am glad that they heard a substantial part of the evidence from the previous panel. We have Chief Superintendent David O'Connor and Chief Superintendent David Suttie from the Association of Scottish Police Superintendents, along with David Ross, who is vice-chairman of the Scottish Police Federation. With this panel, we will focus mainly on interviewing children, victims' rights to specify the gender of an interviewer, and restitution orders, but I cannot limit the committee to that. I wonder why I have to say that, because members know it. However, those are the specific areas that we will focus on.

John Finnie: What challenges will arise for Police Scotland from the provision that will enable the victim to specify the gender of the interviewer?

The Convener: Who wants to answer that first?

Chief Superintendent David O'Connor (Association of Scottish Police Superintendents): Each of us will probably have something to say on that.

The service will face practical challenges in providing that option to victims, but it is certainly doable and it should be pursued. It is not an insurmountable problem, but we need to give due consideration to it and to the other practical implications of the bill.

The Convener: Will you expand on the term "due consideration"?

Chief Superintendent O'Connor: We need to consider logistics across Scotland: we need to

have the right interviewer in the right place at the right time. As with everything else, when such investigations come our way, we must be in a position to respond.

Chief Superintendent Craig Suttie (Association of Scottish Police Superintendents): That provision will be more of a problem in some parts of the country than in others, but one benefit of Police Scotland is that we can draw on resources from across the country, so interviewers might be available to come from other areas. It often takes time to set up an interview, which will allow that. It will be less of an issue than it was previously.

The bill allows for SIOs to justify why they could not provide an interviewer of the requested gender. However, we would encourage SIOs to be more proactive so that when they know that they will have that type of investigation they will do their best to ensure that an appropriate person is available.

The Convener: I am sorry. What are SIOs?

Chief Superintendent Suttie: SIO stands for senior investigating officer.

David Ross (Scottish Police Federation): The practical implications will come when it is necessary to interview an individual immediately, rather than during the course of an inquiry. It is relatively easy for us to get people to a location to carry out investigative interviews after an incident. However, delivering that at the time of an incident is far more difficult. There will be practical implications for us—certainly in the area that is covered by my former force, the Northern Constabulary, where I know John Finnie has a significant history and connection.

The Convener: He has a history? Oh-ho!

David Ross: It would be difficult on some of the islands to carry out interviews with the necessary expertise and experience immediately after an incident.

John Finnie: I do not know whether the panel members were present when I asked the previous group of witnesses about training. The legislation will kick in at the point when people are identified as witnesses. Do you believe that current police training is sufficiently up to speed to deal with the bill's provisions? Is there sufficient focus, in training, on the needs and rights of children as witnesses and victims?

Chief Superintendent O'Connor: This is a journey. Many new pieces of legislation are coming our way and many changes to policing are happening at this time, so we as a service must examine the training needs of officers to ensure that they have the right competencies and skills to meet the expectations of victims and witnesses. It will be incumbent not just on the police service but on other criminal justice partners to consider their training to ensure that we can deliver the bill's aims and objectives and meet the expectations of victims and witnesses across Scotland.

Sandra White: Good morning, gentlemen. I want to move on from the previous question on the choice of investigating officers and to consider Rape Crisis Scotland's submission, which states that victims should have a choice about who undertakes their forensic examination, and that in most cases—male and female—victims ask for a female doctor to examine them. How do you feel about Rape Crisis Scotland's proposal in that respect? Do you have concerns that it would be difficult to achieve?

David Ross: Forensic examination of victims, in particular victims of sexual offences, has been a significant difficulty for the service in general since we moved to outsourcing of such medical examinations. Irrespective of the gender of the person who carries out the examination or, indeed, of the fact that they may travel significant distances to do so, victims of sexual offences have frequently to wait a significant length of time for the examination to take place. I think that what Rape Crisis proposes would compound those difficulties.

I absolutely accept that individuals should have the right to choose the gender of the individual who will carry out an examination, especially when issues are involved that will have a significant impact on the victim, but it may be very difficult to achieve that without further delaying the process and causing significant angst to the individuals concerned.

The Convener: Can you expand on the point about outsourcing?

Sandra White: I was just going to ask about that.

The Convener: I am sorry.

Sandra White: That is all right, convener.

David Ross: Previously, the service employed local doctors across the different forces. However, before we moved to a single service, we outsourced the work to particular companies. I do not want to name them, but a number of companies provide the services of doctors; the companies deliver them to the required location. Each force signed up to that with different companies about five or six years ago. As a consequence of that and of attempts to reduce costs to the service, there have been significant delays in carrying out examinations—individuals have on some occasions had to travel significant distances for examination.

Sandra White: I was going to raise that point. Obviously, it is imperative that, in cases of sexual abuse, rape and so on, examinations take place as quickly as possible. Can you give us a timescale? I was under the impression that local doctors could be used; I did not know that agencies are being used.

Chief Superintendent Suttie: The practitioners are specially trained and the Crown must authorise them. There are issues before the police get involved. There are good examples of centres being developed where victims can go and samples can be taken before they make the decision whether to report the offence. We would very much welcome anything that can be done to encourage that.

However, the reality is that some of the medical practitioners—although I am not one of them—who take samples feel discouraged from taking part in the procedure because of delays in the court process later on. Anything that can be done to streamline the court process in respect of the requirement to attend and give evidence would be welcome.

Sandra White: Thank you. That is a very interesting point.

The Convener: No other member has a question at the moment, so I will address you. I think that the previous panel mentioned the right to see one's previous statements, which children do not see. Is that correct? Can you speak to that? Is it a matter for the Crown?

Chief Superintendent Suttie: The provision of statements is more a matter for the Crown. The police provide statements, but that is through contact with the Crown.

The Convener: I did not know that. I was quite surprised to learn that people are not able to see previous statements. Several statements might be taken over a period.

Chief Superintendent O'Connor: Yes—and all the statements would be submitted to the Crown. It may be necessary to interview a victim or a witness on a number of occasions. A number of statements might be submitted to the procurator fiscal or to the Crown Office, but the authority—as I understand it—to return statements to victims and witnesses rests with the Crown.

The Convener: We must ask about that.

On interviewing techniques, we have spoken about training for court officers, solicitors and judges. What training of police officers is there on dealing with children as victims or witnesses—or, indeed, as the accused?

Chief Superintendent O'Connor: Investigative interviewing has been in the service for 20 years. Joint interview training with police and social workers is carried out to ensure that cognitive interviewing skills and techniques are learned and tested in a training environment. The joint training that is available is delivered to a very high standard.

Detective officers are also trained to a high standard on investigative interviewing; they are trained to deal with the sensitivities of witnesses, complainers and victims while dealing with the various rules and parameters that are put in place for interviewing suspects.

The Convener: Do you use continuous professional development as a means of assessment, as many professions now do?

Chief Superintendent O'Connor: Yes—the process is continual. After accreditation there is refresher training to ensure that skills are kept up to the high level that is needed.

Alison McInnes: The consultation that preceded the bill included a question on investigative anonymity orders. The bill does not mention those, although they are in operation in England and Wales. There has been concern that not including such orders may raise cross-border issues. Do you have a view on that? Do you think that it would be sensible to extend anonymity further back into investigation of cases?

Chief Superintendent O'Connor: I am aware that such orders are being used in England and Wales, although I have not seen them in operation. I am also aware that there are cross-border issues, although they are not insurmountable.

On protection, there are concerns about how we give witnesses the confidence to come forward. Very often witnesses refuse to give statements to the police, or when they do give statements and those are provided to the Crown, they are then unwilling to give evidence in court. That is the reality. Anything that can be done to assist in that should be encouraged.

Graeme Pearson: The bill provides for disclosure of information to victims at various parts of the process. Police Scotland is one of the bodies that will be responsible for disclosing qualifying information. Is the service prepared to manage and release information in a timely manner to victims as they go through the procedures?

11:30

David Ross: All partners in the criminal justice system would probably accept that we have been poor at keeping victims and witnesses informed as to the progress of cases in which they are involved. As to whether we, as a service, are

prepared with regard to disclosure of such information, my personal view is that we are not. As far as our information technology systems are concerned, even our ability to share information across the various areas of Police Scotland is not joined up at the moment.

Graeme Pearson: You are pressing my buttons.

David Ross: It is work in progress. Are we prepared to do it at the moment? I do not think so. We absolutely want to disclose the relevant information and to embrace the aims and objectives behind that, but we are probably not prepared for delivering that.

Chief Superintendent O'Connor: This is an area in which Police Scotland needs to do an impact assessment on the bill to identify our capacity and capability to deliver on that level of commitment.

Graeme Pearson: If we pass the bill, how will you deliver on your responsibilities when day 1 of the legislation's being in force arrives?

Chief Superintendent O'Connor: That goes back to David Ross's point; the responsibilities under the eventual act will rest with Police Scotland and other agencies—it is not just for us.

Graeme Pearson: So, it is not a case of saying, "Let's not worry about everybody else."

Chief Superintendent O'Connor: We all need to know what the bill means for us in terms of disclosure of information. We need to know what the responsibilities are, and we need to know what information needs to be shared with whom, when, why and where. We need to assess the bill carefully and identify its implications.

Graeme Pearson: That sounds like a challenge.

Chief Superintendent O'Connor: It is a challenge.

Graeme Pearson: I will move to a different topic. The bill covers restitution orders. There is a notion that restitution orders will be paid into the benevolent fund, and that there will be some form of support for treatment centres for police officers and so forth. At an earlier evidence session, I asked whether there could be a perceived challenge in people's minds about a conflict of interests in cases where officers are giving evidence in court, knowing at the back of their mind that the outcome could end up being a restitution order. Does that give rise to any concern within the service? Is that notion overly simplistic and too sensitive?

Chief Superintendent Suttie: I can understand where people are coming from on that. There are concerns elsewhere about why that provision is just for the police, and whether it should be widened out. We have been supportive of those payments being widened out to other emergency workers and others who work at the front line. I do not think that there is a direct link between officers giving evidence and restitution orders. The systems that are in place, which will be managed by the Scottish Government, will be dealt with separately.

We welcome the restitution orders, and we think that they are a good move. I have paid so many pounds a month towards the Police Treatment Centres and the police benevolent fund for 29 years now, and my colleagues have done likewise: most officers do. Fortunately, I have never had to use those facilities, but they are very good. The police are perhaps ahead of the game compared with some other services in having such facilities.

To return to the question, I do not have any real concerns about there being an impact on officers' evidence.

Chief Superintendent O'Connor: I do not see there being any conflict of interests in relation to officers being assaulted and having something in the back of their mind about restitution orders. I have no doubt that officers go about their business and carry out their duties to the highest professional standards. Unfortunately, assaults on the police continue to happen. Ultimately, it is for the courts to decide on disposals. If the disposal is a restitution order, we would certainly support that.

David Ross: The courts can already impose compensation orders on offenders who have assaulted police officers; that has not impacted on the evidence that officers give in courts. I do not envisage that restitution orders will have any such impact.

It is a sad fact that the rate of assaults on police officers continues to rise. Between March 2011 and March 2012, the number rose by 20 per cent to 570. There are two former police officers on the committee and three officers on the panel. Sadly, I can say confidently that all of us have been assaulted at some stage in our careers, if not on several occasions.

The Convener: Schoolteachers and ambulance workers are assaulted, too. That is the problem.

David Ross: Absolutely. There is no resistance from us to extending the provision beyond the police service.

The Convener: I hear that—the other emergency services were mentioned. What happens in a criminal case in which a schoolteacher is assaulted?

Colin Keir: Or a transport worker.

The Convener: Indeed. A person could be assaulted in performing their job when they are driving a bus or working in a supermarket, for example. That is probably an issue. Could it be quite divisive if only the police are covered? Would it be counterproductive if you were seen as being special?

Chief Superintendent Suttie: We would welcome the inclusion of emergency workers and front-line staff. You are right: it is a matter of how we define the front line. Shopkeepers are essential front-line staff to some communities, in that they ensure that shops stay open. We do not want the bill to be divisive, but police officers, by the nature of what they do, are more likely to be assaulted; David Ross has provided statistics on that. The impact is that some might say that we would have better protection. We may anticipate that, and that is a wider issue, but we would support widening out the restitution orders to others.

John Finnie: I would like a bit of background information. Is it still the case that the Police Treatment Centres is entirely funded by subscriptions from officers, that it is not the service that is funded but the individual officers, and that the same applies to the benevolent welfare fund?

David Ross: There are subscriptions and donations from individuals. Police Treatment Centres is a registered charity.

The Convener: Okay. You now have that on the record.

Roderick Campbell: At the risk of going back to an issue that Graeme Pearson raised, can you help me with the issue of information having to be provided on decisions to proceed with or end criminal investigations and the reasons for that? How much of a cultural change from the existing practice will it be for you to have to qualify with the provisions under the bill?

Chief Superintendent Suttie: From a police perspective, that rightly takes things back to the investigation. I think that the bill talks about whether we are going to instigate criminal proceedings or end them, and about justifying them. I do not think that it should be too much of a problem. One of my frustrations as a divisional commander was that, when surveys came out, we were regularly found to be lacking on updating victims of crime. Training will come in. We need to change our culture and understand far better what it is about, and that something is taking people away from being complainers to being victims of crime, because they are victims of crime. Thankfully, crime is going down—I hope that that will continue—but we need a far better service to victims.

Chief Superintendent O'Connor: To build on that, communicating with victims and witnesses and keeping people informed are key to the service.

To build on something that David Ross said earlier, I have absolutely no doubt that there have been occasions in the past when we have not got it right; keeping people informed about what is happening and giving as much information as possible are critical. I go back to the point about training. An issue for new officers who are joining the service right through to the most senior managers in the service is that we need to go the extra mile to ensure that people are kept absolutely up to date on where their investigation is and at what point it will pass across to the Crown and the prosecutors and beyond. That may sound like basics in some quarters, but the service and much of the service delivery hinge on that.

The Convener: Should there be a case companion, which has been mooted to us, if people want that? Should there be someone who supports people and tells them about things? If so, when would the case companion kick in? Would it be when you come into a case and investigate, or when the Crown decides that the case is going to court? For most people, it will perhaps be the one and only time in their life when they are involved in the court process, and it can be overwhelming.

Chief Superintendent O'Connor: Being involved in a court case can be extremely daunting, as you know. For me, the answer depends on the nature and gravity of the offence and the circumstances of the crime.

I would entrench in officers' minds that the case companion must be the officer who is dealing with the victims and witnesses. During the course of the investigation, and depending on the allegations that have been made, the officer may change and more experienced or specialist officers may be drawn into the investigation. However, right from the outset, officers need to adopt the attitude that they are there to support and encourage witnesses and victims through the process, which can be daunting.

Chief Superintendent Suttie: Others can help us with that. Victim Support Scotland can be good in helping us with that because it brings different skills and can approach cases from a different angle. It is perhaps incumbent on the police to get better at making referrals to support agencies—I see that as being a route to go down. I am not so comfortable with case companions, given issues about how they would be serviced and how they would get information.

The Convener: Of course, putting things in language that people understand is perhaps the most important thing.

Roderick Campbell: On victim support, I want to clarify in my own mind what kind of interaction,

if any, the police have with victim information and advice. Is dealing with VIA left to the Crown?

Chief Superintendent O'Connor: The VIA service is overseen and delivered by the Crown. There will be interaction between the police and the Crown in relation to VIA. From where I stand, I say that the VIA service has taken us forward significantly in supporting witnesses and victims. The actual interaction may be through local liaison groups in different parts of Scotland, but interaction does take place.

The Convener: I think that we have no other questions lurking in the woodpile. Do you have anything to add that we have not thought to ask about?

I see that Superintendent O'Connor has put his glasses on, so there is definitely something coming.

Chief Superintendent O'Connor: Yes—these are my Eric Morecambes.

We fully support the aims and objectives of the bill. As probably all of us have alluded to at various points in evidence, we need to assess the bill's impact on the service, ensure that there is a commitment to its provisions across the service and manage public expectations. The measures in the bill are an opportunity, but there will be some risks. One of the big risks will be the information technology infrastructure and the ability to speak to other key agencies in providing witness and victim support. We need to be pragmatic and realistic, but the bill provides a solid foundation to build on.

David Ross: I support everything that David O'Connor has said. We fully support the aims and objectives of the bill, although we have some concerns about the practical implications. Most of those will not be known to us in detail in terms of their direct impact on day-to-day practice—

The Convener: Have you mentioned all those practical implications? Those were about IT and the ability to have someone of the same sex for interviews. Was there anything else?

David Ross: The ability to deliver gender-specified interviewers is an issue. Another issue is whether we have enough appropriately trained people to carry out the interviews in all areas of the country. I am confident that the training is adequate, but I am not as confident that we have enough people trained throughout the country.

The Convener: That will all be put to the cabinet secretary, who I have no doubt is listening.

Thank you very much. That ends our evidence session. As agreed, we move into private session, for which I will wait until the public gallery has cleared.

11:43

Meeting continued in private until 11:55.

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