The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 26 November 2013

Session 4

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JUSTICE COMMITTEE
34th Meeting 2013, Session 4

CONVENER

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

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*John Pentland (Motherwell and Wishaw) (Lab)
*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Catriona Dalrymple (Crown Office and Procurator Fiscal Service)
Lily Greenan (Scottish Women's Aid)
Mark Harrower (Edinburgh Bar Association)
Detective Chief Superintendent Gillian Imery (Police Scotland)
Raymond McMenamin (Law Society of Scotland)
Mridul Wadhwa (Shakti Women's Aid)
Robin White (Scottish Justices Association)
James Wolffe QC (Faculty of Advocates)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 26 November 2013

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

Criminal Justice (Scotland) Bill: Stage 1

The Convener (Christine Grahame): Good morning. I welcome everyone to the Justice Committee's 34th meeting in 2013. Please switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system, even when they are switched to silent.

No apologies have been received.

Under agenda item 1, we will continue to take evidence on the Criminal Justice (Scotland) Bill. This is our sixth day of evidence at stage 1. We will hear from our panel of witnesses on corroboration and related items.

I welcome to the meeting Robin White, who is vice-chair of the Scottish Justices Association; Raymond McMenamin, who is a solicitor advocate and member of the criminal law committee of the Law Society of Scotland; James Wolffe QC, who is vice-dean of the Faculty of Advocates; and Mark Harrower, who is president of the Edinburgh Bar Association. Good morning and thank you for your written submissions.

We will go straight to questions from members.

Elaine Murray (Dumfriesshire) (Lab): Last week, we heard from the Lord Advocate that he is very supportive of the abolition of corroboration on the basis that, post Cadder, it is now very difficult to get corroboration, particularly in rape cases—even corroboration that intercourse had taken place, whether it was forced or not. What is your response to the concern that Cadder has changed the landscape and that we now need to think about removing corroboration in order to protect rape victims?

Mark Harrower (Edinburgh Bar Association): Good morning. Thank you for allowing me to give evidence.

The landscape has changed in that, now that suspects have the right to legal advice before formal police questioning, they are more likely to exercise their right to silence. I understand the concern that a rebalancing of the evidential layout as a result of Cadder is needed, but my concern is that the removal of corroboration is not really the right place to look. I think that we are starting in the wrong place.

It is true that, if fewer people confess, there will be corroboration in fewer cases from that source, but that does not mean that there will not be corroboration from other sources. Cadder is a development in that line but, as we have heard, methods of sourcing DNA evidence are always improving, and we are able to get evidence from other sources in many more cases that we possibly could not have got in days gone by.

Do we need to remove corroboration because there will be fewer instances in which penetration is corroborated? That would be a dangerous way to go. The rates of conviction by juries in such cases are notoriously among the lowest rates of conviction in jury trials that go ahead. It is too simple to say that juries take that approach because there is not enough supportive evidence. I think that juries are hesitant to convict in all serious cases, and there are many reasons why they acquit in rape and attempted rape cases. We need to look at the whole picture.

The removal of corroboration across the board would certainly be a massive step simply to get at crimes that are committed in private, as it is recognised by Lord Carloway as one of the pillars of our system at the moment. We need to be a bit more imaginative if we want to assist the Crown in finding ways to support complainers' evidence rather than removing corroboration across the board.

James Wolffe QC (Faculty of Advocates): I, too, am grateful to be giving evidence on the proposal, which, in respect of its systemic impact on the criminal justice system as a whole, is perhaps the most significant that the committee will have had to consider.

Like Mark Harrower, I would respond to the question in a number of ways. The first point is the one that he made. In circumstances in which one might be less likely to get an admission at police interview, one answer is to look harder for other sorts of evidence. In many cases of the sort that we are talking about, DNA evidence is a realistic option.

The second point is that the proposal to abolish corroboration will affect every case across the whole criminal justice system. As I suspect that we all appreciate, the rule reflects, at root, the practical common sense that if there is evidence from more than one source there can be a degree of confidence that the case is well made. At root, there is a serious policy question to be asked. Is that rule—as a safeguard against miscarriages of justice, which is fundamental to the operation of the justice system—a good rule, which we should hold on to, or is the particular issue that has been identified in relation to the cases that we have been talking about of such significance that the rule needs to be changed?

If one is going to change the rule, there are a number of things to look at. Are there alternative approaches, short of abolishing corroboration across the board? Should one be looking at modifications of the way in which corroboration operates in particular types of case? In any event, given the systemic and fundamental nature of corroboration at every stage of our system, one must look very hard at what one is putting in its place, and one must ask whether one is getting the right balance between safeguards against miscarriages of justice on the one hand, and a reasonable system for prosecuting crime on the other.

Fundamentally, that is why the faculty supports the recommendation that Lord Gill made to the Justice Committee last week—that is, that the issue ought to be examined looking at the whole criminal justice system in the round. Indeed, the faculty's position from the outset has been that the issue is of such fundamental importance to our criminal justice system that, if we are going to look at it, we must give it to a body such as a royal commission or the Scottish Law Commission, with the widest possible remit to consider the implications right across the system.

Raymond McMenamin (Law Society of Scotland): Thank you for the invitation to give evidence on behalf of the Law Society of Scotland, convener.

It is important to remember that Cadder was nothing to do with corroboration. Cadder was to do with the rights of individuals in police stations and what should apply in that particular set of circumstances. The Carloway review opened up the issue of corroboration and how it might fit into the bigger picture. The Law Society of Scotland welcomes the wider debate; the society thinks that there should be a debate about the whole thing, which should not simply focus on how one can get people convicted following Cadder and how one might apply evidential rules in order to get convictions. I would go so far as to say that if the motivation for the bill is to have people convicted in certain classes of case, that is wrong and indeed quite shameful.

There must be a degree of deliberation about where we are starting from in all this and where we wish to go, because if the bill passes into law in its present form we will be in danger of having a system of justice in which the safeguards against wrongful conviction are so minimal as to be capable of being described as basic—and, indeed, compared with other jurisdictions, primitive. Commentators and lawyers from other jurisdictions will look at Scotland and wonder why we are going backwards in this area. They will wonder whether we have learned nothing at all from the Cadder experience.

The Law Society takes the view that we have a great opportunity to widen the debate to look at corroboration and other safeguards that might apply, and at how those might fit into our system. To that end, the Law Society has invited a number of parties, for and against the retention of corroboration, to a debate in January next year. For the moment, however, we have to consider the initial starting point, which is Cadder and the rights of individuals, not the issue of how we can convict people.

Robin White (Scottish Justices Association): I have four points to make that, to a large extent, underline what has been said already.

The Lord Advocate's observations are powerful, but they seek to extrapolate from a limited range of examples. Rape is an appalling crime, but it is not clear to me that one should, from the difficulties of convicting in such cases, extrapolate to every criminal case that there is. It is easy to forget that, according to much of the literature on the issue, more than 90 per cent of all criminal cases are summary cases. There is a heavy emphasis on juries in much of the debate, but they are involved in a narrow range of cases. They are important—quantity is not the only dimension—but they are involved in only a tiny proportion of all cases, and, of course, sexual assaults and rapes are a tiny proportion of jury cases. I am not suggesting that those cases are not important; I am pointing out that the effects of abolishing corroboration would be felt enormously more widely than that.

The second point, which has been touched on and has been referred to in written evidence, is that there has never been an easier time to get corroboration, because of the scientific and medical advances of the past few decades. In some senses, therefore, it is a strange time to be talking about abolishing the requirement.

The third point, which is slightly more fundamental, concerns the balance metaphor that is explicit or implicit in much of the debate. I have trouble with the balance metaphor because it assumes that there are only two interests to be weighed—a set of scales or a chemical balance is obviously the idea behind it—whereas there are frequently more than two. It assumes that there is some sort of unit of account that allows you to say, "I have put more on that side of the balance, so I must put the same amount on the other side." However, there is no unit of account that can be applied. It assumes that you can tell when the balance is in balance—you may recall that a chemical balance has a little indicator that shows when that is the case, but there is no such indicator in this debate. The use of that metaphor leads to an infinite debate whereby one change is argued to require another change somewhere

else, which is argued to require another change, and so on. That infinite continuation of debate is, perhaps, unfortunate.

My fourth point, again, reiterates what others have said. The essential issue is that corroboration, like cross-examination, is a means of testing the quality of evidence. Much of the debate has been about corroboration as quantity. There is clearly a quantitative aspect, but one should not forget that there is also a qualitative aspect: it improves the case if there is corroboration. Therefore—as others have said; this is hardly novel—there is a need to consider everything in the round. I notice that the not proven verdict has been sent off to the Law Commission. That is an interesting and quite important issue but I suggest that it is of enormously less importance than the corroboration question, so why should corroboration also not be sent off to the Law Commission or some other body to be considered, as well as the alternative safeguards that would be put in place if it were to be abolished?

Elaine Murray: The Lord Advocate has also argued that the proposed prosecutorial test, which, I presume, is similar to the test that exists in England, would act as a safeguard against prosecutions that were based on flimsy evidence, as it is based on a reasonable prospect of conviction.

I was therefore quite interested in Mr McMenamin's comment about other jurisdictions, because we have been told by supporters of the proposal that very few jurisdictions across the world use corroboration and that, because we have it, we are somehow behind the times.

10:15

Raymond McMenamin: A lot of people are under the apprehension that corroboration does not exist in other jurisdictions when, in fact, it does. The English have it; the Police and Criminal Evidence Act 1984 contains provision for requiring corroboration of confessions made to the police by persons with mental handicaps. If our bill passes into legislation, we will not have the same safeguard that is built into the English system, which will mean that vulnerable people will be better off in England than in Scotland by virtue of corroboration. The Dutch system, too, uses corroboration for confession evidence. A lot of people are therefore wrong to think that we are the only country that applies corroboration.

It is true that our application of corroboration is more widespread and that we rely on it more than any other country, but other countries also apply it. I have cited the English and Dutch jurisdictions but I know that the United States uses corroboration a lot and, indeed, research will show that other jurisdictions think that corroboration must be considered in many cases. In England, the system contains certain safeguards whereby judges in certain cases can caution juries regarding corroboration and prosecutions based on single-source evidence.

I am not saying that that is right or wrong but it is different from our system, which we have developed in a different way. We are now about to see that aspect disappear and, unlike in many other countries, corroboration will simply not feature. I agree with my colleagues that it is the main safeguard that will go if the bill goes through; as Mark Harrower has pointed out, the minimum that could be done in solemn cases is to increase the votes on a jury by two. Some will say that we still have the not proven verdict but no research has been carried out on its impact as a safeguard; all we know is that it is a verdict of acquittal. We cannot look into the minds of juries—indeed, we are prevented from doing so.

My point is the same as that made by the Lord Justice General. This has not been thought through, and it needs to be thought through a lot more thoroughly than it has been. We need to do more research into other jurisdictions, into what systems might apply here in Scotland and into whether we entirely abandon corroboration or—as is a distinct possibility—retain it in part for certain cases. That approach might well work but it has not been looked at. If we simply throw corroboration out altogether, we will be in danger of throwing the baby out with the bathwater.

The Convener: As you have rightly pointed out, how juries think about cases and come to their decisions is an unknown quantity but Mr Harrower said that he thought that there were reasons why juries do not convict. What are those reasons? What are your thoughts based on?

Mark Harrower: Juries find it very difficult to assess cases involving crimes, particularly of a sexual nature, that are committed in private. They go into court not looking to acquit people but wanting to do their job properly, and I think that the jury system is probably the fairest method of trying someone that can be used.

As a defence lawyer who over the years has represented a number of people accused of rape, I know that such complaints come out of emotionally charged situations in which alcohol is often present and in which the people involved very often know each other and have history between them. More than any other type of case, juries find it very difficult to assess cases of rape and other such allegations because they see a witness—and indeed the accused, if they give evidence—for only a short time in the witness box. Moreover, when witnesses give evidence in court,

they find it an unnatural environment; for example, they might be giving evidence via a television screen as a result of special measures. A person—this applies both to the accused and to the complainer—may not perform well on the day because of the pressures of being in court.

Although some contributors of evidence on the bill have referred to certain preconceptions in Scotland that need to be tackled—regarding how women dress, for example, or other things that have in the past been identified as problems—modern juries nowadays are hesitant to convict in rape cases because, even with corroboration, the case very often boils down to one person's word against another's. Even if the case gets to court with corroboration of penetration, the question comes down to whether there was consent or not, and that is still a very difficult assessment for juries to make.

That assessment will become even more difficult if we put cases into court where there is no corroboration. At present, as the Lord Advocate said, there needs to be some support for the three essentials in order to prove rape: penetration, lack of consent, and mens rea on the part of the accused. Currently, the cases that go to court have that element of additional evidence. What is proposed is that we put cases into court where that additional element is absent. How can we expect juries to be more sure when that evidence is not there?

With regard to the qualitative test that Elaine Murray mentioned, we need only look over the border to a very recent case that involved a very high-profile prosecution for rape based solely on the evidence of a complainer. That resulted in a unanimous acquittal of the person who was accused, but we must consider what effect the case has had on the system. Whether that was a miscarriage of justice depends on one's definition of the term; I know that Lord Carloway says that the cases of people who are not brought to court qualify for the same definition.

When someone is acquitted in a high-profile case such as the one in England, it is equally damaging for the criminal justice system if we are left wondering why the case ever got to court in the first place. In the newspaper reports about the Le Vell case, commentators were asking how on earth that case got to court in the first place. The case would never have made it to court in Scotland, because of corroboration. The result of the Le Vell case is that the accused's life is ruined, and there is a lot of rebuilding to be done. In addition, we must consider the effect on the complainer in future, as she has been disbelieved and will have to deal with that.

We need to make difficult decisions in our justice system about which cases we put into court. It is not simply a question of just putting witnesses in and letting them get on with it. The rules that we have established over a very long time have—as Lord Gill said—served us extremely well. We have very few miscarriages of justice in this country because we have set the bar quite high and said that we will not put cases into court unless we can be sure that, if a conviction is returned, we have got the right person.

The Convener: I will take Margaret Mitchell first, followed by John Finnie, Roderick Campbell, Sandra White, Alison McInnes and John Pentland. All the questions are on corroboration, so there is no such thing as a supplementary. I see that Christian Allard wants to come in too.

Margaret Mitchell (Central Scotland) (Con): We have heard quite a lot of evidence this morning, and I want to be clear about three things. First, do panel members agree that other jurisdictions' not having corroboration is not a reason to abolish corroboration in Scotland?

Secondly, the Carloway report examined two options: to abolish and to retain corroboration. The third option is to retain corroboration and to improve the law of evidence in order to make corroboration easier. That option seems to be viable, but it was not considered. Would the panel favour consideration of that option? I am thinking in particular of the Law Society of Scotland's upcoming debate, which will address the options of retention and abolition but, perhaps, not the third option, which might usefully be added.

Thirdly, Lord Gill made another suggestion which—for the avoidance of doubt—two of the panellists have already indicated would be good. The committee is very worried about pressure of work and the fact that we are considering the very lengthy Criminal Justice (Scotland) Bill, which has many other provisions with which abolition of corroboration is slotted in. Given the importance of corroboration to the criminal justice system and Scots law, and the weight of opinion against abolition, would the panel favour taking the provisions out of the bill and giving them to a royal commission, for example, so that the issue could be properly examined?

Raymond McMenamin: On that last point, yes—the Law Society of Scotland would favour the provisions on corroboration coming out of the bill and going before a royal commission. We think that the matter is so important that we need that wider debate. We also need wider research, as I have already mentioned. I agree entirely with the suggestion.

Margaret Mitchell: What about the options?

Raymond McMenamin: At present, it would be premature, given the need for wider research and discussion, to say that one thing should happen

over another. However, at the moment, corroboration should not go; we have nothing to put in its place that would provide the safeguard that corroboration currently provides.

Margaret Mitchell: Could I ask you to look at it another way—to look at retaining corroboration but improving the law of evidence to make corroboration easier? As Mr White already said, with new technology and with more DNA evidence, we should be able to use the law of evidence to try to make corroboration easier.

Raymond McMenamin: I think that we already do that, because corroboration has in various respects been whittled down—for want of a better expression—to the bare minimum. For example, in cases where there is scientific evidence, there is now statutory provision—there has been for some time—for only one scientist to be called to give evidence for the Crown, and notice is given by the Crown, in the service of an indictment, that that is to happen. Only one person is needed to speak to scientific evidence.

Lord Carloway, whom I have heard speak on corroboration on a number of occasions, has stated that in his view, corroboration has been reduced in various areas to almost nothing, which is one of the reasons why he advances his argument for its abolition. It is correct that it has been reduced; in our evidential rules, it does not take much at all to corroborate a confession. For example, special knowledge confessions basically mean that if somebody makes in a confession a reference that suggests that they may have been the perpetrator—that they have knowledge of how a crime was committed—that is enough. We already apply a very much-weakened rule regarding corroboration in many respects.

Margaret Mitchell: I think that we are looking at this in different ways. I am looking to strengthen corroboration and to see how it could be improved and more easily established, and not just as it relates to DNA and new technology but in terms of what happens in court at the moment—for example, the Moorov doctrine and the timescales that are applied in practice, which could be relaxed a little to improve things. Those are just two propositions that we are bringing to the panel today, which I think rather proves the point that there is an argument for a third way, which is at least to consider retention while improving the law. I do not think that either of us—

The Convener: I caution you about using the word "we". I have no problem with what you are saying, but you need to speak for just yourself—as does everyone else.

Margaret Mitchell: Yes—okay. It is something to consider.

On the third point, with regard to what other jurisdictions do, Lord Gill made the point in his opening statement at last week's meeting that what other jurisdictions do is not a reason in itself to retain or abolish corroboration.

The Convener: We have had Mr McMenamin's answer; do other witnesses concur? Mr Wolffe?

James Wolffe: Thank you, madam convener. I agree with all three propositions that have been put to me. On that last point on comparison with other jurisdictions, it is perhaps a mistake to look narrowly at the question of corroboration and what other systems have in relation to the rule of corroboration. You have to look at a system in the round. A much better informed authority than me, the regius professor of law from the University of Glasgow—along with his colleagues—has submitted written evidence to the committee that states that if

"the Criminal Justice (Scotland) Bill as it now stands"

were to be enacted, it would

"reduce the level of protection against wrongful conviction offered in Scotland below that offered in any other comparable jurisdiction."

That statement is by three distinguished academics from the University of Glasgow; I suggest that it must be taken seriously.

The other point that perhaps is worth making in relation to the contrast between Scotland and other jurisdictions is that, over the years, a variety of options that form part of the suite of safeguards in other jurisdictions have been looked at in Scotland, but have been rejected on the basis that we have, among other reasons, the protection of corroboration. I can give the examples of dock identification and the picking out in court of the accused by a witness. Many systems regard that as an unfair procedure, but it is regarded as being acceptable in our law, within limits. One of the reasons why it has been found to be acceptable in our system is that we have corroboration.

10:30

If we are to abolish corroboration across the board, we have to look again at a variety of the rules that we apply routinely in our courts, and to decide whether they should remain an acceptable part of a modern criminal justice system that does not have corroboration. I suggest that it is therefore important to look at corroboration not in isolation, and I have given a number of reasons why. The Faculty of Advocates does not suggest that there is no issue to be examined. We welcome the debate on such a serious and important issue. However, if corroboration is to be examined, we should look in the round at all the structures and rules of our criminal justice system.

Robin White: If the system were unique, that would look like a very good reason for abolition: "They're all out of step except our Johnny". However, the common objection is not that that is not an argument but that it is a burden of proof issue. That is to say that it is an argument, but no more than an argument. If you like, it is not a knock-down argument, hence the suggestions that the matter needs to be looked at more fully.

Mark Harrower: The proposal to abolish corroboration should be taken out of the bill. I do not think that I have spoken to a single solicitor in my jurisdiction who supports abolition. You might think that my profession would be the one to benefit most from more cases going to court, but we do not want it.

Every solicitor who has been doing the job for a long time, running trials week in and week out, will be able to talk about a handful of cases—I hope only a handful—in which he or she genuinely believes there have been miscarriages of justice. Most such miscarriages of justice are below the radar because they happen at summary level; as we have heard, the majority of prosecutions in Scotland are at summary level. In 2011-12, 96 per cent of people who were convicted were convicted in the sheriff summary courts and justice of the peace courts, and the so-called safeguard of the majority raising jury will not even touch that because juries never go near the sheriff summary courts or JP courts. The majority of convictions in this country have nothing to do with jury voting. That is one of our main concerns. Nothing in the bill is proposed as an additional safeguard on summary business.

Apart from that, most solicitors will be able to tell you that they have dealt with a number of cases in which people were convicted, and most decisions on guilt were based on questions of credibility and reliability, which means who the judge or jury believed and who they rejected. When a judge or jury comes to a decision that goes against a solicitor's client, there is not much that the solicitor can do about it: that is the end of the line. You only get one shot at a trial in Scotland and you only really get one appeal. Appeals against conviction generally have to be based on errors in law. You cannot ask the appeal court to revisit all the evidence and come to a different decision about who the sheriff or jury believed.

We have a one-stop shop, which is why we in Scotland have been so determined to ensure that we get it right first time around. That is why the formula at which we have arrived has produced very few miscarriages of justice. During the past few decades in England, a number of high-profile miscarriages of justice have been overturned in the appeal court. Many of those convictions were based on single sources of evidence—primarily confessions—whereas we in Scotland always look for an independent check. We have avoided what has happened in England by virtue of the formula at which we have arrived over a long period. To change that suddenly and to take one part of that equation away without looking at what we need to replace it with would be a big mistake.

As far as evolution of the law of evidence is concerned, it would be possible to look more at what we could do in particular cases to assist the Crown to get cases to court. However, we need to look at that very carefully because the law of corroboration would need to be watered down in respect of crimes that were committed in private if we are to get more of the cases that the Lord Advocate talked about into court. Is that what we really want to do, though? Do we want to create a special class of case in order to get cases involving one against one into court so that juries can make a decision?

We can look at the options. The law of corroboration has managed to evolve over the years; in recent times we have managed to bring home two convictions for murder in cases in which no body was recovered. That happened in a system in which we have all the challenges that corroboration puts in front of the Crown. I think that we can say that our justice system actually serves this country very well in respect of such difficult cases.

I agree with everyone else that we cannot just rush to judgment on this matter. We need to look at the whole system because all the elements are interdependent. I have heard sheriffs say many times that they have found proof beyond reasonable doubt in corroboration. Sheriffs, of course, will give reasons for their decisions in a conviction case, but juries cannot do that. Perhaps we need to look more closely, too, at how juries arrive at their decisions before we can safely say that a jury majority of 10 is a safe margin.

The Convener: I have raised previously the issue of how juries arrive at decisions. I put it to you that you would say what you said about corroboration because you are a defence lawyer, so if we were to get rid of corroboration, fewer of your clients would get off. How do you answer that?

Mark Harrower: Many solicitors start off on my side of the fence as defence lawyers, but quickly become prosecutors or go to other parts of the system. We all have an interest in the system working properly. As I said earlier, we can all think of cases—we do not really forget them—in which we know deep down that there have been miscarriages of justice.

I can think of a case from a few years ago of a rape conviction that was returned against a man in

his early 20s who had no previous convictions. After a night's drinking he met a young woman in the town and they got together; there was evidence on video of their being together. Later on, intercourse happened in a public place and according to the complainer it was non-consensual, but according to him it was consensual. Without going into all the details of the case, I remain convinced to this day that that young man was innocent and nobody will ever convince me otherwise. He was very well represented by someone who was a defence solicitor, and is now one of the top prosecutors in Scotland, who will not be convinced otherwise, either. Because it was a decision that was based purely on credibility and reliability, there was nothing I could do. I had to sit and tell him and his mother that because our law is that all questions of credibility and reliability are exclusively for the jury or the judge, his case was at the end of the line.

I do not want to see an increase in cases like that, which is the reason why all my colleagues and I are opposed to the abolition of corroboration. We believe, as does Lord Gill, that abolition will mean an increase in miscarriages of justice. It stands to reason that if we lower the standards that are required, we will convict more innocent people.

James Wolffe: As professional lawyers, we are fundamentally interested in the proper administration of justice both in securing convictions against the guilty and in acquittal of those who are not guilty. In looking into the matter, the Faculty of Advocates convened a committee that included advocates with considerable prosecution experience as senior advocate deputes, as well as those with experience from the defence side. It is important that the committee understands that it was that body that put together the response from the Faculty of Advocates.

The faculty's fundamental concern with the bill is that if the provision in relation to corroboration is enacted with the ancillary provision that would increase the jury majority from eight to 10, we would be left with a system that fundamentally runs an unacceptable risk of an unfair trial in Scotland.

The Convener: I thought that it was important to get that on the record because one of the issues that will be raised is that you are speaking from the defence side alone. It gives an opportunity for that to be challenged elsewhere.

John Finnie (Highlands and Islands) (Ind): Good morning, panel. I have a question about the phrase "access to justice", which keeps cropping up in evidence. The argument that is being put is that the requirement for corroboration is denying people access to justice. I would appreciate your comments on that, along with issues around sufficiency of evidence and what the rationale for prosecution is in relation to the public interest.

Raymond McMenamin: Prosecution should always be in the public interest. That must be the starting point.

There is an issue with our system of corroboration in that when certain persons make complaints and there is no corroboration or back-up evidence, they are not in a position to give evidence. A prosecutor will decide that the case cannot go to court because of a lack of corroboration. That may well have to be looked at.

In considering that, we must have a system that is robust and fair to all—that is, to witnesses and accused persons. It is a difficult thing to reconcile, but at present the Law Society—whose members, I hasten to mention, consist of defence lawyers, prosecutors and those who represent the interests of people who have been victims of crime—feels that there is now a great opportunity to look at all that and to come up with a system that will serve us well in the future. However, it is a difficult issue and I accept totally that in our corroborative system, there are some people who will make complaints who will not have the chance to give evidence.

James Wolffe: Perhaps one needs to look at it this way. One ought to be concerned about access to effective justice. We do not serve anyone's interests by bringing a prosecution that does not have a reasonable prospect of success. It is not in the interests of a complainer to be put through a trial in which the jury will only acquit. To put an accused person through a trial when there is not a reasonable prospect of conviction is not only a waste of public resource but deeply unfair to that accused person.

If one is going to talk about prosecution in the context of access to justice, it is important that we are talking about access to effective justice and not simply the airing of an allegation in the abstract.

Robin White: Given the remarks that "Defence lawyers would say that, wouldn't they?", I have the advantage of being disinterested in this matter, being neither a prosecution nor a defence lawyer—

The Convener: That was a correct use of "disinterested". That is one of my bugbears.

Robin White: I am glad that it will appear in the *Official Report*.

The Convener: Yes. I love it.

Robin White: I am pleased to have given you pleasure.

The Convener: I am not saying that you did not know what you were saying, but so many people use it in the wrong way. Miss Campbell taught me how to use it.

Robin White: We must keep up standards.

As a minor member of the judiciary, I speak with a degree of disinterestedness. On access to justice, I take it that that was, in effect, a reference to victims. I am concerned by some aspects of the view that is being taken of victims in the criminal justice system. Victims and witnesses tend to be collapsed into one group. There are clearly very important issues about witnesses; they are not infrequently victims. In the past, the criminal justice system has been very remiss in treating them simply as prosecution fodder—or defence fodder, as the case might be.

We have to distinguish the interests of victims as victims, from the interests of witnesses who may be victims. The significance of that is that there is a danger of losing touch with—I think it is uncontroversial to say it—the underlying purpose of the entire criminal justice system, in so far as it is a system, or with criminal law and criminal procedure. Criminal law is that part of the law that identifies behaviours that are to be punished—I will use that word—and for which sanctions are to be applied. Criminal procedure is the means by which rules for identifying those people are laid down. The underlying purpose of the criminal law is to identify those who have done a category of wrong that we will punish.

10:45

Another part of the law is entirely concerned with compensation of victims of one sort or another—the law of delict. There is masses wrong with the law of delict, just as there is masses wrong with the criminal law, but we have to be careful not to trespass out of the criminal justice system into the delictual system and assume that the function of the criminal law is to provide a remedy for victims. If it does that, that is all well and good, but I hope that it is uncontroversial to say that that is not its fundamental function. If we are going to try to change the criminal justice system's fundamental function, we should know that we are trying to do that and not do it by a side wind.

I have a second point on sufficiency and public interest. The prosecutor's test for prosecution has already been mentioned, and I think that we are coming back to it. I am certain that I am correct in saying that, in the Carloway report, there was no discussion of what that test might be if corroboration were to be removed. I see that the written evidence from the Crown Office mentions what it thinks the test should be, but I think that it is accurate to say that there has been little discussion of that. What the Crown Office writes might be sensible, but it is not something on which there has been general debate. If the nature of the decision to prosecute is to change, as it must, there will have to be considerable debate about what the test will be.

Mark Harrower: We have to remember that our system, like all systems of justice, is a human system that is never going to be perfect. We can never convict everyone who is guilty and we cannot protect everyone who is innocent every day of the week. All that we can try to do is achieve a balance whereby we properly and fairly process as many guilty people as possible while keeping miscarriages of justice to a minimum. I think that we have managed to achieve that.

The phrase "access to justice" implies opening up the courts to those who have complaints and who want to see the person whom they perceive has wronged them brought to justice and convicted and punished. We have to remember that not everybody who makes a complaint is telling the truth. Unfortunately, because it is a human system, although many people come to court to do their best and tell the truth, a number of people come to court to lie. It is difficult for a human system, especially if it deals with witnesses in a short space of time, to ascertain who is telling the truth and who is lying.

We ask juries to make those decisions, and we recognise that it is difficult to do. In Scotland, we have given them some assistance by saying, "Look for something else—an independent check." That is true not just for juries but for sheriffs, and it has worked very well for us. By lowering the standard of proof, you will open the doors of the court to more complainers and increase the risk of convicting more people on lesser evidence, which will increase the risk of miscarriages of justice.

John Finnie: With regard to the crime of rape, the three elements that you mentioned—consent, mens rea and proof of penetration—were alluded to last week by the Lord Advocate, who said that, before Cadder, we had a situation where an accused may have previously admitted to consensual intercourse and one of the elements had then been proved. If one of the catalysts for the removal of the requirement of corroboration is to improve the conviction rate for heinous crimes including rape, do you think that there will be an alteration to the three elements, or are there other consequential effects of that? It would seem that, if you do not prove penetration, you are talking about another heinous crime, potentially.

Mark Harrower: As I said earlier, even with corroboration, juries find it difficult to decide who they think is telling the truth in such situations. I do not know how you are going to corroborate

penetration other than by an admission from the accused or forensic evidence. It is just not going to happen unless you can find some compelling supporting evidence.

The supplementary Crown submission provides a number of examples that I think are powerful arguments but which do not amount to corroboration as we know it. Either you have corroboration or you do not and if you get rid of it, it will be possible to convict someone of rape who might never have met the person in question. I know that the Crown intends to apply a qualitative test and look for supporting evidence, but I have not heard it say, "We'll definitely not prosecute if there is no supporting evidence." We need look only at the Le Vell case down south, which, despite the lack of supporting evidence, was prosecuted all the way. We should seek to avoid such a situation in Scotland, however difficult such choices might be and however difficult it might be to tell someone you think might make a very good witness, "I'm sorry but this is the rule." We need such rules to ensure that we maintain the balance that has been struck here.

The Convener: Have you concluded, John?

John Finnie: No, convener. I have one final question on Mr Harrower's point about the two recent murder convictions in cases where no body had been found, which showed that, with corroboration and sufficient investigation, a conviction could be obtained. That would often require a Crown Office direction to the police service and the availability of dedicated police resources. Do you think that, as presently configured, our system has sufficient resources for the Crown to ensure that that would happen in every case?

James Wolffe: Although we are discussing fundamental principles with the committee, one cannot ignore the resource question. Indeed, the Faculty of Advocates has made a response to the bill's financial memorandum. On its own analysis, the Crown predicts an increase of between 3.5 and 12.5 per cent in the number of solemn prosecutions if corroboration is abolished, which equates to 220 to 760 additional cases prosecuted on indictment each year, and a much greater number of additional summary prosecutions. We have sought in our written comments to address the various assumptions that the Crown has built into its approach to resources, but the bottom line is that, as a result of the measure, significant additional costs have been identified as being required at all stages of the criminal justice system, particularly in the Crown Office and the courts. Indeed, the estimate for the courts is £3.25 million in staff resources and about £900,000 in training.

A striking feature of the financial memorandum is its statement that the additional costs to the Crown and the courts system will be absorbed without any increase in funding. Of course, if this is the right thing to do, one will have to find ways of resourcing it, but with such a systemic change one needs to take a clear-eyed view of the practical consequences for the system. We must be concerned that, first of all, a system that one might already regard as stretched will become overstretched and, secondly, any investigation that does not have to be carried out might not be. I say that, of course, without suggesting any want of integrity on the part of the police or prosecutors.

The Convener: We will move on. I call Roderick Campbell.

Roderick Campbell (North East Fife) (SNP): I refer to my entry in the register of members' interests; I am a member of the Faculty of Advocates.

As it says in the submission from the Crown Office and Procurator Fiscal Service, the second part of the new test for prosecution, which requires a prosecutor to make an assessment about the public interest, is no change from the current situation. However, the first part—the evidential test—will be made up of three elements. As the Crown said, those will be:

"(i) a quantitative assessment—is there sufficient evidence of the essential facts that a crime took place and the accused was the perpetrator?

(ii) a qualitative assessment—is the available evidence admissible, credible and reliable?

(iii) on the basis of the evidence, is there a reasonable prospect of conviction in that it is more likely than not that the court would find the case proved beyond reasonable doubt?"

To what extent will the new test provide safeguards against potential miscarriages of justice when prosecutions go forward? How much of an improvement will it be?

Raymond McMenamin: It might not provide any safeguards. That is largely speculative. There are assessments that a professional prosecutor will have to make, based on his or her experience, but within that there are no real safeguards.

That is especially the case given the point that has just been made. There is a widespread perception in the legal profession that the Crown is struggling with its workload, which is a concern. That might not be something that the Lord Advocate will readily accept or admit to, but I am a practising defence lawyer and can confirm that there is such a view of the Crown. We are talking about beleaguered procurators fiscal marking cases—and Crown counsel perhaps less so. If the prosecution system is under stress, our chances

of having prosecutors think about safeguards as they mark cases are diminishing all the time.

James Wolffe: As I said, I do not for a moment doubt the integrity with which prosecutors will seek to apply the test. However, there is a constitutional point. In looking at the bill, the Parliament is looking at the statutory structures within which a trial will take place and the safeguards in that regard, but the Lord Advocate's guidance to prosecutors is not to be enshrined in statute and has as yet been the subject of relatively little debate, as Mr White said.

Lord Advocates come and go and may change their guidance. I note that the Lord Advocate has acknowledged that for certain classes of individual, which are identified in paragraph 33 of the Crown Office's supplementary submission,

"proceedings ... would not be taken up without strong supporting evidence."

One understands why the Lord Advocate said that in the context of those particular cases. However, that is an example of how the guidance that will be provided will result in the test being applied in different ways to different classes of case, in ways that are, as yet—and in saying this I am not being critical of the Crown's written evidence—unclear and unknown.

Legislators who are looking at the bill must ask, "Are we putting in place a system that adequately secures the conviction of the guilty and the acquittal of the innocent? Will the structure that we put in place provide adequate assurance in that regard?" Of course the prosecutor's role is important, but it is not a legislative safeguard, and precisely how the test will be applied remains to be seen.

The Convener: Does anyone else want to comment?

11:00

Mark Harrower: On the ground, in the courts, the bar is seeing prosecutors who are under increasing pressure. They have big workloads nowadays, and there seem to be categories of case that they are on instruction to proceed to trial with, come what may. That rather counts away from the tradition that we have always had in which prosecutors have had the discretion to discontinue cases if they did not believe that they were in the public interest.

In recent times, certain cases have been highlighted as being of particular concern to society, such as cases with racial or religious aggravations. I have spoken to prosecutors about that. A stalking case was highlighted in the *Daily Record* as recently as last week. According to the *Daily Record*, the Crown Office stated:

"pleas of not guilty in such circumstances should not be accepted without evidence being heard at trial."

Stalking cases under section 39 therefore now seem to fall under the category of cases that have to go to trial.

As recently as this morning, I spoke to a prosecutor to ensure that what I am about to say is right. There is a certain category of cases in which a certain sensitivity is identified, and it is thought that almost all cases of that type should proceed to evidence. Certain cases are therefore prioritised for trial.

The proposed new test will require prosecutors to do a great deal of independent assessment of the evidence and to take on responsibility in those cases, as they will need to assess what supportive evidence there is, the quality of that supportive evidence, and whether it is enough to justify the case going to court. They are expected to make a decision on whether the case could reasonably proceed to a conviction on the basis of what will often be written statements.

A lot of people are prosecuted year on year. In 2011-12, 124,736 people were proceeded against in court and prosecuted. If corroboration did not apply to all of those cases, how would that assessment be made? We do not expect prosecutors to get in the complainers in every single case, so they will need to make the assessment based on written statements. In the smaller cases—the summary cases that I have mentioned, in which people can still get up to 18 months in jail if they are convicted—those written statements will very often be taken by police officers, who will sometimes not be very experienced. They can be taken late at night when those officers are under pressure—for example, in the middle of George Street when a big rammy is going on. How are prosecutors to make a proper assessment of whether the case has a reasonable prospect of conviction, based on statements alone, especially when prosecutors may be subject to the additional influence of having to be careful of cases with particular sensitivity? I worry about how that test will apply and how our prosecutors, who are so used to corroboration, will change their mindset to apply it properly.

The Convener: You are being delicate but, given the stalking case example, are you implying that, because of the sensitivity, sexual assault, rape and domestic violence cases will be taken to court almost no matter what? Is that where you are going?

Mark Harrower: I think that we see categories of case going into court in which prosecutors are clearly under instruction to get on with it. For example, just a couple of weeks ago, I saw a domestic abuse case file sitting on a table in court

with a big note from a senior prosecutor to the junior prosecutor that said that there was a reluctant complainer in the case, but proceed anyway.

It could be said that it is in the public interest to proceed with all domestic abuse cases, as that is quite rightly an area of concern, but I think that, if we apply that to every single case of a particular type, we will plug up the courts with cases that have to proceed to a conclusion. For example, I had a jury trial in the sitting in Edinburgh last week that was one of nine jury trials that were adjourned out of that sitting. I think that that was the third or fourth trial diet that that case of mine had got to.

As Mr Wolffe said, we have to be able to balance the resources in this country, which are not infinite, with prioritising cases that truly are the most important ones, and we need to guard against imposing blanket directions in cases of a particular type because we are worried about what the *Daily Record* might say.

Roderick Campbell: I want to move on to another subject: the reasonable jury point, which was in the Scottish Government's second consultation on safeguards and which is not proceeded with in the bill. What is the panel's view on that point? Lord Carloway suggested that there were two reasons why the proposal would be inappropriate. One was that, if the judge got it wrong, it would be very late in the day for the prosecutor to try to appeal the decision, and it would be costly in terms of resources. The second was that, if one judge alone made the decision, it would be an opportunity for an idiosyncratic judge to decide, whereas if the decision is restricted to the appeal court with three judges, they are more likely to get it right.

Are there any thoughts on that and on the implications?

James Wolffe: As I understand it, Mr Campbell is raising the question of whether the trial judge should have the right to withdraw a case from the jury on the basis that the evidence does not meet the appropriate standard, whatever it is.

First, we have a ground for appeal in our system that allows the appeal court to set aside a conviction on the basis that no reasonable jury would have convicted. Logically, that implies that we recognise that, on occasion, juries bring in verdicts that are unreasonable. It seems odd that we are depriving the one independent and impartial judge, who is highly trained and has seen the evidence, of the power to withdraw a case from the jury in those circumstances.

That ties in with the point about prosecutorial discretion. For example, a prosecution may be brought in good faith on the basis that it is thought that the evidence meets the test, but at trial, when the witnesses appear, the evidence does not meet the test. One would hope that, in those circumstances, the prosecutor would withdraw the case from the jury, but he or she might not. Are we to say that the judge may not say, "I do not take the view that the evidence meets the test that would have allowed the case to be prosecuted in the first place, and I am going to take it away from the jury"? It is odd that such a proposal has not been taken forward.

To meet immediately the objection that the provision would put power in the hands of a trial judge who may exercise it idiosyncratically, the Parliament has recently provided for a right of appeal where a trial judge upholds a no-case-to-answer submission. We have had experience of such appeals, and appeal courts are convened very swiftly—effectively overnight—so that the appeal court can review the trial judge's decision to uphold the no-case-to-answer submission and remove the case from the jury by that means. The appeal court is convened swiftly so that, if the Crown appeal is upheld, the case can go straight back to the jury and the jury can decide it. The Parliament has already put in place the mechanism that can deal with the concern that Lord Carloway expressed. There is no reason why a similar Crown appeal could not be made available against a decision of the type that we are discussing.

Robin White: I emphasise again the point about the propensity of trials to be summary. We are discussing further safeguards that are to be introduced, but the discussion has related entirely to jury trials, which—as we know—make up a tiny proportion of trials. It is difficult to imagine how that particular form of safeguard could be operated in summary trials, because the fact finder and the law decider are collapsed into one, so a summary sheriff or a justice of the peace would presumably have to advise himself on the matter.

Roderick Campbell: On the question of the number of jurors in agreement—whether it should be 10 or 12; I will put it that way—the judges collectively seem to be happy enough with two thirds. However, the written evidence from the Faculty of Advocates suggests that, as that would still mean that potentially five people would take a different view, it would not be a safe way of preventing miscarriages of justice. Are there any further comments on that, or is there just a difference between the faculty and the judges?

Raymond McMenamin: If a third of a jury have reasonable doubts, does that not raise alarm bells about the conviction, even more so than in the current situation, in which we need only eight out of 15 jurors to convict?

I appreciate that senior judiciary have expressed the view that 10 out of 15 might be appropriate,

but where has that come from? Again, no research has been carried out on the matter. For example, we have not looked in detail at other jurisdictions. If we are going to take the English and Welsh system as a template for a system that does not use corroboration in such a widespread fashion, we should remember that the juries in that system are, in the first instance, directed to return unanimous verdicts. Only on the judge's direction can there be a 10 out of 12 majority verdict for a conviction, which is still a substantially higher standard than 10 out of 15.

Referring, again, to the academic studies that James Wolffe mentioned earlier, I note that the only other system that applies a single straightforward majority is the Russian one. I am not decrying that system in any way, but I understand that it is different; for a start, it relies not on a single verdict but on a kind of questionnaire that the jury has to fill in. Moreover, we know that in other jurisdictions juries sometimes sit with qualified lawyers or others who might advise them.

As I said very early on in this session, the Law Society of Scotland is deeply unhappy with the proposal to simply increase by two the number required for conviction without any background or research.

Mark Harrower: I agree that insufficient research has been carried out into how juries reach their verdicts. For example, in a jury trial that I conducted a couple of years ago of a nurse accused of assaulting an elderly patient, the nurse was—rightly, in my opinion—acquitted unanimously. However, when I went into the jury room after the case to help the bar officer to clear out all the productions—we had received very voluminous defence productions for the case—we found a piece of paper on the table that said, "10 not guilty, two not proven, one don't know". We would never have known how that jury reached its final verdict—if that was, of course, how it reached its verdict—but the fact is that jury deliberations have traditionally been shrouded in secrecy and we do not know how juries arrive at their decisions. All that we can hope is that they can understand in a very short space of time the complex directions that we give them. Sometimes they will come back with questions, to which the sheriff must give concise answers that, again, one hopes they will understand.

Occasionally you will get a verdict from a jury that you cannot understand but, by and large, juries do their best. Nevertheless, before we reach any view on whether 10 out of 12 is safe, it might be that we should take more of a look at how juries arrive at their verdicts in the first place.

James Wolffe: As I understand it, the norm in common-law systems is unanimity or near unanimity. Moreover, the very difference of opinion on this one issue shows that we need to look at the system at large and all its elements so that we can secure a system that strikes the right balance between prosecuting crimes effectively, including those sexual crimes and crimes of domestic abuse that rightly raise public concern, and avoiding miscarriages of justice.

The Convener: As time is pressing, we will move on.

Sandra White (Glasgow Kelvin) (SNP): Good morning. I am glad that Mr Wolffe has mentioned crimes of domestic violence, because last week we were given figures that showed that hundreds of domestic violence and rape crimes do not reach the courts. Obviously that was a matter for concern and we considered those figures alongside the issue of corroboration. I mention that simply because Mr Harrower has constantly referred to one miscarriage of justice down south; I would argue that those figures show that there are hundreds more miscarriages of justice. After all, justice is also for victims, which is indeed the issue that we are considering in the round in this bill.

The Lord Advocate has said that because of the corroboration requirement, he is unable to prosecute many crimes that have been committed, simply because they happened in private, the victims of which, of course, could be children and elderly people. Although the supporting evidence might be persuasive, the cases cannot be prosecuted because the corroboration rule has not been met. If corroboration remains, what do you as experts in the justice system suggest we put in place to ensure that victims in such cases receive justice?

11:15

James Wolffe: First, there is understandable public concern about those categories of cases, which are rightly ones to be taken extremely seriously. Secondly, as I recall, the Lord Advocate gave statistics to the committee on the number of cases in those categories that were marked for no prosecution on the basis that there was insufficient evidence. Alison McInnes then asked a very pertinent question, which was how many of those would be prosecuted by applying the new test. It is important to recognise that, at least on the Lord Advocate's view of his own test, not every case in which a complaint of sexual crime or domestic abuse is brought would be prosecuted. So, I think that one has to be slightly careful about the numbers that one looks at.

Thirdly, it is important to understand that abolishing corroboration is not a panacea for the difficulties that those cases raise. Mark Harrower has already identified some of the difficulties that I

suspect any of us who have prosecuted serious sexual crime will recognise. Fourthly, those of us who have prosecuted those crimes recognise the value of corroborating evidence in supporting a complainer's evidence and in persuading a jury to accept that evidence. Further, the corroborating evidence might be extremely important if the complainer is, for a variety of reasons, a difficult witness. It is therefore very important that we do not end up with a system in which there is a diminution in the efforts that are put into ensuring that all investigations are carried out and evidence obtained.

I do not suggest that there might not be room for examining the way in which corroboration works. If I understand it correctly, Lord Hope has suggested that one might look again at the role that distress plays in corroborating the different elements of a sexual crime. One might look at the corroboration of crimes by reference to facts and circumstances that are consistent with the complainer's account. I do not wish to commit the faculty to a view on those points, but—

The Convener: They are just observations.

James Wolffe: I do not suggest that there is not a case for examining the way in which corroboration works in relation to sexual crimes, nor do I for a moment suggest that the issues in relation to those crimes do not create a case for examining whether corroboration is a doctrine that we should retain. Our fundamental concern is that if we are going to take away corroboration—ultimately, there is a serious policy question about whether to do that or not—then we must appreciate that the whole system will look completely different at every stage: the investigation stage, the prosecution stage, the trial stage and the appeal stage. One must look very hard at whether we will leave ourselves with, as the academics from Glasgow say, a system that fundamentally runs an unacceptable risk of unfair trials taking place in this country.

Sandra White: Thank you very much for that, Mr Wolffe. I agree with your point about the number of cases not coming to court because of a lack of corroboration. The Lord Advocate was very honest in saying that it is still high compared with the number in respect of some other crimes.

I want to pick up on some of Mr McMenamin's comments about corroboration and no one having said what could be put in its place. We talked about corroboration being removed from other countries' judicial systems. Mr McMenamin said that in England there is a provision for vulnerable people under the Mental Health Act 2007 and that there is similar provision in Holland. You also said, Mr McMenamin, that we rely on corroboration more but that it has been whittled down to almost nothing.

When we talk about corroboration as a separate issue, you say that it has been whittled down even more, but we use it more. Will you elaborate on that? Why do we need to keep corroboration as it stands if we rely on it too much and it has been whittled down to almost nothing?

Raymond McMenamin: Over the years, there have been a number of cases before the appeal court that have addressed corroboration in various areas of law. I will not go into the detail of those particular cases but suffice it to say that not everything has to be corroborated. The essentials of a criminal case—that a crime was committed and the identity of the person who committed the crime—have to be corroborated, and we have corroboration of those essential matters in such cases as a check and a system of safeguarding against miscarriages of justice.

It is correct that corroboration has diminished in that what is today being called the corroboration doctrine does not apply as strongly to certain evidential aspects as it does to others. However, if you are going to convict someone in a court of law, you need a system of checks and balances to avoid miscarriages of justice, and at the present time we have corroboration; we have nothing else of any substance. It is important to acknowledge that. Until we can come up with something to replace it—although we might never come up with something that will satisfy everyone—I suggest that corroboration has to stay.

The Convener: You say that corroboration has been whittled down, but the Lord Advocate said in committee last Wednesday:

> "Can I tell you what effect corroboration has? We have to corroborate the taking of buccal swabs from alleged offenders, so two police officers are required for that. We have to corroborate the taking of intimate swabs from a complainer in a rape case ... In the case of child pornography, we need to corroborate that children are under the age of 16, so that must be done by two witnesses. We have to corroborate forensic analysis, so two forensic scientists have to speak to the results of forensic examination".

That does not sound to me as if the use of corroboration is being whittled down. Would you care to address that?

Raymond McMenamin: As I mentioned before, in certain areas, such as forensic science evidence, the Crown can serve notice that it is going to call only one forensic scientist although that might mean that it needs to call two forensic scientists during the course of the case, or have two forensic scientists prepare a report. When it comes to the service of indictment, the Crown is entitled to give notice that it intends to call only one witness.

The Convener: I accept that that is true for the collection of evidence. Should any alleged inquiry

into or review of corroboration look at the requirements of corroboration in the collection of evidence as well as in court proceedings?

Raymond McMenamin: Yes. There is scope for looking at the application of corroboration throughout the evidential procedure and perhaps in relation to the classes of cases in which it might apply. That is worthy of debate.

The Convener: I am sorry to have interrupted but no one else had raised that point, and I know that the Lord Advocate said:

"That is where I am coming from."—[*Official Report*, *Justice Committee*, 20 November 2013; c 3745-46.]

The point seemed to be a substantial one for him when he was giving evidence last week, and you have addressed it.

Sorry, Sandra.

Sandra White: No, that is fine. I was going to go a wee bit further but you have clarified some of my points, convener.

Mr McMenamin, you said that we do not have anything else apart from corroboration. I asked previously whether anyone had any ideas about what we could have as guidelines. There are the proposed jury changes—which some say are fine and some say are not—and the judge being able to take the decision away from the jury. Do you agree with those aspects of the bill? I am not just speaking to Mr McMenamin—

The Convener: Mr McMenamin is giving you the eye.

Sandra White: Yes. These are ideas that have been proposed and there are areas in which I probably have a lot of confusion. We are looking at the Criminal Justice (Scotland) Bill in the round and, as Mr Wolffe has said, there is not just one part to it; it has lots of different parts. If we were to take the corroboration issue out of the bill and look at it separately, what knock-on effect would that have? What would be the effect if we passed the rest of the bill without including the abolition of corroboration?

The Convener: The question is whether that would sabotage the bill. Could the bill proceed without that in it?

Raymond McMenamin: The position of the Law Society is that all matters that are subject to the bill should have been subject to consideration on a wider scale than has been the case. However, we are where we are. As has been suggested, if the provisions concerning corroboration and jury numbers are taken out of the bill, we would support that. We would also support further consideration being given to those aspects.

The Convener: I think that the term that I was struggling for is "wrecking amendment". Would the bill still function without those provisions?

James Wolffe: It seems to me that the only provision that is linked—in practical terms, if not logically—with the abolition of corroboration is the increase in the majority that is required for the jury.

I should say, as the committee will appreciate, that the Faculty of Advocates broadly supports many parts of the bill. In particular, although we have made some observations about them, we support the provisions in part 1 relating to arrest and custody. We would certainly welcome the removal of the specific provision dealing with corroboration and the one associated provision that deals with jury majority, precisely so that those other parts of the bill can proceed swiftly to enactment.

Alison McInnes (North East Scotland) (LD): I refer members to my entry in the register of members' interests and the fact that I am a member of the council of Justice Scotland.

I want to return to a couple of points and then, if I have time, touch on one new thing.

The Convener: Yes, I want us to touch on something new.

Alison McInnes: John Finnie talked about access to justice, and I want to pursue whether the panel shares my concern that the issue seems to be driven by a desire to give victims their day in court rather than by the need to secure prosecutions in the public interest, and my worry that that might be a dangerous road to go down.

Mr Harrower made detailed points about the prosecutorial guidance and the decisions to pursue certain cases regardless, in a way, because they were, perhaps, politically sensitive. Beyond the dangers of individual miscarriages of justice, might these profound changes be significant, constitutionally, in the hands of a less benign Government?

The Convener: Less benign! You could be a minister, the way you are going. I sense a new coalition.

Mark Harrower: Many solicitors worry about some of the emphases that are being placed on certain types of case in court. All types of case that go to court are important, and the consequences in all cases are important for the people who are affected by them. We seem to be concentrating on certain types of case. I understand the drivers behind that, such as the focus on domestic abuse, which has obviously been a problem in Scotland. The problem is that, when that approach is applied in practice, wide nets are cast and in every type of case that is categorised as, for example, domestic abuse,

people are brought into court and there are regular appearances from custody. The numbers in Edinburgh sheriff court have gone up substantially this year as far as prosecutions are concerned. Since April this year, there has been a 50 per cent increase in cases that are registered in the JP court, where we now see fairly serious road traffic cases—of course, there is a policing initiative on road traffic at the moment—and a 38 per cent increase in cases that are registered in the sheriff court, where there are drives on issues such as domestic abuse and the football legislation.

We just worry that there seems to be an ever-increasing desire to cast a very wide net and let the courts sort it out—to put more cases into court and let the judges and juries make their decision. Unfortunately, when you do that, you end up catching all sorts of cases, some of which could be dealt with in other ways.

There is a political drive behind the review and the Government is obviously under pressure from various groups. However, we must remember that we have come across these problems in the past. In days gone by, there was a particular concern about people being robbed on the highways when there were no witnesses. Those crimes were committed in private, but back then we were able to resist the temptation to remove the requirement for corroboration, although that would obviously have dealt with the problem.

Now, we have a similar type of problem, although a different section of society is affected by it. The media highlight the issues and the public, I think, understand the problems. As a justice system, we have to make sure that we do not make rash decisions, because once we get rid of corroboration, it will be gone. In my submission, that would be to the detriment of our system, unless we have properly thought out checks and balances in its place.

11:30

Robin White: I will address those two points, if I may. I am not sure that I would characterise the first point in precisely the same terms. I repeat that there is a danger of extrapolating from a narrow range of what are, no doubt, dreadful cases. The suggestion is not that the requirement for corroboration be removed from sexual assault and domestic abuse cases but that it be removed from everything—theft, ordinary assaults, breach of the peace and so on.

I turn to the second point, which is the "less benign Government" point. When Mr Wolffe addressed it, he described it as the constitutional point. It is not entirely clear to me why the new test, post-corroboration, should not be put into statute.

Raymond McMenamin: The question was about whether the proposal is motivated by the desire to give victims their day in court. To put it bluntly, it should never be motivated by that. In fact, victims are not victims until it has been established in court that they are victims. That is the first point.

Secondly, as I think Mr Finnie mentioned, it should always be a case of prosecution in the public interest. In certain circumstances, it may not be in the public interest to put a single witness in court to give evidence. It may not even be in the interest of that particular witness to stand in a court of law with no back-up evidence, be cross-examined at length and find that the accused is acquitted.

Also, going back to the point that hundreds of cases could be brought to court, I think that it is easy for some people to be swayed by the numbers game here. We cannot approach it on that basis. We have to look at each case individually and decide whether it is appropriate to bring a prosecution and whether it is in the public interest.

James Wolffe: I will make an observation on the last part of the question. It is important to have in mind the constitutional significance of what we are doing here. We are considering the way in which the criminal justice system operates, and ultimately we should all be concerned about securing the rule of law in Scotland for the long term. That is why our fundamental focus is on the safeguards that are required to make sure that, notwithstanding changes of Lord Advocate, changes of Government, changes of social attitudes and moral panics about one thing or another, we have a system of criminal justice that secures the liberties of the citizen in Scotland while at the same time ensuring that those who commit crimes can be brought to book.

That is why the Faculty of Advocates welcomes the debate that putting the issue on the agenda has given rise to, but it is also why the faculty cannot support the proposals in the bill and would welcome a much broader review of the criminal justice system.

Alison McInnes: The new point that I said I wanted to make is that, in tandem with considering the bill, we are considering a petition that calls for the retrospective application of the removal of the requirement for corroboration. It would be useful to have on the record the panel's views on the implications of such a move.

Robin White: If I can leap in, I would say that there are almost never any justifications for any retrospective criminal legislation.

Raymond McMenamin: In two words, it is unworkable and inappropriate.

James Wolffe: It is fundamentally unconstitutional.

Mark Harrower: I agree with the other contributors.

The Convener: Thank you. We needed to get that point down.

I call John Pentland, to be followed by Christian Allard. Those will be the last questions, because we have had a long session and time is moving on.

John Pentland (Motherwell and Wishaw) (Lab): I have not been on the Justice Committee for long, so I am sure that you can understand that my knowledge of the legal system has been severely stretched.

What we have is a proposal for the abolition of corroboration. I find that there are two teams: yourselves and the Lord Advocate. In the Lord Advocate's submission, he highlights clearly the point that the system needs to be modernised for the reasons that have been outlined, such as that nearly 2,800 potential victims have not had their day in court. I agree that the phrase "their day in court" is not the right terminology; perhaps we should say instead that they have not had their opportunity to see justice done.

This is the second evidence session that we have had on corroboration. While the Lord Advocate came up with ideas, other witnesses last week and the witnesses today have not been helpful to the extent that, although they have said that we need to change, they have not suggested any modifications that would help the people whom we believe are not getting access to justice.

Is it too early for me to ask whether you have any fresh ideas that would help the people whom we think the system is failing? Do you have any ideas about how we could ensure that those people get their opportunity to see justice done? Do you think that, somewhere along the line, consensus could be reached on the proposal that is being made? The grenades that have been thrown into the ring include statements that the prosecutors office may not be up to speed in dealing with all the people who could come to see it. Instead of finding a solution, it seems that we will end up miles and miles apart. I would have found it helpful if you had given us ideas so that I could understand what would be the best way to ensure access to justice.

The Convener: I heard Mr White say that we could perhaps look at corroboration in particular cases. I think that that was the issue that you were raising. What you said surprised me, because I would have thought that we would be looking at something that would apply in any case. It might help John Pentland if you could expand on that.

Robin White: I certainly do not deny saying those words, but I have no recollection of doing so.

The Convener: Oh dear. We will check the *Official Report* during the week.

Robin White: Which I will certainly trust.

I did not wish to be understood to be proposing that there be corroboration in some cases and not in others.

The Convener: No. I thought that the inference was about what constituted corroboration. That would fit in with something that I think Mr McMenamin said. I cannot actually remember who said it—it has been such a long morning—but I think that the expression, "It has gone to almost nothing" was used. It would be helpful to know if there is any way forward that would reconcile the Lord Advocate's position on corroboration, which we understand, with yours. We understand the difficulty that is posed for domestic abuse and sexual assault cases and for people who genuinely do not have a remedy in the criminal law.

Raymond McMenamin: It might have been me who said that it is perhaps worth looking at what categories of case require corroboration.

The Convener: It might have been. I beg your pardon, Mr White.

Raymond McMenamin: The basis for saying that was that I know that in certain jurisdictions in the United States there has been application of corroboration to particular types of case. I am not suggesting that we do that, but it is perhaps worth looking at.

The Convener: In an overall review.

Raymond McMenamin: In an overall review—exactly.

If the committee will forgive me, I am not going to come up with any solutions today, and I would be very surprised if any of my colleagues did so. We are dealing with a very complex situation, and corroboration can at times be a very complex area. It has occupied rather a lot of the appeal court's time over the past few decades.

However, we must acknowledge that it is a system that has developed here, and that to move away from it would be a seismic shift for Scotland. We must also take into account that, for all that the Lord Advocate has stated his argument for the abolition of corroboration, the people who are against its abolition, certainly at present, include the major legal institutions in this country: the Scottish Law Commission, the Faculty of Advocates, the Law Society of Scotland, the Scottish Police Federation—as I understand it—

and almost all of the shrieval bench. If that does not tell you something, frankly it ought to.

To discard corroboration in the light of the opinion of those bodies is a rash act, and perhaps a foolish one. The issue is worthy—as we have all said—of greater debate and consideration.

James Wolffe: There is, of course, a perfectly respectable view that the doctrine of corroboration as we have developed it over a long period of time reflects the practical commonsense notion that one wants to cross-check evidence from more than one independent source on the essential facts before bringing a case to court.

However, as I said earlier, I would not for a moment suggest that there is not a case for looking at the way in which corroboration works in certain types of case. I would not immediately be attracted by a system that says that we should have corroboration for some types of case and not for others, although it is interesting that, for some time—as I understand it—in the law of England and Wales, corroboration was required only in sexual cases, precisely because of some of the difficulties that those cases present.

To illustrate some of the things that might be examined, I mentioned earlier the question of the role that distress plays, which at present is quite limited. It can corroborate certain elements of the crime, but not others. That could, along with the question of corroboration of mens rea, be considered, although—as I said earlier—I would not wish to commit myself to a view on them.

The Convener: You also mentioned facts and circumstances.

James Wolffe: Indeed, and there is the question of whether one needs to have an independent source of evidence that positively incriminates rather than simply providing a cross-check of consistency. There may well be ways in which the doctrine itself could be adjusted. As I said, I do not come with a menu, or a prescription that those suggestions are necessarily the right way to go.

It is interesting to note that the Lord Advocate, in his guidelines, does not by any means suggest that the cross-check is unimportant or not useful. Ultimately, the question that is before you as legislators is the abolition of corroboration, and you have to look at that in the context of the other things that have been done by way of adjusting and compensating in a system that has until now—in ways that cannot be overemphasised—been fundamentally based on that doctrine being at the heart of our criminal justice system.

The end point for the Faculty of Advocates is not that there are certain things that one might not wish to look at or that there is no debate to be had, but that the proposal in the bill to abolish corroboration with the very limited adjustment to the jury majority and no additional safeguards in summary cases is not one that the faculty can support.

11:45

The Convener: I do not want us to go over old ground. However, I thought that John Pentland asked a good question. It is certainly the issue that the committee has to consider.

John Pentland: It is just a pity that with regard to any suggestion that modifications or solutions be found, Mr McMenamin's mind seems to be made up. I might have picked him up wrongly but I note that in response to Sandra White, for example, he said that it was unlikely that the Law Society would support any change and that he thinks it rash for this proposal to be in the bill in the first place. If we are going to try to help victims who do not get any justice in court, Mr McMenamin might have to open up his mind a bit.

Raymond McMenamin: The Law Society's position is that it is prepared to look at the overall situation; after all, we have invited people to debate the matter with us. We just think it utterly illogical to approach the issue by saying, "What've you got to replace corroboration? Nothing? Well, let's get rid of corroboration then." That is the situation in which we find ourselves just now.

Robin White: In essence, Mr Pentland's point is that last week, the committee heard evidence that corroboration ought to be abolished entirely; this week, it has heard evidence that such a course of action is not appropriate. He is asking whether there is no middle point. At the risk of going over old ground, I would respond by pointing out, first, that there was a further consultation paper on safeguards, which, in mentioning only two or three things about juries, seemed a little perfunctory. Secondly—this is the main point that many people at this end of the table have made this morning—the distance between those positions is the very reason why the matter should be referred to the Scottish Law Commission, a royal commission, a departmental committee or whatever. There might be a number of middle points but no one has looked for them.

The Convener: We move on to a final question from Christian Allard. Members should bear in mind that this session has lasted nearly two hours and we still have more work to do.

Christian Allard (North East Scotland) (SNP): Good morning—or is it afternoon?

The Convener: It is nearly afternoon.

Christian Allard: I seek some clarification on what we have heard this morning and what we

heard last week from Lord Gill. As I understand it, we are talking about removing the requirement for corroboration but, this morning, we have heard that it will be taken out of the system altogether and simply discarded with nothing to replace it. Is it not the case that in other jurisdictions and judicial systems where there might be no requirement for corroboration it is still used extensively in many cases? Surely if in removing the requirement for corroboration we can still retain it in the system the evidence that Lord Gill gave last week does not make sense. After all, he made it very clear that the legislation must apply across the board. Do you agree with that view? From what I have heard this morning, it seems that some of you might not.

Mark Harrower: It will be difficult to create different classes of case, some of which will require corroboration and some of which will not. Moreover, cases very often come to court with a number of different charges. If a complainer has alleged a number of different types of crime against the same person, how do we explain to a jury that charges 1 and 2 do not require corroboration but charges 3 and 4 do? Juries have to absorb a lot of directions in a short space of time; it is sometimes difficult for them to get their heads around them but they do their best. It will make things very complicated if we create certain classes of case in which corroboration is not required.

The Convener: So that the committee and the public understand the point, can you give an example of the kind of complaint that would have those different elements to it?

Mark Harrower: If a complainer alleged rape at knife-point, there might be a charge of rape for which the evidence could come from the complainer alone, irrespective of evidence of penetration, if the requirement for corroboration was removed. However, if there was an accompanying charge of possession of a knife in a public place, perversely we might need a witness to state that the man had a knife in a public place. In practice, the Crown would probably not be too bothered about the additional charge. However, it would have to be explained that two witnesses were needed for that charge but that only one was needed for the rape charge. There might also be a charge for an act by the accused to try to destroy or get rid of evidence; again, we would have to decide whether such a charge would require two sources of evidence or just one.

Lord Gill's point is that creating different classes of case, some of which would require corroboration and some of which would not, would be a very complicated exercise. To go back to Mr Pentland's question, if there is a determination to remove or weaken evidential requirements—in effect, that is what getting rid of corroboration would do—in order to improve access to justice and give witnesses their day in court, we must understand that more cases going to court would not be the only consequence. What else would be achieved? I do not think that any of the contributors to the consultation that I have heard, including Lord Carloway, can say that more convictions would be achieved. In fact, Lord Gill quite clearly believes that a decrease in the conviction rate would be achieved. It stands to reason that if we weaken the rule on the amount of evidence that is needed, we are even less likely to get convictions in the type of cases in which juries are already reluctant to convict.

If more and more people were acquitted of sexual crime, what would be the knock-on effect for the system? That would not increase public confidence in the system at all. If one or two high-profile miscarriage of justice cases were produced as a result of the evidence change, that would be very costly for the system financially because appeals to the Scottish Criminal Cases Review Commission are very costly and compensation must be paid if convictions are overturned. In addition, many years down the line when some people come out of prison, the public sometimes wonder what went wrong. Miscarriage of justice cases are very costly for the system in terms of both money and public confidence. Until now, we have managed to avoid them for a reason and, to me, corroboration is the main reason.

Christian Allard: I want to press you on what you just said about the rate of conviction. I pressed Lord Gill on that subject and asked him:

> "On access to justice, would abolishing corroboration increase the number of cases that would be brought to prosecution?"

He answered, "No." When I pressed him further by saying "Definitely not?", his answer was:

> "It might increase the number of prosecutions, but I am not convinced that it would increase the number of convictions."—[*Official Report, Justice Committee*, 20 November 2013; c 3727.]

What do you think?

The Convener: That is Mr Harrower's point.

Mark Harrower: I agree with Lord Gill on that. If we are going to have more cases in which there is deemed to be enough evidence, we will increase the number of cases that go to court. All the additional cases that the Lord Advocate talked about could end up in our courts. However, I do not see how the conviction rate, or the percentage of cases in which we achieve a conviction, can do anything other than stay the same or fall.

I have figures for 2011-12 that show that for rape and attempted rape cases, 20 were "Acquitted not guilty", 16 were "Acquitted not

proven" and 50 were "Charge proved". So, 36 were acquitted and 50 were charge proved; an additional eight people had pleas of not guilty accepted or the case was deserted. The conviction rate is about 50:50 at the moment.

The Convener: Those figures are for what year?

Mark Harrower: They are from the statistical bulletin "Criminal Proceedings in Scotland 2011-12", which the Scottish Government produced on 27 November 2012. There is a table on page 23 that shows how many people were proceeded against in court and a breakdown of the outcomes.

The Convener: That is fine. We have the reference for the *Official Report*. The figures are interesting.

Mark Harrower: Nobody is saying that juries are not doing their job properly or that they are going into court and trying to find ways of acquitting people. Juries are going into the court at the moment and hearing corroborating evidence, but they are not being convinced. How do we expect to increase how often they are convinced if we take away one of the major checks on the proof of the allegation that is put to a jury?

The Convener: I will stop now unless anyone else wants to come in. It seems that Mr Wolffe does.

James Wolffe: May I make two brief observations? First, like Mr Harrower, I am not attracted by having different rules for different types of crime, which is why I am pretty diffident about offering possible modifications. The issue is well worth looking at, but one would have to look very hard at possible modifications.

Secondly, on the consequences for the conviction rate, our real problem is that we just do not know what they will be. Lord Gill talked about as yet unknown consequences and he was right to do so, because at first flush one might expect the rate of conviction for sexual crimes to decrease, because one is prosecuting crimes with a lesser evidential basis, but at the same time we are removing a requirement for corroboration across the board—judges will no longer uphold no-case-to-answer submissions, and juries will no longer be told that they must find corroborated evidence—so for all that we know there might be an increase in the conviction rate, not in sexual cases but across the board. Whether that will be so, and what the implications for the system and its resourcing will be, are anyone's guess.

The Convener: I am looking at the clock and thinking that this has been a long evidence session. I thank the witnesses very much. We will have a five-minute break. I apologise to our witnesses for the next agenda item, who are waiting to give evidence.

11:56

Meeting suspended.

12:03

On resuming—

Anti-social Behaviour, Crime and Policing Bill

The Convener: We are back. I put on record that we are all cold. I do not know who is in charge of the heating in here. I ask members to bring in portable radiators next week, just to make a symbolic gesture. We are all cold; so cold that even people who are sitting in the public gallery have had to take coffee to warm themselves up—now, there is a first. However, they were not allowed near the muffins—although perhaps they got them while my back was turned.

I also apologise to our witnesses and I suggest that they put their coats on because it is so cold in here. Unfortunately, I do not think that members have brought their coats with them.

I thank you all for waiting. I am sure that you will all agree that from all aspects the previous session on the Criminal Justice (Scotland) Bill was very important. I am sure that witnesses are very interested in that bill.

Agenda item 2 is on a legislative consent memorandum on the Anti-social Behaviour, Crime and Policing Bill. The bill is progressing through the House of Lords. Today we will hear evidence specifically on the bill's forced marriage provisions. I welcome to the meeting Detective Chief Superintendent Gillian Imery from Police Scotland and Mridul Wadhwa from Shakti Women's Aid—did I pronounce that correctly?

Mridul Wadhwa (Shakti Women's Aid): Yes.

The Convener: I also welcome Lily Greenan of Scottish Women's Aid and Catriona Dalrymple, who is head of policy at the Crown Office and Procurator Fiscal Service. I apologise to Ms Dalrymple's colleague, Anne Marie Hicks, who waited such a long time but had to leave for important reasons.

We will go straight to questions from members.

Margaret Mitchell: I wonder whether we could look at the Istanbul convention. The Scottish Women's Aid submission suggests that the current civil law approach, whereby only a breach of a forced marriage protection order is criminalised, is compliant with the article in the Istanbul convention, whereas Police Scotland and perhaps the cabinet secretary suggest that it is not. Could we consider that?

Lily Greenan (Scottish Women's Aid): I thank Ms Mitchell for that question. The Istanbul convention requires that state parties that wish to ratify the convention ensure that forced marriage is criminalised in their state. Our argument is that forced marriage is already criminalised in Scotland through a number of provisions, in common law and in statute, and that there is no need to create a specific offence of forced marriage.

Our sister organisations in England, particularly Southall Black Sisters, Imkaan and Dr Aisha Gill, have argued for the same reason—which is that legislation is already available, either through common law or statute—that there is no requirement to criminalise forced marriage or create a specific offence for England and Wales. They argue that existing law is sufficient and that criminalising forced marriage would be counter-productive.

The Convener: You are nodding, Ms Wadhwa.

Mridul Wadhwa: I agree. I do not think that we need specific legislation to criminalise forced marriage. A lot of the behaviour that we see around forced marriage and in situations in which forced marriage arises is already criminalised, so we do not need a specific law against it.

The Convener: Just for the record, how is it criminalised?

Mridul Wadhwa: The behaviour that we see in the forced marriage cases that we have dealt with includes abduction, illegal confinement and physical assault. All of those factors are already criminalised. Criminalising forced marriage is problematic for us at Shakti Women's Aid because we do not see forced marriage as an event. We see it as a process. It is not a wedding. It is a process that starts for many people when they are children and can end when they are in their 30s or 40s. What exactly are you going to criminalise in that process? There is a lot of behaviour as part of that process that is already criminalised. We do not really need specific legislation around that. That is one of the arguments.

The Convener: Ms Imery.

Detective Chief Superintendent Gillian Imery (Police Scotland): Thank you, convener.

The Convener: I should call you detective chief superintendent, as that is your title.

Detective Chief Superintendent Imery: Not at all.

The Convener: Not at all? All right. It is shorter to call you Ms Imery.

Detective Chief Superintendent Imery: I think that we all agree that forced marriage is unacceptable and fundamentally wrong, so there is no dissent in our view on that matter.

The position of the police is to enforce whatever the law of the land is. That is our role. The best response would be that of prevention. The forced

marriage protection orders allow us to intervene. There are seven of those orders in place in Scotland at the moment. The breach of such an order is a criminal offence but forced marriage in itself is not. That appears on the face of things to be somewhat anomalous.

The point about making forced marriage a specific crime as opposed to using common law or statute offences that currently exist is that it conveys loud and clear the point that I started with, which is that forced marriage is fundamentally wrong. It is a message to those who are perhaps potential victims of forced marriage as well as those who might be the perpetrators of forced marriage or labouring under an illusion that it is acceptable. That is why Police Scotland feels that it is helpful to make forced marriage a criminal offence in its own right.

As for the argument about driving the matter underground, I have to say, frankly, that it is already underground. Six out of the seven current forced marriage protection orders relate to children and all have come to us through child protection procedures. Those cases would still come to us through the same route and we would still have the option that we are using just now of a forced marriage protection order.

The Convener: Thank you for your submission, in which you make it clear that seven forced marriage protection orders have been granted in Scotland, six of which related to children. What age were those children?

Detective Chief Superintendent Imery: They ranged from as young as 11 to 16; in fact, only one of the children is 16. There were a couple of 13-year-olds and a 15-year-old.

The Convener: I take it that those proceedings are not live and that we can discuss them.

Detective Chief Superintendent Imery: They are live. These are interim forced marriage protection orders and because of the small numbers involved I am unable to be very specific. If I were, I would be in danger of identifying the individuals involved.

The Convener: Absolutely. That is fine.

Catriona Dalrymple (Crown Office and Procurator Fiscal Service): Scotland's prosecution service will work within whatever criminal law the Parliament sees fit—

The Convener: So we would hope. We would not want you to work outwith it.

Catriona Dalrymple: I just wanted to stress that this is a matter for the Parliament. As prosecutors, we acknowledge that forced marriage is a very complicated issue and, given the need to recognise that a prosecutorial response might not always be the most effective, we will continue to work with the support agencies and the police to ensure that the most effective response is taken in the best interests of the people involved.

Initially, you asked whether effective criminal sanctions were already in place. A variety of offences could be considered, such as abduction, assault and sexual offences but I am concerned that they do not cover the full spectrum of the behaviours involved in forced marriage. There are, for example, psychological, emotional, financial, community and honour pressures that do not necessarily involve force, violence or abuse but which still put individuals under intense pressure. The new offence in the bill, which refers to

"violence, threats or any other form of coercion"

might be easier to fit with some of the circumstances that these individuals might face. I just wanted to highlight that point to the committee.

Margaret Mitchell: A different system was adopted in Scotland because of the fear that criminalising forced marriage outright would stop victims coming forward. We thought that forced marriage protection orders would be a good halfway house and would encourage people facing threats, violence and all the pressures that Ms Dalrymple has mentioned to come forward.

It seems that Police Scotland—and I took this from the written submission, not Ms Imery's comments—is suggesting that we could have an approach in which people can be encouraged to come forward in the knowledge that having a forced marriage protection order does not constitute a criminal offence per se, although a breach of the order would be such an offence. At the same time, we can deal with those whom it has been proved are already in a forced marriage and make that a criminal offence.

Is there any problem with that perspective? It just seems to me that we would be balancing the two issues. If someone who is not yet in a forced marriage is being coerced in that direction and if you are doing everything you can to prevent that from happening by making a civil order, making the breach of that a criminal offence works, I think, very well. If, however, a person is already in a forced marriage, in Scotland there is no criminal offence per se and we rely on all the things that Ms Dalrymple mentioned. Is there a balancing act to be had there?

Mridul Wadhwa: To give the committee some statistics, 14 cases of forced marriage came to Shakti last year but not all of the people involved were willing to consider even the forced marriage protection order when they contacted us. Indeed, we have to work at getting them to use even that. That figure does not include women who have

already been forced into marriage but, in our experience, those who have been forced into marriage and who come forward are looking for safety for themselves rather than some sort of justice. They are not looking to prosecute their families. They just want the marriage in which they find themselves to end.

12:15

At that moment, their hope might not be that they reconcile with their families, which would not be advisable at that time, but in the long term, they intend and hold the hope that, one day, they and their families might be able to reconnnect. Whether that happens for them is a matter of time and the nature of the families that force them into marriage. If we criminalise forced marriage, when women come forward and say that they were forced into marriage, that long-term hope might be significantly diminished. The reality is, however, that the focus for most of those women in that situation who come to an organisation such as Shakti Women's Aid, Hemat Gryffe Women's Aid or any other women's aid organisation is that they want the marriage to end.

It might also be that the man or the woman to whom they are married is not aware that the marriage was forced on to their partner. Do we also want to criminalise someone who is not actually aware that their partner was forced into marrying them? All those questions continue to be raised.

In theory, and the forced marriage civil protection guidelines say this, we could still use forced marriage protection orders to protect those who have already been forced into marriage. Criminalisation will not necessarily solve the issue for the victims. I can say confidently that, in the 14 cases that came to Shakti in 2012-13, none of the adults was willing to use any legal recourse, even civil protection, at that stage. Will people come forward if the action is criminalised?

Those people were willing to speak to the police as long as the police were able to guarantee their safety, and that response has worked. The victim's safety was protected and the police worked with them. No one challenged or prosecuted their families. Putting the victim's safety in place means that if they feel that something occurs that is completely unacceptable to them, they come forward. An immediate response from the police saying that they were going to go after the victim's parents—or more people than only their parents—would not make the victim talk.

Margaret Mitchell: That is very helpful; thank you.

The Convener: I think that I will bring in Sandra White here because she was on the Equal Opportunities Committee and was involved in the passing of the legislation. John Finnie, were you involved in that?

John Finnie: No.

The Convener: I am interested to hear what informed that committee and took it to the original civil remedy that, if breached, is followed by a criminal offence. Someone asked me whether forced marriage is not illegal anyway. We should make it plain that it is illegal, but it is not a criminal offence unless the forced marriage protection order is breached. I just want to make it plain on the record that we are not saying that forced marriage is not illegal.

Sandra White: I was on the Equal Opportunities Committee that considered the original legislation and we took evidence from all the groups. We heard evidence that is similar to what Mridul Wadhwa said—the issue is not as clear-cut as it seems. There are a lot of cultural and historical issues to consider.

I will ask again a question that was asked at that earlier stage. People who are brought to the country for forced marriage—and it is not just women; men are also involved—find it difficult to break up a family, you might say. That is where the problem lies. At the time, the Equal Opportunities Committee thought that criminalising the act would make it even more difficult for people to bring the issue to the fore. For some people, especially younger people who are brought over for a forced marriage, the family is the only network that they have so they are very much alone.

The Convener: I think that you are giving evidence, Sandra. We will get to a question.

Sandra White: Oh, sorry. When we looked at that, it seemed to the Equal Opportunities Committee that criminalisation was not the proper way to go.

Obviously, as we have the LCM, the legislation is going through Westminster and we have only a short time in which to put the committee's views. I have read the written submissions and obviously the witnesses want to be consulted but are saying that they have not been.

I will ask a couple of questions. Bearing in mind that we have a short timescale to make our decisions on the LCM, if you were to be consulted, how long would that take?

Additionally, witnesses have quite rightly said that they deal with the issue day in, day out. Have you discussed with any of the people in Shakti Women's Aid or Hemat Gryffe Women's Aid the criminalisation that would take place as a result of the bill?

Mridul Wadhwa: Yes. We have obviously spoken to our staff and also to a number of those who have been affected by forced marriage. One person in particular stands out: a woman who is very estranged from her family, although she has some relationship with them. Her forced marriage took place about 15 or 18 years ago and it is only now that she has bravely come forward to talk about forced marriage. She asked for safety when she was still a teenager and did not get the most effective response—something that still happens for a number of victims of forced marriage today—and even she is not convinced that criminalisation will assist victims when forced marriage is happening. Maybe retrospectively, 10 or 15 years later, when a person has moved away from the situation, they may think that they should have gone after a prosecution, but only a minority of those affected by forced marriage say that they would have wanted their parents, uncle, aunt or husband to go to prison. That was not an in-depth consultation, but I spoke to a number of women and, of course, our colleagues as well.

Lily Greenan: I want to address the question about how long a consultation would be, which is a bit academic. The concern in our submission is that the step that the Scottish Government took was taken without any discussion with the forced marriage network and without any consultation with the organisations with which it had consulted quite extensively in the run-up to the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011, as Sandra White will know from her work on the Equal Opportunities Committee. That consultation was a good process that took account of the views of different communities around Scotland and looked at what was going to work.

If I could draw a parallel with—

The Convener: Can I just say something for the record? The Government has not yet taken a step. What it has put forward has come to the committee. We have to report by mid-December and in the Parliament's first week back after recess there will be a debate. This committee is very influential, so if we take a view on what has been suggested maybe we can turn the tide a bit.

The bill is provisionally being dealt with at Westminster in mid-January, although nothing is set in stone yet. Certainly, do not think that it is all done and dusted. We would not have you here if we thought that.

Lily Greenan: I thank you for that, convener, but in response I say that although the issue is now at this committee, it started as an email to the forced marriage network that announced that there was going to be a criminalisation of forced marriage.

The Convener: When this committee saw that, we decided to have you here—we jumped in.

Lily Greenan: That is great. I am very happy that you did that. It is good to know that the matter is not done and dusted.

I would like to draw a parallel with the work that has been done on domestic abuse in Scotland over the past three decades. In 1981, the then Scottish Office progressed a piece of work that led to the Matrimonial Homes (Family Protection) (Scotland) Act 1981, with which many of you will be familiar. That act was, in effect, a civil remedy response to domestic abuse at a time when very few domestic abuse cases made it to the police and even fewer made it past the police to the Procurator Fiscal Service. It was recognised that something needed to be done to protect people who were victims of domestic abuse, particularly to ensure that they did not lose their home as a result of being a victim. That is where the mat homes act came from.

Over the subsequent however many years it has been—32, I think—

The Convener: Goodness! I remember it coming into force.

Lily Greenan: Over that three decades-plus, we have seen an enormous shift in public perceptions about domestic abuse. In recognition of the impact that it has, the education and awareness raising that has gone on has massively supported men and women to come forward and acknowledge that they are victims of domestic abuse. Whereas in 1976 the Dobashes were able to review for their violence against wives report 2,000 cases, I think, in which there had been an assault against a wife by a husband, last year more than 60,000 incidents were reported to police in Scotland.

For me, there is a parallel. Forced marriage is not talked about in the communities that it affects. It is not well known about by the agencies and practitioners. Having a civil remedy enables the process of education and awareness raising to take place while ensuring that protection is available for those who are at risk of being forced into marriage. There are many different behaviours and patterns of behaviour. Where a criminal act can be identified, there is law in Scotland that already allows it to be dealt with.

The Convener: Does anybody else wish to comment? Police Scotland has a different view. We seem to be hearing that the approach would be counterproductive to protecting the very people whom we want to protect. Lily Greenan seems to be saying that the approach could be incremental and that, somewhere down the road, it might be possible to move on to there being a criminal offence, but not in this way, now.

Detective Chief Superintendent Imery: I accept that the issue is hugely complex and am very aware of the strong views about what has, until today, been felt to be a lack of consultation. That view was expressed at a meeting at the end of October in which Police Scotland brought together stakeholders—from service providers and the third sector in particular. Scottish Women's Aid and Shakti Women's Aid were both represented. The discussion was about wider issues including female genital mutilation and so-called honour-based violence, and was not just about forced marriage.

Police Scotland very much accepts that we do not fully understand all the surrounding issues and all the possible unintended consequences of what we think would be a good intervention. I am not departing from that here today. I and, I think, the Crown acknowledge that our understanding needs to evolve. If we were invited to express an opinion on whether forced marriage should be criminalised, our response would be that we think that it should be because that would send a clear message to communities and, just as much, to our teams about how to recognise and deal with what we acknowledge is a problem.

The issue is sensitive, but we should not be distracted by considerations of diversity—which we have experienced—and cultural sensitivities in relation to FGM that distract us from what we know to be right, which is that no one should be forced into a marriage.

Mridul Wadhwa: We are taking that message out anyway through the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011. After that legislation was passed, there was a significant public campaign around forced marriage and its unacceptability. I do not know whether any research has been done on its effectiveness, but from our perspective, it has certainly been easier to have conversations with many people that we did not have before that, including local authorities, for example. Until that legislation, they were not even willing to talk about forced marriage or to recognise it as an issue for them.

The legislation quite effectively sent out the message to a lot of people that forced marriage is not acceptable, including to service providers, which until recently did not ask questions and did not do anything about the matter, and to communities, in which it is being said that forced marriages are illegal and are not recognised in law, as we have already clarified. I am not quite sure whether we need to criminalise forced marriage to make that message stronger. We can say that it is not acceptable and we can provide effective responses for victims who come forward once they have got that message.

However, we still have to do a lot more work to get that message to people, because many people who should understand the message do not, yet. There is still confusion about the difference between a forced marriage and an arranged marriage—not among victims but among those who are supposed to protect them. I am not convinced that we need to criminalise forced marriage in order to make the discussion stronger, which we are already trying to do. We need to focus on investment to help those who are sending out that message—organisations such as Shakti Women's Aid, Hemat Gryffe Women's Aid, our partner sister organisations in Women's Aid and others—so that they have the resources to do that and to protect victims.

The police might provide the most immediate response, but we find that for women who leave forced marriages the practical long-term responses that will allow a victim to lead a safe and happy life are not necessarily in place. That is what we should be discussing.

12:30

The Convener: I will let somebody else in now, if that is all right. I call John Finnie, to be followed by Alison McInnes, Roderick Campbell and Margaret Mitchell.

John Finnie: Good afternoon, panel. My question is for the detective chief superintendent. It is clear that a lot of collaborative work goes on between you, the prosecution service and the women's aid groups. Did you discuss the submission that Police Scotland was going to put in with the women's aid groups before you provided it?

Detective Chief Superintendent Imery: No.

John Finnie: That is not indicative of collaborative working, is it?

Detective Chief Superintendent Imery: We had a meeting on 30 October at which, as I said, everybody was represented. I chaired that meeting and I gave a platform to one of Lily Greenan's colleagues, Louise Johnson, for her to explain the issues to everybody who was present. There is no question that I was unaware of the issue. I was aware of the Government's position and I gave an opportunity for the issue to be aired within that partnership context. You asked me specifically whether I discussed the content. I did not, but we knew one another's positions.

I have to say the same as the Crown; Police Scotland is being asked for a view so it is giving one, but we will enforce whatever the law is. It is not for us—

The Convener: To be fair, there has not been an awful lot of time for anybody to do much.

John Finnie: There is no personal attack here, but—

The Convener: I know, but in fairness I should say that the process has all been accelerated.

John Finnie: I am trying to understand the process. There is a clear and compelling message in the information that was emailed last night, which states that, if we do not take advice from the people and communities that the bill is intended to affect, we ignore the message from them at our peril.

Is it Police Scotland's view that specific legislation, on top of what already exists on abduction, breach of the peace, false imprisonment, trafficking and so on will change community attitudes?

Detective Chief Superintendent Imery: I would not be so bold as to say that a change to the law—

John Finnie: Might it help to change attitudes and practice in communities?

Detective Chief Superintendent Imery: There are precedents. Parliament has done that in relation to football offences, for example, by giving people a strong message about sectarianism. If we are drawing parallels, there was—and is—existing legislation to deal with sectarianism, but it was felt that there was a societal moral issue in Scotland and we wanted to articulate strongly that sectarianism is not acceptable. In that vein, I argue that there is merit in being specific and clear that forced marriage is a crime in Scotland.

Having said that, I would not for one moment dismiss the views of service providers and people within the community whose understanding is far more sophisticated than mine. That is why I referred to the meeting at which I tried to hear all those voices and give people an opportunity to discuss the issue. As the convener said, there was not much time. We had less than a week to provide a submission.

John Finnie: Indeed. I understand that there was a quick turnaround. I wonder whether—

The Convener: I add that the submission from Malcolm Graham, the assistant chief constable, of 22 November mentions the caveats that the existing legislation has not been around very long and that forced marriage is hugely underreported. Again, Police Scotland is not at fault, given the break-neck speed of this. I appreciate that it is in a difficult position.

John Finnie: I have a question for Ms Dalrymple. I absolutely appreciate that the police and the Crown Office and Procurator Fiscal Service work with the legislation that they are given, but is it your view that the civil remedies, combined with the existing common law, have been insufficient to deal with the issue?

Catriona Dalrymple: That is the difficulty. We have not had experience in relation to the civil remedies. There is evidence that there have been a number of FMPOs. We have had one breach of order reported to us, but it was decided in consultation with the police that we would not progress a prosecution because there were difficulties with the way in which the order was drafted and, actually, prosecution was not the response that was demanded at the time.

Neither I nor my organisation has the relevant experience, which is why we will rely heavily on all our support agencies to help us with the education and training process for what will be a specialised area of work if a criminal offence is created.

The Convener: To clarify, you said that a prosecution is not being progressed.

Catriona Dalrymple: There was one report—

The Convener: The submission from Malcolm Graham says:

"To date only one has been breached with the case subject to live criminal proceedings."

Catriona Dalrymple: My understanding is that a decision has been taken that there will not be live criminal proceedings as a result of the issues that I mentioned.

Detective Chief Superintendent Imery: That is right.

The Convener: Thank you. I just wanted clarity on that.

John Finnie: I am also new to the issue and am just going on what I have seen in the papers that we have received in the past few days. However, does what you have said suggest that the existing arrangements are working satisfactorily?

Catriona Dalrymple: The point that I made was that it could be difficult to shoehorn some of the behaviours within a forced marriage into the existing offences. However, I do not have examples that I can provide the committee with simply because they have not been reported to us.

Detective Chief Superintendent Imery: I hesitate to say that the current arrangements are sufficient, because I think that seven FMPOs is a woefully low number. We have heard that 14 cases have come to Shakti this year, not including cases involving women who are already in that position, so clearly the information is not coming to the police. I understand what inhibitors there might be, but somewhere, collectively, we are failing a lot of women and children.

John Finnie: You are, though, being told by the people who are directly involved that involving

criminal law will act as a further inhibitor to people coming forward. Nonetheless, you commend that course of action.

Detective Chief Superintendent Imery: So, we know about hardly any at the moment and we will know about none.

Mridul Wadhwa: I would not say that the women are being failed because they have not gone to the police; they have made contact with someone. The messages about intolerance of forced marriage have reached them and they are asking for assistance. At that moment, involving the police is not the sort of assistance that they wish for. Sometimes, what they want is just a discussion of their options, although we might at some point have to involve the police.

I am speaking mainly of adult women with full capacity. Situations involving children and adults with incapacity require a completely different response, and we already have processes in place in that regard. The response is not uniform but, from experience, I can tell you that it can be a struggle to get those processes in place and to get people to take the situation seriously, because they do not necessarily understand forced marriage.

The Convener: Who do men report to if they have been forced into marriage? Sandra White referred to that. Do men have a network of support?

Mridul Wadhwa: There are a number of places to which men can go. The Foreign and Commonwealth Office's forced marriage unit is a good destination, as is the police. I have been involved in supporting an agency that was dealing with a man who was in a forced marriage. That agency does not normally deal with forced marriage, but we were able to connect it with the services that were needed in that situation.

The only place that is available for women is Women's Aid, but every other service should be able to deal with a forced marriage disclosure. Most of the disclosures that involve children might occur within education and the ones that involve adults with incapacity might be made to voluntary sector organisations or local authorities.

I do not see much difference between the two. I think that statutory responses would be the same for men.

The Convener: Part of the benefit of this committee taking evidence on the subject is that people who are in a forced marriage but had never thought of reporting it might be able to read what you say. Dealing with the LCM in this way might in itself publicise the issue. That is why I wanted to ask about men, who might have different feelings about coming forward. I wanted to give you the opportunity to say what could be done for them.

Mridul Wadhwa: We work with young boys and men up to the age of 18 anyway. If they fall into that age group, Shakti would be working with them.

The Convener: Thank you. That is helpful.

Catriona Dalrymple: I want to build on what Lily Greenan said about the evolution of domestic abuse.

The committee may want to consider the cultural change that is required in Scotland in relation to forced marriage. Gillian Imery has identified that criminalisation of conduct can play a part in influencing cultural change. It is not the whole story—it may be a very small part of the story—but there must be some benefit in clarifying what is unacceptable and criminal conduct in Scotland. We must make that clear not just to the people who are subject to that conduct, but to the people who surround them—the schools, the education system and the social workers. We must make it very clear to everybody when something is potentially criminal. That will play a part in changing attitudes regarding what is acceptable. As we saw following the introduction of the stalking legislation, by giving that behaviour a unique name we have made inroads in terms of victims coming forward to tell us what has been happening to them.

The Convener: We take that as a general point, but it is not the case that one size fits all.

Catriona Dalrymple: I accept that.

The Convener: Let us move on.

Alison McInnes: My question follows on from Ms Dalrymple's point. The Scottish Government argues that it feels the need for consistent legislation on forced marriage throughout the UK, which is why it has brought forward the LCM. I set aside the fact that that is a rather odd statement from a nationalist Government.

The Convener: You were doing so well.

Alison McInnes: Would there be unintended consequences of our not agreeing the LCM? Now that we are where we are, is there a danger that it would be perceived as being less of an issue in Scotland if we did not agree the LCM?

Lily Greenan: Scotland does not have a specific offence of marital rape, although England does. It is an offence for someone to rape the woman to whom they are married or with whom they are in an intimate relationship and now, under the most recent Sexual Offences (Scotland) Act 2009, it is an offence for someone to rape a man to whom they are married or with whom they are in a civil partnership. There has to be statute in

England because that is how English law works, although it is not how our law works.

The Convener: That is only one part of an answer, but it is a fair point.

Lily Greenan: It was just the first thing that occurred to me.

The Convener: Does anybody else want to comment? What about cross-border enforcement?

Lily Greenan: We already have difficulty with cross-border enforcement around things such as interdicts. In Scotland, our civil remedies are different from those that are available in England, although there might be parallels and ways of equalising them. Until relatively recently in Scotland—I am not even sure whether this has gone all the way through yet—a person could not register to vote anonymously, as a survivor of domestic abuse, using their interdict as evidence for the electoral registration clerk as to why they need to vote anonymously. People in England and Wales have that right. If someone from England, Wales or Northern Ireland came to Scotland, they could pitch up before an electoral registration officer and say, "Here's my injunction. You've got paperwork that tells you that you recognise that," and they could register to vote anonymously in Scotland, although a woman from Scotland could not. We already have cross-border issues and we find ways round them. Such work is a large part of what organisations such as mine do. I do not see that as being an issue, in itself.

Detective Chief Superintendent Imery: To go back to the question, I think that forced marriage being a crime in England and Wales but not in Scotland would risk feeding a perception that Scotland in some way offers less protection. I accept that that might not be the reality, but that might be the perception.

The Convener: That was an interesting question, Alison—not that your questions are not always interesting. I did not mean to sound surprised.

Roderick Campbell: I will follow up what Alison McInnes has been talking about in a slightly different way. The UK Government is a signatory to the Istanbul convention and, under the current constitutional position, it speaks for Scotland although Scotland has a different criminal justice system. The key question in my mind is whether the existing legislation in Scotland meets the requirements of article 37 of the convention.

The Scottish Government says that there is no specific crime in Scotland of forcing someone to marry or taking advantage of their lack of understanding to trick them into taking part in a marriage. That is the crucial point. Whether someone is in favour of or against criminalising forced marriage is slightly irrelevant to the basic point, and whether we prosecute in different ways or have different criminal offences is by the by.

12:45

Detective Chief Superintendent Imery: When I sought clarity from Government officials following the spirited discussion that I referred to earlier, the response was that whether you agree or do not agree is a moot point. It is a fact that we do not comply with article 37, and forced marriage is not a crime in Scotland. That was the response on the lack of consultation; there is no requirement for consultation because that is a fact.

The Convener: I thought that I had read somewhere that we are compliant with article 37.

Detective Chief Superintendent Imery: Yes, that is the usual view.

Lily Greenan: It is about interpretation. Article 37 requires that

> "Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised."

As Mridul Wadhwa said in her presentation, we are not talking about a wedding; we are talking about a process of behaviour or grooming that goes on from when people are very young. Our argument is that there is legislation or common law in Scotland that means that all the behaviours and patterns of behaviours that are involved contain offences. There are points in that process that are offences, and we have legislation or common law that meets the requirements of article 37.

Article 37 is designed to address the deficit in states that do not criminalise domestic abuse, and that is what article 37 requires—I say that as someone who was involved in the debates about the development of the Istanbul convention.

Roderick Campbell: I agree to a certain extent. That is where the debate should be; the other points that we are considering seem to be slightly irrelevant to where we are. I will be interested to hear more from the Scottish Government on that point.

The Convener: We are irrelevant with our other questions, but I do not mind.

Margaret Mitchell: That was my starting point too. There is some dubiety about whether we contravene article 37. We then get into arguments about deterrents and cultural change, but we have heard that people will not come forward if forced marriage is criminalised. Where is the public interest? Criminalisation will not be a deterrent because what victims want is some protection and to get out of the marriage, and they still harbour

the hope that they can be reintegrated into their family. There is much less chance that that will happen if forced marriage is made a criminal offence.

I notice that the submission from women's aid groups says that if the FMPOs are breached and criminal proceedings are started, the offence should then be looked at as an aggravated offence. That might well send out the deterrent and cultural messages that people are looking for.

I just want to put on the record the fact that I was convener of the Equal Opportunities Committee at the time, and Sandra White and I sat through all that evidence—

The Convener: I knew that you had been a convener at some point in time because of the way that you sweep me to one side at times.

Margaret Mitchell: We listened to all the arguments on a very complex issue and we were very proud of the legislation that we passed. We thought that we had excelled and done better than what was in place in England by coming up with a balance: a deterrent that would still encourage people to come forward while being protected. I feel that the Government jumped the gun in seeking an amendment on 15 October without scrutinising how the FMPOs work in practice.

I thank you for the evidence. [*Laughter*.] Convener, this is a good starting point—

The Convener: You do not understand why I am laughing—

Margaret Mitchell: There is a majority Government and legislation can go through very quickly—this is a case in point.

On forced marriage affecting males in particular, we are currently looking at equal marriage legislation, and I would fully support our looking at how homosexual males in the Asian community are sometimes forced into heterosexual marriages. That discrimination or abuse is still going on but has not even been looked at, so there is a lot to uncover.

The Convener: That is not what I was laughing at, Margaret; I was laughing at you thanking everybody for their evidence, which is usually the convener's role. I have given up.

I think that the committee would agree that there are two points. Roddy Campbell was quite right. We must consider whether it is mandatory that things are done to comply with article 37. If that is the legal test that has to be met, there are issues about the practicalities. If that is not the legal test that has to be met, that makes it much easier for us. We have listened carefully to what has been said about the result and the practical consequences, but that is the first important test. It is quite useful to have an advocate on the team at times.

I thank the witnesses very much for their evidence and for their patience in waiting for such a long time to give their evidence. I will let them go and get warmed up.

Subordinate Legislation

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2013 (SSI 2013/289)

12:51

The Convener: Under item 3, we will consider three negative instruments that we previously agreed to defer. Time presses.

The Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2013 adds one body—the Perth and Kinross Heritage Trust—to the list of prescribed conservation bodies. I hope that that is not controversial. The Delegated Powers and Law Reform Committee is content with the order.

As members have no comments on the order, are they content to make no recommendations on it?

Members *indicated agreement.*

Act of Sederunt (Commissary Business) 2013 (SSI 2013/291)

The Convener: The Act of Sederunt (Commissary Business) 2013 removes sheriff courts that are closing from the list of places where commissary business can be conducted. The Delegated Powers and Law Reform Committee is content with the instrument. Do members have any comments on it?

Elaine Murray: I am not content with the closures.

The Convener: I know, but we are not talking about them. The instrument is a technical thing.

Are members content to make no recommendation on the instrument?

Members *indicated agreement.*

Drugs Courts (Scotland) Amendment Order 2013 (SSI 2013/302)

The Convener: The third instrument is the Drugs Courts (Scotland) Amendment Order 2013, which removes the requirement for a dedicated drugs court in the sheriffdom of Tayside, Central and Fife. The Delegated Powers and Law Reform Committee is content with the order.

Last week, a query was raised about the impact assessment on the order, to which Scottish Government officials have responded. That response can be found at paragraph 21 on page 4 of paper 3.

Do members have any comments on the order?

Alison McInnes: Convener—

The Convener: Two members want to speak. I knew that there would be comments. It is all right—I was alert to that.

Alison McInnes: This is a backward step. The drugs court in Fife has been a success, and I know that there is local opposition to its closure. I resist the order.

Margaret Mitchell: I am concerned about the order, on which no impact assessment was carried out. The sheriff principal, as is his duty, has said that it would be good to close the drugs court because of capacity issues. Have those capacity issues arisen because the drugs court sits in Dunfermline and Kirkcaldy sheriff courts? At present, there is not enough capacity because of the planned closure of the nearby Cupar sheriff and justice of the peace court. It seems to me that the proposal has been made for all the wrong reasons.

The Fife drugs court was piloted in 2002, and no impact assessment has been carried out recently on how it has worked. There will be savings, but they are false economies. Like Alison McInnes, I oppose its closure.

The Convener: I am hugely supportive of drugs courts, but I read today—this is not in the papers, and is separate from the issues relating to the Fife drugs court—that there is a high degree of recidivism in those courts, that 70 to 80 per cent of those who had taken part went back, and that the courts did not work. I am sad to report that. I have been at drugs courts where the sheriff and support teams had not been successful in the way that one would have hoped. The issues are very complex.

Roderick Campbell: I disagree with Margaret Mitchell. I do not think that she has evidence—although I am not saying that she is saying that there is evidence—that the proposal has anything to do with the closure of Cupar sheriff court.

It is a wee bit unhelpful to have a note that says that the sheriff principal no longer wants a drugs court to run in his sheriffdom but does not explain why. That has left things a bit more confused than they might otherwise have been.

The Convener: I do not want to publicise *The Herald*—although I have done it—but I think that a Government response gave the percentage of recidivism in relation to drugs, which I am sad to say was very high for what is a dedicated court.

John Finnie: The rationale for having a dedicated court is to deal with a specific and extremely complex issue. Recidivism and regressing into offending behaviour that is connected to addiction issues must be recognised as a part of that. I, too, am pained at any closure of such a specialist court.

Sandra White: I do not know whether Roddy Campbell said what I am about to say—it is a similar point. I reiterate that the policy note says:

"The Sheriff Principal ... believes that he will be better able to discharge his statutory responsibility if we move away from a dedicated Drugs Court. It is not possible to continue a Drugs Court ... without the support of the Sheriff Principal."

The Convener: We have all had our say.

Margaret Mitchell: The note says:

"The Sheriff Principal believes that, for a number of reasons, issues including court capacity, there is no longer a strong case for continuing".

The Convener: That is all on the record, including my bit about recidivism—I meant recidivism in relation to drugs and not to crime per se. I have to say that I was impressed when I saw Glasgow drugs court years ago.

Alison McInnes: The rest of the committee does not have the figures to analyse that the convener has. I know that the community justice authority and the council in the Fife drugs court area have concerns about the proposal.

The Convener: I read the figures in *The Herald*. I have put a caveat on them, but I think that 60 to 70 per cent of those involved were back on drugs. Members can check that out and hold me to account next week if I have misquoted the figures.

Are members content to make no recommendations on the order?

Members: No.

The Convener: Members are not content. We have to report on the order by 2 December, so we will do a quick report, which members can all see before it is issued.

Margaret Mitchell: I think that we are against the order.

Alison McInnes: Do we not need to vote?

The Convener: This is not a voting item. We are reporting to the Subordinate Legislation Committee—I know that that is no longer that committee's name. Some members are not content and others are; we will just do a brief report. Everything that members have said is on the record.

Margaret Mitchell: If statistics are available, it would be helpful to have them.

The Convener: The trouble will be in getting statistics to members within the deadline, but we will endeavour to get statistics, particularly on the reference that I made—I ask the clerks to check that out for me, please, as I do not want to be maligned. We will make a short report on the instrument.

Act of Sederunt (Rules of the Court of Session Amendment No 6) (Miscellaneous) 2013 (SSI 2013/294)

The Convener: Item 4 is on an act of sederunt that is not subject to any parliamentary procedure. It is before us because the DPLR Committee reported it for an incorrect reference to another instrument. In responding to that point, the Lord President's private office confirmed that it plans to correct the error at the first available opportunity. As members have no comments, are we content to endorse the DPLR Committee's conclusions?

Members *indicated agreement.*

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

12:58

The Convener: Members will recall that we invited responses from the Minister for Community Safety and Legal Affairs, the chief constable and the Lord Advocate to issues that have been raised in correspondence to members about the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. The responses are included in paper 6, along with a further response from the fans against criminalisation group.

I give a wee warning about sub judice matters. Members should not refer to specific cases, in case they are live, but general issues that arise from the act can be referred to.

As members know, the correspondence that has been received calls for an early review of the legislation. The act is due to be reviewed for the period 1 August 2012 to 1 August 2014, and a report of that review is to be laid before the Parliament by 1 August 2015.

The committee is therefore invited to consider whether, in light of all the correspondence and responses received, we consider that action needs to be taken at this stage. In doing so, we need to bear in mind that any issues of police misconduct should be referred to the police complaints procedure. In addition, the point about domestic violence is not directly related to the operation of the 2012 act. Do members have any comments on the correspondence received?

13:00

Margaret Mitchell: It seems to me that the responses from the minister, Police Scotland and the Crown do not address whether the 2012 act is working better in practice than the previous legislation. That is the nub of the problem, so I do not think that we are any further forward.

John Finnie: I dissent strongly from what Margaret Mitchell has just said. I said all along that I supported the legislation but was keen that we addressed the concerns that were raised with us. I think that, given this healthy bundle of papers that is about 2 inches deep, we have a lot of information, which the clerks confirm is in the public domain.

The principal issue for me is the perception of a disproportionate impact. However, that there is a disproportionate impact is not borne out by the statistics that we have. The historical position, which I hope is still a live offer, was to raise awareness of the legislation, which I think is key. We have been told about engagement with fans groups and guidance on emerging trends and songs.

I want and would encourage people to engage, but we have information on engagement in the letter from Police Scotland to the convener, which states that FoCUS, the football co-ordination unit for Scotland,

"hosted a number of events around the country for supporters in the period immediately prior to the Act's implementation in March 2012. These provided an opportunity to discuss the Bill and address supporters' concerns. A key theme was to reassure supporters that police tactics would not be significantly changed once the legislation came into force. FoCUS continues to engage on a daily basis with elected members, supporter groups, fan liaison staff and individual members of the public to answer queries and provide education on the operation of the legislation."

The bit that I find the most disappointing is the final sentence of that paragraph, which states:

"In many cases, however, those who most vociferously oppose the Act have repeatedly declined to meet with FoCUS officers."

I think that we need engagement and people speaking to one another to understand.

I previously raised the question of camera surveillance. The documents tell us about hand-held and body-worn cameras. The Police Scotland letter states:

"The officers deployed as evidence gathering teams equipped with bodyworn video and hand held cameras undertake a training course which includes information on police powers—"

that is very reassuring for a start—

"Human Rights and Data Protection, and they are expected to provide members of the public with this information if asked to do so."

Clearly, we want the police to use technology to acquire evidence in ways that are compatible with both data protection and human rights legislation.

On avenues of redress, I am conscious of the convener's comment about live cases. On representations that the committee has had previously on the legislation, I have encouraged co-operation and have encouraged fans to come forward and, if there is any suggestion of wrongdoing from whatever quarter, to raise that. I would continue to encourage that approach. However, sadly, that does not seem to have happened. It is perhaps unfortunate that we are fettered in what we can say in relation to events in a specific location.

We have also received specific information from the Lord Advocate. I do not know whether protocol permits me to read out some of that.

The Convener: Yes, of course it does. The Lord Advocate's letter is in the public domain.

John Finnie: Right. The letter uses terms such as "f***". If the letter is in the public domain, people will clearly find a range of things in it offensive, and I hope that all reasonable fans would condemn them. The Lord Advocate's letter says:

"Successful prosecutions have followed arrests for brandishing a flagpole to make it look like a firearm during a football match, making a Nazi salute at a football match, engaging in organised and pre arranged disorder and violence at a busy station".

If people have seen the footage of women and children fleeing at a major railway station in Scotland, that would surely upset them. The letter continues by saying that successful prosecutions have followed arrests for

"abusing passengers including children en route to a football match, wearing a T shirt in sight of opposition fans with the words"—

an organisation, the word "f***", and other information are then mentioned.

The Convener: It is also important to say that the Lord Advocate says:

"I appreciate of course that this type of behaviour is carried out by a small minority of people."

One does not want to tarnish—I was just concluding the quote.

John Finnie: Absolutely. It is clear that I have highlighted many passages in many reports, and I could go on at length, but I will not. I am reassured that both the minister and the Lord Advocate have said that it is wrong to downplay the fact that police officers are victims. If someone has something deeply offensive to say, it should not make any difference whether or not the individual who receives the abuse is a police officer. The fact that 13.1 per cent of the charges relate to police officers as victims makes no difference at all.

I was keen on our conducting an early review. I am aware of the on-going academic review at the University of Stirling. It is clear that I am no academic, but there may be academics in the room. The information that I have received from all the various sources, which is in the public domain, has reassured me that some of the supporters groups' concerns have been addressed, as has their understanding of positions, and some of the emotive language that has been used has been dispelled.

I encourage engagement with FoCUS. Part of our role is to review. I am content to leave things at this time, unless there are significant changes of direction in policing, in the knowledge that the legislation is under tight scrutiny from various quarters, including the committee.

Elaine Murray: I am still struck by the divergence of understanding between Police Scotland and prosecutors, for example, on one side, and supporters organisations on the other, so I tend to favour a one-off evidence session if we could fit it in. We could try to get supporters organisations in to voice their concerns and go through those with other organisations to try to ensure that there is engagement, as John Finnie would say.

Sandra White: I do not have a lot to add. I concur with everything that John Finnie said. Having asked for a further update from the Lord Advocate and the minister et al, and having read the reports, particularly with regard to police officers who have been on the receiving end—we have evidence on that—we have fulfilled what we were asked to do. No further action needs to be taken to move things forward. The committee asked to look at two full football seasons in the first place. We got what we asked for in an amendment, and we should carry that forward. I do not see the point of bringing forward an ad hoc committee or having evidence sessions with football fans.

John Finnie quite rightly said that a group goes round the country that is open to meet the fans, but it has found that certain people do not meet it to get any answers back.

Basically, we should not take any further action at this stage.

The Convener: Some of this appears to me to be complaints about the way that police are doing stuff. It would be interesting to know how many complaints have been lodged with the police about how they are operating the legislation. That would be useful to know because we have recommended that, when action has been heavy handed, out of context or whatever we like to call it, the first port of call should be to lodge a complaint. How do members feel about that?

John Finnie: Convener, there is huge frustration associated with the matter. To be frank, people need to put up or shut up. A number of serious accusations were made and then people would not co-operate with the police to investigate them. We need to have a rigorous system for investigating any suggestions of wrongdoing in the police, but that requires people to co-operate.

I am not soliciting complaints about the police.

The Convener: I am, actually. If there is stuff going on to do with operational policing, I am saying—

Sandra White: Convener—

The Convener: Bear with me.

I would like to know how many complaints have been lodged with the police regarding the operation of the act. That would be useful to know.

Sandra White: It was not that I was butting in. I had not finished and then you butted in on me.

The Convener: I do that occasionally. I get to butt.

Sandra White: Yes, I know. You are the convener and we allow it. That is the role of the convener.

The Convener: Well, other people do it, too.

Sandra White: To pick up on John Finnie's point, among the emails we had evidence of people who complained but, when the police tried to contact them, never got back to the police. There were people from Cyprus and various other parts of the world—not necessarily local people—and a number of the complaints had nothing to do with the act but were to do with policing arrangements. We have already had notification of people who have complained but did not follow it up. How do we get people to follow complaints up? It is not the committee's job.

The Convener: No, no. As I have said on the record, if there are complaints about how the legislation is being operated, as distinct from other matters, it would be useful if people put them to the police with a narrative about what happened. Then we would have some meat.

Sandra White: I think that they know that.

Alison McInnes: Convener, you know that I think that the legislation was ill judged and rushed through in an unconsidered way, so it will not surprise you that I think that we need an early review of it. There is a danger of a breakdown of trust between one group of people and the police. That, in itself, should concern us. I support Elaine Murray's suggestion that we ought at least to consider an evidence-taking session to take the matter further.

Sandra White: Who do we ask?

The Convener: Just bear with me a minute. John Pentland wants to say something.

John Pentland: Since we last discussed the matter two weeks ago, the goalposts have certainly changed for a couple of the committee members. I agree with Alison McInnes that there is a breakdown of trust and that the best way to recover from that is to push for an early review of the act or, as a last resort, to support Elaine Murray's proposal that we have an early evidence-taking session. Although we said that we would like there to be consensus, we will have to take a vote somewhere down the line or we will discuss it from now until the two years for the review are up.

The Convener: I understand the call for an evidence-taking session but I am just trying to work out what the purpose of it would be in relation to the legislation. It could not be for people to make complaints about the way the police were handling things and to say in front of us that the police did X, Y and Z, because that would be a matter for the police to deal with, not the Justice Committee, whatever the legislation. What would the purpose be and how would it relate to the legislation, not operational policing?

John Pentland: It would relate to the last round of emails that we received, which started the negotiations.

The Convener: Some of those emails concerned operational matters, though, and involved domestic abuse, which has nothing to do with the legislation.

John Pentland: However, that is what was taken up with us and that is why committee members called for an early move on it.

Roderick Campbell: I do not want to repeat what everybody else has said, but engagement between both sides would be a good idea, irrespective of what we decide about taking evidence. Also, although in our correspondence there are references to issues that should give rise to the possibility of complaints to the police about how the individuals were handled, there seems to be no indication that anyone has used the complaints procedure. If people have issues, they should use the police complaints procedure.

13:15

John Finnie: Of all the items that the committee has dealt with, this is one on which we are damned regardless of what we do. I certainly feel that, anyway.

I have acted in good faith in everything that I have done. I do not know whether John Pentland thinks that I have changed my position since our previous discussion. He will recall that some people wanted to make a decision that day. My position was that I was keen that there should be an early examination of the issues and that we should be informed by the people who are best placed to tell us about them. We have submissions from the supporter side—we do not know how representative they are of all supporters—and we wanted information from the prosecutors and the police, as well as the Scottish Government's position.

When we talked about, for example, the disproportionate impact, the use of cameras and how a specific incident was responded to, I said

that, from the information that had come to us, I thought that the issues had been addressed. However, in any case there is on-going monitoring. I have not diluted my position, but I am not going to ask for information, get it and then ignore the content.

The Convener: I am just trying to think about how to find the middle way, as someone said. Would it be appropriate to hear from the Minister for Community Safety and Legal Affairs before we get other people in—

Sandra White: No—

The Convener: I hear you, but I am trying to find a way for the committee to come to an agreement. My concern is to keep the operational issue separate from the act—and it is difficult to separate the two. Parliamentarians must not start dealing with operational policing.

Christian Allard: I was not at previous meetings, but I read all the evidence and I agree with John Finnie that the committee must be very careful to send the right message to the supporters who are out there. They need to engage with FoCUS. If we decide to take evidence or do anything of the sort, all those people who have not engaged with FoCUS will not do so. I would prefer to send a strong message to them that they need to engage with the process.

Sandra White: I do not think that committee members are ever going to agree. We should just go to a vote.

The Convener: I have not suggested any solutions yet. Let me give members options: we could have a one-off evidence session with the Minister for Community Safety and Legal Affairs; we could appoint a reporter or group of reporters to investigate the issues further on our behalf; or we could explore the options for seeking the establishment of a committee to consider the issue. There is the pick and mix; if members want to add suggestions, tell me.

Sandra White: I suggest that we take no further action.

The Convener: Right, so the options are: no further action—I do not know whether this is multiple choice—

John Finnie: On a point of order, convener.

The Convener: There are no points of order in committees, but I will let you make one. I love to say that.

John Finnie: I just want to say that we will be taking further action, because, as with everything that we do, we are monitoring the issue and we are aware that a report will come back to us. I know that Sandra White means that we should do nothing at the moment, but in any case we are not ignoring the issue. The review is coming and we are very interested in it. It is about how we phrase it. I propose that we wait for the completion of the academic report.

The Convener: No further action pro tem, until the review is complete. Is that what you are saying?

John Finnie: Yes.

Sandra White: Okay.

The Convener: Right. The options are: no further action pro tem; one-off evidence session; appointment of a reporter or reporters; establishment of an ad hoc committee. Have I missed anything out of the list? I am not sure how we should do this—

Margaret Mitchell: May I comment? I proposed that we have an ad hoc committee precisely because of the situation that we are in. There is clearly an issue. An early review is desirable, and the Justice Committee does not have the capacity to do it, because we are already overloaded. I thought that establishment of an ad hoc committee would be a sensible way forward, to tease out the issues.

The Convener: Who wants to take further action at this stage and who does not?

For

Murray, Elaine (Dumfriesshire) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: I am in the most difficult position. I would like to see something in between what you all want to do. We have had a vote with four for and four against, but my concern is that we have not been able to find out whether those who are aggrieved—and may be rightly aggrieved—have had any working connection with the folk at FoCUS. I would like to know that before we decide what to do. We are saying that not everyone has engaged, but if they have and they have been unsuccessful, it is important to know that. Could we find that out first and then come back to this? If people have engaged and it has been a waste of time, that is fine—we will have found something out. However, if they have not engaged, we will also have found something out.

Sandra White: The people who were aggrieved emailed all of us in great numbers about what they were aggrieved about. They knew that FoCUS was there, and they could have contacted it. We have the figures of people who made complaints,

yet when those people were contacted they did not follow those complaints up. I think that that is evidence enough.

The Convener: I want to know whether they have engaged with FoCUS or whatever—what is it called again?

Alison McInnes: Surely the proper way to do that is to put out a call for evidence and hear from people.

The Convener: We usually find out. Perhaps we should ask whether FoCUS plans to give written evidence. We usually have written evidence before we—

Alison McInnes: I think that we are just stringing this out.

Sandra White: Absolutely. We could string it out for ever.

The Convener: No, we are not. I am loth to call people for evidence if, when we ask them whether they engaged with FoCUS, the first answer to the first question would be no.

Alison McInnes: Surely there are so many questions other than that.

The Convener: I would like a one-off evidence session for the Minister for Community Safety and Legal Affairs. I will be honest: I do not want to go straight to a review of evidence or something before we have tested it further.

I understand that the committee is divided—I do not like it divided. I hope that, if we get the minister along we can test the issue first, then we can go back to it. That is where I am. If members agree to us doing that, we can pack in the meeting today and get the minister along for a one-off evidence session.

Sandra White: No.

Roderick Campbell: You will have to put it to a vote. It is a difficult one.

The Convener: That is my proposal. Who is prepared to have the minister along first? Am I on my own?

For

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Murray, Elaine (Dumfriesshire) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pentland, John (Motherwell and Wishaw) (Lab)

Alison McInnes: It is an improvement on nothing.

The Convener: Right. So we will do that.

Sandra White: Can we get to vote?

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: The result is five votes to four. We will have the minister in on either 18 or 25 February.

Christian Allard: I want to make an objection. You asked whether we agreed to see the minister first. I object to the use of the word "first", because we need to send a strong message to the people who are not engaging that they need to engage. We cannot have them out there saying, "That's fine; we don't need to engage."

The Convener: Our discussion about whether people have engaged is on the record. We expect them to engage and we wish them to do that, but our next step is to do what the majority has decided, which is to have the minister along for a one-off session on it shortly. A short one-off meeting will be fine.

Thank you very much. The next meeting will be on Tuesday 3 December.

Meeting closed at 13:23.

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