OFFICIAL REPORT
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DRAFT

Criminal Justice Committee

Wednesday 17 January 2024

Session 6

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CRIMINAL JUSTICE COMMITTEE
3rd Meeting 2024, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

Katy Clark (West Scotland) (Lab)
*Sharon Dowey (South Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)
*John Swinney (Perthshire North) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sarah Ashby
Sandy Brindley (Rape Crisis Scotland)
Emma Bryson (Speak Out Survivors)
Jennifer McCann
Hannah McLaughlan
Hannah Reid
Dr Marsha Scott (Scottish Women's Aid)
Hannah Stakes
Kate Wallace (Victim Support Scotland)
Ellie Wilson
Anisha Yaseen

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 17 January 2024

[The Convener opened the meeting at 09:08]

Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 1

The Convener (Audrey Nicoll): Good morning, and welcome to the third meeting in 2024 of the Criminal Justice Committee. We have received apologies from Katy Clark.

Under our first agenda item, we will continue to take evidence on the Victims, Witnesses, and Justice Reform (Scotland) Bill at stage 1. Today, we will hear the views of survivors of sexual crimes who have personal experience of the criminal justice system. This is an important evidence session for the committee. The bill aims to improve the experience of survivors of crime in the justice system, so it is important that we hear the perspectives of the panel members who are giving their views today.

I offer our first panel—Hannah McLaughlan and Ellie Wilson—a warm welcome. Thank you for taking the time to attend the meeting; it is greatly appreciated. I intend to allow about an hour for this session. If you would like to ask a question or say anything, please raise your hand or indicate to me in some way, and I will be happy to bring you in.

I thought that it might be helpful if I opened the session with a general question about trauma-informed practice. As you know, the bill introduces a requirement that victims and witnesses

"should be treated in a way that accords with trauma-informed practice".

Do you think that that is needed? If so, why?

Ellie Wilson: I think that it is essential. Trauma affects people in a lot of different ways. Throughout the criminal justice system, a survivor might encounter a range of people, including advocates for the Crown, advocates for the defence, people from support services and members of the jury. If all those individuals are informed about the process, there is less room for misunderstandings. That is part of ensuring that the justice system is survivor-centric, because—to be realistic—it is currently not. It is as though victims are an afterthought in the whole process. I certainly think, therefore, that a trauma-informed approach is the only way to go.

The Convener: Thank you very much, Ellie.

Hannah McLaughlan: I absolutely agree with everything that Ellie said. I agree 100 per cent that people who work in the justice system should be trauma informed. Personally, I cannot understand how, in 2024, that is not already the case. It is unacceptable, and it is not good enough. I am really glad that we are having meetings such as this one and are looking to change that, because it absolutely must change. As Ellie said, that is essential.

Survivors endure trauma as a result of the abuse that they go through, but, having come through the justice system, I would say that I endured trauma not only from my abuser but from the system that is supposed to provide me with justice. That is not acceptable, and it needs to change.

I strongly believe that defence lawyers need to be trauma informed—that must be a fundamental part of their practice. When you are on the witness stand, you should not be made to feel embarrassed, humiliated or undermined by someone. I will not go into too much detail, because I know that we do not have the time, but I want to say briefly that, in giving my evidence, I had to take the time to try to educate the defence lawyer and other people in the room about how trauma can work, how it works in different ways for different people, and how it impacted my brain, as I uncovered things only after my relationship had ended.

It is absolutely ridiculous that a witness on the witness stand, in such a vulnerable position, was put in that position. I was made to feel like I had to try to help people to understand something that they should have already had a good understanding of beforehand.

The Convener: Thank you very much. You spoke specifically about defence lawyers. The committee is aware of, and understands, the fact that there is a need for improved trauma-informed practice across the whole criminal justice system, from the point that somebody contemplates making a disclosure to the conclusion of a court case, because the whole justice system could be involved in a case.

I am interested in your views on two things. Do you think that a whole-system shift in trauma-informed practice is essential, rather than there being a piecemeal approach? I am also interested in your thinking around a trauma-informed environment—for example, the committee has spoken about the way in which traditional court buildings can be intimidating. Hannah, perhaps you can start by outlining your thoughts on how we embed trauma-informed practice across such a large system.

09:15

Hannah McLaughlan: Yes. I understand that it is so massive. It is not just one particular thing. I named defence lawyers because I feel that they are a key part, but you are absolutely right.

Recently, I was grateful to be at a meeting at the Scottish crime campus, where we said that it is about everybody who is involved, from start to finish, as you said. From the moment that you report—when you walk in—whoever you meet on that day at that station has to have had some trauma-informed training. That has to happen. It cannot be stand-alone training that is done just to tick a box. It has to be on-going, because, over time, new research will come out about how trauma works. From start to finish, everybody who is involved in the process in some way must have a good understanding of how trauma works.

It is also about the court buildings and about changing the whole process, as you mentioned. Unfortunately, that is tricky, because every survivor is different. We are all unique, so what works for one person will not work for all. Throughout, I was treated as though I was really vulnerable, damaged and broken—as part of me was, and is, I suppose—and other survivors will be in that more vulnerable and broken state of mind. However, we should not all be treated like that. We are still human, and we should be listened to.

For example, at the moment, screens are in place for when you give evidence, and there is a supporter with you in the courtroom. However, I had to fight—as did some of the other girls who were involved in my case—not to have the screen, because we wanted to face our abuser when giving our evidence. That was a personal choice for us and no one else. Time and again, we were not listened to, and it involved a fight.

I just think that we should have been listened to, because we know ourselves and what we want. The thinking is probably about protecting us—it is probably about our best interests, and I totally understand that—but people should listen to us and be mindful that every survivor is different.

It is really tricky. I do not know the answer, but there has to be an overall understanding of what trauma-informed practice looks like.

The Convener: That is really interesting. To summarise, we should not make assumptions about what people need or want. That is helpful.

Ellie Wilson: Hannah made an excellent point about the defence. We need to focus on that. Correct me if my understanding of the legislation is wrong, but I believe that the talk about trauma-informed practice in the criminal justice system does not apply to the defence. That is symbolic of the system that we operate in. We have all these rules, regulations and codes of conduct, but the system is often like the wild west when it comes to the behaviour of the defence.

Under sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995, the defence is not allowed to introduce evidence that focuses on a complainer's sexual history or character, but such evidence is routinely introduced—as it was in my case, even though there was no section 275 application—because the defence knows that, even though the judge will tell the jury to disregard it, members of the jury will have already heard it by that point. Not including the defence in this issue is a massive blind spot, and we need to have a serious think about what we can do to properly regulate defence conduct and ensure that it is appropriate.

I will touch on the specialist courts. It is correct that the court environment is intimidating and is difficult to be in, but I also worry about losing the solemnity of court proceedings, because, although the experience was very intimidating and difficult for me, it solidified in my mind that what happened to me was a serious offence. It also shows perpetrators and wider society that sexual crimes are serious. Rape is one of the most serious crimes in Scots law; such cases are only ever heard in the High Court. That solemnity is sacred, and it is important that we maintain it.

I will also touch on what "trauma-informed practice" means. If it is a simple question of those who are involved in the criminal justice system taking a training session to learn about trauma, that is important, but how does that manifest in real life? If victims and witnesses are continually sidelined, left out of the process, ignored and subjected to inappropriate behaviour by the defence, and if all the individuals who are involved in the process understand trauma but are not doing anything to behave in a trauma-informed way, learning about trauma is meaningless.

The Convener: Thanks, Ellie. There is a lot in what you have said that members will pick up on.

Before I open up the questioning to committee members, I welcome Jennifer McCann, who was held up in getting here. It is nice to see you. We will let you get settled in.

John Swinney (Perthshire North) (SNP): Good morning and thank you for being here today. I want to follow up on one of your comments, Ellie. You described the court environment as intimidating. Would you describe it as respectful to you?

Ellie Wilson: I felt respected by the majority of the members of the court. My support worker was excellent and the clerks were great, but I did not feel at all respected by the defence. In fact, I felt humiliated, I felt abused and I felt that I was

treated like a criminal, so my experience at the hands of the defence is that I absolutely was not respected.

John Swinney: Thank you for that. That opens up two issues that I would like to explore. The first is the issue that you and Hannah McLaughlan have aired about what trauma-informed practice looks like in reality in the court setting. I would like you to explain, from your experience, your expectations for the future if trauma-informed practice is to be a requirement in court proceedings. Where do you believe the greatest amount of movement is needed in that respect to ensure that, in the future, victims will be in a trauma-informed environment?

Hannah McLaughlan: May I jump in?

John Swinney: Please do.

Hannah McLaughlan: Two main points come into my head. The first is about when you are in the courtroom with the defence lawyers, which we have spoken about, and the way that you are treated in that room. The other thing is that, from the point of reporting to the point of getting to the court, the phone calls that you get to provide updates—or the lack of updates, in our case—are very much not delivered in a trauma-informed way. Maybe those people forget that, because they do that job every day—they may have been doing it for years—they know how it works, but we have no clue because it is our first time going through the process. When they phone us with an update, it feels very much like they are trying to do it as quickly as possible. They will just quickly tell you, "Oh, the date's been changed for the preliminary hearing. We'll contact you again when we've got another update." You are left with a million questions and a million emotions but no clue what to do with that or who to speak to. You are just left alone to get to the next date that you are given. The goalposts keep moving and moving and moving because of a variety of factors that are outwith people's control.

Covid created a massive backlog that affected our case, which meant that it was a long time until the trial. The date for the preliminary hearing, when the accused gives different excuses, gets moved and moved, so the goalposts keep moving. The updates that you are given could be provided in a more trauma-informed way with more understanding of how it feels for us.

I work with children and I work with a lot of children who have been through trauma, which involves trying to develop empathy and understanding. You might not have experienced something so you will never fully get it, but you can try, to the best of your ability, to understand, to reason with the person and to try to help to regulate that person. Our bodies are already responding to the high emotions of a date coming up and then it gets changed, but we are left with no support available to us. Those are the two main points.

Ellie Wilson: I echo the points on defence conduct, which is a primary issue that we need to address. Agency and involvement are also key for me. Survivors of sexual abuse have already had their agency stripped from them, yet they partake in a criminal justice system that further strips it from them. We are treated like outsiders throughout the process. I went into the criminal justice system naively thinking that I would be involved in my own case, be able to speak to someone about it, have information about it and be told whether certain bits of evidence had been uncovered. However, I was not given any information whatever.

We talk about conviction rates and, with the bill, we are looking to change jury sizes and bring in judge-only trials, but if we want to improve conviction rates, the way to do that is by involving survivors in their cases. I secured some guilty verdicts in my case and I also got some not proven ones. I believe that my case would have been much stronger if I had been able to sit down with the advocate from the Crown Office and Procurator Fiscal Service and talk things over.

The reality is that the victims are the experts in their own cases. You could be a very learned lawyer, but to look over information as an outsider and have no clarity about it—no understanding of the context—does not make for a strong case. Involving victims is the right thing to do not only to give them their agency back and to be trauma informed, but to increase conviction rates.

Hannah McLaughlan: We have spoken a lot about how you are treated as a bit of evidence. As Ellie Wilson said, we are the experts. It is our life. It happened to us, so the process should include us. It cannot be that difficult to do that. We should be part of the process, but you are made to feel like you are a bit of evidence that gets put on a shelf. You are brought out when you are needed and you are then just disregarded afterwards. You feel like it is your whole life—in the lead-up, it is all that you are thinking about—but you are made to feel such a small part of the process.

That sounds bizarre when I say it out loud. How could it possibly be like that when it is about you and what happened to you? The trial would not be happening if you had not reported what happened to you, but you are made to feel like such a minuscule part of the greater picture.

John Swinney: It does sound bizarre, but it is also a powerful explanation of how you did not feel central to the case, which is a point well made.

The Convener: Jennifer, do you want to comment on that? You do not have to, but I give you the option.

Jennifer McCann: I am not sure what Hannah McLaughlan and Ellie Wilson have already said, but I add that trauma-informed practice is vital in serious sexual offence cases, purely to give victims confidence in their own cases. The person that you first report to has to be trauma informed. Mine, unfortunately, was not, which hindered my experience moving through the case and throughout. By the time we get to the fiscal—I echo what Hannah McLaughlan said—the updates should use less legal jargon. I did not have a clue what was meant when we got phone calls, and then I spent hours googling and searching for information that should have been readily given to me.

Also, juries should be trauma informed. I cannot explain the anxiety that I felt or the pressure around how to act and how to behave in a courtroom. I was made to believe that everyone was expecting me to have a breakdown, that that was normal and that it was how I should react. When that did not happen and I went in there with no screen and no emotion, I felt that that was going to be pitted against me at some point. That is pretty much all that I have to add regarding that. However, I will say that our case preparer was trauma informed and really good at her job.

John Swinney: I have a further question that develops the second part of what I am interested in. You made a point about defence counsel, which I take and recognise. One argument that is put to the committee is that the judge is there as a protection for victims to ensure that there is good order and process and a respectful environment in the court. I am interested in whether you think that that is the case. Could that role be deployed more effectively? For example, are there areas in which it might be assisted by a trauma-informed approach?

09:30

I was struck by a point that I think you made, Hannah, although I may have got that wrong. You said that the defence counsel is able to say something in the full knowledge that the judge will say, "Strike that from the record." In fact, it was Ellie who made that point—I apologise. Despite what the judge might say, we all live in the real world, and what has been said is out there. That does not strike me as being part of a respectful environment: the fact that it is possible for a defence counsel to say what they like, in the full and certain knowledge that the judge will exercise their role in protection, as they should properly do, yet what has been said is already out there.

Ellie Wilson: On that point, I have talked about my experience in court, but I also have a family friend who has his own defence practice. He was trying to prepare me for what to expect in court, and he said, "Generally, we try to create a smokescreen and distract the jury, and say whatever. We know that the judge will tell the jury to disregard it, but they have already heard it." I am sure that, if you were to bring members of the Law Society of Scotland before the committee, they would say, "Of course not—that is not something that we do", but that sort of distraction tactic is common practice.

I have spoken before about the difficulty in making complaints, which I think creates an environment of people acting with impunity. When I wanted to make a complaint about the defence lawyer in my case, I had to access my court transcript, which cost thousands of pounds. I lodged my complaint in the summer of 2022. It is still sitting with the Faculty of Advocates now, and it could take at least another year to resolve. Where there is an environment in which individuals can operate with impunity, why is it that we are surprised that that sort of behaviour is taking place?

On your point about judges, it is really pot luck as to the sort of judge that you get. It is also important to bear in mind the lack of diversity of judges, and their age. In addition, quite a few are reticent about intervening.

Hannah McLaughlan: I would like to add to the comments about the role of the judge. Personally, I felt very victimised when I was standing in the witness box giving my evidence. It almost felt like it was a game to the defence lawyer—I did not feel respected at all. It was really difficult to stand there thinking, "This is my life—this has happened to me", but it was like it was a joke to that man. He was trying to make a mockery of me to everybody, and I was undermined after everything that I said.

As Ellie mentioned, it is a smokescreen. We spoke after our case, once we had all given evidence, and we all agreed that the defence had nothing—it was all just a waste of time, and a smokescreen. They would talk about anything and everything to try to paint you in a bad light. They said things that were not even true, and they would undermine you and call you a liar.

I was left feeling like I was fighting for my life in that box, and that man was not going to give in until he broke me. I did break on the stand, but then I came back from it, because I just thought, "No." I said to the defence lawyer, "You are actually treating me how your client, my abuser, treated me, and I have come too far since then to allow you to break me again here today."

I was standing my ground, but I remember looking at the judge and at my advocate depute, and then back to the judge and back to my depute, pleading with them with my eyes without saying any words. I was trying to say, "Someone help me—throw me a lifeline or something", but nothing came. Nobody stepped in and nobody helped me. I was fighting on my own on that witness stand, with no preparation beforehand on what to expect or what line of questioning would come.

Afterwards, we were really lucky to be able to meet the Lord Advocate. Our advocate depute was also present, which gave me the opportunity to ask him, "Why didn't you intervene at any point? Why didn't the judge intervene?" He was able to answer that—he just said that he made a judgment call and that he is only human, so he may get it wrong sometimes. He made a judgment call on the 20-minute Zoom call that he had in order to meet me the week before our trial began. He got the impression that I was quite a strong person and that I needed that moment in that room to get some power back and get that moment for myself. I understand and appreciate that.

However, from my point of view, you are standing in the witness box in a very intimidating room, with all those people looking at you, and multiple people typing every single word that you say—and your abuser, who is writing down every word you say in a notebook. I was feeling so alone and scared. I was thinking, "Do the people on the jury believe this man? Because he's putting on a good show—I'll give him that." What do you do? No one had prepared us beforehand about what to expect or what kind of questioning there would be. That is quite important, but—as far as I am aware—it is not included in the bill.

Perhaps there could be some provision on what happens before you get to your trial. We spoke about that in our meeting with the Lord Advocate, along with our advocate depute. They were talking about whether it would potentially be good, before trials began, for advocate deputes to have more time to build up more of a relationship and run through scenarios. They would not talk about the evidence that would be included in the case, because that would obviously have implications, but they could make up scenarios to give you an idea of what the lines of questioning might be like and what it feels like to be challenged on your truth.

I do not know how you can explain that to someone, but I hope that I never feel that way ever again. It was so retraumatising and horrific to be challenged on your real-life experience and to constantly fight back just to be believed.

John Swinney: Thank you.

Ellie Wilson: Is it okay if I add something quickly?

The Convener: Please be quick, as quite a few members want to ask questions.

Ellie Wilson: I will be brief. I note that Hannah said that we had no idea what to expect. She got in contact with me prior to her trial because she had seen me on social media, and I shared my court transcript with her to give her an idea of what to expect. I have done that with several others. I have noticed that it is survivors who are giving other survivors legal advice and telling them what to expect, because they have no other recourse to the information. I know that Hannah and others have been doing that, and I have been given legal advice by other survivors. That is the state of affairs that we are currently in.

The Convener: Thank you. Russell Findlay is next, to be followed by Fulton MacGregor.

Russell Findlay (West Scotland) (Con): First, I thank you all for all the work that you have been doing, and for waiving your anonymity, which cannot have been easy.

The evidence that we have heard so far has been really compelling, and so many things that you have said jump out: being treated as an outsider in the court; being treated as a bit of evidence; and being alone and scared. I note what Ellie said about how the defence lawyers often conduct themselves and how the court is an environment in which individuals can act with impunity.

I have a lot of questions. One issue that we have not touched on so far relates to the proposed new sexual offences courts and the proposal that there should be a pilot of judge-only rape trials without juries.

Do you have any views on whether, in your circumstances, you would have preferred a non-jury trial, or were you satisfied with that aspect? Was the presence of a jury almost a counter to the legal establishment that dictated the rest of the proceedings?

Any one of you can answer.

Jennifer McCann: I sit on the fence regarding specialist courts and judge-only trials. That is not because I do not think that it is a good idea, but because I am aware of the time constraints, and the fact that the timeframes for dealing with such cases would be widened. For example, if we have 25 courts and that is stripped down to two specialist courts, given the amount of rapes that we see every year, a backlog will build up quickly. It would still result in lengthy delays and the things that we experienced.

I would also be concerned about potential bias in a single judge-only trial. The benefit of having a jury is that there are different points of view and opinions, and ideas can be expressed, explored and discussed to their full extent.

I spoke to Hannah Reid, who was involved in our case but could not be here today. She thinks that specialist courts should come into play, but she has the same reservations and concerns as I do regarding judge-only trials.

I think that there should be a specialised jury—and Hannah agreed with me on that. The issue is not so much about the fact that there is a jury; it is about taking 12 to 15 random members of the public, sitting them in a gallery and telling them to decide what to do with someone's life. From a personal point of view, they will have to carry that. They will have the lives of two or more people in their hands. Are they really equipped to decide if someone has been raped or not, based on how they act in a courtroom over a couple of hours? That is a point to argue.

In our case, a lot of jury members were young boys, and you can imagine the concern that that posed to us. We knew that his defence would paint a picture of him being young and immature, and say that he had grown up now. Having young members on the jury is a bit concerning in that regard. I would also reiterate what I said earlier about the expectation of breaking down on the stand. Are the juries aware that someone might not, or they might? They might be angry; they might stand there and cry; they might stand there and say nothing.

I sit on the fence on the question of judge-only trials, based on the fact that such ideas cannot be fully explored. However, Hannah Reid and I are in agreement on specialist courts. Our only reservations are regarding the 10 constraints and the effect on timeframes.

Ellie Wilson: There is no doubt that judge-only trials are a controversial measure. Quite a lot of survivors are split or torn on the issue. I do not feel particularly strongly either way. What I do feel strongly about, however, is that there are about 100 other issues that we should have addressed already, which would have improved conviction rates and the process. They have not been done; they have been on-going for years. I do not understand why we are not addressing some of those issues, which would create much broader consensus, and which would be much easier to resolve. Instead, however, we are going for some big issues.

I note that one of the provisions in the bill is to reduce the number of jurors. I think that that will be extremely detrimental to conviction rates. In my case, I had a taped confession of my rapist confessing to raping me, and I still did not get a unanimous verdict; I got a verdict by majority. I do not know the numbers, because I do not have access to that information as I am just a witness. That is a really concerning provision. It is all very well to say that we will end the not proven verdict and bring in judge-led trials, then reduce the number of jurors but I do not think that that will be remotely beneficial.

Russell Findlay: Following on from that point, I would say that many things could be done without legislation. One of the central parts of the proposed legislation is to embed trauma-informed practice. I am not entirely sure exactly what that means. If it means treating people with dignity and respect, do we really need legislation to achieve that?

Ellie Wilson: We have existing legislation that is not being enforced. I have spoken about the legislation that can be termed the rape shield laws, relating to what information can and cannot be introduced. That legislation already exists but, because of the procedures that are in place, there are complex reasons why it is not always enforced in practice. I have spoken about the difficulty with complaints and judges not interfering. We have existing legislation that is not serving its purpose.

Russell Findlay: That also applies to the section 275 process. The legislation seeks to ensure that a victim complainer would be able to get legal representation in the event of a section 275 application. In your case, however, the evidence was effectively introduced without the defence having sought that. I wonder if that would leave you and others exposed, without representation. What do you think could be done about that?

Ellie Wilson: I think that victims should have access to independent legal representation throughout the entire process. Applying that to section 275 applications only is completely insufficient.

Russell Findlay: Is that a shared view?

09:45

Jennifer McCann: Independent legal representation is important, but more so is having a consistent point of contact throughout the process. In our case, I had a different police officer from the four other girls who were involved. We each had different levels of contact with the victim information and advice officer and the case preparer. Each of us depended on the other girls to let us know what was happening with the case. For example, I am still waiting for a phone call to let me know that my rapist has been arrested. We have now gone through court and he has been sentenced, but I am still waiting on that phone call.

A consistent point of contact to explain the ins and outs, break down the legal jargon and go through the process would be more beneficial than pretty much anything else, to be fair.

Russell Findlay: Thank you. I am mindful that other members want to come in.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Thank you very much for your evidence so far, which has been powerful. I cannot overstate how helpful it will be to the committee.

Our conversation has moved on a wee bit since then, but my question goes back to what Hannah Stakes said about there being a screen that you did not want. I found that very interesting. As Pauline McNeill and Rona Mackay will remember from the previous parliamentary session, when the Justice Committee pushed for stuff such as the introduction of screens, we heard that even when the justice system gets things "right", it is still not being flexible. It is almost as if, when the authorities are doing the right thing, they are forcing that on to you, because that is what Parliament and other people want. I told the convener that I would keep my questions brief, so I will ask them now. Is there an issue about flexibility in the justice system, even when it is perceived to be taking the better approach? How could we change that through the bill?

Hannah McLaughlan: Jennifer McCann was not here earlier when I said that someone else in my case had had a similar experience, so perhaps she could come in on the point about the screen.

We have to give credit where it is due. I understand, and we appreciate, that people are trying to protect us. A screen is put there to help us but, as I mentioned earlier, every survivor is different. If we say that we do not want something, please listen to us and respect our decision. Do not keep pushing it down our throats if we say that we do not want it. That can trigger how we were made to feel in the abusive relationships that we were in, when our voices were not listened to and we were not respected. There needs to be more flexibility and an understanding that, although the offer of a screen or extra protection might be absolutely what one survivor needs, it might not be what another needs. Please listen to us and do not make us have an unnecessary fight.

In the lead-up to the trial in our case, and even on the day, it was such a waste of our energy to have to consistently fight not to have the screen. If a survivor is able to make that decision, voice their opinion on it and give a valid explanation of why they do not want a screen, I do not understand why that is not respected and understood.

Fulton MacGregor: Do you think that that could be brought out through the trauma-informed practice that is embedded in the legislation?

Hannah McLaughlan: Yes, but being trauma informed does not mean that you should treat someone as though they are broken, are not resilient and cannot come back from what has happened to them. What is fundamental in trauma-informed practice is having the knowledge and understanding that trauma impacts people in different ways. How it looks for one person will be different to the situation for another. Our trauma will look and feel different and impact us in different ways. There will be similarities, of course, but there will also be differences. For example, Jen and I might need absolutely different things, or we might need the same thing but Ellie might need something different. It is a complicated situation because, unfortunately, that is what trauma is. You cannot undermine the impact that trauma has on someone, so there has to be more flexibility.

I do not really know what the answer is, because it is a complex thing to get right, but I can appreciate and give credit where it is due. The Lord Advocate is trying to provide comfort and protection, but if someone does not need those measures, what is their alternative?

Throughout our case, some of us were not ready to engage with the support that was provided or offered. I brought that up at the meeting with the Lord Advocate. I said, "You must have a plan B, a plan C or even a plan D, because everybody is different. If someone is not ready for the support but you are aware that they've been through something so horrific and traumatic, you know that that person will need support. If they're not ready to engage with that support, are you just going to leave them?" Throughout the process, there are lots of things that require more flexibility and more choices need to be offered.

That goes back to what Ellie Wilson was saying: let us be involved. Actually include the survivor or give them the option to decide whether they want to be involved. Let us have a voice.

Jennifer McCann: That goes back to the point about autonomy. Look at the basis of rape—your autonomy is taken from you. Giving survivors back their autonomy so that they can decide what they need or how they want to approach it is vital.

As Hannah McLaughlan said, it really was a fight not to have a screen in the court room. I stood in the court room, on the day that I was supposed to give evidence, arguing with my advocate depute that I did not want the screen and being asked to go and stand behind the screen, to see how it felt, to see whether I changed my mind, when I had said for the two and a half years leading up to this that there was no danger that I was using a screen.

As long as someone has capacity to decide what they want, why should you strip that from

them? Again, I echo the point that it is not a cookie-cutter fix. Everyone is so different.

Hannah McLaughlan briefly mentioned support and someone not being ready to engage with support. That was my situation, and I routinely felt penalised for that. I would have a conversation with our case preparer and she would say, "You've not reached out yet" and I would say, "I don't want to reach out" and the response was, "Okay, but—". She did not have the time to go through everything and answer my questions but, because I did not want to engage with the support, I just was not going to get those answers and I was not going to have anyone to fall back on.

Support once the trial is over is also vital. As Hannah mentioned, you are a piece of evidence: you are taken off the shelf, you serve your purpose and you go back on the shelf—your job is done. Autonomy where autonomy is due is potentially the answer.

Fulton MacGregor: Thanks very much for that. That was very powerful.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Hello, and thank you for being here. Before I ask my questions, I want to briefly follow up on what you have been talking about. I go back to your point, Hannah, about being listened to. If the message comes across from today's meeting that being listened to is so key to your experience of the process, that will be brilliant.

On trauma-informed practice—you spoke about the one-size-fits-all approach—surely trauma-informed training should train people to understand that they cannot take that approach. People need to listen to that message, too.

I want to discuss the issue of specialist courts. Ellie, you explained very well the solemnity of High Court proceedings and how that reflected the seriousness of what happened to you. I completely understand that. The committee has had the same concern, but I will put to you what we have been told when we have asked about that. We have been told that it will not be a downgrading of the High Court process and that matters will be treated in the same way. The sentencing will be the same as it would be if the case was heard in the High Court. The upside is that the judge would be specially trained in trauma-informed practice in order to deal with your unique experience and the seriousness of the crime.

If you could be convinced—or rather, if you could be reassured that that would be the case, would you support the use of specialist courts for that reason?

Ellie Wilson: I support specialist courts in principle, but I have expressed my concerns about the solemnity of the proceedings. To be honest, I think that even what we call the court is important. For example, if it was called the specialist High Court, the words "High Court" would emphasise the severity of the crime.

I want to note that the way that a building is configured is also important. When I went to give evidence, I was told that, in theory, I could have used the side door to avoid any risk of running into my rapist or his family but, apparently, it was closed because of Covid. I do not really see the connection there. Things such as ensuring that a building is configured in a way that ensures that witnesses and their families come in through different entrances are important.

Rona Mackay: That is common sense, is it not?

Ellie Wilson: Yes, it is common sense.

Rona Mackay: Jennifer, you said that you were worried about possible delays and backlogs in a specialist court, but we have heard that that would not be the case. Last week, I asked the Lord Advocate about floating trials, and she said that she does not want them to remain and thinks that a specialist court might alleviate that. That all sounds quite encouraging, but I think that the message that we are getting from you is that it has to be done right and you need to be reassured that it is not going to make matters worse.

I will make another comment, which is about a plus side of judge-only trials. We have had powerful evidence about rape myths that exist among some jury members. Judges are trained to know about that and, although there is never 100 per cent certainty in anything, we have been told that the probability is that the rape myth element would not be there so much in a judge-only trial. We have heard stories from survivors where there was clearly huge bias because of some of the evidence that the defence had led.

I do not really have a question to ask you; I just wanted to tell you that that is what we are hearing. We are aware of your concerns about the issue, which is why it is important that you have told us about those today.

The Convener: We have around 10 minutes left. At this point, I will bring in Pauline McNeill.

Pauline McNeill (Glasgow) (Lab): Good morning, and thank you for giving us your time. I have heard some of your evidence before and some of it has really stuck with me. There are two issues in particular that I want to come back on.

What all of you—and other survivors—have said about not being able to tell your story about what happened to you, because of the court process, really resonates with me.

Ellie, you talked about advocate deputes prosecuting cases, and others have said the

same. We will hear from someone on the next panel who had a more positive experience, when they had the chance to sit down with the advocate depute. I think that you also spoke about this issue, Hannah. I have heard so many times about the frustration of having to listen to the case being put when what you think is crucial to your case is not put before the court. Hannah, you talked about feeling that you needed to be thrown a lifeline because of that.

Aside from obvious failings in the system, the apparent reason for that is that the role of the prosecutor is to prosecute "in the public interest". That term keeps the victim out of it. It strikes me that that is part of what needs to change. I have been really interested in advocacy and the right of victims to have an independent advocate, but I am now more interested in the right of the victim to have conversations before and during the trial with advocate deputes. That practice is not that common, but it does happen. Would each of you like to say how important you think that that would have been in your particular case? Ellie, would you like to answer first?

Ellie Wilson: I have touched on that before, throughout this evidence session, and I think that it is essential for the wellbeing of the victim-survivor. You talked about prosecuting cases in the public interest. It is in the public interest to involve the victim, because I think that that makes the cases stronger.

Pauline McNeill: Thank you. Hannah?

Hannah McLaughlan: I would say that having that opportunity beforehand would help to reduce anxiety a lot. They constantly say to you that it is not a memory test but, boy, it feels like it is. Even though it happened to you, when you are in that intense environment under a lot of pressure and scrutiny from everyone in the room, you forget certain dates and things, so it becomes like a memory test. Rather than walking in there completely in the dark and with no idea of what to expect, you should be given the opportunity to meet beforehand. It should be a fairer playing field. We say that constantly. From start to finish, it feels as though we do not have the same opportunities and rights as the accused. As far as we are led to believe, they have had the two and a half years leading up to the trial, during which we were left in the dark.

Pauline McNeill: I want to focus on how we could change the role of the advocate depute or, as Ellie said, determine that the public interest also includes the proper conduct of the trial, including consideration of all the relevant evidence.

Hannah, I want to come back to you on this. Even if, in those circumstances, you had an independent advocate, they would not be able to intervene at that point. There is not really a way of going back on that, but perhaps if you had an opportunity during the course of a trial to say to the advocate depute, "You didn't put this crucial point—why did you not do it?", that would give them a chance to go back over that evidence.

10:00

I am wondering whether having that ability is more important than having an independent advocate, because at least the AD has a full understanding of the case. As you were told by the Lord Advocate, they are only human, so mistakes will be made. Would having a right to say to the AD, "I want a recess in the trial in order to put some of the points that I feel have not been put," be more useful than independent advocacy?

Hannah McLaughlan: Absolutely, because, at the moment, you are left with unanswered questions and you are left going over it in your head, whereas, if you had the opportunity to directly question them on that and have an open discussion, you would be more included and involved in the process, which goes back to what Ellie said. That would be amazing.

Pauline McNeill: It would help the quality of the evidence, because you would have more of a say.

Hannah McLaughlan: Yes.

Pauline McNeill: There is a fine balance to be struck, because I imagine that an advocate depute would say that they were the best judge of what the best evidence was. I would accept that, but there are certainly cases that I have heard of in which the case would have been put better if the victim had been able to say, "You missed something really important."

Hannah McLaughlan: Yes, because we have no idea of what evidence has made it to the trial. Out of all the evidence, we have no clue what will be presented until it is presented to us.

Pauline McNeill: As Ellie said, you are an outsider—what we have heard bears that out.

I have a separate question for you, Jennifer. We have talked a lot about rape myths, so I have thought about what that means to me. However, you have added something else that is really important, which is other myths that I have never thought about. You said that you were expected to break down in court, and Hannah said that she had to fight not to have a screen. I wonder whether we need to look at those elements when deciding what a trauma-informed approach looks like and what proving a case looks like.

You will know that the law on proving rape has changed over the years. You used to have to

show distress, because juries wanted to see visible distress in order to believe the victim. You do not need to prove that any more, but the two points that you made are really important. If a jury expects you to break down, because that is their myth, but you do not break down, perhaps you are less believable.

On whether you have a screen or not, I wonder whether that is another myth, whereby juries think that, if you do not give evidence behind a screen and you are able to face your accuser, perhaps you are not to be believed. Are those important aspects of taking a trauma-informed approach and proving a case that we should now draw out?

Jennifer McCann: Yes, I think that they are vital. Again, that speaks to the fact that one size will not fit all. Every survivor will act differently at the time that they give evidence.

I went into court over two days. The first day, I forgot my own name. I stood and looked back at my advocate depute for a good five seconds—I just froze. However, I went back on the Monday, having sat all weekend, and I could answer all those questions straight off the bat with no emotion whatsoever. All that I thought about was that the jury was going to think that I was off my head because of the two polarised reactions that I had.

That was a huge thing, which I spoke about at the meeting with the Lord Advocate. You are expected to act in a certain way, to dress in a certain way and to speak in a certain way. When you challenge that, you experience the anxiety of, "Well, what now?" If I do not look like a victim, how will that be perceived and how will it affect my case? It is important to have juries that are more informed. That echoes the point that I made earlier: we do not necessarily need judge-only trials, but we do need trauma-informed specialist juries to be brought in so that they are aware of those things.

Hannah McLaughlan: I go back to the point about the perception of someone not having a screen for giving their evidence meaning that it has maybe not happened to them, or that they are not scared of their abuser any more. Our abuser ended up taking the stand when we had finished giving our evidence, and we were repeatedly told throughout our case that we were not allowed to go and sit in the public gallery, as that would not look good to the jury. It was the same with the verdict: we were advised not to go to that, as it would not look good if we were there to attend the verdict as well as his giving evidence. That is clearly a myth among juries, too, but I am not sure why that is the case. That should be a decision that the survivor gets to make; we should not be directed in that way. We should be able to decide for ourselves whether we want to sit in the public gallery for the verdict or for him giving evidence. That decision should not be made for us.

Pauline McNeill: Rape Crisis Scotland makes reference to that in its submission. Is there a view about where you should be in the court once you have given your evidence, or do you just want to be able to see the on-going trial?

Jennifer McCann: I wasn't that bothered about whether I got to see him on the stand or not. It goes back to the point about the autonomy of the victim. I wanted to be in and out of there as quick as I could; there was no hanging about. I actually ran away from the macer at the end. Whereas Hannah would have liked to have the opportunity to sit and hear what our abuser had to say, I couldn't care what he had to say. My view was, "I know what happened. I've said my piece on what happened. Believe me if you want. Take it or leave it."

It comes down to autonomy. If you want to go, why can't you? On the point about it not looking good if we attend the verdict, surely the jury have already made up their minds at the point of the verdict, so what difference does me walking in make to the jury, as the verdict is being given or just before, given that they have already ticked their box and given it back—or however it works?

Ellie Wilson: We could consider that in relation to specialist courts. Having a private room that gave us sight or audio of the court could perhaps be beneficial. Quite often, I wanted to know what was happening throughout the court case after I had given my evidence—we are not informed. However, I would not have liked to be in the same room as my rapist and his family, with no special measures. Perhaps we could consider that in relation to specialist courts.

Pauline McNeill: That is helpful. Jennifer has spoken about the right to choose. If you want to hear the trial, there should be a way of allowing for that that you would feel comfortable with.

The Convener: We will have to close this evidence session shortly, but I want to ask all the witnesses if there is anything else about the bill that you would like to raise with us this morning. I just want to ensure that we have not missed anything that you were keen to share with us.

Ellie Wilson: Provision for psychological support is lacking from the bill. I think that survivors should have a legal right to psychological support. I understand that the NHS is under huge pressures, but surely we could ring fence some funding for victims of the most serious crimes who have taken the step to pursue justice, to provide some support for them. I think that that should be enshrined as a right under law.

Hannah McLaughlan: When the question was put as to whether the bill goes far enough, I was struck, as a survivor who went public afterwards, by the fact that, while the bill contains a right to lifelong anonymity, we are still missing something. Not all survivors will keep their anonymity. What about those survivors who go public? There are three of us sitting here, and there are many others. What support are we getting afterwards? That reinforces the idea that, "You're a bit of evidence; now go and fend for yourself. It's up to you." I understand and appreciate that it was our decision to go public—nobody told us to do that. However, you are then left on your own. Jennifer and I were fortunate that we had each other to navigate going public together, but survivors such as Ellie Wilson had to do that on their own.

There is perhaps room for some sort of support—although, again, I do not have the answers on what that would look like or how you would make that work. We should not be pushing for people to keep themselves anonymous, as that reinforces the idea that this is something for people to be ashamed of, but it is not their shame to carry any more. We should be trying to empower victims a little bit more, I would argue.

The Convener: Thank you, Hannah. That was well articulated.

Jennifer McCann: I think that the bill is a great first step to improving the criminal justice system, but it will have to incorporate all the moving parts. Thinking about how long the process is, how many moving parts there are and how many people are involved, the bill needs to incorporate all of that.

I was speaking to Hannah Reid yesterday, and we have come to the conclusion that, as it stands, the criminal justice system is built on a game of chance, from who you report to, all the way through to your case preparer, your fiscal, your advocate, your judge and your jury. It is a postcode lottery, with a severe lack of consistency regarding procedure, support and trauma-informed practice. That is what needs to change.

While the bill is a great first step, there is definitely more to be done.

The Convener: On that note, I bring this discussion to a close. I thank all of you very much indeed. It has been extremely valuable to hear your views, and we are very grateful that you were able to attend this morning.

10:11

Meeting suspended.

10:18

On resuming—

The Convener: I warmly welcome our second panel of witnesses. As I mentioned at the start of the meeting, it is very important to hear the views of survivors of sexual crimes who have personal experience of the criminal justice system, so the committee is interested in hearing your perspective on what is being proposed in the Victims, Witnesses, and Justice Reform (Scotland) Bill. On our second panel, we have Sarah Ashby, Hannah Stakes and Anisha Yaseen. Welcome to you all. We are very grateful that you have been able to join us this morning. I intend to allow around an hour for this session. If you would like to answer a question or come in on anything, please raise your hand or indicate to me and I will bring you in.

It might be helpful if I open with a question that I put to the first panel of witnesses, about trauma-informed practice. As you will know, the bill introduces a requirement that victims and witnesses

"should be treated in a way that accords with trauma-informed practice".

Is that needed—and why?

Sarah Ashby: There is absolutely no question but that it is needed.

It is very difficult to express how you feel unless you have been in that situation. As the panel before us noted, every single one of us is completely different. My experience is very different to that of the women who you have heard from and the women who are sat next to me. My experience was positive—I use that word whether or not it is correct. The system treated me well. I was taken care of, supported and convened with regularly by the police, the court and the fiscal. That went some way towards comforting me throughout the whole process.

Through listening to the stories and experiences of the other women, it is incredibly evident that they were not treated with the same consideration and that there was no consistency throughout any of our processes. That is why it is so important that the people who are involved are trained sufficiently to deal with all of us and our experiences.

None of us is ever going to have the same experience; it will never be exact. You can never tick a box for every person. That is a fact. However, what you can do is be consistent in the

way that you support each of us as victims and as witnesses throughout the trial.

Hannah Stakes: I agree that trauma-informed practice is required. I had a very different experience from Sarah Ashby. My investigation experience was positive, but, as soon as I entered the system, as it were, it was evident that my life did not matter as much as that of the accused. That is how it felt.

The system offered the opposite of what it is supposed to offer. If you report a sexual crime, it should offer you protection, because you are doing that to protect yourself and society and to hold the person to account. Instead, it feels as though you are giving away yourself, your life and your trauma—giving away your body, when it comes to examinations—although you already know that there is a very slim chance of a conviction.

It defines years of your life. Every court delay changed a version of myself that I would have been and a version of the life that I would have lived.

When it comes to specific trauma-informed things that would have helped me, one aspect was that the accused had run away overseas, but I was told only that there was a court delay, with nothing to support that. At first, I was told that he had not shown up for the preliminary hearing. I had to continually chase information to find out that he had breached his bail conditions. I then kept having to chase up the facts—asking where he was and what the update was—to find out that he was overseas. Being told in the first place that he was overseas would have relieved a great deal of pressure on my life, because the person who assaulted me was a stranger, so I had good reason to believe that, if he ran away, I could be at personal risk. Just the information that he was not in the country would have reassured me—although it later turned out that he was in the country.

After the trial was picked up and restarted, the day before the trial date, when I was meant to give evidence at 4 pm, I was told, by a hostile woman who worked in the court, "We're not doing it tomorrow." When I questioned why, I was told that it was none of my business and that I was a witness. Only during the trial did I find out that it was because, the day before, they had decided to do additional DNA testing, which had not worked. If they had told me that at the time, I would not have been in the deeply distressed mental state that I ended up in. I did not know whether I could build up to and cling on for another trial date.

The first and only time that I met the advocate depute was before the trial. He came across as misogynistic and uninterested, and he had walked into the room with the assumption that I was stupid. He put his wig on; he took his wig off. He told me not to be worried about the defence lawyer, because they went to uni together and he was a nice man and they played golf together. That did the opposite of what he thought. It offered the opposite of comfort. It told me that I was completely done for and that decisions about the trial and about evidence that was missed in the trial— that sort of thing—were made on a golf course.

I had waived my anonymity in court, in that I had not used any special measures. That was treated with contempt even by the judge. She went out of her way to say that it did not matter how I came across, even though I had been interviewed before the trial about how I would come across.

I have a few other points. My case received the not proven verdict, despite a massive amount of evidence, including DNA. The defence just denied that the assault ever even happened.

After three years, at the end of the trial, I was just left. I heard the not proven verdict, and then I walked out of the courtroom and that was it. There was no reason given for the decision, no follow-up and no contact. It was just, "The system has failed you and off you go—make of that what you will."

Little things could have been done—the things that Sarah Ashby had, such as follow-up contact and information being shared—that would have made a world of difference.

The Convener: Thank you. I bring in Anisha Yaseen.

Anisha Yaseen: Everybody, in any walk of life, should have trauma-informed practice as part of their understanding in order to engage with people generally. What I find difficult is that it is no secret that the system is a mess. We would not all be sitting here right now if we did not know that.

However, it does not matter what we do—we are already blanketing victims left, right and centre. That even applies to special measures—if you do not use a special measure, they will be sat with you, going, "Are you sure? Are you sure?" even when you say categorically, "Actually, I don't want to do that, and this is why".

I have been in a situation in which I went to court and the whole time I was thinking, "I'm not going to use a special measure, I'm not going to be scared, I'm not going to hide myself" and, actually, on the day, I changed my mind. It is beneficial to have that reminder and that understanding. However, the second time that I went to court, it was a completely different ball game. It was rammed down my throat that there was no way that I would be able to cope with anything if I did not use a special measure.

Regarding the trauma-informed element, VIA is not equipped to deliver that service. It seems to offer a good service to few and far between. That is great, but it is not equipped to deal with the situation. The people involved are usually paralegals or perhaps law students, and they are dealing with a range of victims from a range of backgrounds. They do not understand how to support people or how to put things into words that show that they are human and they care.

They do not even deliver the information that you need at the right time. You could have a phone call, and they will say, "Oh, when he comes in for his preliminary hearing"—or his plea hearing, or whatever—"we will phone you right away." However, it was actually me, as a 17-year-old girl, who was phoning up all the time, for a good week. Those phone calls last a very long time, because you are waiting, sometimes for an hour, just to get through to the hotline.

On the flipside, the second time that I went to court, it was because of a person who was in a position of trust—he was a police officer—and that completely changed how I was dealt with. Information was even more restricted than it had been previously. You are no longer treated like a victim like everyone else—you are treated as if everything has to be a secret. When you get a good service from the VIA staff, and when you need a little bit of extra support so they phone you a little bit more, you are expected to be thankful for that. That is not okay.

The Convener: Thank you.

I come back to Sarah Ashby. You spoke about having had a more positive experience than some of the other women to whom we have spoken this morning. It sounds as though your positive experience was by virtue of relatively straightforward things, such as communication and being kept informed through phone calls and conversations. That is not exactly rocket science, and it should be quite intuitive in the justice system.

I am interested in your thoughts about how trauma-informed practice should be developed in the justice system. Does it need to be complicated or costly, or is it simply about a culture change so that relatively straightforward measures and tasks are delivered better?

10:30

Sarah Ashby: It absolutely needs to be about consistency—that has to be the fundamental baseline. As you say, that should not be difficult. Being able to communicate should not be difficult; it should not be hard for the police force to engage with the procurator fiscal. That communication changed my experience. Sitting here listening to the experiences of others, it infuriates me that I should feel lucky to have gone through that in the way that it happened. That is outrageous.

I am not entirely sure that trauma-informed practice needs to be costly. I am very much behind the idea of the commissioner role—in my eyes, that should be the person who puts in place the rules for consistency and continuously checks on the way that advocates perform in all courts.

My trial was at Glasgow High Court and the sentencing was at Edinburgh High Court. I was genuinely treated consistently by all persons who were involved. I was informed and supported throughout the whole process. For the trial itself, I was given the opportunity to visit the court twice prior to the trial beginning; I have not heard of any of these other women being given the opportunity to do that. I was able to take my husband with me, so I had constant support and comfort, which was very important. I met the victim support team in the courtroom, and I was given a tour of the court—that was the first visitor experience that I had.

The second time, the advocate depute called me in for a meeting in which he sat down with me and asked me questions about my evidence and my experience. He used witnesses' names, and I felt comforted in knowing that he knew, consistently, about my case. I felt like he was in my corner. I have heard these other women speak about their experience in that respect. That approach was so fundamental to my experience. I felt comfort in knowing that, when I went into the courtroom, I knew who I was sitting with. For me, the room was blocked out—I could just stand up and look at that man, whom I had met before, and take comfort in the questions that he was asking me. However, that experience is not consistent.

It does not need to be a costly exercise, but there needs to be trauma-informed practice and some sort of commissioner, or someone in charge, with whom people have to interface. Perhaps, at the end of every trial, there needs to be communication and lessons learned about how those experiences have gone. That is something that I do in my workplace after we finish a project, whether the outcome is positive or negative, so perhaps that also needs to be considered.

The procurator fiscal and the advocates train together. Those are separate departments in completely separate situations, but they are working together for us—for the public and for the good of society—to ensure that these rapists are not on the street. That is fundamentally what we, as victims and witnesses, were a part of.

The Convener: Thank you. You make a really interesting point about having what is almost a debriefing at the end of a trial.

Before I open up questioning to members, I come back to Hannah Stakes to speak about a trauma-informed environment in the court process, in particular, which we have been looking at and taking evidence on.

There are different views on how intimidating that environment can be. For some, as we heard from witnesses on the first panel, the solemnity of the court environment brings a feeling of seriousness to a survivor, in terms of how serious and important their case is.

I am interested in what views you might have about the court environment and how that could be improved. Does it need to be changed or altered, from a victim's or survivor's perspective?

Hannah Stakes: Ultimately, the court experience was intimidating, but it was what I expected, and I had more than enough time to prepare for it, so I am not sure whether I am the best person to comment on that. I had worked very hard not to be intimidated by it, and it was not a particular fear of mine. I knew that I was not going to have a nice time. The cross-examination was a farce, but it was not as aggressive as I thought it would be.

The one thing I would say is that I refused to use special measures, and I was treated with contempt because of that, even by the judge. I decided to watch the trial, but I was advised how that would look. I decided not to watch the person give evidence—I decided that that was not a memory that I wanted to have—but I wanted to understand how the rest of the trial worked, so I sat in the gallery for quite a lot of it. I know that that worked against me.

It is heartbreaking to know that you have built up your character, you are telling the truth and there is a lot of evidence behind you, but, ultimately, at the end of that, a judge is going to sit and say—while getting my name wrong—"Remember, it does not matter how well Hannah Stokes has presented today." I thought, "Well, it does matter, because I was interviewed before then, because I am telling the truth, because I am here and because I am a strong and credible witness; and you are saying that to a jury after they have been misled and led up the garden path about how sure and certain they had to be." I hope that I can touch on that later.

There was also a bit of confusion around the jury being led towards a not proven verdict, which I think was intentional, given the level of evidence. That was quite a difficult thing to have happen. I had worked quite hard to be the person who I was in that room that day, but, ultimately, it worked against me. That is to do with jury biases, the behaviour of the defence and, obviously, some bias that the judge had brought into the room.

Anisha Yaseen: I want to pick up on a couple of points that Sarah Ashby made. With the first case, I met the prosecutor. The meeting was probably 10 minutes long—it was before we went into the room—and it very much involved them saying, "Hi, this is who I am. Goodbye. See you there." The second time, I was older and much more aware of researching and finding out what my rights were in the situation, because there was no lawyer. The defence lawyers sit there and counsel them, but there was none of that. Nobody was seen to be on your side. Through looking at lots of things, I eventually thought, "No, wait a minute. I can ask to speak to this person."

I spoke to my prosecutor, who at the time was Liz Paton, a number of times. Sometimes that was difficult, because a lot of the time I would be sitting there going, "I want to know what legislation you're using, because nobody is talking to me about this. If I know the legislation, I can google it and find out what it means." A lot of times, I was told, "No, you can't do this and we can't tell you that," and I was going, "If that's what we're going to court for and I'm going to be used as evidence for this charge, the least you could do is tell me what the charge is." You were constantly reminded that they were so busy and that you were taking up their time and were an inconvenience, which is difficult.

I also want to quickly mention VIA. I was at a completely different event to do with hate crime. VIA was invited, but no matter how much the procurator fiscal encouraged it to go along to the event, it did not want to go. That says a lot about what it looks like in its environment. Is it really going to sit there and listen to people talking about trauma-informed practice? Is it really going to put that in place? It puts that doubt in your mind.

The Convener: Thank you, Anisha. I invite members to ask questions. Russell Findlay will be first.

Russell Findlay: I commend you all for waiving your anonymity, campaigning and coming here. Your testimony is so powerful and so helpful to our knowledge of what is really happening in the courts. There is a lot of ground to cover, but I start with a question that relates to your experience, Sarah. You have perhaps been an exception to the rule in that trauma-informed practice can happen and people can be treated properly with dignity and respect. Do any of you have views on whether legislation is required to achieve that, given all the various parties that are involved in the process?

Sarah Ashby: For consistency, legislation is absolutely required. You just have to meet the six of us, as you have done this morning, and listen to every experience to understand how every one is completely different. Even though the first three women were involved in the same trial, they were

all treated differently. Consistency and communication need to be key. Generally, I feel that the only way to do that is to hold people responsible for how they treat us—and, unfortunately, every other woman who comes forward—and to be honest. Let us not forget that this crime—we are talking about rape—happens daily. We all have a right to be treated the same and the right to a fair trial, as we were told at the beginning. It is incredibly important that legislation dictates that consistency.

Anisha Yaseen: If we are talking about VIA being brought into legislation to give us extra support, I would err on the side of caution. That is not because I do not think that it is a good idea, but because the system is not a one-size-fits-all and VIA is never going to be a one-size-fits-all. You have to take into consideration the added complexities such as honour-based violence and women from different cultures. VIA is not specialised enough to deal with those people. It does not understand enough even to be able to deliver information in a specific way to help people feel a bit better or to help them understand without being condescending or cold. I do not think that we should not have it but, rather than saying that we will just train all those people in those different things—we know that that does not always work—we need to provide other services within that system.

The Convener: For the record, when you say "VIA", are you referring to the victim information and advice service in the court system?

Anisha Yaseen: Yes.

Russell Findlay: I asked the previous panel whether they had views on having the option of a non-jury trial. Would that have made any difference to any of you?

Hannah Stakes: As I have touched on, even though they worked within the limits of the law, I think that the judge in my case expressed some sort of bias, whether that was towards my behaviour or not. I have always advocated for it being professionals, whether that would be a panel of judges or trained individuals—even if they were legal students, they would come into the room with a level of legal training—because you would be given a reasoned decision that made sense afterwards.

Some of the theatrics that go on within a courtroom are not really about the truth or the evidence but about weaving a story. In my case, it was that DNA might have been transferred because we touched the same wine bottle or he had time to wash the DNA and he did not, which somehow proved evidence. The jury had to be more sure of anything than they had ever been in their lives, including Brexit.

Some people who are against the proposed changes say that being on a jury is a public duty and that we are making out that the public are stupid. We are not. The victims, including me, are also the public and I have watched how things play out in court. Something needs to be done to address that. Nothing has been done to address the court behaviour of some of the legal professionals. The way to address it is to do the opposite, so that victims are dealing with professionals and not with the public, who do not have the internal knowledge; they cannot have it.

There is something to be done on that, but I am concerned that, if a case was heard by a single judge and they were biased, there might be more reason to worry about a mistrial. They would have to give a reasoned decision. The proposal is worth exploring, but it does not have to be as extreme as is proposed.

Sarah Ashby: I agree with that.

Russell Findlay: Do you favour a different approach?

Sarah Ashby: Having a single judge is not, in my opinion, the way to go. I feel that there should be a jury, although I am not sure whether it needs to be on the scale and size that it is now. Could it be six people, to reduce the scale of things? If I were to go through the process again, I would feel more comforted by having a jury than by a single person making the decision about my life.

10:45

Anisha Yaseen: I do not think that the proposal is a good idea. That would definitely have put me off. Had that been a thing before I reported what happened, I do not think I would have reported it. I am a brown girl in a white person's world—if that puts things any clearer. I already feel out of place a lot of times. People would know that they would go into a courtroom with centralised power in what is usually a white man. There are very few female judges—that is the reality. Nobody is exempt from unconscious bias, and that is unfair or unrealistic. In an ideal world, a judge would not have any bias; they would put everything to the side and be professional. However, that is the point about unconscious bias. If we had to go down a judge route, there would need to be a panel.

I am also concerned about how appeals would work if the person went to prison. How are we looking at human rights? There are many different things within that. If there was an appeal and the verdict was overturned, how would the victim feel? Things are already difficult.

Russell Findlay: That goes back to Hannah Stakes's point and her experience. A prosecutor and a defence lawyer were best of pals and very

clubbable. In that scenario, in all likelihood, the judge may well have personal connections, too, and a similar background.

Hannah Stakes: I do not know. I admit that my memory has changed over time, so I might be making the situation more extreme than it was, but it was certainly to that effect. They had definitely gone to university together. I was not to be intimidated because they were mates. Things were left out in the trial, which left me with the question whether it was tit for tat—"I'll give you this; you give me that." There was evidence that I thought was vital while they were allowed to weave a make-believe story—I have touched on that.

There is definitely that element. However, I do not trust juries either. One juror was asleep, and the jury took less time to come back with a verdict than I did to get ready this morning. There is something to be worked out in the middle.

Russell Findlay: I assume that you would rather get rid of the not proven verdict, on that basis.

Hannah Stakes: The whole trial was led. There was a concrete amount of DNA. I go back to the old analogy. If there had been a break-in, someone's footprints were all over the house, the windows were smashed and they denied ever being there, it would have been a clear-cut case. The case was really clear cut. The man denied that he had even touched me, but significant DNA evidence was found.

Russell Findlay: You would rather that there was a binary choice without the not proven verdict.

Hannah Stakes: Yes. I would rather have the binary choice. I genuinely do not believe that a false acquittal would have been possible. The opening argument in the trial started with the statement that it was not a civil case and members of the jury had to be more sure about things than they had ever been in their life. I have a note on that. The "beyond reasonable doubt" issue was overexaggerated. It was made to look as if there could not be any doubt. The whole defence was about things that I have touched on. The man could have washed off the DNA in a shower. It could have been transferred because he touched the same wine bottle.

The advocate did not take time, because I did not have that time with him. If I had had the time with him, I would have pointed that out. He did not point out that that would make DNA evidence redundant in any courtroom. If someone picked something up in Tesco that someone else had touched, they could be accused of murder. There were really simple things.

Russell Findlay: I presume that, if you had had some form of legal representation, you would have been able to respond to that.

Hannah Stakes: Yes. Another issue is that the accused usually does not give evidence. As far as I understand it, the accused was not planning to do so, but he was advised to do so because of the way that I had presented myself. By all accounts, he fake cried. The opposite stance to that which I had taken was taken. Members of the jury were told at length that they needed to be more sure than they had ever been in their lives, despite the concrete evidence. They were then told, essentially, that they did not have to make a decision, and they were led towards that.

The Convener: I will bring in Sharon Dowey in a moment, but I want to pick up on Sarah Ashby's concern about judge-only trials. I was having a quick look through the submission from Rape Crisis Scotland, which has articulated things quite helpfully in respect of the scenario in which there is a judge only and no jury. It said:

> "A written verdict could be a very positive development for complainers."

In other words, if a case were to be heard by a judge only, they would have a responsibility to set out reasons for coming to the decision or the verdict that they came to. The submission goes on to say:

> "A judge would be required to give reasons for a decision. Some survivors describe the lack of any explanation for a jury's decision as distressing because it means they are never able to understand what happened."

The written judgments from other cases seem to have added some weight to that.

Do you feel that such an approach might reassure survivors as to the merits of a judge-only trial? I am not putting words in your mouth; I am just interested in whether you feel that it might provide some reassurance.

Sarah Ashby: Of course. I am not saying that it would not. All that I can do is give you my opinion on how I was treated and how things went for me. Looking at it from the outside in now, and trying to support progress in all areas, I do not think that that is a negative idea—I would not say that you were crazy if you did it. I am just saying that, from my perspective, I do not feel as though putting that responsibility on a sole person would make me feel comfortable if I were to be in that situation again.

All the reasons that Rape Crisis Scotland has given the committee are completely solid ones. I can certainly understand why such an approach would give survivors comfort and at least an understanding of why the verdict had been reached. For example, I know that it would

probably help Hannah Stakes to have an explanation of why the verdict was reached in her case. If that option had been there for me and I had been able to have such a transcript from the judge at the end of the case, I would probably have appreciated it, too. I do understand where you are coming from on that.

The Convener: Thank you very much. With that, I will bring in Sharon Dowey.

Sharon Dowey (South Scotland) (Con): We have heard about the proposal that specialised courts will not be held in dedicated buildings; existing buildings in the court estate would be used instead. How well would that reduce traumatic experiences for victims? Do you have any concerns about the proposals for specialised courts?

Hannah Stakes: I do not have any concerns. I am not sure whether I fully understand your point about cases being heard in the same buildings. Do you mean that they will still be in the High Court but the trials will run slightly differently?

Sharon Dowey: We have heard that trauma-informed measures will be in place—for example, the use of separate entrances, the option to have screens, and there being separate areas for victims, survivors and their families to go to. However, those would be in buildings in the current court estate and not purpose-built courts. Do you have any concerns about that?

Hannah Stakes: Being in a different building would be beneficial. However, it would still have to be apparent to everyone that it was very much a part of the High Court. I do not know how that would work.

I was offered those options in my case anyway. I refused to do it, but I was offered the chance to go in the back door so that I might avoid the accused on the way in. I had a room that I could sit in, and I think that I had someone with me. Those steps were already in place, so the proposal does not seem as far reaching as I was expecting it to be. Would having a specialised building mean that I would be forced to go through the back door? That is what I am hearing from what you said. I do not think that that would be enough.

Sarah Ashby: I agree with Hannah. I do not think that it matters where the building is; it is about ensuring that such trials are shown the levels of respect and importance that they deserve. As I think the women on the earlier panel mentioned, the High Court is an important place.

I was given all those options, too, and I took every single one that I could. For example, I brought a supporter and I had a member of the court staff meet me at the entrance. Throughout the morning, I was ushered among several different rooms to ensure that I was as far away from the accused as I could possibly be, which was my choice. I took the option of using a screen. As I said earlier, my husband was with me the whole time.

It is all about having consistency and, as Hannah mentioned, survivors not being made to feel as though we are the ones who are being accused. The only thing that I would have changed about the trial experience for the one day on which I was there as a witness would be to have had the accused being kept out of my way—if he could have been kept in a side room while I was able to go for lunch with my husband without feeling as though I had to hide behind things all the way there. That would be my opinion. It is also vital that cases maintain their level of importance by being held in the High Court buildings.

Sharon Dowey: Although it has been suggested that other parts of the court estate could be used, you would still want cases to have the prominence that comes from them being heard in the High Court.

Sarah Ashby: Personally, yes.

Anisha Yaseen: Giving evidence, or just going to court, is horrendous in general. I was in early labour when I went through my trial. I refused to not do it, because I wanted it over before I had my baby. I was heavily pregnant and on crutches, and I had to go to places that had a lift instead of using stairs, because I could not get up the stairs quickly to get to another room. It was not just him; his family were standing outside the court, and there were different people supporting him inside the court. I was standing there with this person saying, “By the way, that’s his friend” or “That’s his sister.” What was I meant to do? I was stuck. They were fully aware that I was heavily pregnant, on crutches and not able to run if something did happen. I agree: that should not have been on me. People try to frame it in a way that makes it sound like they are being nice to you, saying, “We’ll protect you” or “It’s okay.” Actually, I just want to be able to live my life. I want to be able to come here, do what I need to do and not be in fear. He is the one who is on trial, not me.

I have a worry about having a specific courtroom. Edinburgh sheriff court has court 4, which is a domestic abuse courtroom where only domestic abuse cases are heard. However, it is treated like a revolving door. Even watching the sheriff, it sometimes seems like they are saying, “Come on—next!” How do we know that that will not be the case again? That is my concern.

How do you manage vicarious trauma? The judge will have vicarious trauma from consistently sitting in all those trials. How will we ensure that

things are split a bit more and that people get more time? People—specifically, judges—will then be more able to put that emotional energy into bring present in order to make a decision, rather than having somebody who has heard that much trauma, who is completely stone-faced and looks like they are just thinking, "Whatever."

Sarah Ashby: I think it is more about the process than the building.

Sharon Dowey: We heard from the previous panel about a lack of communication. We have heard about independent legal representation, too. Do you think that we should consider allowing more access to the advocate?

Sarah Ashby: Completely. I will be incredibly clear about this: the fact that I had access to Mr Kearney at the time changed the way that I felt about the entire trial. I was able to ask him all the questions that I had in my head, as was my husband. You are sitting in an incredibly traumatic situation and, as Hannah Stakes said, you forget: your mind sometimes goes blank, or you panic. It is a really scary situation to be in. I felt comforted that the advocate knew my case, and the fact that he was able to use other witnesses' names calmed me. I was thinking, "This guy knows. He understands." I felt like he was on my side. I think that is absolutely imperative. It is a matter of communication, access and consistency, from the fiscal stage all the way through to the end of the trial. That is fundamental, for me.

Hannah Stakes: This is a key point for me. I was willing this man with my mind, thinking, "Please point out the DNA evidence to the jury." There was an expert in—but I can go into that another time. I was willing the prosecutor to explain to the jury about believing the DNA evidence—there was a considerable amount of DNA in sensitive areas of us both. I wanted the prosecutor to say, "The accused denies that the assault took place at all, but if he denies that this happened and you buy the idea that it is from touching a wine bottle, please consider how redundant that makes DNA evidence in society—you could be accused at any given time."

That would have put a huge doubt in the jury's mind—it was a huge point. I should not have had to be willing him to say that in my mind. We could have had a two-minute conversation about it. I thought that was such an obvious thing that he would do, but the trial ended, he did not do it, and I did not get an opportunity to say, "Were you having a day off?" That was it, and it will stay with me forever. That would really have made a difference to the verdict, potentially.

Anisha Yaseen: On communication and having that representation, I did access my prosecutor, but that involved a lot of barriers that I had to jump over. Someone from VIA was assigned to communicate with me, but I remember saying, "Actually, no, I want to speak to the person who's dealing with this case—no offence, but not you." Even then, the VIA representative said, "Oh, I've never done that before. I don't know if you're allowed to do that," and it was me who was saying, "Yes, I can do it, actually, and this is why I want to do it, so can you please ensure that I get in contact with her directly?"

11:00

My other issue is the number of times that the case was moved. The first case was a little bit easier, but the second one had added complexities. We are going to see a change in legislation that will make this more apparent, so the issue needs to be sorted. We had gone from, I think, the advocate depute in Glasgow down to Liz Paton, the sheriff and jury lady, who was overseeing it. I cannot count how many times this woman said, "Oh, it's horrific; it's horrific," and I was going, "Well, that's great but you're not telling me what's going on here. I'm glad you acknowledge how dreadful this is, but this isn't giving me what I need—I'm not actually informed about anything."

There was no prior warning that the case was going to move all of a sudden. We were informed that there were eight other victims—all of us from domestic abuse relationships—who were pursued by the same person, and yet the case almost fell and nobody really understood why, including, by the way, the person from Police Scotland's anti-corruption unit, who also did not have a clue and came to the house, saying, "I actually don't know what's gone on here."

Sentencing is another real issue. We are not told what the agreed evidence is or could be, or given prior warning of that spiel that the court will give during sentencing, particularly when a person pleads guilty, because you have lost all that control. You have already lost control, but you then no longer get an opportunity to say what you want to say. You no longer get the opportunity to say, "Actually, do you know what? I'm not happy with this. I'm not okay with this. And this is what he did to me."

Instead, what is sometimes referred to as a narrative is produced. Very commonly, it is a narrative, and it is much directed with the defence in mind—it is their story. They get to tell their story. Prosecutors will stand up and say what they want to say. I particularly urged my prosecutor to stand up and say that that was a narrative, but what I did not know was that there was a bunch of so-called "agreed" evidence that I absolutely did not consent to, part of which was, "Oh, she had an affair." I did not know about that. I did not have a clue.

That is the kind of misinformation and mismanagement that I am talking about. I was stuck in a court and, by the way, surrounded by the press, which then reported, "Oh, she had an affair," and that is absolutely not the truth.

John Swinney: Good morning. Thank you very much for coming in to share your testimony with the committee, which is incredibly valuable for us. I do not doubt how traumatic it is for you to share that with us.

In the previous evidence session, the system was described as "a game of chance". When I listen to the testimony that Sarah Ashby and Hannah Stakes have given, I am struck by the validity of that remark. We could not have had two pieces of evidence that made that point more emphatically.

That brings me to another point. Forgive me, convener, because I am going to stray away from the bill. We are here looking at legislation, but in your evidence, Sarah, one of the key points that struck me was that you were enlisted by the advocate depute as a key contributor to the formulation of the case and, Hannah, you were not. If there was ever a point for us to identify as a system failure, that would strike me as being a pretty big one.

Sarah Ashby: It is distressing, isn't it?

John Swinney: From your respective perspectives, tell me a little about what, in your case, Sarah, was good about that engagement and what in yours, Hannah, was deficient.

Hannah Stakes: It is obvious, isn't it? It is distressing for me to hear that Sarah had that opportunity and that there is no reason why I could not have had it under the current legislation. It could have secured a guilty verdict.

Essentially, three years of my life went down the drain, during my most formative years. It is not an exaggeration to say that the court delays and that trial impacted every aspect of my life, such as my career and where I lived. You put things on hold. You cannot get over something when you are trying to remember it but it is also ahead of you.

The assault on me was brief, and I am not surprised that one of the jurors fell asleep, but it was significant, it was real and it happened to me. I am left not knowing what would have been possible, but I regret phoning 999 because, in hindsight, eight years on, I do not have closure—obviously; otherwise, I would not be here. If I had not called the police, I would have got up and would have forgotten about it over time. It would always have stayed with me, but I would have felt safer in the world. What leaves me feeling that I am unsafe and that the whole issue is unresolved is the fact that the justice system failed me more than the perpetrator did. That was the biggest thing that made me feel unsafe. That is far reaching—far beyond what happened in the first place.

As a woman, you are brought up in the world being told that the chances are that it might happen to you. You are aware of the complexities, and that you might not get a conviction, but you are not prepared for how badly you are going to be treated by the system and how potentially damaging it will be.

John Swinney: Did any elements of your experience with the system work well or effectively, Hannah, at any stage of the process?

Hannah Stakes: That is quite hard to articulate because, as I said, I am quite a blunt and straightforward person, so I would be willing to take on the chin certain aspects of the trial, even such farcical things as the defence said during it. I am therefore probably not the best person to comment, because I was willing to stand my ground.

For me, it was really about the time taken and the fact that it was apparent from the get-go that I did not matter—that I was collateral damage, sort of, in the protection of that person in case they did not do it. You are just not thought of or considered at all, as literally years of your life go down the drain. Then, in my case, it was ultimately for nothing.

To touch on the not proven verdict, I know that there was jury research but, in the sort of trial that they did with the mock jury, you can see how it would reach such a verdict.

I have been doing this for five or six years and I have heard so many stories like mine and Miss M's. The stories in which the not proven verdict is reached involve concrete evidence, essentially, and the manipulation of the jury. The defence lawyers have two chances at acquittal. The situation is very imbalanced. If they think that they will not get a not guilty verdict, they focus on not proven. That has been one of the hardest things for me to come to terms with, overall. It was not a case of, "He said, she said"—as in a lot of cases it is not. Some cases are far worse—it is not a competition, but people have gone through far worse things, including injuries—and there is just a denial that it happened or a suggestion that, somehow, their injuries were consensual; and, at the end of the day, there is an acquittal.

The victims are left feeling unsafe in society. They do not believe in the law or in anything that is meant to protect them. In addition, the perpetrators are free to walk the streets without consequence and with—I cannot remember the word as it is off my tongue, but it is about why anyone would not commit such an assault when it

is apparent that, more likely than not, they will get away with it.

Sarah Ashby: That is exactly why I am here, because I hear about what happened to Hannah and the other women that have been here today and the inconsistencies with my experience. That is the exact reason that I am here: to talk about my experience and bring the inconsistencies to light. One in the six women to whom you have spoken today has had a positive—albeit horrendously horrific, traumatic, distressing and awful—experience. Just because I use the word "positive" does not mean that the whole thing was roses and smiles. It was horrendous. However, throughout that process, to be given respect and to feel like the credible person that I am are the bare minimum that we should endure.

John Swinney: That is perhaps the key point. We all accept that none of that is pleasant, but I put the same point to you as I put to the previous panel: did you feel respected during the process?

Anisha Yaseen: Absolutely not—you are just a pawn in their game. That is all you are, and it is very clear. If you want to find out something, you essentially have to beg for it, and you will be lucky if you can get it. If you want something specific, you have to dance around it, because they cannot say yes or no. You say, "Okay—well, is it this, then?" and they say, "No." I say, "Oh, okay—that is obviously the answer," and they say, "Oh, you're a very clever girl"—or, as one of them said, "You're a very clever cookie,"—because I had figured it out. I was thinking, "Well, you could have just said."

You are picked up and dropped off numerous times, and once you have given your evidence, it is, "You've done your bit; now off you go." The second time round, the defendant pled guilty, which in and of itself is horrendous, but you are expected to say, "Okay—he pled guilty, so that's it. I can move on with my life." That is essentially what they say to you: "It's done."

That was after we did go to court, which was horrible. People from the anti-corruption team, who had been on the journey with me for three years, specifically used the words, "It's finished." They essentially expected me to simply say, "Oh right—I'll just get on with my life, like this has never happened."

There is a feeling of, "We'll phone you when you need to give evidence. When we need you, we'll get in touch with you, but other than that, we don't really have time for you—please don't phone us. If you do, it'll be a hassle for you. By the way, if you don't come here, you might get threatened with arrest."

Where are we in the system? I have said that so many times: where am I in the system? It is all dictated by somebody else. In reality, however, they would not have a case if we had not come forward. That really irritates me. You bring the matter forward—you have decided to report it to the police, knowing the current state of affairs. You report it, and go through gruelling hours of evidence that is meticulous and very detailed. You do all that, and you then have to go through the evidence-gathering part, knowing that somebody could just turn around and say, "That's it—we don't have enough evidence. It's over."

When you get past that stage, it is in the court's hands. The court reassesses the case, and there might be another thing that needs to be done. Meanwhile you are just stuck, not being told anything, but you can bet that the second that they need you, you had better be there. That is a threatening environment, and you lose once again—and again and again—the control that you had already lost. When your part is done, you should not even sit in the courtroom and watch the rest of it—how dare you think that?

The Convener: We are coming up to our allocated time. I bring in our final member, Pauline McNeill, then give our panel members a chance to add anything else that they wish to.

Pauline McNeill: Good morning, panel, and thank you very much for your evidence so far. It is very persuasive with regard to whether—perhaps John Swinney was getting to this point—the changes that we need to make are structural.

As legislators, we are being asked to look at structural changes, such as changing the nature of the court and abolishing the not proven verdict, which you might be in favour of. However, what I hear from you all, time and again, is that it is about the treatment that you experience in court and the exclusion from the system that you feel. In the system that has grown up, you are not seen as part of the public interest. As Anisha Yaseen said, you do not even have the right to call certain people—that is very common—but when you are needed, you have to be there.

I am thinking deeply about the extent to which the changes that need to happen centre around what we can do to fundamentally change the system, which is culturally broken for a lot of victims. Like John Swinney, I have asked about the role of the advocate depute. In my mind, their role is really important.

11:15

Sarah Ashby spoke very eloquently. Your positive experience seems to be fundamental to how you feel and perhaps in relation to how you feel about the court trial itself. However, I have heard of cases in which people who have been accused of crimes have felt the same way as other

witnesses: they consider that a question that they felt was fundamental to their trial was not asked, and I do not think that that feeling would be exclusive to them. I suppose that the balance that we need to strike is the extent to which people should have access to the advocate depute in order to have a voice.

There are two elements to that. The first element is when the trial is being conducted. Hannah Stakes mentioned not being able to ask why an argument had not been made. The second element is when people are in the witness box. I have heard other witnesses say, "I never got to tell my story" or, "You didn't ask me that question." Hannah McLaughlan said earlier that she wanted someone to throw her a "lifeline". Those seem to be common experiences.

Given all that, do you agree that the priorities for legislators, or people who are in charge of the system, should be centred around making changes of that kind, to those elements, rather than on making structural changes? That is not to say that structural changes are not important. What do you think about that?

Anisha Yaseen: It does not matter how much legislation you throw at this, because the issue is the culture. Nothing will change—no matter how many things you put into place—without a change in culture.

Hannah Stakes: My key focus is based on what I have witnessed and on other people's stories of the not proven verdict. However, court delays are not addressed in the bill. I realise that there are complications related to resources, but it is a fundamental human right—given the heaviness of such situations—for both parties involved to be addressed within a legal time limit. I do not know how that limit would be worked out, and again, I appreciate that there are complications but, for everyone involved, the process needs to be tightened up. People cannot be expected to wait for years. They are clinging on to their trauma and what happened to them for all that time because the trial is a memory test.

We have touched on transcripts before, and that aspect is not in the bill, but I am so grateful to you for hearing me on the issue. I asked for a copy of my court transcripts for closure. If I had a copy of my court transcript here today, I am 100 per cent certain that my memory will not have shifted over time, or, if it has, I assure you that it has done so only slightly. I would also be able to use it to evidence what I have said today. Transcripts are a copy of the truth, and they do not have an agenda. Making them available so that they could be reviewed post-trial could be part of the bill, although maybe it is too late to do that. That would give you concrete evidence—in addition to our evidence—about what was going wrong in certain situations and prove our points.

Obviously, I am in favour of structural changes, but the things that I experienced are so extreme that I find it hard to talk about that; I am just focused on things such as the not proven verdict.

Having access to the advocate depute would have made a world of a difference to me. Also, based on how biased the system is, we should have our own legal representation. Ultimately, it is a "He said, she said" situation. Witnesses should be as involved as they want to be, have the same rights and be treated as equals throughout the process. Legal representation would allow for that.

Pauline McNeill: Thank you very much for bringing to our attention your point about the importance of transcripts—that is something else that I think that we will need to take on. I know that a pilot on the use of transcripts is running at the moment, which you should take credit for.

Sarah Ashby: I agree with Hannah Stakes. All change is incredibly important, as is the fact that the Parliament is reviewing the whole process from beginning to end. My belief—which is based on my experience and on hearing about how dramatically different the experiences of others are—is that the focus should be on the not proven verdict. I agree with Hannah Stakes; it is incredibly important that that is abolished.

On the point about providing legal representation, the whole process, when it gets to trial, is incredibly legal. You become a witness, and all of a sudden what happened to you did not really happen to you. You are the one giving evidence, but it can be quite a struggle just to get around the legal jargon that is being used and to understand the whole process of your becoming a witness. I would understand why a lot of people might struggle with that, given the difficulties surrounding that.

I was fortunate with my support network. As I have told you, I had access to the fiscal and the advocate. When I was confused about something, it was very clearly explained to me. Anisha Yaseen mentioned having to google things to find things out herself. That adds to the trauma of the whole situation. It would be helpful if witnesses were given one person, whose job it is to support you, to discuss that with; even their just explaining the terminology would be incredibly helpful, so I am very much in favour of that as well.

On the commissioner role, as I mentioned earlier, witnesses could take comfort in having someone whom they could meet and whom they are aware is fundamentally taking that forward. That is important on a support and communication level.

I would like to quickly mention one thing about the defence that I did not raise earlier. I was given the opportunity by the advocate to meet the defence. He brought in the defence to meet me and stood with me the whole time. He provided comfort in that situation, which was incredibly important.

Pauline McNeill: Thanks for that. This is my final question. The proposal to have a specialist court was mentioned earlier. Lady Dorrian recommended that such a court be part of the High Court, but that is not what is in the bill. I am not too clear in my mind what that court would be. It would have national jurisdiction, and we know that it would be trauma informed—there are a lot of important aspects to that—but it will not be part of the High Court. That means that it would not necessarily be the same lawyers, and sheriffs could sit as judges, but perhaps that does not matter. Those are the things that we as a committee must consider.

Sarah Ashby spoke strongly in relation to the importance of the High Court. Rape trials can be conducted only in the High Court, and some sexual offences go to the High Court or to the sheriff court, depending on the severity. If you have a view on that, that would be great to hear.

Sarah Ashby: It is about the level of importance with which rape trials are treated. I would not like for such cases to be dismissed or for us to be made to feel that they are any less significant than they are. When you get the information through that the trial is going to the High Court, there is an element of realising how important that is. For me as a victim, and for the accused and anybody else involved in the trial, it is important to know how significant that is. That is just my opinion.

Hannah Stakes: The High Court is failing us, is it not? As much as that level of importance must be conveyed, how important is it when it is not working? That is my opinion on the matter. The severity of the crimes needs to continue to be conveyed, but we are telling you that it is a bit of a farce, to put it mildly and bluntly. I am quite behind that proposal.

Anisha Yaseen: The whole thing is a failure. My concern is that I could sit here for another 10 years and say the same thing in 10 years' time. How much of this will actually make a difference? We are at a point now where I am asking myself, "What else are people supposed to do? How many more people will it take?" We all acknowledge the problem but, until now, we have not necessarily been doing anything about it.

Yes, the bill has been introduced, and Lesley Irving's lengthy domestic abuse report had good things in it. When you put all that together, it provides a bit more reassurance that things will perhaps get better. However, in reality, and practically, that is not what we are seeing. You could apply that to anything. There are organisations out there that say that they are trauma informed but that absolutely are not, under any circumstances. At the end of the day, we are all human. Judges and lawyers are human, and you are not guaranteed that they will be trauma informed all the time.

The Convener: I have one very final question, picking up on a point that Hannah Stakes made about court transcripts. There is a proposal for an audio transcript. Would survivors welcome that? Would that be a helpful, positive option?

Hannah Stakes: I like an audio book. As I mentioned, I sat in on the trial, and I think that an audio version should be available, but I would like a written version.

This is definitely my last time at the committee. I hope that the changes that are made are significant. I have done my bit, and I will be moving on. I raised this matter with you back in 2019, but I had to stop—I said that I would never be back, so I thank you for inviting me back. It is partly for closure.

As I said, the one bit of the trial that I did not sit in on, and which I probably will need to take time to digest, was the accused's testimony. Whether I will read that or skip over it, I do not know, but I definitely do not want to listen to it. If the audio option was put to me, I would still, for that reason, ask for a written version. However, if somebody wants an audio version, they should get that as an option. If it is cheaper or easier in some cases, why not make it available?

The Convener: Before I bring the session to a close, would any of you like to make any final points?

Anisha Yaseen: I want to pick up a couple of things that we have not talked about. One is the victim blaming that takes place in the court. There is something that women's organisations often refer to as DARVO: deny, attack, and reverse victim and offender. We see that happen quite a lot. For example, males come to court and they have intentionally bought clothes that are three sizes too big so that they look more hard done by, or they come in with their hair all messy. That influences the jury, without their even knowing it.

We do not talk—we have not talked enough today, and the bill does not mention it—about after support. These women—more so now—are being left for years upon years. They are living their lives essentially at the mercy of the justice system, and then one day it is over, and there is nothing there. If they have children, they have to take that into consideration as well. It is a horrendous experience—it stole not just my life, but my

children's lives. I am not the same mother now that I was to them before, and that is not taken into consideration. The family is not taken into consideration.

There is also a huge general data protection regulation issue with regard to requesting your documents. That is your data, so why is it so difficult to get your hands on your own data? That issue needs to be brought up, because that is not okay. In any other situation or setting, you would be able to get your hands on your data but, because it is a legal set-up, that is not allowed.

The Convener: Thank you. Do Hannah Stakes or Sarah Ashby have any brief points?

Hannah Stakes: I will touch on one point. I think that we all can acknowledge that the current system and how it operates in court is not really a quest for the truth—it is often about theatrics, and it is very imbalanced. Although this is not in the bill, I want to put on record that there needs to be a provision in place to hold the legal profession to account, whether in relation to the way that its members speak to people who are witnesses, or whether they are just not doing a good job. I do not think that there is any tight follow-up or regulation around their behaviour. That is just something to note and consider for the future.

The Convener: Thank you, Hannah. Finally, does Sarah want to say anything?

Sarah Ashby: I have nothing to add, other than to urge the committee to listen to the inconsistencies between my story and Hannah Stakes's story in particular. We are sat right next to each other, and our lives have been changed completely. We have been treated in different ways for different reasons, and it is imperative that you take that into consideration when you are looking at the need for consistency and holding people accountable in their roles moving forward.

The Convener: Thank you, Sarah. I draw this session to a close. Again, I thank you all very much for your time. Your evidence is very important to us in thinking about the bill, so thank you again for joining us today.

We will have a short suspension to allow for a change of panel.

11:29

Meeting suspended.

11:37

On resuming—

The Convener: Our final panel is part of phase 3 of our scrutiny of the Victims, Witnesses and Justice Reform (Scotland) Bill, which focuses specifically on parts 5 and 6 of the bill. Those parts cover the establishment of a new sexual offences court, anonymity for victims of sex offences, independent legal representation for complainers and the proposal for a pilot for judge-only trials in certain rape cases.

I welcome to the meeting Sandy Brindley, chief executive at Rape Crisis Scotland; Dr Marsha Scott, chief executive at Scottish Women's Aid; Kate Wallace, chief executive at Victim Support Scotland; and Emma Bryson from Speak Out Survivors. I intend to allow about 90 minutes for this session.

I begin with a general question. Do the witnesses support the creation of a specialist sexual offences court? What would be the main benefits of creating one?

Sandy Brindley (Rape Crisis Scotland): Rape Crisis Scotland supports the creation of a specialist sexual offences court. We heard this morning and previously from survivors about how traumatising the current system is. Seeking justice after rape or sexual crime should not be as difficult and traumatising as it is now. A specialist sexual offences court, by introducing a requirement for ticketing, so that anyone working in the specialist court—from the clerk to the lawyer to the judge—will have had to go through trauma training, would be positive and have the potential to improve some of the issues that we have heard about from survivors, such as the communication that they have from people involved in the court process.

There are some areas that we might touch on in which what is proposed could go further. I am disappointed that it does not remove floating trial diets. The very least that we need to do for survivors who are giving live evidence at court is to give them some certainty about when they are giving evidence, because we know that uncertainty creates significant additional trauma.

There is one other issue that I would highlight about the specialist court. We have welcomed the presumption for complainers to pre-record their evidence, but I would sound a note of caution. You have heard from two women this morning who spoke about being under pressure to use special measures. I spoke to 20 complainers about their experience of the justice process for some research that I did, and five of them raised the issue of being under pressure, not being listened to and not being respected when they said that they did not want to use a certain special measure. I see that the bill contains provision for somebody to give live evidence, but only if the judge deems it to be

"in the vulnerable complainer's best interests".

However, no further detail is given on what "best interests" means in this context.

I caution against paternalism in the name of protection if it removes control and agency. We know that, for rape and sexual offence survivors, rape is a crime that very much takes away their control, and the current system removes that control. We need to ensure that, where survivors can make choices, they are given those choices, and that they are listened to about what those choices are.

Kate Wallace (Victim Support Scotland): As you have heard from me before, Victim Support Scotland is supportive of the bill in general, and we think that the proposed legislation marks a significant step forward in ensuring that the needs of victims and witnesses are at the heart of justice. I commend all those who came forward earlier this morning, and I thank the committee for inviting them to share their experiences.

In response to the specific question, we agree about the specialist sexual offences court, which we think is really important—we are supportive of it. Enabling everybody to be trained in both trauma-informed approaches and sexual crime is really important, and we think that the specialist sexual offences court provides an opportunity for that. You heard earlier this morning about an inconsistency of approach, and we think that a specialist sexual offences court, particularly in conjunction with some other provisions in the bill such as those involving a trauma-informed approach, would give the potential to reduce that inconsistency.

We agree with Sandy Brindley, in that there are a couple of other things that we would like to see in the bill that Victim Support Scotland has long been arguing for. Floating trial diets are inhumane, as you have already heard this morning. The lack of certainty is traumatising for people, and we think that there should be a secure place in the specialist court for viewing the rest of the trial after giving evidence. We saw that in the virtual trial pilot: it was possible for victims to view the rest of the trial online, and we got feedback to say that that was really useful. That was in summary cases, but it would be helpful to explore that through the specialist court, too.

We are supportive of the proposals. We understand some of the concerns about a perception of downgrading, although we think that those can be dealt with and addressed. We think that the bill is a big step forward.

Dr Marsha Scott (Scottish Women's Aid): Those of us who work in the area of domestic abuse have a particular perspective on specialist courts, and I am happy to bring that evidence to this discussion. I am a little dismayed that they have not been used much.

I have a couple of points to make. The specialist domestic abuse courts that were piloted in Glasgow quite a while ago, if you recall, were evaluated robustly, and it was demonstrated that the use of a specialist court in the context of domestic abuse delivered some excellent outcomes. They delivered reduced witness attrition, speedy trials and better evidence for the whole system. Those elements greatly served the public interest by improving justice. However, the courts also reduced trauma significantly.

11:45

Just this morning, I reviewed again some of the comments from the Law Society and other bodies that are in opposition to the proposal. I was struck that their arguments are very similar to ones that were raised in opposition to the specialist domestic abuse courts in Glasgow. Those were based on a sort of "aye been" attitude and a notion that the status quo is safer—well, it is safer for some.

I think that you know that we support the proposals for a specialist sexual offences court. We need to be confident that we can deliver better outcomes for the system. It would be hard to deliver worse ones. If the status quo is not acceptable—which is why we are here—we need to be willing to change it significantly, rather than make changes at the margins.

Emma Bryson (Speak Out Survivors): Before I say anything about specialist courts, I thank the six women who gave evidence earlier. They are the experts and I sincerely hope that each member of the committee will take something away from their evidence that informs the actions and decisions that you take forward, whatever your political persuasion.

Speak Out Survivors supports the creation of specialist courts in theory. Trauma-informed practice, a better, more supportive environment for victims and a less traumatising environment for them to give their evidence in are all worthy aims. However, we have concerns about the reality. There is always a concern that, although you might start out with a perfect and beautiful theory of something, when you implement it, it does not always translate in practice into the outcomes or aims that you expected it to deliver. We should all be careful about that.

Our main concerns relate to sentencing. We have heard that the specialist court would have the same sentencing powers as the High Court. We agree with some of what the previous contributors said about how important the High Court is. It is the High Court and it exists to prosecute the most serious offences. The use of the term "specialist" suggests that the proposed

court somehow falls into a completely separate category.

That needs to be considered, not just from a victim's point of view but from the public perception point of view. If the public perceive that serious sexual offences and rape are not deemed to be serious enough to be heard in the High Court, that raises questions about public confidence in the criminal justice system as a whole. [*Interruption*.] Excuse me. My mouth just went really dry.

We have concerns about a lot of the practical stuff. Floating trials are dehumanising for everybody involved—not just the victims but the accused in sexual offences cases. We need to see evidence for the idea that the specialist court will somehow fix a whole lot of issues.

Sorry, I am waffling. I am just going to take a breath. It is really intimidating. I am not an expert.

We need to be assured that the concerns that have been raised by other witnesses on this panel and the six women from whom we heard earlier are taken on board and addressed.

I will leave it at that. The short answer is that we agree in theory but have concerns about practice.

The Convener: We heard a lot today about the significant benefit of survivors being part of the case, how important it is for them to have choice and control and how that might impact on convictions. That has been interesting.

On the issue of floating trials, which Rona Mackay picked up earlier, I would like some clarification. When we had the Lord Advocate before the committee last week, she expressed a desire that the use of floating trials for sexual offences cases be looked at, with a view to them not being part of the process for such cases. That was interesting to hear. From your engagement with survivors, do you have any further views to share on the use of floating trials and how difficult that can be for them? I go back to Sandy Brindley on that.

Sandy Brindley: I want to put on record just how distressing complainers tell us that they find floating trial diets. First, there is the delay—the length of time that it takes for cases to get to court. That was bad before Covid, and it is even worse now.

People talk about putting their life on hold for years. Some talk about rehearsing: every morning, they wake up and go through in their mind what will happen in court and the evidence that they are going to give. That distress and anxiety is worsened by the lack of certainty. People have a trial that is allocated to a certain period, and every night they are waiting on a call to tell them whether it is going to go ahead the next day. That is far from trauma-informed practice, and it is not how we get the best evidence from vulnerable witnesses.

It is well over a decade since Lord Bonomy recognised that floating trial diets were inappropriate in rape cases, yet here we are, where it is the default for every rape case. If we are setting up a specialist sexual offences court, it seems that the very least we should do in that court is give certainty, notwithstanding that the default is that complainers have their evidence pre-recorded. As we heard in powerful evidence this morning, some complainers, for a variety of reasons, want to give live evidence, and they should not have to endure the additional trauma of floating trial diets. It is a case of the system's needs being prioritised over the complainer's needs.

I appreciate that there are concerns from the Scottish Courts and Tribunals Service about delays, but that should be an issue that the system and the justice agencies work out to ensure that delays are not increased, rather than the burden being put on the complainer.

The Convener: Thank you for that.

I come back to Dr Scott. You spoke helpfully about the specialist domestic abuse courts that we have been developing in Scotland and how they have demonstrated excellent outcomes.

I will shift a little bit to discuss the proposal for, and the piloting of, judge-only trials. There are different views on that. We have heard that that was a clear recommendation from Lady Dorrian, and that the pilot would be time limited. Given your experience in a different context, I am interested in hearing your views on that proposal, given that there is a pilot.

Dr Scott: First, I meant to add something to what I said before, so thank you for the opening. One of the unfortunate aspects of the implementation of specialist courts in the context of domestic abuse has been that much of their power has been eroded by an attempt to rebadge what are really normal courts as specialist courts, because of the clustering of cases or whatever. That misses the critical elements such as specially trained sheriffs and judges; specially trained prosecutors; independent support such as the ASSIST service or Scottish Women's Aid provides; and speed to trial.

One of the sequelae of that, in my view, is that we would, in implementing specialist courts, end with a pilot of judge-only trials, in which we would have to pay close attention to adequate resourcing in order to protect the model. We would need to ensure that we did not allow decisions to be made—as Sandy Brindley said—that create

efficiencies in the system but have extraordinarily harmful impacts on victims and survivors.

The last point on that, which is related to the others, is that the vast majority of domestic abuse survivors have experienced rape and sexual assault in the context of their domestic abuse and are deeply reluctant to disclose that in our system. The confidence that they have shown in the improvements in truly specialist domestic abuse courts shows the potential for us to build confidence in the system so that domestic abuse survivors who are also rape and sexual assault survivors have confidence that the system does not provide them with, as we heard earlier, horrific or horrendous experiences. Domestic abuse is difficult enough.

On judge-only trials, I am quite struck by the horror of, "Oh my God, we're proposing eliminating juries," when the vast majority of domestic abuse cases are heard in sheriff courts. I know that the distinction, supposedly, is that serious crimes are heard in the High Court, but I think that that distinction is one of convenience and history rather than any assessment on the part of our justice system that the domestic abuse cases that are heard in summary court are not serious. In fact, under section 1 of the Domestic Abuse (Scotland) Act 2018, there is an ability to hear cases where there is sexual assault as part of the course of conduct.

I understand why people are nervous about a judge-only court, so it is appropriate to start it as a pilot. Everything that we know about improving systems tells us that you start small when the risk is high. I have to keep coming back to the point that what we have is not working, and we have to be willing to take the risk. Monday was Martin Luther King day in the United States, and he said that it is always the right time to do the right thing—I think that this is the right time.

There is no panacea because, as the previous women made so clear, people talk about a culture change in Scottish courts, but people often talk about a culture change in domestic abuse, which is their excuse for putting it in the "too hard" box. Culture is a very real, very measurable issue, and you improve it with training and accountability. You also improve it with the reality of what happens to the women who go through the court. If they are treated unequally by juries that maintain rape myths, and we know that many are, the culture does not change. Changing the reality of the participants in the justice system is how we change cultures.

The Convener: I open up the session to members, starting with Rona Mackay.

Rona Mackay: Good morning. I want to pick up on a couple of the points that have been made about judge-only trials. Some of the women whom we heard from earlier said that they found the prospect of judge-only trials scary because they would not have confidence that that one person was not biased. However, I submit that there is more chance of a few people in a jury being biased than there is of that one specially trained judge being biased. The key point that must be remembered is that, in a specialist court, judges would have to have had all the necessary training and would have to understand the very sensitive nature of the issues.

That brings me on to my question, which relates to a point that one of the women made about the role of the victims and witnesses commissioner for Scotland. They felt—and I agree—that members of the legal profession must be held to account in some way for their conduct. We can pass all the legislation in the world, but if members of the legal profession do not implement it, it is pointless. Could keeping an eye on how cases are conducted and how the legal profession implements trauma-informed practice be a key role for the victims commissioner?

12:00

Sandy Brindley: I can start, and I will perhaps pass over to Kate Wallace.

A point that was well made in the earlier sessions with survivors was on the issues with accountability. To me, that is primarily about the complaints process. We heard Ellie Wilson talk about how long her complaint has taken, and we heard about the situation regarding the comments made by Gordon Jackson on the train during the Alex Salmond trial, which took years to come to a resolution. There is a real issue with the accountability of the complaints processes. The accessibility of those processes really needs to be dealt with.

There is a related issue, which concerns the specialist sexual offences court. There is no point in having ticketing if there is no process for removing a ticket. In my experience, we cannot rely on professional bodies such as the Faculty of Advocates to carry out that role. We have seen that in previous investigations that have been carried out. As far as I have seen, there has been no consideration of appropriateness in rape trials following some serious and concerning behaviour.

We need to examine the complaints processes, particularly for the Faculty of Advocates and the Law Society of Scotland. We need to consider how accessible they are, particularly for people who are representing themselves. The process is very legalistic, certainly in the faculty's case. I would say that it is not at all accessible.

Hannah Stakes spoke about court transcripts, which are another aspect of accountability, and the victims commissioner could be another layer there. There are a number of layers of accountability that we need to consider.

Rona Mackay: Do you think that the victims commissioner could incorporate that in his or her duties? They will not be able to intervene in individual cases, so it would seem to me that having oversight of what is actually happening would be a good role.

Sandy Brindley: They could certainly consider having a thematic review of issues that are raised. However, we should not have to wait. The bill will take some time to be passed and implemented, and it will take time for a victims commissioner to be set up. We should not have to wait for that—I think that the issues around accountability and improving the complaints processes can be dealt with now.

Kate Wallace: On the point about the commissioner's role, I agree with Sandy Brindley that the time required to pass and implement the bill does not stop us looking at things now. In a previous evidence session, we argued that the victims commissioner's role should match that of the Children and Young People's Commissioner Scotland in that respect. As long as no other process is on-going at the time, the commissioner should be able to look at the situation. I think that they could have an oversight role, in particular around complaints processes.

In a previous evidence session, I made the point that even understanding who it is you should complain to within the justice system is difficult, because there are so many different organisations involved, with different roles and responsibilities. As I also said in that previous session, I think that the commissioner role is critical when it comes to accountability, so I agree that that is one thing that could be added to the commissioner's remit and powers.

Dr Scott: This is where I differ from my sisters on the panel. We have been concerned that introducing a victims commissioner into the system would dilute the influence that survivors struggle to have. In Scotland, we are lucky to have a system that is relatively accessible, whereas other places in the UK that have victims commissioners do not look as accessible. We have been told by our counterparts in those other countries that, from their perspective, a victims commissioner would not be a good idea, because it is an additional bureaucratic role. I am hesitant to say that, only because we would favour anything that would give more voice to the experience of those who go to court.

The difficulty is not in defining the problem; you have heard over and over what the problems are. The question is whether a victims commissioner would have the power and authority to change the things that we are hearing about. I have strong questions about whether that would be true.

There is another issue for me. We have just been talking about the importance of specialisms in this area, and yet a victims commissioner would not be a specialist. If you were going to introduce that role, I think that you would need to have a specialist violence against women and girls commissioner.

What is the problem that we are trying to solve here? Sandy Brindley and Kate Wallace raised important issues with regard to using the mechanisms that we have now, but the elephant in the room is accountability in the system, and I do not think that a victims commissioner would make that significantly better.

Emma Bryson: As far as our view is concerned, I guess that we are sitting on the fence. Is such a role really necessary? There are already a number of qualified intermediaries, organisations and agencies involved who represent, efficiently and professionally, victims' interests across the board.

We also believe that victims of sexual and domestic offences have particular needs and vulnerabilities that other victims do not, so we have concerns about the idea of having a victims commissioner who would somehow represent the views of all types of victims. We certainly echo Dr Scott's point about having a violence against women and girls commissioner as well.

That issue sits alongside the idea of trauma-informed practice being a one-size-fits-all approach: that, if everybody has had adequate training in trauma-informed practice, that will somehow fix all the problems. We know, however, that victims of domestic and sexual violence have very specific needs and vulnerabilities, and they are not the same thing at all. Having a victims commissioner would potentially be useful for a broad array of victims, but how beneficial would it be—without the commissioner having specialist knowledge or a specialist focus—to domestic and sexual offences victims? We would like that to be taken into consideration.

Rona Mackay: I have one quick final question, on the specialist court. We heard some concerns about the perception of a downgrading of the seriousness of the offence. We all have that concern, and that is not what we want. It is about the perception.

One of the survivors came up with a simple suggestion regarding the name of the court, which I think would be effective: we could call it the

specialist High Court. That is an easy fix. Do you agree with that idea? If we simply call it a specialist court, that suggests that it could specialise in anything.

Sandy Brindley: From our perspective, the risk of downgrading related primarily to the new court having limited sentencing powers. It is clear to me, however, that the proposed court is equivalent to the High Court in its unlimited sentencing powers, and I anticipate that it will be taken as seriously as the High Court.

With regard to the naming suggestion, the issue there is that the proposed court is intended to include what would currently be sheriff court cases, so I am not sure whether, practically, we could call it a "High Court".

Rona Mackay: That is something to think about. Does anyone else have a view on that?

Sandy Brindley: I want to come back on one point about rights of audience, which I know that Pauline McNeill has raised previously. We raised it in our submission—we had some concerns about the rights of audience not being equivalent to the situation in the High Court.

At present, for example, for attempted rape, the legal representation would need to be done by somebody who had rights of audience in the High Court, who was able to prosecute or defend in those cases. From my reading of the bill, that is no longer the case. I would like to see in the specialist court equivalent rights of audience to the situation in the High Court.

These are very complex cases. The committee heard powerful evidence from the Lord Advocate about some of the challenges in prosecuting them, and her point about the need for additional resources for the Crown was very well made.

One of the strongest points that I took from the previous sessions with survivors concerned the lack of consistency, and the difference that meeting the advocate depute, and having a positive and constructive meeting with the AD in advance of the trial, can make. That should be happening routinely. It is linked to the issue of floating trial diets, in terms of how late advocates are getting cases. They may get a case only a week before the trial, in some cases, so it is difficult for them to meet complainers repeatedly in the way that the Lord Advocate would want. I think that there are significant resource issues for the Crown in ensuring that ADs are able to meet complainers in advance of the trial. That is absolutely required, however, as was powerfully put by the complainers who gave evidence this morning.

The Convener: Pauline McNeill is next.

Pauline McNeill: I was going to ask about that issue, so I will carry on where Rona Mackay left off.

Emma Bryson spoke about the difference between theory and practice and asked what the practice will be. What will the law be? What is it that we are legislating for? That is what I am thinking about. I was quite persuaded by Lady Dorrian's evidence last week and her report on the specialist court, which she envisages as being a branch of the High Court. I am mystified by some of the changes that the Government made when it went from the report stage to the bill stage, and that is what I want to ask you about.

Sandy Brindley, as you rightly said, the sexual offences court will be a national jurisdiction court that will have sentencing powers, but what is missing is that the rights of audience will not be the same as those in the High Court. You also said that in your submission. For that reason, my view is that the specialist court will not be the same as the High Court unless that issue is resolved.

I draw attention to a point that I made to Lady Dorrian. Do not quote me on the year because I have no idea, but when we extended the sentencing powers of the sheriff court, Lord Bonomy made the same point about floating trials as he did about the right of an accused person—who, before we extended the powers, would have been tried in the High Court—to have rights of audience of more senior counsel. It is now impossible to get senior counsel approved by the Scottish Legal Aid Board. It strikes me that we need to ask SLAB what its view of that is. If the right is not enshrined in law, I am absolutely certain that the whole area will become murky. In my view, the distinction in law is that rape and murder can go only to the High Court, and everything flows from that.

Sandy, from your submission, I think that you share my concerns that we need to persuade the Government that, if we do not sort out the issue, the specialist court could not really be what Lady Dorrian envisaged it being.

Sandy Brindley: I absolutely agree with you on rights of audience. I do not have a view as to whether the specialist court should be part of—or equivalent to—the High Court, as long as rights of audience are amended. However, my concern is that we do not want there to be a courtroom in Glasgow High Court that has a label on the door that says, "Specialist Sexual Offences Court", but there is literally no difference other than that the people involved have maybe been on a day's training.

How do we make sure that the specialist court actually represents system change? If we think of

it as something distinct, it becomes easier to think of system change. The specialist court should not have floating trial diets—not that the Government is proposing that. It is being discussed that the court should have a dedicated viewing room for complainers, and it should have dedicated advocacy workers, whom survivors really value. How do we make a system change, rather than the change simply being that somebody has been on a bit of training?

Pauline McNeill: You might not be able to answer this question. Again, I do not fully understand why the Government, when it legislated, said that murder, if it had a sexual element, could be indicted in the specialist court. Had you asked for that? Had you made representations to the Government on that?

Sandy Brindley: We made representations on the limited sentencing powers; the initial proposal from Lady Dorrian was 10 years and, at the time, I did not entirely understand the rationale for that 10-year limit.

However, as I said to the Government, my concern was that, if that limitation was in place, women in extremely serious cases—cases that could, for example, lead to an order for lifelong restriction—would not get any of the benefits of the specialist sexual offences court. That did not make any sense to me. We made representations on that, but not specifically on the murder question.

Pauline McNeill: That has muddied the waters—for me, anyway. Murder cases should be in the High Court, so I do not understand. Obviously, they can be prosecuted in either court, but once we lose that provision from law, we will never go back to it—that is for sure.

I have a question for Kate Wallace. The committee is persuaded that the lack of certainty in the floating trial system must be traumatic; we have heard that from survivors. What concerns me about how we would fix that is that the figures that the Lord Advocate gave the committee last week demonstrated that the volume of cases that would be removed from the High Court to be dealt with in the specialist court would strip the majority of cases out of the High Court. We know that because, in essence, the root of the problem that we are trying to address is the number of sexual offences cases. I think that she gave a figure of about 73 per cent.

12:15

Are you not concerned that, if all those cases then go to the specialist court, rather than the High Court, we are going to have a problem trying to get certainty about the date because the same problem will arise? The volume of cases going to the specialist court will then be high. Do you see what I mean?

Kate Wallace: I am not sure whether I do. Well, maybe—

Pauline McNeill: The reason for the lack of certainty in the floating trial system is that they want to try to push as many cases as possible. If there is a spare court, they want a window of time to let a trial proceed. With a fixed trial diet, the case has to start on that date, so courts might be lying vacant. If a high volume of cases is then going to the specialist court, I am not sure that we can deliver certainty.

Kate Wallace: The first thing to say is that the design of the specialist court would have to take into account the volume of cases and the predictions about that, because the Crown Office is aware of what is potentially coming through the system in the next two or three years. Therefore, that should be built into the planning. The point about how it is going to be managed and resourced effectively is crucial.

On the trade-off between fixed trials and floating trial diets, there is a concern that there will be less-efficient use of the court estate; for example, a courtroom might lie vacant if a trial goes more quickly than anticipated. However, the reason why we think that certainty is so important is that some of the decisions that are being made at the moment about efficient use of the court estate completely ignore the traumatic impact on victims.

Sandy Brindley and I are aware of a case in which a trial went ahead more quickly than had been anticipated. A person was called on a Friday but their evidence was only partly heard on that day, which meant that they had to wait the whole weekend before going back to give the rest of their evidence. My argument is that all of that person's evidence should just have been left until the following week, although I know that that would not look good for efficiency statistics on efficient use of the court estate.

Pauline McNeill: I am very sympathetic to that point. I think that you have made a very good point from the perspective of survivors. I am just concerned about the volume of cases that would be transferred to the specialist court and how we would achieve that.

Kate Wallace: My point of view is that that has to be built into the planning and the number of people who are trained. Using that knowledge is how you will do it.

Even prior to Covid, the Crown Agent asked us about the question of certainty versus delay. Delay is a huge problem—it always been. However, when we asked the people whom we work with whether they would choose certainty, if having

certainty about the date meant that they would have to wait a couple of extra months, they all said that they would much prefer to have certainty and would accept a longer delay. The problem is in having the rug pulled from under you, day after day after day. I am not saying that delay is not a problem that we need to address—it absolutely is—but uncertainty adds a whole other layer to that.

Pauline McNeill: That is really helpful. The incredible evidence that we have had—I thank all of you—from victims and survivors, has persuaded me that a lot of the changes that are required are not legislative but are about the system itself.

I suppose that it goes back to Emma Bryson's points. I am going to have to give some thought in my mind to how we can get such a change.

Other members have asked about how victims can get more of a say in their own cases and how they get access to advocate deputes. My very scant knowledge tells me that the issue might be cultural, in that for many years ADs were trained in such a way that they were told, "You are the prosecutor; it's your job to act in the public interest—you're not representing the victim." That is very much how they have been trained, but what we are hearing is that that does not really help the conduct of trials. There is a lot of thinking to be done around that.

Sandy Brindley has made the case with regard to conduct, but to me, there is a separate issue about changing the culture. That might be something of a resource issue, too, because it would require more time. Are those changes as important as—or, indeed, more important than—the changes in the legislation?

Do you want to go first, Sandy?

Sandy Brindley: At the moment, there is a legal right to effective participation for complainers in all sexual offence cases, but you would absolutely not know that from their experiences. Overwhelmingly, complainers say that they feel completely marginalised, that they are unprepared to give evidence and that they feel underinformed.

What was really striking in the previous session was Sarah Ashby's evidence. Although her experience was horrendous, she was positive about it, because she had been informed and was prepared. Crucially, she had had a meeting with the AD and the defence. One case is not enough to demonstrate system change, but it shows that that sort of approach is possible within the existing system.

Some of the barriers in that respect are cultural; there are resource barriers for the Crown; and I also think that, as I have said, floating trial diets are a barrier, too. Because cases are, in turn, being allocated so late to a sitting, ADs are being allocated late. A number of things need to change, but they are really simple and could make huge differences to people's experience.

For me, the key point is agency. How do we give complainers agency in the process? That is one of the most important questions for the committee as it considers the bill. Are these provisions going to give complainers a bit more agency, or are they going to negate it?

That said, I think that we can do a lot within the current system, but that would negate the need for the legislative changes that are before the committee. Most of the changes that I have been outlining are for the Crown, but clearly there are wider systemic issues that require to be addressed. For example, I heard Hannah McLaughlan talking about how she felt that she was fighting for her life when she was giving evidence, and how no one in the courtroom intervened.

A culture and system change is required, and we need to think about how legislation, practice and culture go hand in hand. In my view, we cannot address one without addressing the others.

Kate Wallace: I agree. Improvements could be made to the system at the moment, but the fact is that a lot of them are not being made. I just do not think that we will achieve the level of culture change that we need without legislation. The classic example—I heard it mentioned in the previous session—is the struggle over what is actually meant by "trauma-informed practice". Some of its key principles—for example, choice, control, collaboration, trust and safety—underpin the evidence that you have heard this morning, and they need to be enshrined in legislation. Having been in post for six and a half years now, I am of the view that if we do not enshrine trauma-informed practice in legislation, and state that it is an ambition for the justice system in Scotland, we will never achieve it. We need it to be a cornerstone.

I therefore agree with Sandy Brindley. I do not disagree with the point about the need for culture change—I absolutely see that need—but the question is how to achieve it and what levers you use to do so. I think that the bill provides a really useful start.

Pauline McNeill: Thank you. Do you wish to respond, Marsha?

Dr Scott: I will just say, "What they said", with a few additional observations.

We have been very involved in what I have to say have been disheartening and discouraging conversations with justice officials on the failure to implement the Children and Young People

(Scotland) Act 2014 and a variety of other legislation. As far as I know, the will of the Parliament should be the law of Scotland, but because of the failure to allocate resources appropriately, the law is still only on paper.

Sandy Brindley talked about agency, but for me the matter underscores the issue of the agency of Parliament. If we are committed to transformative system change, such an initiative will require multiple efforts to address, for example, the question of what changes culture, and the fact is that it is often the law that does so.

The Domestic Abuse (Scotland) Act 2018 is a brilliant example of that. It has not fixed everything or even most of the issues in the system, but it sets a different standard. I agree that legislation is part of the solution, but it is not the entire solution. Legislation also has a huge impact on culture.

Post-legislative scrutiny is also absolutely critical, especially when you are creating new practices. One tool that is available to the committee, and to the Parliament as a whole, is the opportunity to follow up on whether the will of Parliament has been implemented. I have concerns about that with other legislation, but we should also not be complacent about decisions that are made after all the evidence taking being trumped, therafter, by resource decisions.

We should avoid binaries—we should not say "Yes, we need legislation", or "No, we do not." Nor should we say that one measure will change culture but another will not. I am mindful, for instance, of the series of case management pilots that have been happening mostly in domestic abuse cases. Some of the changes in processes that those pilots involve have solved problems that were perceived of as being only resource problems. If we make appropriate changes to how early diets happen, guilty pleas will increase, which is an efficiency in the system, in some ways. It delivers an outcome that, prior to the pilots, would been considered to be just a resource issue.

Emma Bryson: Like everybody here, I came to the meeting having spent a lot of time thinking about legislative changes. I was persuaded by the evidence that I heard from the six women who talked about their experience because they described a system that has failed them in a million small ways, and how much of an impact that has had not only on them personally, but on public confidence. We should recognise that if we have a system that fails at least five out of six survivors, that is not good enough. It is deeply concerning.

Legislative changes have the power to be hugely significant, but from what I have heard today, it strikes me that, in the system that we have, comparatively small fixes also have the power to make enormous differences. On the proposed legislation and the pilot of judge-only trials, we are talking it being years down the line, if we are realistic, before anything will change. In the meantime, how many more survivors will be failed by a system that does not work for them?

That is not to say that legislative changes are not important. We should still work towards them but, in the meantime, there are smaller fixes that can be implemented more readily. That might sound idealistic, but legislative changes are, arguably, more difficult to pass.

If we focus on system change in the short term, first, we have the advantage of immediacy. We could make changes in a short space of time rather than years down the line. The impact of that on victims here and now would be significant. It would also encourage other victims to feel that the experiences that we hear about from victims every day, whether from the women who spoke to the committee earlier or the stories that we read in the media, have the power to make a difference. It would encourage them to feel that, when victims are failed, Parliament recognises that and does not just keep kicking the ball down the line for an ideal solution. There is an element of reality to be brought to the matter.

Costs and resources are an issue, as well. We sit on the fence on measures such as the introduction of a victims and witnesses commissioner, but there is a financial element to that. Arguably, that money could be spent better elsewhere and for wider advantage to many victims.

I will also speak briefly about the cultural element. We live in a culture in which survivors of sexual and domestic violence are discouraged from speaking about their experiences. An element of shame is still attached to that, as if women are somehow accountable for the things that have happened to us.

12:30

That has played out in courtrooms. Defence lawyers trade on stereotypes and on rape myths. We treat victims of rape in a way that we do not treat victims of any other types of crime. If your car is stolen, you are not expected to stand up in a court and defend why your car was stolen. Speak Out Survivors hears from survivors all the time about their experiences, whether or not they have had a prosecution. Speak Out Survivors was born of a campaign to change the requirement for corroboration to enable more cases to get to court, so we have a pretty broad perspective on survivor experiences.

I am not saying that legislative change is not the way forward, but I have found what I have heard this morning to be really powerful. I hope that everybody else in this room has, too. I am sure that you are aware what it costs women to tell their personal experiences. It is not an easy or comfortable thing to do. It should be listened to and lessons should be learned from it.

The Convener: Could I move things on?

Emma Bryson: Of course. Sorry.

The Convener: I am reluctant to intervene but a few members want to come in and we have a bit to cover.

Sharon Dowey: Good morning. I agree with a lot of what you have just said. I am concerned that we spend too much time tying ourselves up in legislation when there might be small changes that we could make just now that would make a huge impact on survivors, one of which would probably be improving communication at courts. There are a lot of things that we could do just now, rather than having to wait until we get to the end of the process.

What is your vision of specialist courts? We have already heard that we will be using the existing court estate. How many existing buildings do you expect will be classed as having a specialist court within them, and how does that number compare with what is being used now? We can start with Sandy Brindley.

Sandy Brindley: My understanding is that the whole estate is being looked at. There are pros and cons to using the existing estate or having one national bespoke building—which I understand from Lady Dorrian's evidence is not being contemplated. There are difficult tensions.

We have done some consulting of survivors on the issue. For some people, a bespoke building would make a huge difference if it was trauma-informed. We hear time and again about the difficulties of using the existing estate, about common entrances, and about complainers having to hide in a room and not go out for their lunch until the accused is out of the building, but there is still the possibility that they will meet in the lunch room or the cafeteria. There are real issues with the existing estate.

There are even more issues with having rape trials in sheriff courts. We have had negative feedback about when that happens, including about people having to have discussions with their advocate depute in the corridor before giving their evidence.

There are major issues with the existing estate, but I understand the rationale for talking about local justice. It does not make sense for somebody from Orkney, for example, to travel a huge distance to a national court.

My vision of what the court should be is that, no matter where in Scotland it is, you can expect it to take a consistent and trauma-informed approach, that people will treat you with sensitivity and that you will be kept informed.

There are also issues with scheduling, as Kate Wallace said. One of the women who took part in my research spoke about being called to give evidence right at the end of a Friday. Such things show that the systems' needs are the priority rather than the complainers' needs.

That would be my vision for a specialist court. No matter where it is in the country, it should offer a certain level of service and experience that people should be able to take for granted, whether it is in Orkney or Edinburgh. As I said, I am keen to make sure that it is substantially different and not just the same story branded in a different way.

Sharon Dowey: I am afraid that that does not make things any clearer for me. [*Laughter*.]

Sandy Brindley: Sorry.

Kate Wallace: We would agree. It is difficult for us to answer your question about the number of buildings, because that will be part of the planning process. I hope that those who design the court look at consistency and actively consider the challenges posed by certain buildings, because there are issues in some buildings that cannot be overcome and which mean that they should be discounted as being usable for the purpose of the specialist sexual offences court.

It is just the nature of the court estate that some of its buildings are really not conducive to a trauma-informed approach; even if you try to do what you can inside, some courts do not have, for example, separate entrances. We can debate and argue over whether the survivor should be coming in the back entrance—obviously, in my role, I have strong views about that and completely agree with some of the previous evidence—but if there is no opportunity in that respect and if you cannot avoid the accused or those related to the accused coming into contact with victims and survivors, those buildings should be discounted. However, that has to be seen as part of the planning process.

I was heartened by what was said earlier, because I am often asked, "What does 'trauma-informed' mean?" To me, it means that, even though what has happened to someone has been horrific, they are able to come out of the process—if it involves the court—and say, "The way I was treated, I felt safe the whole way through. I was kept informed and up to date, and my needs were

met." The buildings and the environment are really important in that respect, too.

When people say those sorts of things, they are, to me, describing the outcomes that you want from this approach. The verdict or the sentence might not have been what they wanted or expected, but that is part and parcel of the system. If someone feels safe and informed all the way through, if they have been asked about their choices and those choices have been acted on and if they have been treated with the respect and dignity that we talked about earlier, that, to me, is what we want, and any building where that approach does not work should not be part of the specialist court.

Sharon Dowey: But will that not run the risk of creating more delays in the court system? Will reducing the number of buildings that can be classed as part of the specialist court not have those sorts of unintended consequences?

Kate Wallace: I would not say that that would happen automatically. I guess that it all depends on how you design the court and schedule and prioritise cases.

Sharon Dowey: Does anyone else have any comments?

Dr Scott: I just have an observation. Domestic abuse cases happen in courts all the time; the problem here is the state of the estate, if you will, rather than who is using the building. Survivors of domestic abuse will talk all the time about being told, essentially, that they could not have access to justice, because the building did not allow it. I think that that is the problem, not whether having a specialist court in those buildings will suddenly lead to problems that we did not already know existed.

We can absolutely ameliorate some of these issues through planning, but as for the problem of moving things around, the fact is that that approach will solve a lot of other problems. If we take a binary approach and say either, "Yes, we'll do it," or, "No, we won't," we will still have those other problems to deal with such as the difficulties faced by women living in Shetland or Orkney and all the other implications of having a central court.

Sharon Dowey: Moving on, I note that the bill obliges all courts to roll out trauma-informed practice. What extra trauma-informed practice or training would you expect to see in a specialist court that you do not get in other courts already?

Dr Scott: I am happy to weigh in a little bit on that. We have had extensive conversations with NHS Education for Scotland on what appropriate trauma-informed practice looks like in the context of domestic abuse and sexual assault.

It is not rocket science, but it requires a specialism in terms of understanding the intersection of violence, trauma, stigma and gender and the experience of understanding not only what you are seeing in front of you, but what Kate Wallace was talking about in terms of agency, safety and respect.

I think that creating a specialist environment around violence against women and girls in which that is the least that women can expect rather than the most that they can expect will, first, raise the practice in the rest of the system. Secondly, it is really the minimum requirement for delivering equal justice.

Sandy Brindley: Marsha Scott is absolutely right: it is about specialism. I heard Lady Dorrian talking about this at last week's committee meeting, in relation to trying to create a different culture among the judiciary. She spoke a lot about the efforts that she and the Lord President have undertaken in terms of the judiciary's approach to section 275—sexual history—applications, as well as in relation to judges becoming more interventionist where required in court.

Those are two examples of particular issues in sexual offence cases: the approach to sexual history evidence and the need for judges to intervene and actively manage what happens in the courtroom. The benefit of specialism is that it should give us the possibility to change the culture, which is what we have heard so clearly this morning that we need to do.

Kate Wallace: On the question of what is needed in addition to the generic trauma-informed practice training, it is about gender competence. It is about a deep understanding of violence against women and girls and a real focus on that, coupled with what that means for your own practice. To me, those are some of the key hallmarks that the specialist court would have and that is why we are so supportive of it.

John Swinney: This has been a helpful airing of some of the interactions that I will come on to in a second, but if we doubted the necessity of legislation, we need only look at Lady Dorrian's remarks last week, when Russell Findlay valiantly put a quote to her from the Faculty of Advocates submission that

"there is no single feature of the proposed court which could not be delivered rapidly"

through existing mechanisms.

Lady Dorrian replied:

"We have, of course, managed to bring in the changes in the way in which juries are directed and so on, but even if they were brought in rapidly, they are still being done in a piecemeal way. They are not being done in a principled way, with the underpinning of a whole court that is dedicated to trauma-informed practices.

One of the things that we said in the report was that, if we do not seize the opportunity to create the culture

change from the ground up that Mr Swinney spoke about, there is every risk that, in 40 years, my successor and your successors will be in this room having the same conversation.—[*Official Report, Criminal Justice Committee*, 10 January 2024; c 22-23.]

There are a lot of moments from the evidence taking that are not going to leave me. A lot of them happened this morning, from our six witnesses earlier on and from this session, but that moment with Lady Dorrian registered with me.

That brings me on to think that the process has got to involve a combination of three things. The first is legislation, because Lady Dorrian's recommendation is that we have to really have a go at this. Piecemeal change and incremental change have been played around with and have not worked. The Lord Advocate took the same view last week.

We also need cultural change, which is about trauma-informed practice. Absolutely nothing should happen in the process that is not trauma informed, so we need legislation to underpin that.

Then we come to the thorny issue of regulation of the profession. I am interested in Sandy Brindley's comments about ticketing. If there is to be an underpinning of the approach to participate in the specialist court by ticketing, so that everyone who takes part has to be trauma informed, there has to be a requirement or a possibility that the ticketing can be removed—and removed timeously—when people do not follow the principles that are expected of them. I would be interested to hear panel members' views on whether they are confident that that will be the case.

12:45

Sandy Brindley: I am not at all confident that that will be the case. I raised the issue when I was on the working group that developed the proposal for the specialist sexual offences court. There is absolutely no point in having ticketing if there is no process for dealing with circumstances in which a serious issue arises that leaves considerable questions about someone's suitability to act in that court. I am thinking of defence lawyers, in particular, but we might not be talking only about defence lawyers. There must be a process for assessing whether it is still appropriate for a particular professional to act in the sexual offences court.

At the moment, there is nothing in the bill that deals with that. To my mind, there is overreliance on and overconfidence in the existing regulatory bodies, which, I would say, experience has told us is misplaced. We need to have clear processes in place.

John Swinney: There is a big challenge for the committee here, because another committee of the Parliament, of which my colleague Mr MacGregor is a member, is examining the issues around legal services regulation and, from what I have heard about those proceedings, everyone is holding up their hands in horror at the poor quality of such regulation. I put that point to the Law Society of Scotland and the Faculty of Advocates when they came here. It seems that that issue cannot be confronted because it is too unacceptable. Do we need to confront those issues?

Dr Scott: I have to say that I took part in one of those hearings, and I said that the proposals were unacceptable because we needed to have an independent body. We agree with everything that Sandy Brindley has said. As I said before, the elephant in the room is accountability. I wish I knew how to inject significant accountability into courtrooms in Scotland.

However, I do not think that we can not do what we are talking about here just because we are not clear that it will deliver the prize of accountability. We certainly need to address the issue of ticketing and the fact that, beyond training, there needs to be behavioural change. Given the way in which our systems work, it is clear that people will not have their ticket ripped away for a minor infraction. We know that that will not happen, so where is the power in our system? Recourse needs to be available for victims and their advocates.

John Swinney: So an accountability mechanism needs to be injected into the proceedings.

This might be a question for Kate Wallace and Emma Bryson. It is clear from looking at the terms of reference of the victims commissioner that they would not be able to effect any of what we have just talked about; they might be able to comment on it, but they would not be able to effect it. Do you have any reflections on what questions that poses for the committee about what is required to make sure that the triumvirate of cultural change, legislative change and regulatory change can be delivered to make sure that we deliver the comprehensive strategic change that we all want?

Kate Wallace: As I said earlier, I think that the victims commissioner is a key component but, as with many of the bill's provisions, on its own, it is not enough, just as the bill itself, on its own, is not enough. That is true of a whole range of things. I make no secret of the fact that I think that the powers of the commissioner could be strengthened. We have asked for that in previous evidence sessions.

I agree with what you say. However, on the issue of being held to account for particular

standards, we already have some standards of service in place. We see the commissioner as having a key role to play in oversight of those standards of service and holding to account organisations that do not deliver them. That is not happening at the moment. I agree, and I take your point about the role of the commissioner in strengthening regulation, and—

John Swinney: Forgive me for interrupting, but the bill says that the role of the commissioner is to "monitor compliance" with standards, "promote best practice" in relation to trauma-informed practice and "undertake and commission research". The commissioner will not, under the existing proposal, have the power to put his or her foot down and say, "This is not acceptable." That power is somewhere else, but over there, everyone is kicking off and saying, "Oh my goodness, we have far too much interference in this wholly ineffective system of legal services regulation that we have in Scotland."

Sandy Brindley: I will give an example. Sticking to the agreed and public facts of this case, a high-profile King's counsel sent an intimate image of himself from the High Court toilets a few minutes after defending in a rape case. At no point was there any process or consideration of whether the KC should still defend in rape cases. It seems to me inhuman to expect a rape complainer, who would already be very anxious about giving evidence, to be in the position of having to contemplate what that might mean in her case. That is an example of why we need proper processes for removing ticketing.

Emma Bryson: I will make one comment. If a victims commissioner is put in place, we would want that person to have the power to take action against anyone in the system who expresses inappropriate views, takes inappropriate actions or behaves in any way that suggests that they do not understand the meaning of trauma-informed practice or what best meets victims' needs. There has to be accountability.

The Convener: It is just after 10 minutes to 1, and we are looking to run the evidence session until just after 1. A couple of members still want to come in but, before I bring in Russell Findlay, I will interject and cover an issue that we have not picked up this morning, which is anonymity for victims.

Assuming that you are supportive of the provision on anonymity for victims, are there ways in which you would like to see the proposals in the bill changed or strengthened—for example, in relation to the offences covered or the duration of anonymity? The issue was covered to a greater or lesser degree in some of your written submissions, but I would like to pick it up in committee.

Sandy Brindley: One issue in relation to anonymity that we found very difficult was when it should end. The Government has gone down the road of it ending upon death, and we have come, on balance, to recognise the reasons for that. However, I have subsequently had conversations with rape survivors who have expressed strong views on the issue. They have asked, "Why should my protection end when I die, and what about my family?" We would certainly be willing to shift our position if the committee were to look at the feasibility of extending that protection beyond death.

Kate Wallace: It is important to recognise that the proposed right to anonymity would bring Scotland into line with the rest of the UK. It is important for encouraging people to come forward, and it plays an important role, but we have a couple of things to say about it. We think that it should be extended beyond death, because there could be a situation where a victim of rape was granted anonymity, but if that victim was then murdered, they would lose their anonymity. In the work that we have been doing around that, we speak to many different families—we have a specialist service for families bereaved by murder and culpable homicide—and we have seen the impact on surviving children, who by default are also identified when a parent or carer is killed.

We understand the issues, but we think that they can be overcome in Scotland. We think it is the right thing to extend anonymity beyond death. We recognise, however, that there should be a right to have a waiver—and this is the mark of having a trauma-informed approach. If victims or their families wish to waive their right to anonymity, they should have a mechanism to do that. Some of the concerns around extending anonymity beyond death were to do with the experience in other jurisdictions, where victims who have come forward themselves have been threatened with legal action, because they have named themselves.

Having a waiver is important, and extending the time is important. We would also wish the types of crimes to be considered. For example, domestic abuse and stalking should be considered, too. Those are our main points in this area.

The Convener: That is helpful—thanks very much.

Russell Findlay: I do not think that I have taken so many notes in any of these evidence sessions as I have done today and, given the finite time that we have, I am slightly overwhelmed in deciding which questions to go with, but I will focus on parts 5 and 6 of the bill.

My first question, on part 5, goes back to something that Sharon Dowey touched on earlier:

the practicalities of what the proposed specialist sexual offences courts might look like. We have heard new evidence about the right for complainers to watch proceedings from a safe space of some sort. That sounds like a great idea but, given that that would be in the same building as the courtroom, there will not be anything bespoke brought into play, partly due to financial reasons. How might it be achieved?

Sandy Brindley: You could set up a secure space online that is not within the court building, which would be comfortable, and where there is support, where somebody could view the proceedings online if they wished. That is a default. If we do not have a bespoke building, I do not think that it would be realistic to set aside a secure viewing room within the existing estate. It is not suitable, and there is so much chance of bumping into the accused or his family. To set up a secure viewing space where complainers could view the trial, if they wish, would be a solution.

Russell Findlay: Such as the Victim Support Scotland facilities that already exist.

Kate Wallace: Yes. The technology has already been tested, and it works, so it is possible to do that.

Russell Findlay: The other issue that I wish to discuss is to the use of pre-recorded evidence. That does happen now, but the new legislation will make it the default. Some new research by Professor Cheryl Thomas KC at University College London, which came out a few days ago, found that, across all crimes, the rate of conviction is 10 per cent lower when pre-recorded evidence is used. In respect of rape crimes, it is 20 per cent lower. That is not absolute, and it may not wholly apply, but I wonder whether that research, which I am sure you are aware of, has surprised you in any way. Has it given you any cause to rethink the whole-hearted support for those arrangements in the bill? If not, what might be done to mitigate or fix that anticipated decrease in conviction rates? That might be one for Sandy Brindley to address.

Sandy Brindley: I read the coverage about it, but I have not had a chance yet to read the full research. I was concerned by those findings. I have heard concerns from prosecutors for years, anecdotally, about evidence that is not live having less impact on juries in rape cases when the accused is directly there, beside the jury. It might mean that the complainer's testimony has less impact. An evidence review was commissioned by the Scottish Government, and it seemed to find that it did not make a difference.

I would like to see some Scotland-specific research. It would be hard to establish whether there was a causal link, because there are so many variables in what might lead to a conviction. We need to establish whether there is a correlation because, even if there is just a slight correlation, the key is to have informed choices for complainers. Pre-recorded evidence might be the only way in which some complainers can give evidence, in which case that is absolutely what they should do. For other complainers, however, if there is even a slight correlation between pre-recorded evidence and a lower conviction rate, that is information that they should have so that they can make an informed choice.

Russell Findlay: I wonder whether that goes back to some of the evidence that you gave us previously about data.

Sandy Brindley: Yes—absolutely.

Russell Findlay: Presumably, the Crown and the courts have information about conviction rates where that approach has been used, both for crimes of a sexual nature and for crimes of a non-sexual nature. That is something that we should consider.

Sandy Brindley: I was struck by one part of the Lord Advocate's evidence last week, in which she mentioned a conviction rate for single-complainer rape cases. We know that the overall conviction rate in rape cases is the lowest of any crime type, at just over 50 per cent. However, in her evidence, she said that the conviction rate in single-complainer cases is 20 to 25 per cent, and that is of cases that get to court. That is such important data, particularly when we are looking at the rationale for the judge-led pilot involving single-complainer cases. To be honest, that conviction rate is extremely concerning, and it points to Russell Findlay's point about the need for much better data to underpin these discussions.

13:00

Russell Findlay: I have a question on part 6, if I have time, convener. [*Interruption*.] I will take that as a yes.

My question is about the invocation of section 275 in the 1995 act, and the requirement for independent legal representation in that situation, which is in the bill. Serious concerns have been raised by the Crown, the Scottish Courts and Tribunals Service, the judges and the Law Society of Scotland about that provision leading to additional churn and delay and further trauma for complainers. However, a new element has been raised today by some of the witnesses we heard from earlier, which is about cases in which character or sexual history information is introduced in effect by stealth by defence lawyers without making a section 275 application. How widespread might that be? Does the bill need to address that particular blind spot or loophole, or whatever you want to call it?

Sandy Brindley: New research has been carried out into the operation of sections 274 and 275, which I anticipate will be published in the next couple of months and which I think will be helpful on that matter. The difficulty is that we do not have any up-to-date evaluation of what is happening with those provisions. The most recent previous research looked at cases two decades ago, and it painted a depressing and concerning picture, but we know that there has been a lot of change since. My understanding is that the situation that you describe is not widespread but that research that is being carried out by Edinburgh, Glasgow and Warwick universities should give us a much clearer evidence base.

Notwithstanding the concerns that have been expressed in relation to the procedures in the bill around sections 274 and 275, the new provision is vital. The review that HM Inspectorate of Prosecution carried out into sections 274 and 275 found that even judges said that they are some of the most complex provisions that they have come across, yet we expect complainers to express a view on them without any legal representation. Absolutely, the changes must happen, but we need to make sure that the process is correct.

Russell Findlay: Often, the Crown does not object to such applications, so the victim is left with no voice.

I think that you also support an extension of the proposed timescale in the bill, from 21 to 28 days.

Sandy Brindley: The timescales are impossible. Since a case called RR, the Crown now has a duty to seek the views of complainers and to put their views to the court, irrespective of the Crown's position. However, the timescales are so difficult that it is almost impossible to do that in a trauma-informed way. These are very sensitive and difficult discussions that the Crown needs to have with complainers, so there needs to be enough time to do it properly.

Do I have time to go on, convener?

The Convener: Carry on.

Sandy Brindley: As part of the research that I mentioned, I spoke to three complainers who had had that conversation with the Crown in being consulted on their views on section 275 applications. That absolutely demonstrated the need for legal representation, because the approach that the Crown took in those cases did not enable the complainers to give informed views by any stretch of the imagination. One complainer who I spoke to said that she was very distressed and did not understand what the evidence meant until it came to the trial, when it formed a key part of her cross-examination.

We cannot put complainers in the position of being asked to give a view on very distressing and sensitive information that is part of a complex legal process involving sections 274 and 275 without legal representation. That is an example of giving complainers a right—the right to express a view—but without a means to make it accessible, which can actually be damaging. I think that it is close to damaging if we are not giving legal representation to help people navigate these really difficult conversations about such personal information being brought up as part of a rape prosecution.

Russell Findlay: Can I ask a very quick question about judges, convener?

The Convener: Please be very, very quick.

Russell Findlay: With regard to single-judge and non-jury rape trials, I note that Rape Crisis Scotland's submission talks about the conduct of "unsympathetic and unreceptive judges" towards rape victims and suggests that, even with training, they might hold biased views. In fact, a judge in a recent case misdirected a jury, resulting in a child rapist walking free and adding to the victim's trauma—and that happened in much more enlightened times. I wonder whether the bill goes far enough in respect of the requirements on the judiciary to ensure that, especially with judge-only trials, judges get sufficient training.

Sandy Brindley: I will start with that. Obviously, the judge-only pilot is controversial, and it is absolutely right that, because of its nature, we have significant debate and discussion about it. It comes against a background of a significant—I would say overwhelming—amount of research that shows the impact of rape myths on jury decision making. However, there are legitimate questions to ask about the impact of rape myths on judges or the prejudicial attitudes that they might have and, indeed, about the diversity of the judiciary.

According to the research, what makes a difference with regard to rape myths is participatory education, and it is much easier to do that sort of work with a small group of judges than it is with the entire Scottish population, which is what we would be talking about with juries. There are valid questions to ask about the diversity of the judiciary and attitudes, but they can be addressed through training in a way that would be much more difficult with juries.

Crucially, judges understand key legal concepts in a way that I do not think that jurors are able to. Do jurors understand what, for example, "beyond reasonable doubt", "Moorov" or "corroboration" means? To me, such benefits outweigh any worries.

Kate Wallace: That is also a key reason for running the proposal as a pilot—it is about gathering information on and getting an

understanding of it. We have always been supportive of such a move, partly because we had the benefit of the jury research and managed to get a really deep understanding of it. It just means that we can immerse a finite group of people in a lot of training.

Dr Scott: I sat on Lady Dorrian's group along with Kate Wallace and Sandy Brindley, and I know that there was a lot of division over the issue of judge-only trials. What I found deeply convincing was what we heard from some of the senior judges in the room about their concerns and dismay when juries came to conclusions that, from their perspective, were not aligned with the evidence that had been given. I do not think that arguments can be any more convincing than when they come from people who do understand the law and have seen multiple examples of these kinds of cases, and those people are saying that the current structures cannot deliver justice.

Russell Findlay: Thank you very much.

The Convener: Very finally, I call Fulton MacGregor, if he still wants to come in.

Fulton MacGregor: Thank you for the evidence that you have given so far. I know that we are tight for time—and it might well be hard to answer this question in the time that we have—but I have asked the convener for permission to ask about part 4 of the bill. Only Sandy Brindley has had the opportunity to come in and speak to us in person about it, although everyone has had the opportunity to contribute a submission. I therefore want to ask about this part of the bill—Sandy, you can come back on this, if you wish—but I must ask the panel to be as brief as possible, even though I know that that might be difficult.

We have been asked about the not proven verdict, and I am pretty sure that I speak for most people when I say that we accept the reasons why it should not be there and that it seems a bit of an anomaly in the system. However, it feels that, with this bill, we are being asked to remove not proven at the same time as we are being asked to change the size of juries with regard to the delivery of verdicts. I think that I and others are struggling with that balance, because none of us wants to take away not proven only to make the situation worse. I do not know whether that will happen—I do not know what the research says about that—but I want to ask for the panel's views on the issue.

Given that you have already contributed on this matter, Sandy, I will start with the others on the panel, but I will give you an opportunity to come in, too. Emma, do you want to speak to this issue? I should have said that panel members can respond only if they want to.

Emma Bryson: This is quite an important issue, because it highlights the potential for unintended consequences. The intention behind removing the not proven verdict is to increase the number of convictions, but my understanding is that a potential consequence of changes to jury numbers and majorities could be that there would be fewer convictions—juries would be less likely to convict—which would cancel out the advantage of removing the not proven verdict.

The jury research showed that, when the not proven verdict was taken out of the equation, jurors were more likely to convict the accused. However, the research also showed that, when the number of people on a jury was changed to 12, with a majority of 10 required, the jury was more likely to be reluctant to convict, so one of the changes could cancel out the other. Overall, with the bill, we all need to be a little wary of the law of unintended consequences.

Dr Scott: It is difficult for us to be convinced by the data on jury size, but we are convinced of the need to remove the not proven verdict. Through post-legislative scrutiny, there would be the opportunity to look at what was happening if we were concerned about negative unintended consequences.

It seems eminently clear to me that we need to remove the not proven verdict, because that will contribute to the culture change that is needed, as we have said, in the sense that it will provide clarity on the job of the court in deciding the facts of a case. In general, we should be willing to act on issues on which there is the most evidence—in this case, it is the removal of the not proven verdict. I will defer to Sandy Brindley's expertise on jury size.

Kate Wallace: Given that we are tight for time, I will hand over to Sandy Brindley.

Sandy Brindley: The not proven verdict is an anomaly, not a safeguard, and I do not see any rationale for having to change the jury majority as a result of its removal. We spoke earlier about the conviction rate for single complainer cases being between 20 and 25 per cent. It would be very alarming to me if the Scottish Government or Scottish Parliament were to do anything that would make it even harder to get a conviction. This is not about arbitrary increases in conviction rates; it is about wrongful acquittals. If our system has biases or other things in it that make it easier for rapists to walk free when they should not, we should address those issues, but we should not compensate for addressing them by making it harder to get a conviction. The link is not borne out by the evidence.

Fulton MacGregor: Thank you. That point was very powerfully made.

The Convener: We have definitely run out of time now. I thank all the witnesses for attending. It has been a very worthwhile session.

Next week, we will return to the Victims, Witnesses, and Justice Reform (Scotland) Bill and take evidence from academics—including Cheryl Thomas, whom we referred to earlier—who have conducted research that is relevant to the bill, as well as from representatives of the legal profession.

I propose that we defer item 2 to a future meeting. Do we agree to do so?

Members *indicated agreement.*

The Convener: Thank you.

Meeting closed at 13:14.

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