OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 8 January 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 8 January 2019

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JUSTICE COMMITTEE
1st Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Karen Auchincloss (Scottish Government)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 8 January 2019

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning, and welcome to the Justice Committee's first meeting in 2019. We have received apologies from Liam McArthur.

Agenda item 1 is a decision on whether to take in private items 3 and 4 at this meeting and consideration at future meetings of the draft stage 1 reports on the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill and the Management of Offenders (Scotland) Bill. Are we agreed to take that business in private?

Members *indicated agreement.*

Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill: Stage 1

10:01

The Convener: Agenda item 2 is our fifth and final evidence-taking session on the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I welcome to the meeting the Cabinet Secretary for Justice, Humza Yousaf, and, from the Scottish Government, Karen Auchincloss and Lesley Bagha, from the criminal justice division, and Louise Miller, from the directorate for legal services. I have already wished the committee a happy new year in private. I take this opportunity to wish the cabinet secretary and his officials the same.

I thank the cabinet secretary for his various submissions to the committee and invite him to make some brief opening remarks.

The Cabinet Secretary for Justice (Humza Yousaf): Thank you, convener. I reciprocate in wishing you all a happy new year. I hope that you had a good festive break. I also thank the committee for what I think have been extremely thorough and helpful evidence-taking sessions. We have reflected on that evidence in the run-up to this particular meeting.

In recent years, significant changes have been made to the criminal justice system to recognise the interests of vulnerable witnesses. Those measures have included strengthened arrangements to extend access to special measures in court that have been appropriate to help keep children and other vulnerable witnesses out of court through, for example, greater access to remote videolink for summary and solemn cases. However, I strongly believe that more can and should be done to support child and other vulnerable witnesses while protecting the interests of those who have been accused of crimes. That is why, in ensuring that children in the most serious criminal cases can have their evidence recorded in advance of the trial, the bill is a progressive and ambitious step forward.

I have listened with great interest to the evidence that the committee has taken from a broad range of stakeholders over the past couple of months, and I am very pleased that the overwhelming response has been positive and supportive. That said, I accept that some issues were raised in the evidence sessions. It might be helpful if I address a few of them very briefly this morning.

Many stakeholders have asked how and when we intend to commence the bill's provisions and, in particular, when the power in section 3 will be commenced. We have always made it clear that our initial focus will be on child witnesses in the most serious cases. I trust that the committee received the letter that I sent yesterday. It sets out our proposed approach to commencement—provided, of course, that the bill is approved by the Scottish Parliament—and attached to it is a draft implementation plan. As members will note, and as the letter sets out, it is important that the bill's provisions be commenced in a phased, manageable and effective way. I know that some stakeholders support that approach.

It is of the utmost importance that we do not overwhelm the system and that we get it right for children and vulnerable witnesses. Not to do so would be to undermine the policy aims of the bill and, more important, to risk making matters worse for the very people whom we seek to protect. However, members will note that the Scottish Government intends to extend the new provision to adults who are deemed vulnerable witnesses, including complainers in sexual offences cases. It is likely that that will initially be commenced in the High Court.

It is important that each stage of the roll-out be evaluated and monitored to ensure that the justice system as a whole is ready to move to the next phase of implementation. I cannot stress enough that I want the justice system to be fully prepared and the necessary information technology and infrastructure to be in place before we move from one phase to another.

As the committee is aware, the Government has already invested almost £1 million to create a new vulnerable witnesses suite in central Glasgow. We have made a further £1.1 million available to the courts service, and we continue to work with it on upgrading other venues and IT equipment so that the court infrastructure is ready for the increase in the number of witnesses having their evidence pre-recorded.

I am aware that some concerns have been raised in relation to potential miscarriages of justice, and I hope that I can allay those concerns. Evidence is and will continue to be tested. Witnesses will continue to be cross-examined in evidence by commissioner hearings under the new statutory rule. They will also have the oversight of a High Court judge or a sheriff.

The bill in no way undermines those fundamental principles, nor does it amend the current definition of vulnerability or the current special measures; it creates a statutory framework to enable the greater use of pre-recorded evidence so that our most vulnerable citizens do not have to undergo the additional stress of having to await trial before giving evidence.

I am, as always, happy to take questions.

Daniel Johnson (Edinburgh Southern) (Lab): I extend my wishes for a happy new year to the cabinet secretary.

I will begin by asking a broad question. At its heart, the bill represents the view that recording evidence prior to a court case is beneficial to a vulnerable witness. Will the cabinet secretary outline his views of what those benefits are, as well as any potential drawbacks? Will he also tell us what protections are required to make sure that we still see justice being carried out in our courts?

Humza Yousaf: I thank the member for his good wishes and his questions.

It is important to recognise—as I know the member does—that we are not introducing a new special measure. The pre-recording of evidence taken on commission can be applied for and currently takes place, although in some respects we are creating a presumption when it comes to child witnesses. Those safeguards already exist. The evidence being taken on commission would be overseen by a judge or by a sheriff in a sheriff and jury trial.

Organisations such as Barnardo's Scotland and Children 1st, as well as representatives of the legal profession such as the Faculty of Advocates and the Crown Office, have provided overwhelming evidence to the committee on the benefits of the measure to children and to the criminal justice system generally because it potentially helps to speed up the process.

The really big benefit for children—and, I hope, for adults who are deemed vulnerable witnesses when we extend the measure—is that we can mitigate, as best we can, the potential for the court process to retraumatise them. We know that the court process can have a long-lasting impact. In my conversations with the likes of Rape Crisis Scotland, I have heard that rape complainers often say that the court process not only retraumatised them but, in some respects, was even more traumatic than the incident itself. If we are able to mitigate that, it will increase the efficiency of the court process.

There are a lot of benefits, but the important point is that safeguards need to be in place. The current safeguards are fairly good and strong, but we should be open minded about whether there is a need for improvement.

Daniel Johnson: I agree with much of what the cabinet secretary has said. The bill will lead to a big change for people in the courts in terms of the infrastructure that is required—the technology for the pre-recording of evidence—and the changes in

practice. I thank the cabinet secretary for the letter that he provided, but will he expand on the assessments that will be made? A phased approach needs to be taken to ensure that lessons are learned at each stage—indeed, more time should be taken if that is required. How will the assessments be made in terms of practice and infrastructure?

Humza Yousaf: The latter point is hugely important. In some respects, we can look at what is happening in England and Wales, where there is a phased roll-out. The reason that England and Wales are phasing the roll-out is to monitor and evaluate, which it is important that we do. We need to have a degree of flexibility. In my implementation plan, which I forwarded to the committee, dates are attached to some of what we are looking to do, but not to everything. The reason for that is that I want to get things right instead of just giving you an arbitrary date. We need to evaluate and monitor.

I might look to my officials to add some detail of how that work could be done, or I could follow that up with the committee afterwards. We know that High Court cases that involve child complainers and child witnesses will require quite an upgrading of facilities and infrastructure, but a cultural shift will also potentially be required.

The IT infrastructure is really important. I was very interested to read and reflect on the evidence that the committee took on joint investigative interviews, for example. A number of witnesses said that the interviews were not of the quality that they should have been. That alone tells us that there needs to be significant investment in infrastructure. We are providing that investment, and I have seen some of it in the Glasgow city centre location that we will use for child interviews by commissioner. Clearly, the monitoring of that work will be hugely important before we move on to the next phase.

Karen Auchincloss (Scottish Government): Since the practice note came in, there has been a period of monitoring and evaluation to see how it is bedding in, and we will continue that work once the legislation is in place. The work that we will do with the Crown Office and the Scottish Courts and Tribunals Service could relate to data collection—we could seek feedback on the quality or volume of commissions or on how long a commission has taken. Those are all important factors to consider before we decide whether or when we will roll out the system further.

Daniel Johnson: A key question is why the bill stops where it does. I accept the point about the need for caution. Using a phased approach in relation to child witnesses in solemn or specific types of cases, while making provision for extension to other types of cases and witnesses, makes sense. However, why does the bill not make provision for further extensions, particularly to summary cases? After all, a child does not know to be traumatised just because it is a solemn case rather than a summary case. I am thinking particularly about domestic abuse cases, which might well be heard under summary proceedings. We can understand the potential benefits of those measures to child witnesses in such cases. Why does the bill not include provision to make those further extensions—albeit with the caveats and tests that the cabinet secretary has set out?

Humza Yousaf: That is a really good question, and I hope that I can give the member some reassurance on our thinking on the matter. I will ask my officials to come in if they have anything else to add.

I have recognised, from the committee's evidence sessions, that the phased approach has been welcomed by a wide range of stakeholders—particularly those in the criminal justice field—from the Faculty of Advocates to the Law Society and to Lady Dorrian. They are supportive of that phased approach because they understand the infrastructure and the resource implication.

10:15

However, I also understand Daniel Johnson's question about having something in the bill about summary cases because that might make the provision easier to extend in the way that we are suggesting for adult vulnerable witnesses. I have a couple of things to say on that. In domestic abuse cases—be they summary or solemn—there is nothing currently preventing an application for evidence by commission. There could be an application under the current provisions, and it would be for a sheriff or a judge to look at that application and to grant it or not. The ability to do that currently exists in domestic abuse cases. There is also a difference between the number of solemn cases that are presided over in the High Court and the number of summary cases—Mr Johnson understands the difference in those volumes and its implication. Therefore, it is important to go through the phased approach that we currently have, with the list of offences that we currently have.

A third point is that, when we extend the provision to adults who are deemed to be vulnerable witnesses, it will cover cases involving sexual offences and domestic abuse cases.

There are two separate issues, although I understand that there is some correlation between them. I am not closed minded about the list of offences that will be covered. I have listened to the evidence and I see that the issue of domestic abuse has been raised by a number of

stakeholders. As a Government, we should reflect on that. At the same time, however, there is a provision in the bill to amend the current list of offences. As a Government, we should be open minded to the suggestion of including the offence of domestic abuse in the list while understanding the implications of doing so.

There is also the issue of extending the practice to summary cases. I am not quite convinced that we need something about that in the bill. If we were to go down that route, we would have to think about the phasing of the implementation. The current phasing of the implementation begins with children giving evidence in solemn cases in the High Court and in sheriff and jury trials; we will then look at extending it to adults who are deemed to be vulnerable witnesses—again, we will probably look at extending it to trials in the High Court first and then look at extending it to sheriff and jury trials. Would we then look at extending it to summary cases? Would it be extended to summary cases involving children, first, and then to summary cases involving adults? We would have to think about how we would phase that.

If we were to extend the practice to summary cases and create that presumption, it might be unnecessary. Tim Barraclough from the Scottish Courts and Tribunals Service gave the example of a 16-year-old in the summary courts who had witnessed a bicycle theft. Would we require that witness to give pre-recorded evidence? I am not convinced that that would be the best use of time and resources.

For those reasons, on the domestic abuse front, the Government should be open minded on the issue of putting something in the bill. However, I am not quite persuaded of the need to extend the practice to summary cases.

Liam Kerr (North East Scotland) (Con): Following Daniel Johnson's question, do you think that there is a risk—particularly given that the category can be extended by regulation—that the category of vulnerable witness could be extended so much that it would almost become the default position?

Also, is there anything in the assertion that the committee has heard that deeming a witness to be vulnerable could enhance their credibility or the weight of evidence that they give?

Humza Yousaf: Extension of potential vulnerability could be a decision for us to make as a Parliament. Agreement to extension of the category would have to be done through an order that was subject to affirmative procedure. Liam Kerr is right that there must be some flexibility. Perhaps not everybody who is captured under the current definition of "vulnerable witness" would have been captured 20 years ago when Parliament first sat. There has to be an element of flexibility, but it would be up to the Parliament to make the decision on whether to extend the definition.

On the second question—I think that I understood it correctly—I note that a few stakeholders who gave evidence to the committee suggested that more weight could be given to pre-recorded evidence and questioned whether that would shift the balance of fairness in a trial. I have seen no empirical evidence or data to back that up; in fact, some of the data that we have suggests that that is not the case and that jurors do not give more weight to pre-recorded evidence than to evidence that is heard in the courtroom.

On safeguards, I go back to the point that I made to Daniel Johnson that pre-recorded evidence by commissioner can happen currently and there are safeguards. There are the fundamental principles that evidence will be tested by the defence and that there will be cross-examination. All that will continue and, of course, the fairness of the trial is still overseen by a judge or sheriff. Those are important safeguards.

Liam Kerr: On the same topic, do you have anything to say in response to the concerns that have been raised that the definition of a vulnerable witness is not necessarily predicated on any inherent vulnerability or characteristic of the witness, but on the charge or allegation that is being made, such that the vulnerability is a function of the charge and not of the witness? Do you have any concerns about that?

Humza Yousaf: Yes. It would be difficult to argue that a complainer who is, potentially, the victim of attempted murder or other serious offence on the list is not a vulnerable person. They might not have been vulnerable had the crime not been committed, but the fact that the crime has potentially or allegedly been committed makes them vulnerable. It is difficult to separate the two issues completely.

In the committee's evidence sessions, a point was raised about what more can be done to support people who have particular vulnerabilities, such as communication issues and learning difficulties. That is slightly outside the scope of the bill, but the Government is doing a lot of work on the issue in relation to children and ensuring that appropriate adult support is available. In the committee's evidence sessions, there has also been talk about intermediaries and so on. There is an issue about how we support those who have, to use Liam Kerr's phrase, "inherent vulnerability", as well as those who are vulnerable because of the crime that it is alleged has been committed against them.

The Convener: I want to press you a little on that. Clearly, there will be different requirements for adults from those for children. Although the category of vulnerability might not be the issue, there is an issue about the procedures and how many of the previously approved measures that are in place for when evidence is taken from children can be transferred to apply equally to vulnerable adults, and how that will pan out. A lot of different issues have been raised. Is it therefore appropriate for changes to be decided through regulations, albeit that they would be subject to affirmative procedure? Is there a case for looking at the issue fully and, perhaps, for the introduction of more primary legislation? Obviously, for access to justice, it is key that the procedures for pre-recording, protecting and getting the best evidence work well.

Humza Yousaf: I completely understand the thread of the questioning, and it is an eminently sensible question to ask. I had hoped to reassure you, convener—and the committee more widely—on that. The matter is precisely the reason why I think that phased implementation is so important. We need to be able to monitor, evaluate, and learn lessons about what is transferable from how we do things with children to how we do things with vulnerable adults. Where there are commonalities, we should be able to do that.

On the obvious differences that the convener referred to, we should still be able to test that as a Parliament, even if it is by regulation-making order. On the introduction of primary legislation in the future, the committee is well aware of the pressures on the parliamentary timetable. With everything that is going on in the wider context, we do not know what the parliamentary timetable might look like years and years down the line. Would we be delaying something further for not much gain? There would still be parliamentary scrutiny of an affirmative order. Again, I will happily take suggestions from the committee, but we will be testing processes rigorously.

Also, we are working with a range of stakeholders—from the third sector right the way through to justice stakeholders—to ensure that we have the best practice in place for adults who are deemed to be vulnerable witnesses.

Lastly, I will repeat the point that I made to the previous two members: under the current provisions, evidence can be taken by commissioner in certain cases. Where we can learn from that, we should do so.

The Convener: The point about scrutiny is vital. There are pressures on parliamentary time, but those pressures cannot be allowed to compromise potential access to justice, as you are well aware. That is why I welcome the suggestion that you do not totally rule out learning lessons, and the suggestion that there might, in dealing with adults who are deemed to be vulnerable, be a different way forward from regulation through affirmative procedure.

In answer to Daniel Johnson's questions, you mentioned the assessment information data that you are collecting. Would you be prepared to share that with the committee?

Humza Yousaf: I do not see why I would not. If you do not mind, however, I will reflect on the suggestion with my officials in case there are particular sensitivities that I am not aware of. I do not see why we would not be as open and transparent as possible in the process.

The Convener: That is very helpful. Thank you.

John Finnie (Highlands and Islands) (Green): Police Scotland sent us information about a form that it uses specifically for potential witnesses at the High Court. It covers the victim's background and details any vulnerabilities that have been identified. It is referred to as the "victim strategy" and it was agreed on by the Crown Office and Procurator Fiscal Service and Police Scotland. What regard was had to the arrangement, which I understand has been in place since 2014, in shaping the bill?

It seems to me that the victims task force should look at the victim strategy. It covers communication with a witness. To my mind, from reading the information—which we got only yesterday—a measure of training would be needed for officers who would complete that additional part of the police report that is submitted to the Crown. A suggested format is provided.

Any information that you can give us about the existing arrangements and how they have shaped and influenced the bill would be helpful.

Humza Yousaf: I will happily follow up with more detailed information, but I go back to the point that evidence is already taken by commissioner. Good protocols already exist, as John Finnie rightly suggests, and which he knows about from experience, between the police and the courts, and so on. Clearly, if we are going to ramp up the numbers of people who give evidence by commissioner, or pre-recorded evidence, which we hope to do, we will have to ensure that appropriate infrastructure is in place in the courts.

The point that I think John Finnie was alluding to is that clearly it might not be just courts that have to make sure that they have the appropriate infrastructure and training in place; the police will have to do that, as well. The point is well made.

We are at an early stage on the victims task force, which has had one very productive meeting. We have an open mind as to what the task force can discuss.

If my officials do not want to add to that, particularly in relation to the police, we will follow up in writing.

10:30

Rona Mackay (Strathkelvin and Bearsden) (SNP): I want to ask about child accused persons, who are not included in the bill. As we know, many of them are vulnerable and have issues. Would you expand on why they are not included? Will you comment on the view of the Miscarriages of Justice Organisation, which advocates that there should be more on the face of the bill on support for vulnerable accused people? What do you think such support might be?

Humza Yousaf: I looked at the evidence on child accused persons that was given to the committee by Lady Dorrian, and found it to be strong and persuasive. As an esteemed figure within the criminal justice system, she has clear experience.

The obvious reasons for why one might not want to extend the measure to child accused persons have been thoroughly thought about. Rona Mackay is correct that there will often be vulnerabilities in relation to a child accused. I have been in Her Majesty's Young Offenders Institution Polmont and spoken to young people in secure units, and it is difficult not to think of those young people as victims of the adverse childhood experiences that they have suffered—especially the youngest children in the criminal justice system.

I accept Rona Mackay's point, but there are practical difficulties. The accused does not have to give evidence, and any presumption on pre-recorded evidence would fly in the face of that and could undermine the defence. The accused has access to legal representation, which has a different status to that of a witness.

There could also, when a jury is involved, be practical and logistical issues of delays while arrangements for commission are set up. In most cases, the accused gives evidence after hearing the evidence against him or her. Would a trial have to be stopped to take evidence by commissioner? For a host of practical reasons and for reasons of fairness in terms of the trial and the rights of the accused, I am not persuaded that there are reasons to extend. I note that that view is shared by a number of people in the legal profession.

On miscarriages of justice, I go back to the point that I made to Liam Kerr. We heard some compelling evidence about perceptions—I use that word purposely—of miscarriages of justice, but not much in the way of empirical or substantive data. There was evidence from Euan McIlvride of the Miscarriages of Justice Organisation Scotland and from the Faculty of Advocates on the potential for miscarriages of justice, but both talked generally as opposed to specifically.

Remember that we are not creating a new special measure here, since the non-standard special measure already exists. I will have an open mind if the Faculty of Advocates or others want to propose something for the bill at stage 2—perhaps to tighten up the language that has been used. As the convener said, we want to ensure that nothing that we do undermines the fairness of the trial process.

Rona Mackay: When we visited the High Court, it was mentioned that provision exists for a child accused not to be in court during a hearing, but that that does not always happen. Can the bill be firmed up to ensure that the accused should not be in court while a trial proceeds?

Humza Yousaf: I am not sure that that issue is necessarily for the bill. We could take it back to the Crown Office and speak to the Scottish Courts and Tribunals Service. There are various practice notes, and an evidence and procedure review is taking place.

Karen Auchincloss: We would want to discuss that issue further with the courts service and the Crown Office.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Good morning to the panel. I will focus on taking evidence by commissioner, which Lady Dorrian's practice note has increased the use of. In his opening statement, the cabinet secretary spoke about having the necessary infrastructure and IT in place. Are there practical difficulties with how taking evidence by commissioner operates?

Humza Yousaf: Some of the evidence was compelling. For example, the quality of joint investigative interviews has not been good enough; the Solicitor General has told me that we need to improve it and upgrade the IT system. There are infrastructure issues, which is why we will invest in IT. I had the pleasure of visiting the Glasgow city centre location that will be used for pre-recorded evidence for special measures, which the Scottish Government has backed by just shy of £1 million. The suite has state-of-the-art facilities with the latest technology, so I hope that it will get round some of the issues.

We should not be complacent. Jenny Gilruth may be aware that there are 33 recommendations on how to improve joint investigative interviews, which are being taken forward by Police Scotland, Social Work Scotland, the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service and so on—a lot of work is being done. It is a good point that we need to be really confident that we have good infrastructure; if

we do not, we could ultimately impede justice as opposed to helping justice to run its course in an efficient manner.

Jenny Gilruth: On the timing of taking evidence by commissioner, the Lord Justice Clerk has told the committee:

"When children, in particular, are asked to give evidence at a time that is remote from the event, not only has their memory diminished, but they are more likely to be confused by general questioning about the incident, and in cross-examination might come across—often wrongly—as being shifty or unreliable. Indeed, they not only find it difficult to deal with questions at that stage, but are more inclined to agree with the questioner when they cannot remember something."—[*Official Report*, *Justice Committee*, 18 December 2018; c 3.]

I was quite struck by that evidence at the time. Is there an opportunity in the legislation to expedite the time between reporting and taking evidence, to try to get it right?

Humza Yousaf: I, too, was taken by that evidence, which was very strong indeed. Any of us who interact with children and work with them can recognise exactly what Lady Dorrian was saying—Jenny Gilruth has experience of that. I am not sure that the issue is for the bill, as the practice note helps with some of it. In the bill, we have suggested that taking evidence by commissioner would not have to wait for indictment, although I accept that it would be rare to have evidence by commissioner pre-indictment, and the bill will remove the barrier of seven days before the application can be considered—I am not sure why it has been seven days—so we will be able to speed that up.

We have announced specific funding of £1.1 million—£300,000 for the courts service and £800,000 for the Crown Office—to speed up sexual offence cases. Speeding up cases is hugely important, but the matter is much wider than this legislation.

Jenny Gilruth: Thank you.

I asked Lady Dorrian whether the bill should be more specific on what the ground rules hearing should cover. Do you have a view on that?

Humza Yousaf: The practice note is probably the best place for the detail of that. It is important that the bill is high level; as I said, if we are too prescriptive, legislation ends up being rigid and difficult to amend. The practice note is lengthy and covers quite a few pages; it covers everything from whether wigs should be worn to oaths and affirmations, timings, the need for breaks and so on. That is the right place for such detail. If we made the system too prescriptive by putting most of the detail in primary legislation, it would be difficult for practice to evolve in future.

Rona Mackay: You mentioned intermediaries. Should the bill make provision in that regard? Most of the evidence that we have heard has been favourable towards the use of intermediaries.

Humza Yousaf: Again, I found the evidence on the use of intermediaries compelling. I do not think that it is a matter for the bill, which is quite narrow in scope and was designed to be so to enable us to make the progress that we hope to make on child witnesses and adult deemed vulnerable witnesses.

The use of intermediaries is a wider issue. There is a strong argument for using intermediaries more and better in the criminal justice system. Lady Dorrian's remarks on the matter were compelling. She said:

"Although we are in favour of intermediaries in general, I am not entirely sure whether this is the stage to introduce them to the bill."—[*Official Report*, *Justice Committee*, 18 December 2018; c 10.]

I agree with her. The use of intermediaries is a much wider issue, which could have implications for other parts of the criminal justice system. We will look further at the matter, although you will understand that it is more an issue for the Crown Office and the courts, but we will probably not include provision in that regard in the bill.

Rona Mackay: Thank you.

Daniel Johnson: Let me connect Jenny Gilruth's question about what the ground rules hearing should cover and the point about intermediaries. I accept what you said, cabinet secretary. However, the current position is that the ground rules hearing may consider what support is required, and we hear from third sector organisations that they are finding out that a vulnerable individual might give evidence only a very short time before a hearing proceeds. Should there be a presumption that support for vulnerable witnesses will not just be considered but will be found and provided? Such an approach would stop short of providing for an intermediary but would at least be a step towards acknowledging the advantages of having support for a vulnerable witness.

Humza Yousaf: I can see where you are coming from. The important thing to say is that there is no legislative bar to providing assistance to a person who has communication or other needs; there is provision to allow that to happen. The senators of the College of Justice noted that the bill provides that a commissioner may consider permitting such support to be provided for a witness, if that is deemed necessary. The bill addresses your point, somewhat indirectly.

You asked whether there should be a presumption that support will be made available. That takes me back to the point that I made to

Rona Mackay. We would have to look at the issue much more broadly and consider, for example, whether there would need to be a registered intermediary scheme, so that we could have a pool of intermediaries—currently no such pool exists. We would have to consider what training intermediaries would need to undergo and what resources would be involved in that.

I am not convinced that there should be a presumption that an intermediary will be used; what we must and should do, which is outside the scope of the bill, is consider how we can improve access to intermediaries and whether they are being used in the best way possible. I agree with Lady Dorrian that we should look at the issue generally, but I am not convinced that it is a matter for the bill.

10:45

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, panel. In response to previous questions, you mentioned a couple of times joint investigative interviews and their use as prior statements. Can you comment on their level of use and what you see as the main difficulties with them?

Humza Yousaf: I am sorry, but I did not catch the beginning of that.

Fulton MacGregor: It is about the level of use of joint investigative interviews as prior statements and what you see as the main difficulties.

Humza Yousaf: I do not have figures on their level of use. However, I have found the evidence that the committee has taken quite compelling about difficulties that have delayed some trials because the quality of the joint investigative interviews has not been not good enough. I was pleased to hear that stakeholders are looking at the issue seriously. The evidence and procedure review produced 33 recommendations to strengthen joint investigative interviews, which shows that improvements can and should be made. Those recommendations are being taken forward by the appropriate partners, including social work, which is important.

The Scottish Government has committed more than £300,000 to a joint project that is being led by Police Scotland and Social Work Scotland and will create a revised model for joint investigative interviews and develop a training programme that recognises the depth of knowledge and skills required for that interview process. We will design a national standard for the quality of JIIs, which is also important.

As I said, a separate working group is taking forward the justice-related recommendations, including the roll-out of new IT and so on. A lot of work is being done on the joint investigative interviews that will align with the work on the bill going forward.

Fulton MacGregor: You touched on the training angle. You might not be able to give an answer on this just now, but if the task force recommended something about training, would you support it? It would be about taking a more national approach to joint investigative interviews or having a specialist unit, rather than such interviews being done differently in different local authority areas.

Humza Yousaf: National standards are important. The joint project that I talked about will design a national standard for quality assuring JIIs. The Solicitor General has previously made the same point to me that Fulton McGregor made about the differences in quality in different local authority areas, which can sometimes be stark. We do not want justice being delayed or impeded in one part of the country because of the quality of JIIs while the process runs efficiently in another part of the country. Given the technology of the era that we live in, we should be up to meeting that challenge. I hope that I have reassured the member that the work that we and our partners are doing is moving forward at pace.

Rona Mackay: The committee visited Norway before Christmas and had the opportunity to visit a barnahus there. It is fair to say that we were all very impressed by it. What is your view on the possibility of Scotland adopting the barnahus model? What benefits or difficulties would there be from doing that?

Humza Yousaf: I would be interested in sitting down at some point with members of the Justice Committee to hear about their experience of that Norway visit. The visit took place around the middle of December, so I did not have a chance at the end of the year to catch up with Justice Committee members on it. I would be keen to hear about their direct experience of the barnahus model. I have not travelled to Nordic countries or others to see the model, but I have had a variety of meetings with stakeholders and officials about it. However, seeing the model up close is a different experience. As I said, I hope that I get the opportunity for a conversation with Justice Committee members about their thoughts on the visit.

It should be said that the Government is extremely interested in the barnahus concept, which the First Minister mentioned in her programme for government. It is a separate but interrelated issue. The barnahus concept applies differently in different countries. The model that the committee saw in Norway is justice led, whereas it is led more by health services in other countries. Retaining flexibility is important. Another important difference is that Norway's justice

system is more inquisitorial, whereas ours is more adversarial.

The bill contains important reforms for the short term, such as those on pre-recording evidence in advance of a trial. If a child's house—a barnahus—were piloted in Scotland, how we pre-record evidence, undertake joint investigative interviews and take evidence by commissioner could all be incorporated into the concept.

There are no plans to have just one forensic interview of a witness, because our legal system is different and, under it, the defence must have the opportunity to test the evidence directly. However, we are interested in the concept, on which the Scottish Government is doing work, particularly in the justice field.

Before the recess, I wrote to the committee to announce that Healthcare Improvement Scotland, in partnership with the Care Inspectorate, had been commissioned to develop Scotland-specific standards for barnahus, based on the PROMISE quality standards. That work will begin early this year and will take about 12 months, because it will include extensive consultation. Once they are published, the standards will form a framework for health, justice and local government services to understand what is required from our collective response to child victims, and I hope that that will provide a road map for developing our approach to barnahus. I will of course keep the committee and Parliament updated on progress.

The Convener: We were all impressed by the forensic interview model, whose results were outstanding. In her evidence, Lady Dorrian said that she thought that such a model was possible in Scotland, and she covered it in her level 1 vision report. Have you had a chance to look at that?

Humza Yousaf: I have not looked at the level 1 vision report, but I am more than happy to speak to Lady Dorrian and others who have experience of the criminal justice system as legal professionals to take their views, which we should do. I understood that having one forensic interview would be difficult in our justice system because, as I said to Rona Mackay, the defence must be able to test the evidence, cross-examine and so on. However, if those who are involved in the justice system say that there are better ways of doing things, we should be open minded about that.

The Convener: That is welcome, because we were all impressed by the forensic interview model.

Daniel Johnson: I will directly follow on from what Rona Mackay and the convener asked about. Our experience raised two interesting points about the Norway model. Norway's system has adversarial elements—for example, the defence counsel has the right to a follow-up interview, so cross-examination can take place, but that right is not exercised often. A critical element is that the system is police led—highly trained police officers conduct the interviews.

That model looks strikingly like an enhanced JII, albeit in a specialised facility in which other services are available at the same time. If that was combined with the insights in Lady Dorrian's report, it could provide a long-term aim for a model to enhance JIIs. As we know, JIIs can be admitted as evidence in chief. Will the cabinet secretary reflect on whether the Scottish Government could examine and develop that outline of a long-term model?

Humza Yousaf: I will reflect on that, but what I will say is that we have brought health, local government and justice partners together to examine and explore this issue and potentially to bring out a road map for developing the barnahus concept fully in Scotland. However, I have not yet decided whether it should be justice led, health led or whatever, because we want to make sure that this is as holistic as possible. As I have said, there are barnahus concepts and models other than the Norwegian model, and we should look at that broad spectrum.

I might be putting words in people's mouths, but I was interested to hear that in the Norwegian model there was almost a presumption against cross-examination, which happens only in exceptional cases. Obviously our system is very different, and the question is what the thinking of the likes of the Faculty of Advocates, the Law Society and others would be on that and how, if we went down such a route, we could reassure them of the fairness of the trial process. As we know, Scotland has a very unique legal and justice system, and it is fiercely guarded.

I will certainly reflect on what the member has said, and as the convener has suggested, I will look at the level 1 vision report and have a conversation with Lady Dorrian about her thoughts on this as well as take into account the thoughts of others in the justice system. However, we are in a good place in that the reforms in this piece of legislation could be incorporated into a barnahus concept and the partners involved will be doing important work on some of these issues over the next 12 months to help us further down the road to having a barnahus concept in Scotland.

The Convener: Cabinet secretary, you should go and see barnahus for yourself—indeed, I cannot commend that enough to you. It provides an opportunity for legal representatives to listen to the evidence and for points to be put in a very efficient, effective and sensitive way. Everyone seemed to be very happy with it, and I think that it would be worth while if you and your officials saw it for yourselves.

That leads us on to our next line of questioning, which is from Shona Robison.

Shona Robison (Dundee City East) (SNP): Good morning. I want to focus on communication with and support for victims and witnesses. In your very helpful supplementary evidence, you reiterate the fact that £17.9 million has been committed to supporting victims of crime and the third sector organisations involved in that work. The victims task force met for the first time, I think, on 12 December 2018. How do you see its work having synergies and dovetailing with the bill? Timing wise, this bill is where it is in its process, and the task force is in only the early stages of its considerations. How might themes that emerge from the task force's work impact on the bill as it passes through Parliament? Moreover, what other things in addition to the task force could be used to improve communication with and support for vulnerable witnesses more generally?

Humza Yousaf: That is a good question. At the first meeting of the victims task force, which I should reiterate was extremely productive, we were very cognisant of the fact that a variety of legislation going through the Parliament could impact on victims. This bill is one such piece of legislation, and I know that the committee has also been taking evidence on the Management of Offenders (Scotland) Bill, which might have an impact on victims and their perception and experience of the justice system. I would also highlight the non-legislative work that we are doing, including our commitment in the programme for government to bringing forward a restorative justice plan by spring 2019.

There is a whole load of legislative and non-legislative measures, and the victims task force is very cognisant of them. We have not yet decided whether we will create a separate sub-group to deal with the issue or whether officials will update the task force on the legislative and non-legislative measures going through the Parliament that will impact on victims, but we will reach a position on that shortly.

11:00

A lot of research is going on around how we can improve the criminal justice system in general, and the court experience in particular, for people with particular vulnerabilities in cases involving certain offences, with sexual offences and rape being at the top of that list. In my most recent talk with the Lord President, he told me that about 70 per cent of cases coming to the High Court are sexual offences and rape cases. I do not have evidence about that, but he said that those cases represent the majority of cases coming to the High Court. A range of things therefore need to be done, one of which is providing financial support to Rape Crisis Scotland, Victim Support Scotland and other agencies.

We are also undertaking important jury research that is looking at a suite of measures that follow on from the debate in Parliament about the removal or not of corroboration and other safeguards in the justice system. This bill is part of that conversation, and the victims task force will consider the bill, or have cognisance of it at least, and be able to feed into the bill process. However, the Parliament and the Government are also looking at a lot of non-legislative issues, so it is important for us to ensure that they are aligned with the victims task force work as well.

Shona Robison: You mentioned the possibility of a sub-group looking at various pieces of legislation to see whether emerging themes from the task force would have an impact on them. If you decide to go down that route, it would be helpful if you came back to the committee on it. Timing is maybe a bit of a challenge here, because important elements might emerge from the task force that could colour the Government's view of various pieces of legislation going through Parliament.

In terms of this bill, the issue of communication with and support for victims and witnesses is critical. Will the restorative justice action plan that will appear this spring look at both legislative and non-legislative ways forward? With regard to all the pieces of legislation, it would be helpful to set out a clear, consistent way for witnesses and victims to be supported. A lot of work is going on in that area and consistency of message is important. Do you see that restorative justice action plan as a way of pulling some of that work together? How will you ensure that there is consistency across all that work?

Humza Yousaf: It is important to say that, when bills come through the Parliament, the committee engages regularly with the vast majority of the stakeholders who are involved with the victims task force. For example, the committee regularly engages with Rape Crisis Scotland, Scottish Women's Aid, the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service and so on. Many of those stakeholders are very alive to the legislative issues that come through the Parliament, which is why I am not sure whether we need a sub-group or whether it is just a case of officials and organisations feeding into the work of the victims task force to ensure that we are cognisant of the issues. Those stakeholders have already provided input to the bill process—for example, some of the victims task force stakeholders have given the committee oral evidence as well as written evidence.

The restorative justice action plan could draw on the work on the bill and it should, of course, look at

both legislative and non-legislative measures. However, given the legislative pressures on Parliament, parliamentary committees and the Government, it would be better to do some things without introducing primary legislation.

There are some good models. For historic reasons, Northern Ireland is fairly well advanced when it comes to restorative justice. There are other jurisdictions that we can look at, while respecting the uniqueness of the Scottish justice and legal systems.

In terms of the wider framework, the victims task force is the right place to address what we do around victims. The task force is looking at and is engaged in many issues. There are common themes that all of us around this table have heard from victims—that they have to retell their story, that they have been retraumatised through the court process and so on—on which we are immediately getting to work. Some of that will include legislative measures, but I can say quite confidently that the vast majority of that can be done without any legislation.

Shona Robison: That is helpful. In your submission, you say that you are driving forward

"a new 'victim centred' approach to reduce the need for victims to have to retell their story to several different organisations."

That cuts through so many areas that this committee is looking at. We have all heard about that issue often. The point that I was making was that, whether we are talking about pieces of legislation such as the bill that we are looking at, or Scottish Government policy more generally, that overriding principle should be at the heart of things.

The Convener: Turning again to the task force and its inclusion in the Government's submission, I warmly welcome the introduction of this dedicated task force that the cabinet secretary and the Lord Advocate are chairing. I note that you are very keen to hear the voices of victims and their families. How will you advertise that? How will you make that known to people so that they can come forward with their experiences and views?

Humza Yousaf: We discussed the best way to do that quite extensively at the first victims task force meeting. As the committee will recognise, it would be impossible to aurally get the views of every victim directly, so we have to think about how we do that. At the last meeting we decided that the third sector organisations—such as Scottish Women's Aid, Rape Crisis Scotland, Victim Support Scotland and a few others—who were present and who deal with victims on a daily basis should take the issue away and come back to present us with the best way of doing it.

There was a fair bit of discussion. Should we have a committee evidence type of session with victims and families of victims? That was thought to be too intimidating. Should it be more of an open workshop? I am really open minded. I will be guided by the likes of Victim Support Scotland. In terms of who is there, we need to make sure that there is a range of voices. Clearly, it is incredibly difficult for families to take the very brave step of speaking out about their own experience, especially when we are talking about experiences that have been traumatising and retraumatising.

It is hugely important that we include voices of families such as those of Michelle Stewart or Shaun Woodburn, and we want to make sure that we capture the views of people who have been the victims of a range of different crimes and offences. I see it as an iterative process. I do not see it as just one meeting with victims and the families. We may have a parallel structure that sits next to the victims task force.

I should say that the victims task force itself includes the voices of direct victims. Lynn Burns, whose son, Sam, was tragically murdered at a house party a number of years ago, is perhaps the best known. We have victims inputting directly to the task force, and there is an understanding from all of us that we have to feed in as wide a range of voices as possible.

The Convener: Although we give support to people prior to their giving evidence and during a trial, support after a trial has finished is crucial. Some people are more vulnerable than others after giving evidence. After we pass the bill, it would be a shame—a tragedy, in fact—if people who are encouraged to give evidence then say, "I wish that I hadn't," because of the repercussions.

Will the cabinet secretary look specifically at more closed communities, such as rural villages, where it can be difficult to return to the community because everyone knows exactly who has given evidence due to the small scale of the place where the incident happened? There may also be power structures in such communities. If the Government were to issue a call for evidence to ask people to come forward, that evidence might need to be taken in private, to protect those people so that they can give a full understanding of what the repercussions can be. That would be very welcome.

On the more general communication, we are looking at a wraparound service and a holistic approach, but that will fall down badly if we do not have a practical system of communication so that everyone is fully up to speed with where things are with the victim and their family. Has the cabinet secretary considered that?

Humza Yousaf: Yes, I have. I will refer to both points, which the convener has made well. On her first point, I could not agree more. I have spoken to a number of victims who felt after the court process that there was very little support, and Victim Support Scotland tells me about that directly.

We often talk about throughcare for prisoners, which is right and important because it helps to reduce reoffending. The question is where the throughcare is for victims and others. Structures exist, but there is more that we can do, for sure—I do not argue with that. A lot can and should be done, and the victims task force will look at that.

On the second point, closed communities and the differences between rural and urban settings have been discussed extensively. As might be expected, I can give experiences from the ethnic minority community, particularly the subcontinental Asian community. I have come across various examples of very brave women who have spoken about domestic abuse then unfortunately felt, when they were returned to the community, that they had to move away because they were too vulnerable. It is a good point, which the task force is looking at.

On communication, I am not sure whether I understood correctly what the convener was speaking about, but the task force will look at—and the Government is already looking at—the victim notification scheme. It is clear that victims and their families often feel that the victim notification scheme does not go far enough and could be widened out to further offences. It could do better with regard to communication, as victims do not feel that they are given enough information about the entire process, from someone being imprisoned, to the potential first grant of temporary release to be at home on unescorted leave or escorted leave, to the eventual release, the parole system and so on. The parole system side of that is being looked at, and the first grant of temporary release and the victim notification scheme will no doubt be part of the victims task force's consideration.

The Convener: I know that we are very aware of keeping the victim informed, but my point was about the team who are looking after the victim and their family and making sure that they are kept up to date. Barnardo's, Police Scotland and other witnesses have made the point forcibly that communication is absolutely essential for everyone to be kept up to date. It is not about the expert person who is there but about ensuring that the whole team is up to date and knows exactly where things are with the victim, the support that has been given, where the problems are and so on, so that the team can be as effective as possible.

Humza Yousaf: Again, the victims task force should help with that, because it will bring the police to the table, as well as other partners. Further, this year, Victim Support Scotland will introduce its homicide service—we are still discussing whether that is the most appropriate name. It will function almost as a one-stop shop in terms of providing support for a bereaved individual throughout that traumatic process and ensuring that other partners are informed about what is going on. That will be like a pilot scheme for exactly what you are talking about.

The Convener: Thank you. That is encouraging.

John Finnie: Previously, in relation to domestic abuse, the committee heard that coercive and controlling behaviour might not always be evident to other parties. In relation to the harassment of witnesses, which happens regularly, internet social media is often used to that end. Does the task force have access to expertise on that? Something on social media that can look quite innocuous to a third party can turn out to be a pernicious part of a longer process.

Humza Yousaf: The task force did not talk about that important issue at its first meeting, but it was indirectly mentioned by a few stakeholders with an interest in it, including Scottish Women's Aid, Rape Crisis Scotland and Action Against Stalking.

Our crime statistics show that there has been a rise in sexual offences that take place in cyberspace. A lot of work is going on in that regard. As you will be aware, a lot of sexual offences involving young people are committed in cyberspace, although that is not exclusively the case. Catherine Dyer's working group is examining the issue of young people and sexual offending and is thinking about the steps that we need to take as a society in order to deal with the offences. The issue is part of a wider scheme of work that is going on in the Government. As I said, the task force did not specifically discuss the issue at its first meeting, although I have no doubt that it will be part of some of the work strands that we take forward.

The Convener: I thank the cabinet secretary and his officials for what has been a worthwhile and encouraging evidence session. That concludes the public part of our meeting. Our next meeting will be on 15 January, when we will hear from the cabinet secretary on the Management of Offenders (Scotland) Bill.

11:17

Meeting continued in private until 12:09.

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