

Criminal Justice Committee  
Informal Evidence Session  
6 December 2023

*Transcript prepared by the Scottish Parliament Official Report*

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## Wednesday 6 December 2023

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### CRIMINAL JUSTICE COMMITTEE

#### 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:

Witness 1

Witness 2

Witness 3

Witness 4

Sandy Brindley (Rape Crisis Scotland)

#### LOCATION

The David Livingstone Room (CR 6)

# Scottish Parliament

## Criminal Justice Committee

Wednesday 6 December 2023

*[The Convener opened the meeting at 11:20]*

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

#### Informal Evidence in Private

**The Convener (Audrey Nicoll):** I welcome our guests to the Scottish Parliament this morning. Thank you for taking the time to join us; it is very much appreciated that you have agreed to meet the committee. As you probably know, we are considering the Victims, Witnesses, and Justice Reform (Scotland) Bill, which proposes changes to the law, to try to improve the experiences of survivors and witnesses in the justice system. We have been very keen that we are directly informed by people with first-hand experience of the criminal justice process, which is why we are so grateful that you have been able to join us today.

I appreciate that this feels like a fairly formal setting, but I hope that we can keep the discussion as informal as possible. We are here to listen to you and what you have to say to us and be guided by what you would like to raise with us. With that in mind, I wonder if I can open up with a very general question. What are the key things that you want us to know about your experience of the justice process? I am happy for any of you to start things off.

**Witness 4:** I will give a brief overview of what my experience looks like. I went to a police station and said that I had been sexually assaulted when I was at school, when I was a young person. I was taken into a room and I gave evidence. However, the police lost my case. They failed to investigate it for several months, until we followed up with a complaint and asked why nothing had happened. At that point, I was asked to contact other victims who I had named and to get them to come forward with their stories. Many of them shared their stories with me but did not feel in a position to go forward with the case.

Over the next two years, I had very minimal communication. The first hearing happened, but I wasn't told. I had specifically asked to be told when it was happening, because the perpetrator lived near me and, because it was Covid lockdown, I felt that I had to stay with family. I was never told that he was there—he had his hearing, yet I could have walked out of my house and walked right into him.

About a year and a half after I made the report, I was contacted by the procurator fiscal to make a statement. They contacted me again, and they said that there was further evidence. I was at work. They sent me an email and said, "We have evidence; we need you to come in". They wouldn't speak to me in the place I live. They gave me the option of travelling to three other locations.

I was very upset and distressed, but they wouldn't give me any information about what the evidence was—just that there was evidence. I was told to come in at some point over the next couple of weeks, but I was so distressed by this information that I had a panic attack and I couldn't breathe—I was very distressed by it.

The day after they told me that there was, effectively, evidence that would be used against me, but, at the time, nobody explained to me what that meant. I consented to that being used as evidence because I wasn't aware that there was a choice or that, ultimately, that would be used to shame me during the actual trial.

I went to court late last year and gave my evidence as a witness in the trial. I had to fight for every single bit of support along the way. I guess that is why I am here today, because I wouldn't want anybody to have the same experience that I had, which effectively felt like losing two years of my life.

**The Convener:** Thank you. To clarify a point that I maybe missed earlier, you said that your case went to trial late last year. Just to get a timeline of how long that all took, when did you first disclose?

**Witness 4:** I first made my report in the autumn of the start of this decade. Just so that you are aware, the case was heard at the sheriff court.

**The Convener:** Thank you. Therefore, that took almost two years.

**Witness 2:** I went through domestic and sexual abuse when I was younger—I was a teenager when I met my ex-partner. My case took four years, and it was a High Court trial. Witness 4 has already explained what the process does to you, so I am not going to go into that, but my main concern is that, during the period when there were bail conditions, my ex-partner broke his bail conditions multiple times. A sheriff court case ran concurrently with the High Court case, and it seemed crazy to me that they did not put it all into one case. I have concerns about the court delays and the number of people who are out on bail at the moment. My court case was just short of four years long. I could have done so many things with my life in those four years, but you constantly feel like you are waiting. There is not much in the bill about addressing the delays and what that looks

like. Ultimately, you are putting people in a really dangerous position if you do not sort that out.

Unusually, my ex-partner pled guilty and is now serving a custodial sentence.

**The Convener:** Thank you.

**Witness 3:** Witness 2 said “delays”, and that is the first thing that I have written in my notes, because the delays probably sum up the whole experience for me. [redacted]

**The Convener:** Thank you.

**Witness 1:** I was raped by a stranger in the early part of the last decade when I was studying at university. For me, it was the lack of communication and being treated as a witness to the crime that I had reported. Students were providing statements that I did not know about until the end of the case. Often, they had more information about my case than I did. They knew times that were coming up because they had received a letter before I had. People, whom I did not know, knew more information about my rape case than I did.

I did not know anything about the law. The whole process was unknown to us. I did not have any knowledge of the police process to get to the point when the person was charged, and I did not know who I could turn to for that advice. I had practical and emotional support for studying but, even through Rape Crisis, I did not have anyone that I could go to when they were requesting all my medical records. Why did they need to know what happened to me as a child? All of those things, including tonsillitis, were getting brought up. I was being stripped of my self and identity. All of that was happening while I did not even know what was happening with my case. For me, it was about the representation. I had no one and no place to go to get advice. It was traumatic enough trying to speak to my family about it. I had nowhere to go. I felt quite isolated and alone with it.

At the same time, I was being moved and put into accommodation that was secure, because things such as broken windows were happening to my car and the houses that I was living in, because of witnesses from the accused side. I was moved from two different locations and into a third location, while trying to study at the same time.

I didn't have support from the procurator fiscal. I then said that I couldn't cope. It got to the point that, one evening, I didn't think I was going to make it to the next day. I couldn't cope anymore. I had become a witness to my own crime and I didn't want to continue. I didn't see a life past this. I reached out for help. I said that I wanted to stop the case and no longer participate—for my mental

health, I couldn't do it, and I wanted to try to move on from this. The reporting and going to the procurator fiscal service was not helping me.

I didn't have any contact from the procurator fiscal for months. However, that evening, two police officers turned up at my house and said that I could have a case against me if I was to drop it at this stage, because someone had been charged.

So, the only time I actually had contact in those three months was my plea for help, when I was suicidal, and two police officers turned up to try to say, “What's happening here? This is going to be a case against you if you try to pull out today.”

My cry for help—I admit that it was a cry for help; I was really struggling—helped me. The two police officers actually knew me from the very start of the investigation. They told me, “You've gone downhill since the police started working with you. We need to get you more support from the university or you need to stop your studies.”

Fast forward to two years later, the court date was fixed. I went and looked round the court. For me, it wasn't a fixed date—it was a sort of floating date. It was supposed to be in April and was suddenly brought back. They kept saying, “Live your life. You're studying. You've got years to wait for this. Go on and live your life.” However, when I was away on holiday overseas, they called me up to say, “We've moved your date to two weeks' time. You need to come back, to be here for the trial.” So, I wasn't able to live my life, because I was dictated by their dates and what was suiting them.

I looked round the [redacted] High Court, but they called me while I was there to tell me, “We've moved the trial to another location, so, sorry you're looking round court today, on Friday, but you're going to be in a different location on Monday.” All of us, including my family and I, already had enough stress. I didn't want to attend. Then I was told that I wasn't allowed to have a court supporter. The [redacted] court did not have a court supporter and I was told, “You can't take your close family members in, because they are witnesses, so, unfortunately, you're going to have to see the man who raped you for the second time in the court room on your own. We don't have anyone—there are no provisions for that in this location. Sorry about that.” I told them I wasn't going to do it.

It was just a shambles. I didn't have anywhere I could turn to. I know that things have improved over the years. I'm grateful to hear that things are improving in that respect, with Rape Crisis Scotland providing advocacy workers. These small things make a big difference. I didn't have anywhere I could go for this representation.

I then sat through a trial where the person who raped me was sitting across the room. The verdict

was not proven. I have campaigned a lot on that. When the verdict came back not proven, I got different indications from different people I spoke to about what that meant.

The other point is that crucial evidence was missed from my trial. The surgeon was missed. The police officer didn't attend and didn't give evidence either. I felt that it wasn't a fair trial. That's why I then went on and took my own civil case, which I had to research and look into, to try to actually get that evidence into court and have what I thought was a fair process.

I know that there's a lower burden of proof in a civil case compared with a criminal trial, but there is no comparison between the witnesses that we had for the two trials. For the civil trial, my psychologist, toxicologist, gynaecologist and my other surgeon—came as witnesses. All that was in the civil case. I was involved, and I was not just a witness to my own crime. I was a part of the process. Previously, I had said, "Why have we not got this surgeon coming to give evidence, because surely that shows that I was also violently attacked as well as raped?" That evidence was included in the civil case.

For me, the civil case was about having everything heard about what had happened to me. It was not just a matter of, "Let's just squeeze a case in quick in the end of the year. Come back from your trip. Sorry, but stop celebrating and let's just squeeze it through." No. Let's actually get the gynaecologist, the toxicologist, my surgeon and the police officer in court. For me, having a fair trial was everything. I had that in the end, but that was because of the civil case and because I had legal representation.

**The Convener:** We will probably come back to that point, Witness 1.

Thank you all for sharing your experiences with us. I will now open up the questions to members and bring in Katy Clark.

**Katy Clark (West Scotland) (Lab):** I suspect that you're going to be asked quite a lot of questions about what's in the bill that we're looking at, but you've already described very clearly all the things that go wrong in legal processes—all the mistakes that are made—but also the impact of court and other delays, the length of the process and the lack of control that people feel when they're involved in that process.

So, I'm going to ask you about something that, again, is not in the bill. As you know, there are very narrow provisions relating to advocacy and legal representation in court to do with sexual history. In a lot of other countries, they have developed quite extensive advocacy and legal representation rights over the past 50 years. In most European countries now, if you are a victim

of a crime, you're entitled to representation before you even go to the police, on occasions, but sometimes from the point that you go to the police and all the way through the process. You have a right to be given information about the process and to be provided with advice and representation.

I wonder to what extent you had anything like that available to you in any way and what you think that might look like—if you are in favour of it—or whether you think that that is not that central.

**Witness 3:** With what happened to me, I was told that they had an 11-month timeframe to do something—to set the trial date or something—and, at that point, I got a letter that arrived on a Saturday from, I think, the procurator fiscal, saying that the preliminary hearing that was scheduled for the following week had been postponed to October, with no explanation of why. They didn't phone me—they just sent a letter, which happened to come on a Saturday, so I couldn't phone up.

That delay was because the defence had a section 275 application, so that hearing happened in the October, and I was told the result of the application in the January. I came up to Edinburgh and was just told that. They read out a long list of things that they applied for to lead as evidence, most of which was made up, that had been agreed to in a court, at which I was not present or represented, and I was not told it was going to be happening.

That was about 18 months after the incident and, at that point, I was in touch with Rape Crisis Scotland, who were great. They said, "We can do something about this." I remember the phone call really well—with a colleague of Sandy's. I was at work. As you say, you're often at work and you're having to deal with this. So, there was an appeal. Was it an appeal, Sandy? Can I ask you?

**Sandy Brindley (Rape Crisis Scotland):** Yes. A nobile officium case that Dorothy Bain took on behalf of Witness 3 to challenge the section 275 application.

**Witness 3:** Yes, and that was successful. They used article 8 of the European convention on human rights and another article—it was article 12. Following that, the independent legal representation came in. I'm sorry—it was all about five years ago and, also, it is quite hard and a lot of it I try to forget and I'm trying to remember it now. Following that, there was an appeal to the UK Supreme Court, which wouldn't hear it, so it went to the European Court of Human Rights in May 2021, and it just sent this thing saying, "This is inadmissible", and it wouldn't hear it.

I remember at the time that Sandy and Katy said, "Don't worry because it will get through and it

will get through, hopefully, this way, and that will have helped it get through.” I was told very clearly, “You’re just a witness.” To go back to the way that you’re communicated with or not communicated with—you have no representation and you are thrown into a legal process that you have no knowledge of; the language doesn’t make sense and things aren’t explained—people absolutely need that representation, as you say, from the first point.

I still can’t understand why there was a preliminary hearing regarding evidence that the defence wanted to lead.

I also had a precognition interview with the defence solicitor, which was horrific. They were allowed to do that. I remember asking the victim information and advice service, I think, whether I had to do that. I was told, “You don’t have to do it but, if you don’t do it, you might be forced to do it, so it’s better to do it of your own volition.” The things that they tried to lead as evidence, including witnesses, were literally fabricated. I had no way to challenge that at the earliest stage; it just went straight through. A judge just said yes to half of it, and suddenly that was the evidence that they were going to lead.

I understand that that process has now changed as a result of the case that was mentioned but, obviously, it needs to change more in the way that has been set out.

**Katy Clark:** I do not know whether anybody else wants to come in.

**Witness 2:** Rape Crisis Scotland pretty much saved my life. I was a mess when it all happened. I often refer to my advocacy worker. I can’t speak highly enough of her; she was just phenomenal. We quite often have to rely on other survivors to talk us through the process. It’s crazy that you have to say to someone who has gone through it, “What happened? Can you explain the group process to me?” Having somebody in my corner who could speak for me when I was super-traumatised and who was also able to explain the terminology was important. When you are traumatised, you don’t take in information, and when you go through the justice system, it’s all on you constantly. You have to make decisions about things that an ordinary person never has to think about.

In terms of independent legal representation and knowing your rights, so many things come up. I lost count of the number of section 275 applications that were put in about me. They just changed the wording a little bit and kept putting them in. I had things used against me, such as the fact that I was on antidepressants. [redacted] I somehow had to explain the fact that I took Prozac. It’s baffling.

Luckily, the fiscal was amazing, and none of those got through. However, there is always the pressure of thinking, “What are they going to say about me? How are they going to twist it?” With a four-year wait for justice, you are constantly going over every single little bad thing that you might have done in your life. You build things up and you are worried that those things will come out in court. You are so worried that they are going to make you out to be an awful, evil, lying person on the stand because you are going over every single thing in your life. Having an advocacy worker there saying, “That doesn’t matter. It’s not going to come up. If it does, you just answer honestly.” takes much of the pressure away from you.

I am 100 per cent in favour of independent legal representation. It’s baffling that we have got to a stage in Scottish justice where we do not have that. It can be facilitated easily.

I know that there would be queues of law students willing to offer free advice. That is happening at the University of Glasgow. The Emma Ritch clinic is launching that. I think that that could be done in a very cost-effective way. Lots of volunteers would be willing to work under a trained solicitor to make that happen.

**Witness 4:** My case happened fairly recently. There are two parts to this.

First, an application to use evidence against me was submitted, too. I found out that that had been submitted about a month ago. Text messages that had clearly been doctored were submitted by the defence. The time stamps did not add up. I was asked to go to the procurator fiscal’s at very short notice, and I was basically told that the defence wanted to use those messages as evidence. In my head, I just said, “But they’re clearly doctored. I guess that’s okay, because I’m not lying. I’m telling the truth, and I want to be as honest as possible, and they can have that, but this is my statement explaining why they don’t make any sense.” That evidence was submitted to the court for approval to use against me. Nobody told me that that had been approved, so I didn’t even know whether they were going to be used.

I was very fortunate that I had support from both a local rape crisis centre and Rape Crisis Scotland from the point at which I reported, and I had an advocate go to the hearing with me. I want to emphasise how vital that was. There were a number of things in the trial that just shouldn’t have happened. For context, I was a young person when I was assaulted, and they commented on the length of my skirt, they said that I had assaulted the accused and they said that I was just playing a silly sexual game. Actually, that experience was so traumatic for me—I was in floods of tears. My memory of it is somewhat patchy, but having the advocate there

has allowed me to pursue a formal complaint to try to get some resolution to that. Without her having been there, I just wouldn't be able to do it on my own.

**The Convener:** Okay—thank you very much.

**Witness 1:** I have had a criminal case without legal representation and then a civil case with legal representation. If I could have chosen, I would have gone straight for the civil case, because I had somewhere I could go. I had the Scottish Women's Rights Centre, which is part of JustRight Scotland. I had a solicitor, and I then met [redacted] a KC—he was a QC at the time—who I met five or six times before the court case began.

I had someone to go to and ask, "What do I need to know and what don't I know?". I didn't know the system, and, sometimes, we don't even know that we should be asking a question. Straight away, they said, "Do you realise that you haven't got anonymity?", and they had to make an application for me to have anonymity. In addition to that, I asked questions about my medical history and all these different things, and they could give me advice on that straight away. Those aren't questions that we can ask our family or friends; they are questions that you need to ask of someone who knows the process.

It is such an isolating crime to go through. We don't need to go into that, but it is such a personal thing to happen to us. It's not something that people talk about. We can see that from the people who have come here with us today—we've got one family member along for four people. This is not something that we bring our partners or other people along to listen to us talk about, because they have lived it with us.

It was important to have a place to go where I could say, "Next Friday, I'll meet you and I've got loads of questions," if something didn't make sense. They could go through it and say, "Well, actually, in a civil case, this is a different process; you should have had this in the criminal case but you didn't—we need to apply for anonymity for you now". I had a place that I felt was for me; a place where I could ask questions and get to understand the process.

In the civil case, I didn't feel at all that I was a witness to my own crime. I felt believed and supported, and I felt that they recognised what happened to me and wanted to make sure that all the evidence was shown in court. If I could choose, I would go to a civil case rather than a criminal trial.

**The Convener:** Can I just come in on that? You have spoken about advocacy support and how crucial that was for some of you. We have also spoken about legal representation. I am interested

in your views about when that support should start. When should it kick in? Let me come back to Witness 1 on that.

**Witness 1:** As in, when should advocacy support start from Rape Crisis? Sorry—what is your question?

**The Convener:** Legal representation would be more about the formalities of a court case, but, broadly, you have referenced advocacy as being separate from that process. I am interested in hearing when that should start. When should the system offer that to somebody?

**Witness 1:** I can talk about practices that are working really well. In England on the day that someone comes to have a forensic medical, they meet their ISVA—independent sexual violence adviser—there. On day 1, they meet their ISVA, which is an advocacy worker in England. How great is that? The day that you are going to do something traumatic, you have got someone there who is independent from the police and everything else.

What is so triggering for victims who are going through this process in Scotland is that we keep seeing in the headlines, "Is Rape Crisis going to run out of funding?" or "Is the Scottish Government going to give Rape Crisis funding that will last?", yet we are all sitting here thinking that we would never have made it to our trials if it weren't for our advocacy workers and the work of Rape Crisis. We were let down either by the police or the Procurator Fiscal Service; we can see the headlines about how the system doesn't work; and we are trying to get bills through the Parliament to improve the system. Meanwhile, our lifeline—it probably stopped me killing myself—is the advocacy worker.

We're seeing headlines time and again saying, "Is the Scottish Government going to give funding for next year, and is it going to be just for a year or is it going to be longer term?" We're at the other end of that, thinking, "We've got a trial." We all know that the justice system is not set up to support us. If we don't want to talk to our partners or our mums about how we were raped, our only lifeline is our advocacy worker. We can't cut funding or not give stable funding, because that is what we need. We're not sitting here to try to change conviction rates or send more people to prison; we just want to survive, give our evidence, get to trial and finish it. We need adequate funding.

England and Wales have gone from having 300 advocacy workers to having 1,000 last year. They have tripled the number—I know that from the work that I do now. Actually, in Scotland we are asking whether we will have funding for rape crisis centres. I don't know the ins and outs of that but,

just from what we see in the headlines, it is confusing for us. If anything can come from this session today, I hope that it is proper funding. We can't fix the system with our own lived experience, but at least let us have support to be able to get through a system that is set up for us to fail at the moment.

**Witness 3:** To answer your question about at what point the advocacy should start, I would say that it should start immediately. I was raped in Scotland and went through the police system here. The police were good with me and gave me the Rape Crisis Scotland booklet but, because I was living in London at the time, I was sort of in between the two systems. I think I phoned up Rape Crisis Scotland and they said, "Well, you don't live in Scotland so you need to go to the one in England."

Luckily, I met a very good ISVA, which Witness 1 referred to, and she was very surprised that I didn't have a police contact support person. There was no one. The police were great when I was in Perth, but then it was kind of like, "We're done." They said, "You'll get a letter," and two weeks later, I got a letter from the court, but there was no one picking it up at that point. Luckily, the ISVA in London contacted Rape Crisis Scotland and got me back into it, which was obviously incredibly helpful.

Maybe it was different because I was living in another country but, even so, it would have helped if the police had been able to make that link up at that point. Obviously, the court process starts very efficiently—well, not efficiently, but it starts—but that part wasn't quite as good.

**The Convener:** Thank you.

**Witness 4:** I will add something briefly. I didn't have a good experience with the police—in fact, I'd argue that was where my worst experience was. When I made a report, it was a Sunday afternoon, and they kind of went, "Oh, okay—we'll figure it out." It felt almost like an inconvenience. They filled in a piece of paperwork, which I think is called a vulnerable person's declaration, which identified that I was at particular risk of harm. I was particularly vulnerable, on mental health grounds that were related to the case. It was like that form never existed. Everybody was aware it was there but, if I had had an advocacy worker, there maybe would have been somebody to say, "Hold up a minute. We can't get her to hear the stories of all these girls who've been raped who aren't ready to come forward because she's vulnerable herself."

I totally agree that advocacy should be from the beginning and certainly not just from the point where your engagement with the court process actually starts, because so much happens before that.

**The Convener:** Thank you. I will bring in Pauline McNeill and then Rona Mackay.

**Pauline McNeill (Glasgow) (Lab):** Thank you for coming to speak to the committee—it is really invaluable to us. I have listened to what you have all said about your horrendous experiences. It is sad to hear your points about the preliminary hearing system and about section 275 applications, because those two changes to the system that the Parliament made were designed to make things easier for witnesses and victims. Preliminary hearings were designed to save people the trouble of going to court, and section 275 applications were designed so that people were not caught by surprise by the evidence in the trial. Clearly, there is scope for a lot of thought about where we have ended up in relation to that.

My colleague Katy Clark asked you who represents you when you are not there and these decisions are made. I wanted to go a wee bit further than that in relation to something that you said, Witness 1. I've heard you say it before and heard some other witnesses say it in relation to the trial itself.

I've spoken to a number of families in murder cases who felt that they were witnessing their own family in a trial where critical evidence was missed—you said that, Witness 1. In fact, a few of us heard from a stalking victim. She said that, when she was questioned in the witness box, the way she was asked the questions by the defence left her short of what she wanted to say and the person who should have picked that up—the advocate depute, representing the Crown, of course, not you, the victim—did not pick it up. She felt—we have heard this so many times—that your voice or what you want to see in court does not come out because of the system. I wanted to draw that out.

There is the question of advocacy at the preliminary hearing and the question of support. I have had this discussion with some advocate deputes and lawyers and asked what the principle would be against you being able to communicate something during the trial. Witness 1, at the point where you thought that critical evidence was missing in the trial in which you were the victim, do you think that it would have been right or helpful to be able to communicate to the advocate depute that they missed something?

**Witness 1:** Yes, but the main thing here is that, if we take my criminal trial, I met my advocate depute for 20 minutes in the city [redacted] when we thought that it was going to be there. He said, "We can't talk about the case. We can't talk about evidence." I understand why that is. However, in the civil case, I met with my lawyer [redacted] five or six times. He knew the case as well as I did because he was going to be representing me. We



had many discussions about the evidence and I said, "Well, actually, in the criminal trial, they missed out the whole part of the phone. I was locked in my own house and then had my phone taken. Why have we not looked at where the phone has gone?" Of course, in the civil case, we did that, but we did not in the criminal trial. However, I was trying to explain that I know about this evidence and asking, "Why are we not including it? Why have we not got my surgeon to come and give evidence?"

I did not know my surgeon wasn't going to give evidence. I asked other family members to sit through every day of the trial because I was told that it would give the wrong impression to the jury if I was to sit through and hear the evidence. I'd been promised for two years the evidence of what happened to me on that night. I did not know half of what happened. I was going to have all these answers in the criminal case. I understand that I couldn't have my own memory and my own evidence tainted by the updates of what had happened but, for my own sanity, I wanted to know what happened to me the night I was raped so I sent in other family members. They kept coming out and saying, "No, your surgeon hasn't been today" and the next day, "Oh no, your surgeon is not here."

I didn't know until my case had closed and it was going over to the other side that my surgeon was never going to give evidence. I mentioned it in my evidence. I was on the stand for two days and, when I spoke in my evidence about the injuries that I had, I was told to stop and they sent the jury out. They spoke to me and said, "This is not part of your evidence. You cannot discuss this." I said, "How can I not discuss part of what actually happened in my own criminal case?" and they said, "Well, this is not evidence. We haven't got the medical evidence here." I said, "You've got all my other medical evidence. Why have you not got the medical evidence of the injury that I got when I was raped on the night that I'm talking about?" The jury came back in. We then continued and the jury was told, "Disregard the comment that the person has just made. We are not continuing that."

I was 18 when I was raped and 21 by the time I got to trial. How could I sit there and think, "Actually, this is fair"? Afterwards, everyone said, "Just go back to what you were doing. It's all over now. Just move on." I said, "How can I move on when evidence has been missed?"

To go back to your question, I tried to raise it. I tried to give the evidence. It was because that advocate didn't know me. He didn't know the case. It's not his fault. Compare that to the civil case, where my lawyer [redacted] knew absolutely everything. He knew me by my name. He didn't

just know me as a case reference number that was coming through.

Going back again, I was not just a witness to him; I was a complainant. He realised that things had gone wrong. I went to meet my advocate depute afterwards, which was one of the few times that that happened, and he said that he had never met someone after an actual trial, and that he was surprised to get a request from me. I said that I had refused to meet my procurator fiscal and that after the process I had with that person, I never wanted to see them again. I met my advocate depute in Edinburgh and he said, "Your case was so strong. I didn't know about this." Afterwards, we spoke about it and he just said, "I'm sorry." He knew about it when I spoke about it in the case, but he said, "I'm sorry; I didn't know about what you spoke about and what you have gone through." He actually said to me, "If this had been a civil case, I'm sure that you would have—"

**Pauline McNeill:** Can I just be clear about this? There was missing medical evidence that you couldn't speak to, and the jury was sent out. Was why that evidence was not available ever explained to you?

**Witness 1:** Yes; I asked the procurator fiscal. I said, "Why are my injuries not included, and why are we not going through the medical evidence?" and she said, "Well, actually, your case was supposed to be in spring of one year [redacted], but we brought it back to late in the previous year [redacted], so we didn't have enough time to get a report from that surgeon." So I asked, "Why are we doing it late in the year? [redacted]" and her comment was, "Because we have witnesses who are students and some of them will be called. A lot of them won't be here, because they'll be graduating," and I said, "We don't graduate until June, so why can we not keep to spring?" She said, "You've been so traumatised throughout the trial and the investigation that we wanted to bring it back early," but I didn't want to bring it back early to the detriment of my case. What could have been two years and two months ended up being five years, and here I am today. It is eight years ago since my case was given a not proven verdict. I am still here and I am still talking about it. The words from that procurator fiscal! We spoke about what went wrong there, but it is important to say that, when we talk about what happened, each one of us mentions the exact date that our case went to trial. We remember the date that we were raped, but we also remember the date that we went to trial, because they are as traumatic as each other.

For me, it was not only that I was raped; what affects me to this day is that we have a system and I went through it and I believed in it. I thought that I would get justice or at least closure, but I am

still sitting here many years later. I am more affected by the fact that we live in a society where people cannot have a fair trial. I was let down and I probably wasted at least three or four years of my relationship with my family because I couldn't think of anything else. To go back now, retrospectively, and understand the upset that it caused my family, which they never spoke to me about, is the hardest thing of it all.

**Witness 4:** When you asked your question, you made a point about us being missing from the pre-trial hearing, and that is how it feels—that we are missing. It is not just that evidence was submitted without us being there, it is that I wasn't involved in the process. It didn't feel like anybody considered my wellbeing or that I had any autonomy.

My trial had a not guilty verdict, and the most frustrating thing for me was that I felt silenced throughout the trial. As I said, the time stamps in the text messages that were submitted were clearly doctored. The defence also relied on a relationship that he knew from other evidence to be not the way that it was portrayed, but there was no opportunity to speak to that. You are asked questions and you respond, and you are asked questions in a way that feels like it is designed to trap you—certainly by the defence. The most frustrating thing for me afterwards was going, "Did anybody who was part of the formal structure consider me as a person?" It didn't really feel like they had.

**Witness 2:** I just want to go on from what Witness 1 said and move into trauma-informed practice. On what you said about the dates, floating trials are not very good because you are having to remember 10 or 11 dates that will always be significant to you. You are right—you always remember the day that you reported, the day that you were supposed to go to court and the day that you got justice.

Dates are massive for people suffering with post-traumatic stress disorder and complex post-traumatic stress disorder. It comes up a lot in your medical files when you get assessments that you hyper-fixate on those dates, because it is your brain's way of acknowledging what has happened to you.

Also, on the theme of trauma-informed courts, it is not linear. The way that the court system works is that, when you're asked for evidence, they say, "Just answer the questions." To them, that makes sense, because they're looking at the criminal element and what is admissible or inadmissible, but you are sitting there with a trauma brain trying to pick out different bits, and that can be really overwhelming. I'm not sure that complainers and survivors give their best evidence when they are traumatised and if they are just pulling out little bits of the story.

I was involved in the sexual offences review with Susanne Tanner, and a lot of the feedback that came from survivors was asking whether there could be an opportunity, at the end of court trials, for the survivor to give an overview of how they see what happened from start to finish, if that has not been achieved in the courtroom. That would give survivors some of the autonomy back to explain their position, because so much of that is taken away from you, and the jury don't see the full picture.

It is a very messy way of conducting trials where the only thing that matters is what is legal or illegal, rather than looking at the person who is giving the evidence and considering whether there is something that the jury need to know. The court maybe doesn't think that that is important, but it might be of the utmost importance to the person who is giving their evidence.

**Witness 3:** Can I say something? I'm not sure if this is going off at a tangent, but often someone says something and it reminds you of something else.

My case didn't go to a trial, because I requested to withdraw. I was told that you have to request and then be allowed to withdraw. I was allowed, because the accused wasn't in the country, so he wasn't deemed to be a threat and there were no other victims.

It happened in August 2018, and the first trial date was in March 2020, which I remember really well. It was a floating diet, and it happened after the Alex Salmond trial and was affected by that. It went off, either because of that or because of Covid, and then at least two more trials were delayed because of Covid. I understand that that was a whole other thing, but it really didn't help.

In January 2021, I requested to withdraw and was allowed. I never planned to do that; it was because of the delays, which were mainly caused by the defence's section 275 application. That was the main cause of delay at the first stage. I do not understand why the defence were allowed—I do not know if they are still allowed to do this—to request to lead evidence that they made up and why as the victim I got a precognition by the defence solicitor. They told me that it would be a female solicitor, but it was a male solicitor, which in itself was shocking. The questions that he asked me were completely shocking. I had forgotten this, but he also phoned up and spoke to my mum—my mum and my brother were going to be witnesses, because I had called them after it had happened. That was unbelievably invasive. They asked for all my text messages with my mum and my brother going back beyond the incident, which they had, but then they wanted the whole thing. Why are the defence allowed to do that? If they are still doing that, I cannot understand it.

When the Crown told me about the outcome of the section 275 hearing, I was told that the defence were bringing a doctor who was going to dispute injuries that had been recorded 12 hours after the incident. This doctor was going to lie about how the injuries were caused—that is what I was told was going to happen. To me, that was the absolute worst thing. I just couldn't believe that a doctor would be paid—handsomely, I imagine—for that, and how that was allowed. I can't understand it at all.

**The Convener:** Thank you. We will move on. I will bring in Rona Mackay and then Russell Findlay.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** First of all, thank you very much for coming today. I don't think that any of us can imagine what you have been through, but it is so important that we are hearing you today.

Witness 1, you said that the justice system is not set up to support you. In a general way, would you be in favour of setting up a sexual offences court?

**Witness 1:** Yes—definitely. I know that things have changed now, but my experience of being on the stand for two days and being told after the first day that I couldn't go back and speak to my family about what I had gone through because they were witnesses, too, was just farcical really.

Things are changing. There are video-recorded interviews and achieving best evidence interviews. I know that there is the pilot, but I am not sure about the update on that, because I work in a different country now.

A specialist court would have those provisions. It would be a place where victims could go and know that they would be supported there. It would not just be one of those floating courts or a venue that changes very quickly. Having a planned process and rooms for complainants—as opposed to being in a room where the other party is—would be thought out, rather than last minute.

**Rona Mackay:** So, special measures were not available when you were in court.

**Witness 1:** My trial was back in the mid 2010s [redacted]. There was only a written statement, and I was on the stand for two days giving evidence on my written statement. I know that things have changed since then, which is great to hear. However, I am not sure whether there is still a pilot or whether every rape victim can now have a video-recorded interview. I do not know the answer to that.

I have campaigned endlessly and tirelessly for the removal of the not proven verdict—I am really passionate about that. Regardless of all the things that were missed from my case, I would still have

preferred a not guilty verdict to a not proven verdict. People are quite amazed to hear that. People look quite surprised when I say that I would rather have a not guilty verdict than a not proven verdict. People whom that campaign was targeted at think that there is no difference.

We went through the process and were told that the verdict meant that we were believed, but there was not the evidence to convict him. That was what I was told on the phone. That is not true, and it took me to look into that and to go through the process. I can still have a civil case, regardless of a not proven or not guilty verdict, but there is no ending or closure. I was just desperate for closure. I wanted to try to end the case, but I was not allowed to, and pressure was put on me to continue.

**Rona Mackay:** Would anyone else like to comment on the not proven verdict?

**Witness 2:** I would like to go back to the specialist sexual offences court, if that's okay.

Even with screens in the courtroom, you are so close to the perpetrator that you can literally hear them breathing. I have done a training conference with the Scottish Courts and Tribunals Service in which it spoke about estates. It said that the courts are designed to be intimidating—to be great big industrial buildings. When you go to the High Court in the city [redacted], you share the same entrance with the perpetrator. You can request in advance to take a separate entrance and exit. However, there were preliminary hearings in which my group of friends and family was alongside the perpetrator's friends and family. Words were exchanged, and it was horrible to know that that was happening.

There are so many issues with the buildings in terms of tech, waiting around for so long, and waiting for things to work. If you are waiting for a sexual offences trial in a sheriff court, you will be in with lots of other people who are waiting for a trial that day. They might be there just for theft, for example. That is not trauma informed. You have to make a massive effort in advance if you want a private room or to take advantage of special measures.

If there were a specialist sexual offences court, that would allow it to ensure that all the mistakes that are already happening cannot happen. I hope that it could also address delays and floating trials. I am sure that, with one specialist sexual offences court, the days would matter and there would be no more of people turning up to court and waiting to see who has been arrested the night before, whether a case can go ahead, or who has shown up.

The approach is so not trauma informed, and it causes so much damage. Even just practically, my

dad didn't want to tell his boss about what was happening. Anyone with kids will relate to this. He just wanted to keep it really private, and he constantly had to take annual leave days. They would get cancelled. He ate into his holiday allowance because of that.

There are so many things that they could put right by creating a specialist court, taking everything that people complain about and making sure that it cannot happen. Also staff. It would allow them to put the proper staff into specialist sexual offences courts, such as Rape Crisis advocacy being there for people who need it.

**Rona Mackay:** You make a really good point. Witness 4?

**Witness 4:** I will add a little bit about my experience at a sheriff court. I was very fortunate and I had special measures in place but I had to fight for them. It was like everyone wanted to say no. You have to specifically apply in advance to have a screen. You have to specifically request that you are placed at this sheriff court [redacted]. You have a room where the vulnerable witnesses are. My partner and I were there for the day but, otherwise, as was said, we would have just been in the corridor with everybody else.

I was also told that I could sit in on parts of the trial and listen to evidence after I had given evidence but, like others, I was told that it would reflect badly on me because if I have a screen so that I cannot see him, I can't sit in the gallery—because then I would see him.

Yes, I absolutely agree that specific measures need to be in place for victims of sexual assault and my point is that that should include victims of sexual assault, not just victims of rape, because, actually, so much that falls short of that definition is still extremely traumatic.

**Rona Mackay:** Thank you. I will make my final point a general question; you do not have to answer it. Is there one overriding thing that would have made your experience better? I know that there will be lots, but if there is one thing that you could pinpoint so that we can be informed on the bill, what would it be?

**Witness 2:** Reduce delays and let me get my life back.

**Rona Mackay:** Delays.

**Witness 2:** Yes, can I have back the four years of my life that I spent waiting for the criminal justice system? It was hellish. There were so many things.

**Rona Mackay:** It disrupts your whole life—everyone's life.

**Witness 2:** Yes. My dad was seriously ill during the case and, when he was getting wheeled in, he

said to my mum, "Make sure she knows it's not her; it's not the case," because it had happened the same week as the preliminary hearing.

So many things can happen in a four-year window. Life goes on and I cannot put into words how much you feel that you cannot just live. You don't want to get a new job. You don't want to start a uni degree. You don't want to go travelling. You don't want to get into relationships. It has basically taken the whole of my 20s plus already having had that experience of abuse when I was younger. It is like, "When can I get my life back?" For me, it is delays, delays, delays.

**Rona Mackay:** Does anyone else have a particular point?

**Witness 3:** I support that. Obviously, I'd already mentioned delays. Also, the communication from—sorry, I keep forgetting the names. Is it the Crown, I guess? Is that how you refer to them? The way that they communicate with you, which, as I said, is by letter, and the information you're given, in which they would say, "Well, we can't tell you this. You're just a witness," were extraordinary. The manner and type of communication that you get are issues.

**Witness 1:** I would say that independent legal advice would have made things better. That would have covered everything, including ensuring my anonymity. It would have covered my phone that they took and didn't return for two years. It would have covered everything about my medical records. It would have explained the not proven verdict and why we have it because it is exactly the same as not guilty. For me, that was the main thing—having somewhere I could go and get that support rather than bumbling through a process where I was a witness to my own crime. I never was a witness when I had independent legal advice; I was a complainant. This happened to me and I was supported and respected as I went through the process and felt that I was a human, really.

**Rona Mackay:** Thank you.

**Witness 4:** I echo what was said about delays. Communication is probably the main thing that I would pinpoint, in that there was none. There needs to be some kind of route map so that, when you make your report, somebody goes, "It'll look slightly different for everybody but this is an outline of what it might look like," rather than getting to one stage and fighting someone for information only to be told, effectively, that you do not have access to it or it is not your right. Even if I was not involved in the process, it would have been nice to know what the process was.

**Rona Mackay:** Thanks. That's really, really helpful.

**The Convener:** It is about an hour since we started, would you believe, so I want to check in with you. There are still a few more people who would like to ask questions but I want to check that you're okay to continue. Okay, good. Thank you.

**Russell Findlay:** Good afternoon. Thank you for coming in and speaking with us. I'd like to go back to the point about section 275 orders. From what you have said, I think that each of you was subject to these. In essence, these orders allow defence lawyers to introduce evidence of the character or the past of the complainer. I did not appreciate until Pauline pointed it out that these orders were initially brought in, I think in the mid-1990s, to protect complainers from being ambushed in court and from inappropriate use of background information.

The bill proposes that complainers be given access to legal advice in the event of a section 275 order being applied for. I think that you've all pretty much agreed that that is a good idea, but I wonder whether you have any thoughts on whether that goes far enough or whether, perhaps, for complainers or victims in a particular category of case—a case of a sexual nature, perhaps—there should be some form of automatic access to legal advice. Do you have any thoughts on that?

**Witness 3:** I would definitely support that for all aspects of it.

**Russell Findlay:** It couldn't just be done through better communication from, say, the Crown Office or the police at the outset.

**Witness 2:** The Crown doesn't represent you, though—that's the thing. I think there's a misconception in society that the Crown fights for the person going through the case; it is so not like that. The Crown acts in the interests of the state, and then you've got the defence, which acts in the interests of the accused, and then you've got us. We don't have that legal protection. There's no umbrella over us, so I absolutely support having it from the outset or support it coming via agencies like the Scottish Women's Rights Centre, Rape Crisis, the Emma Ritch Clinic—anything that could be done to make it accessible.

**Russell Findlay:** I can't remember who used the word "missing" but that really chimed with me.

Another thing that the bill seeks to do is enshrine trauma-informed practice into the system, although, frankly, I think we've all struggled to be entirely sure what is meant by that. In your account of delays, poor communication, miscommunication and no communication, the complete lack of regard for your wellbeing—even going as far as issuing you with threats at a time of extreme distress—shows that bad practice is still so prevalent in the system. Frankly, I think it's a system that is run in the interests of the lawyers.

That seems to take the priority. I suppose my question is about the bill's proposal to enshrine trauma-informed practice. Do you think that that will achieve what it should achieve? Do you have any confidence in that? What should it look like? Anyone can come in on that.

**Witness 2:** I can come in on that. I worked on the trauma-informed justice framework [redacted], and I think it's one of the most amazing pieces of work that has ever been done. It was designed to be given to agencies so that they would then create their own trauma-informed training themselves—within the agencies. I was out with the Scottish Courts and Tribunals Service with all the executive directors. When you first go into these projects, you think, "But what does it mean to be trauma informed?"

Basically, advocates are taking advantage of trauma on the stand. When you are cross-examined, they are taking advantage of the fact that you can't remember things; they're taking advantage of the fact that you might remember a T-shirt colour as different from what it was on the night. To me, that is essentially taking advantage of something that could be considered a disability, and it shouldn't be allowed.

In order to get the legal profession onside, we've come up with the phrase, "to get better evidence", but it really is in the interests of justice—it benefits everybody. Also, trauma-informed practice is about understanding that there are a lot of people going through the justice system from the other side as well who are traumatised and that that can cause traumatising behaviour. Basically, having an understanding of that means that we, as society, are better equipped to deal with the, I guess, adverse effects of trauma.

All of us have gone through the justice system. When you leave it, you're kind of hung out to dry, unless you can access things like therapy. Having a trauma-informed system means looking at all those things and putting those protective measures in place so that, when you come out and you're traumatised, there's something they can do about that.

There's a phrase among survivors, which is "the second violation". It means that you've been violated once but then you go through the court system and you get violated again. It is the second violation. Trauma-informed practice is about doing everything that they can to reduce that secondary trauma and that secondary victimisation.

That is what it looks like for me: don't take advantage of somebody's trauma on the stand. Take advantage of the truth—find the justice. That is what our justice system should be. It shouldn't be about breaking down a character witness until

they don't remember what their name is. That is the reality of trauma and complex post-traumatic stress disorder—it really messes up your brain.

**Russell Findlay:** We've got an adversarial system, so I suppose it's just a question of whether that culture will change, perhaps with the assistance of the legislation.

**Witness 2:** We have a long way to go and it's not going to be easy. Most importantly, it should hold people accountable. We want to create a culture in the courts so that, when somebody is acting inappropriately, you could say, "That is inappropriate" or, "You can't question a witness like that" and allow a standard to be set of what is and isn't appropriate.

Sometimes, when you watch cases, there are theatrics; there are certain advocates who are phenomenal at their job and, if I was ever accused of anything, I would be straight on the phone wanting them to represent me. For them, it is theatre. They play into being able to get the jury on side, but they also play into making the person—the witness—look a certain way. A lot of the time, they are playing on that person's trauma, and that is not appropriate. A rape has been committed; that has happened and, really, it is just about getting over the line in a court case. Being able to play on and take advantage of one of the most distressing and horrific things that can possibly happen to somebody is so morally bankrupt. We have to address that. It is not good enough.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Good afternoon, and thanks very much for all your evidence so far. I know that today will have been difficult, but, as other members have already said, this session is worth 20 of our usual evidence sessions.

You have already said quite a lot. I just want to give you a very general question. Do you think that the bill will make a difference? I don't expect you to know everything that is in the bill. There is quite a lot about the abolition of not proven, for example. There's the sexual offences court, which Rona Mackay referred to; trauma-informed practice; the victims commissioner and various other things. If the bill is passed as it is, do you think that it has the potential to make a difference?

**Witness 4:** We shouldn't see it as a panacea. It's not magically going to fix every issue that we've discussed today, but it is a good start and it's definitely a step in the right direction.

I want to say something about trauma-informed practice. The bill obviously talks about the way in which trauma-informed practice will be embedded throughout, but the definition of trauma-informed practice is very narrow. It's so important that we get that right and that we understand that trauma

isn't just a buzzword that we use to talk about an experience or a set of experiences. It is something that has a really profound impact on all aspects of your life. If you are traumatised, it's not just a case of, "Oh, I'm slightly triggered right now"; there can sometimes be a lifelong impact on the way in which you function, think and act, and, if you are put in a situation such as a courtroom, that is so much more enhanced.

When looking at a definition of trauma-informed practice, it needs to be really robust and actually explain why it is so important, and it needs to explain exactly how it will be delivered rather than just saying, "X service will be trauma informed" and so on. It needs to be slightly more encompassing than that.

**Witness 2:** So many of the points in the bill have come from survivors—like those in the not proven campaign—who have fought for it or put it forward. The bill itself is very reflective of the voice in society that kind of gets lost within the legal system. It is a start towards listening to the feedback that people are giving. There are only four of us but there must be thousands of people who have gone through these experiences, had their challenges and fought to be heard in the justice system. On that aspect, it will make a difference.

It remains to be seen how the Faculty of Advocates and the legal profession will respond to it, but I like to think that they would at least remember that there are real people going through this. Quite honestly, rape is one of the worst things that you can go through. It's such an entitled crime. It really puts you into a place where your consent has been taken away from you—you almost feel as though everything has been taken away from you. You feel dirty, and it takes so long for that to go away. I think that the bill maybe balances a lot of the disparity that you sometimes feel just going through it—not just as a victim of rape but as a victim of the justice system.

**Witness 1:** I agree. I think that so much good can come from the bill. We just need to be mindful that we don't approve something and then take something away by removing the not proven verdict and then suddenly changing the jury size or something else just to counteract that. The other day, someone explained to me that not proven is like having a green light, an amber light and a red light, and not proven is like the amber light. I tried to explain to them that it's not like that, and that we have two red lights and a green light. We are just trying to have a process that has integrity and a system and a jury process that people understand. That is what we want.

I don't think that we've mentioned anonymity. I didn't realise that I didn't have anonymity until the civil case, but I'm really hesitant about the idea of

lifelong anonymity. If I was to die tomorrow, my name and face could be put out in the press, because I would no longer have anonymity.

I know that there are rules on what we are supposed to do when someone dies, but if I have anonymity and later die, that is very different from if I was murdered and raped at the same time. I would really like some thought and discussion about lifelong anonymity. I can have anonymity today, but when I die, I will not have it.

I am still quite young, and as I go through my years, I would still like to be doing different aspects of this. I kept my anonymity for my family's safety, especially during the civil case. I wanted always to be focused on what was wrong in Scotland and what I could help to try to improve rather than about who I am, what I studied, where I live and who my family are. For me, it is a personal issue that I would really like to keep my anonymity—not forever, but long enough, while my memory lasts, and so that no one can then pick me apart later down the line. We get pulled apart at court. Why should we then have that again when we die, when we still would not have our own agency and voice to be able to talk about that?

Please be mindful of that. Let's not just copy every other system with lifelong anonymity. Why don't we do something new? I know that it's difficult and could be contentious but, if you have anonymity, should that be taken away straight away if you die? For me, that is quite an important topic.

**Fulton MacGregor:** That is interesting.

**Witness 3:** In response to the question, my answer is yes.

Could you clarify whether the parts of the bill would be passed independently or does it all get passed? Are some of them dependent on others?

**Fulton MacGregor:** As the bill stands, it would be passed as one bill but, obviously, we are in a process where there might be amendments and suchlike.

**Witness 3:** Right—so it would all go through or it would all not go through.

**Fulton MacGregor:** Yes.

**Witness 3:** Right, okay.

**Witness 1:** On the judge-led pilot, I know that a lot of people are against that, but for us sitting here that idea is quite forward thinking. We talk about negative parts of the system, apart from our advocacy worker, who was great. That is normally what you hear from rape victims and sexual assault victims.

For me, the jury was the problem. In my civil case, I had the option of whether to have a jury, and I opted not to have one and just to have the sheriff make the decision. I wanted someone who had an understanding of the law and background knowledge, rather than a couple of family members and teachers and so on who were all pulled together and who were there on borrowed time, because they all had to catch up with work the next week. They were there to make a quick decision, and not proven is saying, "Let's sit on the fence and not make a decision."

For me, it was about having someone who understood the process. Obviously, there are different parts of this but there are rape myths. People who do not even understand and who have preconceptions of what rape is, can be asked to sit on a jury. There have been lots of comments about whether the jury should have some advice before the trial takes place, so that they understand that it is not just about someone getting dragged into an alleyway by a stranger. However, you can't educate someone using a half-hour clip or video about a rape myth or the fact that delayed reporting is common in rape victims.

I didn't even know that freezing during rape was common until I had an advocacy worker. I thought that I was so strange, and I felt like I shouldn't report it, because I didn't fight back during one part of it, until I later did. For me, it was like, how could I then explain that to a jury member who might never have had any contact with the RASSO—rape and serious sexual offences—world? For me, it was about understanding that and having that choice.

Going back to the question about the pilot, the hope is that that would never happen and that it would go straight through, but having this conversation and discussion about it is really hopeful for us, because people are thinking about this, and it's not just us coming to share our experiences. Everyone else is coming together and saying, "This could be really good. Why don't we at least discuss it and see if a pilot would work?" We're not saying that it will be forever, but a pilot would be hope for us.

**John Swinney:** Thank you all very much for your evidence this morning and this afternoon, which has been absolutely compelling. I would like to explore two areas. As it did on Russell Findlay, your description of being posted missing and being silenced has had a profound effect on me.

Witness 3, you commented that you heard something like, "You're just a witness," which I find almost inconceivable to get my head around. That will link into my second question. I would like you to explain to the committee what you think we could make sure is in the bill that would ensure that you are not missing, silenced or "just a

witness". What things do we need to make sure are in the bill to ensure that that is not the experience that you have?

**Witness 3:** Communication, which we have mentioned, and having independent legal representation, would mean that you literally were not silenced, because someone would be at that preliminary hearing when the defence was requesting to lead fabricated evidence. You would have your solicitor, lawyer or whatever there, speaking on your behalf. I don't know if you would also be there, but you would at least now be told that it was happening, which I wasn't.

For me, that was in 2018 and 2019, so I appreciate that things have moved on, partly as a result of the appeal. I am talking about how things were before. Communication and being represented in a bewildering system are needed.

**Witness 2:** The right to information is important as well. The Crown is always very reluctant to notify you of certain information, such as who the defence counsel is, and you can see why they do that. They don't want you googling a rape case that the defence counsel has won, but certain things could be shared with the key witness. It can feel like the trial belongs to the accused, and it is the weirdest thing, because your body is quite literally the crime scene—it is all your data and your general data protection regulation information, but you are not entitled to find out information about the other side. Even with a section 275 order, you have to quite literally battle to find out the reason. That information should just be given to you—it is your case, and it happened to you.

There should be a real review of what the Crown will and won't tell the witness and whether that is a sensible thing to not tell somebody, and it should be more forthcoming with information rather than being reluctant to give it. The person should be given the choice, with good trauma-informed practices, to give somebody their consent back. They should be asked, "Do you or do you not want this information?" rather than making the decision for them. It is about guiding them to make the decision for themselves rather than making that choice for them.

We live in the day and age of social media, and many of the Crown practices are reflective of the time before that. You can get any information online, so I don't see the problem with being a little bit more forthcoming about who has been called up as a witness for the other side and who the defence counsel is. So many other people will have access to all the information that should be given to you as standard. Why should the person who it happened to not be given that?

**Witness 1:** For me, it would definitely be independent legal representation. My psychologist said that the main problem in relation to my complex PTSD was lack of agency. I was told by the police that I was a witness. When I tried to leave, they said, "Well, you are now a witness. He has been charged. You are a witness, so you have to continue with this." I was then told by the procurator fiscal service that I was a witness. Actually, I felt like I was a lot more than a witness. I was the only other person, apart from the person that raped me, who was in that room. It was only once I had independent legal representation in the civil case that I didn't feel like I was just a witness—I was someone who was involved in the process. I was able to give that evidence and feel supported. For me, it was definitely about independent legal representation. Addressing that loss of control and agency was vital to me overcoming PTSD.

**Witness 4:** Again, it would be information. To this day, I do not know what crime he was charged with. I have asked and asked, and nobody has ever told me. It has been three years. Just trying to get anything is like pulling teeth. When I made my statement to the police, I named an assault that happened when I was 16. I named another assault—by the same person—that happened when I was eight years old, and a period of non-sexual abuse in the almost a decade in between. It took about a year and a half for me to be told that the first assault was never going to be charged and it was not part of the case. I had named several other girls and, as I said, I had spoken to them and asked them to come forward to the police. The police had spoken to some of them. Until I turned up to the trial, I didn't know whether any of them would be there. I didn't know how many counts of sexual assault he was charged with or how many people were involved. I almost felt like I had no rights in the trial and the whole process. I understand that the defendant has rights, too, but I felt used and spat out by the whole system. If I had had even some basic information, that might have helped me to feel otherwise.

**Witness 2:** There's nothing in the bill about holding agencies accountable. I have had a horrific experience with the police, which is still on-going. It is now in the personal injury court and going through a civil writ. It is hellish. They lost evidence—videos of me getting raped—and then told me that it was "in police cyberspace". That is verbatim. I still do not know what is happening with that; it's on-going. There are very few ways to hold agencies to account. I had to go through a really lengthy Police Investigations and Review Commissioner process and through professional standards. The police investigate their own complaints, which doesn't really make sense.



Again, with the Crown, who do you complain to? I would like to see something in the bill about holding agencies accountable for when things do go wrong. Who do you complain to? Who do you get to review it? It's about all of those things. You could have raised a complaint in writing and had somebody respond to you but that process does not really exist at the moment. When you're trying to get information, it is really, really difficult. A lot of the time, you come into court and you just don't have the energy to even fight it, but all of those things creep up on you and you do want answers.

**Witness 1:** With regard to what you said there about information, as I think that I discussed last week, I feel like I have had more information coming here today than I did when we went to trial for the first time. I do not know what you all think, but the support that I have had coming here today is more than I got when I was going into the criminal trial. That should really tell you everything.

Thank you as well, just for how this session was set up, because we have been able to come here, provide evidence and speak quite openly, so that we are just telling you how it was, which is how it should have been at trial. I know that we get tested on the evidence and that is the whole point of a trial, but we shouldn't be made to feel that we are on trial ourselves or that we are just a witness to something that we're never going to forget.

**John Swinney:** I think that those comments will be aimed at the contribution of our colleagues at Rape Crisis Scotland and also of our outstanding parliamentary staff. A mark of how a Parliament should operate is that it should be a place that is welcoming to absolutely everybody. It is your Parliament, so it should be welcoming to you. Our staff should take a good—

**Witness 4:** Just before we move on, I will add to what you were saying about the complaints process. That's something that I would like to see in the bill. At the moment, the complaints process is almost impossible to navigate. I have made a complaint against the defence in my case, as I said, for basically shaming me with absolutely no grounds to do so. It was completely fabricated, and he was aware of that.

I know that the Scottish Government is piloting a scheme in which you can get access to your transcripts. They are so difficult to get hold of at the moment, especially when you are traumatised and have blurry memories of the experience in the courtroom.

As I said earlier, things would have been impossible if I did not have an advocate as a supporter with me. It was said, "This is what happened," and I said, "No, this is what happened," but I couldn't prove it without a transcript. It is a matter of improving systems to

support victims when things go wrong. Going through the court system is hard enough. When things are not done in the way that they should be, it is like adding a third trauma that just doesn't need to be there.

**John Swinney:** Thank you for that.

You have raised issues about regulation and the conduct of the defence, and we have rehearsed points about trauma-informed practice. Does the bill put enough obligation on the defence to observe trauma-informed practice? That is a big question about the bill for me.

There are other questions about the regulation of the legal profession. Another committee is looking at a bill on those questions. Some of us think that the proposals are rather modest, but we hear from the legal profession that the end of the world is nigh. However, we are not addressing those issues. To keep myself in order, I had better steer clear of them but, believe me, those issues are on the Parliament's agenda.

I come to my second area, which is exploring the concept of a fair trial. A few interesting threads are coming together. I was very struck by Witness 1's description of the contrasting experiences of having an advocate acting in a civil case versus the Crown pursuing a criminal case. Witness 2's observation was that the Crown doesn't act for you. That left me somewhat bewildered. However, when I think about it, if that's how you feel, that's how you feel.

**Witness 1:** That's what we get told.

**John Swinney:** I have the question in my mind, "Well, wait a minute. Surely the Crown must be pursuing a case to make sure that the issues on the indictment are properly and fully pursued."

**Witness 1:** That is for the state. That gets laboured to us. We get told by the police and the procurator fiscal, "This is not a case for you. You are a witness. This is for the state."

**Witness 4:** When you go to trial, you go to trial as a witness. You are not there in any other capacity. I was a witness in the trial as much as anyone involved who did not experience sexual assault was, but actually, we are not witnesses. That is not our role.

**Witness 2:** That is unlike in other jurisdictions, in which you might press charges, so it is like your case. It is not.

**John Swinney:** I am more coming at the issue with the question, "What's the philosophical point here about the fact that you have been in a set of circumstances that are absolutely horrendous and you are missing in the process?" That goes back to my first question.

One of the other points that we have been wrestling with—I think that Witness 1 made a point about this—is not taking something away to compensate for the removal of the not proven verdict. That is a big issue that we are wrestling with. The bill involves the removal of the not proven verdict. It would also change the size of juries—there may not be as strong an argument for that in itself—and change the composition of decision making. I am interested in your thoughts on how that feels. What do you think about those proposals? Do they feel appropriate, or does it feel like you might be making progress on the one hand with the abolition of the not proven verdict, but there might be a setback on the issues that you are concerned about from the changes to the process that is undertaken? My interest is in ensuring that there is a fair trial that is in everybody's interests.

**Witness 1:** I think that the reason that I put all my energy after the civil case into something that could help other rape victims in Scotland was the not proven verdict. It was all to do with people misunderstanding the verdict—to the point that a minister I spoke to said that they had not even known about not proven until they had seen me on the television. If someone in our Scottish Government does not know about the not proven verdict, and they are openly telling me that, how can we expect the jury to contemplate and think about it and then suddenly make a decision that affects not only my life but the other person's life?

When you speak to the accused or to complainants, you find that neither of them like the not proven verdict. No one wants to be left with a not proven—they would rather have not guilty. We come from a place where we do not want to have a not proven, because it sort of puts the inference on us. We are not allowed to go into the courtroom, because it gives the wrong impression to the jury, but you have to be mindful of every other thing; you have to watch everything from the evidence going in to the sentencing, if you get that far. For us, we are already in a place where we are traumatised and overthinking everything, so what if we are then told, "Well, actually, it's not proven"? You have already been told by nearly everybody involved in the case, "Don't go in, because it gives the wrong impression." The question is: what did you do or what did you say that led to not proven rather than not guilty?

For me, removing the not proven verdict should not mean that anything else has to change. I know that lots of other people want it to change, but actually we would be removing something that is confusing, that the accused do not want and which the complainants do not want either. People do not even understand what it is, so why can we not stay with the two-verdict system of guilty or not guilty? We would remove something that is

confusing. Jurors think, "We're giving something back," or "They've set us out on the fence and it's being used disproportionately," but we are just trying to keep integrity in the process and ensure that the jury get to a decision that, one, they understand and, two, we have to live with.

I don't think that we have to appease everybody else who says, "We can't remove not proven." Let's counteract that by saying, "We'll remove not proven, but we've listened to this or that party"—the parties that will probably be giving evidence next week or so. The legal sector is very against changes to the system—it's like, "It's always been like this, so let's keep it like that." In the five years of the campaign, they are the only people who have been against the removal of not proven. It is not the defendant—or the accused, as they are called up here. Of all the areas that I have spoken to, the only people against the removal of not proven are those in the legal sector.

**John Swinney:** Thank you.

**The Convener:** I have a couple of members who want to ask some more questions. Are you comfortable with that? I am very aware that it is almost five to 1. I will bring in the final two members and then bring things to a close.

I call Sharon Dowey, to be followed by Rona Mackay.

**Sharon Dowey (South Scotland) (Con):** Thank you very much for all the evidence that you have given so far—it has been eye opening. As I said to you when we met earlier, I am just new on the committee, so a lot of this is new to me. A lot of the evidence that you have given is kind of unbelievable.

My question was going to be this: is there anything that is not in the bill but which you think should be included? Is there anything that you think we should be going further on? Moreover, following on from the question from Russell Findlay, I am kind of thinking that you maybe need legal representation earlier. Can you tell me that? I find it hard to believe that three years after a trial you still do not know what somebody was charged with and that you can get to the end of a case before you realise that crucial evidence has not been put forward.

Is there anything in the bill that you think that we should be going further on? Is there anything that has not been included? I know that you have touched on some things, but is there anything that you have not mentioned?

**Witness 3:** I was actually going to say this before you said it: we need ILR not just for the section 275s but the whole way through the process. It goes back to the question, "Why isn't the Crown representing you?" Well, it can't, and

because it can't, you need representation all the way through. That needs to be taken even further.

**Sharon Dowey:** I was taking notes earlier. You get no legal representation at all to start off with—

**Witness 3:** No advice, even—no guidance as to what a word means. I remember that when I went to Rape Crisis in London they said, “We don't know what this word ‘precognition’ means.” Obviously the Scottish system is different from the English system, so they did not know what the word meant. They also could not believe that the defence solicitor was going to grill me in a room.

**Sharon Dowey:** It is in my notes that there was a defence solicitor and you had no legal representation at all.

**Witness 3:** No.

**Witness 2:** You get more protection as the accused.

**Witness 3:** Yes. It seems very weighted in their favour.

**Witness 2:** They don't have to speak. They could just have a solicitor represent them the whole time in court and not have to say a word.

**Witness 3:** I read in some of the documentation something about whether you should be allowed to have someone with you when you have the precognition with the Crown. My mum came into the meeting, because we had travelled up from London, but at one point the person who was involved—I forget the name of the role—said that, basically, my mum had to leave. I was on my own in a room having all this horrific stuff read out to me. In that situation, your mind just scrambles.

**Sharon Dowey:** And you had no one with you?

**Witness 3:** No. I wasn't told that I could have someone such as my supporter.

Also, when I had the meeting with the defence solicitor, I took a friend who, luckily, was also a solicitor, although obviously we didn't tell the defence solicitor that—we just said that she was my friend. There were points where I had breaks and she said, “Don't answer that.” If I hadn't had a friend who was a solicitor, I would have got myself into answering all sorts of questions that he really shouldn't have been asking and that were leading into things. I think that that precognition was part of the section 275 process.

**Witness 2:** I don't think that it was well explained enough that precognition is usually the Crown's opportunity to predict what the defence are going to do, but it can come across as very critical of you rather than the Crown trying to prepare a case.

**Witness 3:** Yes. At my first precognition, I didn't realise that it was a precognition. The case preparer called me when I was at work and said, “Have you got some time?” I went out and was on the phone for almost an hour, but she didn't say, “This is a precognition,” or explain what it was. It is extraordinary that I was almost ambushed with that. If I'd had my own solicitor at that point, they would have been helping me and supporting me with it.

**Witness 4:** I talked about complaints processes when things go wrong, but it is much easier for things not to go wrong when you have somebody who actually is on your side from the start.

**Witness 2:** It's all very well saying that there's going to be trauma-informed practice, but how are you going to regulate that and monitor it? Where it's not trauma informed, will there be a route for complaints? I said in my written submission that I would like to see more in the bill on GDPR and data. It is my data. That came up with the court transcript issue. A lot of complainers will hand over phones as part of their evidence. I've had to battle the police for the last four years just to get a USB stick back. That has been nothing short of a nightmare. I'm thinking, “Oh my God, someone in Police Scotland has probably got naked images of me.” That has been a source of really bad trauma, because I'm paranoid about who has got it.

There should be accountability for possessions, data, what belongs to us and what we can get back. I would like a lot more on protection of complainer data in the bill, in terms of who gets to see what and who has seen it. I could probably name about 100 police officers who were dealing with the case. You are just passing data to all of them and they all see some of the most horrific times of your life. We need more clarity on who is going to have access to the data when you report. What happens next? It kind of feels like you just go to the police and then have to navigate the system, and you do not know where the stuff has gone. I would like to see a lot more on protection of your possessions and of your personal data.

**Sharon Dowey:** If you had legal representation earlier, would that be the point of contact who could control everything?

**Witness 2:** Yes. I had support from Rape Crisis Scotland and we posed the question about where the USB stick had gone, and the police were very shifty about it and wouldn't necessarily give me the information—it felt like they were bluffing. I'm not a stupid person, so I quickly picked up on the fact that they were obviously trying to hide things, and that almost made me want to challenge them more. Then I just got really angry about it and thought, “Right, I'm done with this—I'm hiring a lawyer,” and now they have had to admit liability. It shouldn't have taken years and years to get to this

point; I should have just been given the information. It is quite literally videos of me getting raped. That is mine, but also I cannot believe that they've lost it.

**Witness 3:** Can I just ask, did you have to pay for the lawyer that you hired?

**Witness 2:** No. Luckily, I got them on no win, no fee.

**Witness 3:** But even with no win, no fee, there's a risk. Really, when you have been the victim of a crime, why should you have to do that?

**Witness 2:** No lawyer would take it. I probably went to 10 or 20 lawyers in Edinburgh but no lawyer was willing to go against the police. Then, luckily, I got one girl who is super tenacious—there is probably a bit of a back story to it. Anyway, she was willing to take it on and she is incredible.

**Witness 1:** For me, independent legal representation was everything in the civil case. With the criminal trial, even if my case had ended in not guilty, as long as all those people had given evidence and all the right information had been put in, I would have thought, "Well, everything is there and that is the decision that was made; it's not what I wanted but it's closure". Instead, I had to go all the way through the civil case.

I have said that I prefer the civil process to the criminal process, which I do, with regard to how I was treated. However, in Scotland, we have four people—one from my case, one from another case and two men who were involved in another person's case—who have been found liable and guilty of raping somebody, yet they could work in a nursing home or a nightclub. There are no restrictions and there is no safeguarding, yet they have been declared by a sheriff to have raped somebody. Yes, they have had to pay a decree—although, in my case, they made themselves bankrupt—which is what a civil case is for.

For me, it wasn't about this man going to prison. I had to forget that mentality. Initially, I came forward to help other people; I reported to the police so that he wouldn't rape other people. I had to change that mind set, though, because you can't go through a trial if you are thinking that. I wanted disclosure; I wanted people to listen to what had happened and to make a sensible decision based on all the evidence, which is what the civil case gave me.

However, the civil case came at a cost not just in the length of time that it took but financially. At least two and a half years later, I was still paying monthly towards the cost of my civil case. All over the news, my case was slated because people said that I was doing it for money—this decree that will never be paid because he's made himself

bankrupt. He wasn't paying fees each month, but, two and a half years later, I was still paying. I think that it was about two years ago when I stopped paying my monthly payments to the Scottish Legal Aid Board.

Independent legal advice for my criminal case would, hopefully, have had those people there to give their evidence and would have had the right people there, because I would have been part of the process and able to say that. I know they wouldn't be able to discuss the evidence back and forth, but I could at least have said, "Will you make sure my surgeon turns up, because then I can talk about it at the case?". I would have been able to leave the case knowing that I had done everything.

Instead, that feeling only came with the civil case. Although the judgment was four months later, as soon as my evidence was finished and everyone else had provided their evidence, we left and didn't even hear the summing up by the other side. Walking out of that court with my family and friends, I knew that all of the evidence that should have been heard in the first case was finally heard. That was the first time that that had happened, so, even before he was declared to have raped me, I had closure. I had had my opportunity of a fair trial.

Independent legal advice is crucial; it is paramount to having a fair trial. If you don't have one, things go missing, evidence goes missing or people don't even get asked to give evidence in the first place.

A civil case is great, but of course there is no safeguarding involved for a person who has raped someone. He was declared to have raped me, but he could be doing anything. Then there were the financial costs for me—it was just a shame that I had to continue paying as well as giving my time and energy to everything else that I was doing.

**Witness 2:** You shouldn't have to buy justice because the criminal justice system doesn't work for you.

**Sharon Dowey:** So getting the right legal representation earlier on and having somebody representing you in a criminal court could have given a totally different outcome and saved you all that time at the end.

**Witness 1:** Yes.

**Sharon Dowey:** One of the things that you have mentioned is delays, and having to go to a civil court is a delay.

**Witness 2:** The delays are horrific. Another thing with trauma is that, if it is PTSD or complex PTSD, it comes "post" or after the effect. I don't think that I'll be able to properly heal from CPTSD

until everything with the police is over. It has been years now that that has been on-going.

It's really important to deal with delays; otherwise, you've got a whole bunch of traumatised people in society who have gone through horrific things and then had to give a lot of their life to a system that lets them down anyway.

**The Convener:** I am just looking at the clock, and it is 5 past 1. I know that we've all got lunch on our minds, and some members have got other commitments shortly. I'm going to bring in Rona Mackay and then we'll draw the session to a close.

**Rona Mackay:** Part 1 of the bill deals with the establishment of a victims commissioner. Bearing in mind that the commissioner will not be able to intervene in individual cases, do you think that the proposal is a good idea? A one-word answer would be absolutely fine. You can just say yes or no—you don't need to elaborate.

**Witness 4:** Yes—absolutely.

**Rona Mackay:** Would anyone else like to answer? You don't have to.

**Witness 3:** I'm afraid that I'm not familiar with that bit of the bill and haven't looked into it, so I'm not going to answer. Sorry.

**Witness 2:** To me, it's crazy that we don't already have one—so that's a yes.

**Witness 1:** It's a yes from me.

**Rona Mackay:** That is great. Thank you.

**The Convener:** Before I bring the session to a close, I have one final request. If there's anything that you feel we haven't covered this morning—we've covered an awful lot—you would be welcome to make any final reflections.

**Witness 1:** This is more of a request for what I mentioned about anonymity to be considered. Let's not just go with what everyone else does and have a deliberation about whether anonymity should just be lifelong.

I repeat my comments about the not proven verdict. I make a request, as someone who isn't in the legal sector and who doesn't know much else about the process beyond my lived experience: do we have to counteract or balance the positive removal of the verdict when, really, we're trying to come from a position of saying that it is misunderstood? As the research shows, even juries say that they misunderstand it. The accused don't want it. The complainants don't want it. Why are we still using it?

I thank everyone for listening to us and for how well this session has been organised.

**The Convener:** Thank you.

**Witness 2:** I just want to say that, when I reported my case in the latter half of the previous decade [redacted], I could never have imagined the progress that would've been made between then and now. There are a few people in this room who I've interacted with before. I pay very close attention to what the Criminal Justice Committee is doing. I think you're doing a really stellar job and you get a lot of stick for things that are probably outwith your control. I just want to say thank you for your passion and commitment to making this better for us, and thank you for including lived experience. It really means a lot to be able to take our experience and hopefully turn it into something historical and, more importantly, something good. Thank you for that.

**The Convener:** Witness 3 and witness 4, do you have any final quick words?

**Witness 3:** I think I've said everything I wanted to say.

**The Convener:** Thank you.

**Witness 4:** I just wanted to say that it's very difficult to come and speak about some of these issues in any context. Thank you very much for making that as easy as possible.

**The Convener:** Thank you so much. I think we've all found this extremely valuable; thank you especially for your comments at the end. We don't often get complimented, so I'm feeling quite emotional about that.

We will be able to use the evidence that you have shared with us today to try to ensure that the bill genuinely meets the objectives that it has set out to meet in terms of improving the experience of survivors. As soon as the meeting is over, a member of the Parliament's staff will be in touch to discuss next steps and to explain what will happen now in a bit more detail.

Thank you again for joining us today.

*Meeting closed at 13:18.*

