OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 29 January 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 29 January 2025

CONTENTS

Col.

CRIMINAL JUSTICE MODERNISATION AND ABUSIVE DOMESTIC BEHAVIOUR REVIEWS (SCOTLAND) BILL: STAGE 1. 1

CRIMINAL JUSTICE COMMITTEE

4th Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Liam Kerr (North East 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)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Grace Boughton
Detective Superintendent Adam Brown (Police Scotland)
Laura Buchan (Crown Office and Procurator Fiscal Service)
Professor John Devaney (University of Edinburgh)
Dr Emma Forbes (Crown Office and Procurator Fiscal Service)
Malcolm Graham (Scottish Courts and Tribunals Service)
Superintendent Richard Thomas (Police Scotland)
Professor Neil Websdale (Arizona State University)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 6

Scottish Parliament

Criminal Justice Committee

Wednesday 29 January 2025

[The Convener opened the meeting at 10:00]

Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill: Stage 1

The Convener (Audrey Nicoll): Good morning, and welcome to the fourth meeting in 2025 of the Criminal Justice Committee. We have received no apologies this morning.

Our first item of business is the continuation of our stage 1 scrutiny of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill. We have a good panel of witnesses. I am pleased to welcome Laura Buchan, from the policy and engagement division of the Crown Office and Procurator Fiscal Service, and Dr Emma Forbes, the national lead for domestic abuse for the Crown Office; Malcolm Graham, the chief executive of the Scottish Courts and Tribunals Service; and Superintendent Richard Thomas and Detective Superintendent Adam Brown from Police Scotland. I offer a warm welcome to you all. Thank you for taking the time to attend today's meeting and for your submissions, which have been very helpful.

I intend to allow about 75 minutes for this session. I refer members to papers 1 and 2. To get the session under way, I will start with a pretty broad question that focuses on part 1 of the bill. I propose to bring in Laura Buchan first, followed by Malcolm Graham and Superintendent Richard Thomas.

Part 1 of the bill will make a range of changes to the procedures in criminal courts. For the committee to get a sense of your overall views of the proposals, will you briefly outline any provisions in part 1 in relation to which you have issues or concern? When we started our evidence taking last week, issues came up relating to resourcing and the practical implications of the provisions.

Laura Buchan (Crown Office and Procurator Fiscal Service): The Crown's submissions to the committee show that it is broadly supportive of the provisions in part 1 of the bill. The temporary provisions have been successful in making efficiencies across the system and have afforded the system as a whole the flexibility to deal with criminal business. Efficiencies and innovation underpin the provisions that have been in place, and we are seeking their extension.

We need to work together across the system to modernise it and to future proof it through a framework that supports modernisation. As we have heard in previous evidence to the committee, there will inevitably be practical implications, but I do not think that they will be that impactful, as the COPFS's submissions show. A lot of the changes, modernisations and processes are already in place—it would cost more to unpick them if the provisions were not extended—and we will work together with our colleagues across the criminal justice framework to support the processes that might be required to assist any further work.

We are at quite a significant point and are looking forward to important change. The roll-out of body-worn video this year will be significant for victims, witnesses and accused in relation to cases before the courts. That will sit alongside the digital evidence sharing capability—the digitalisation of evidence, which is touched on in the bill—and will build on the summary case management pilot that has been rolled out across Scotland in relation to front loading summary courts to get early disclosure and results, which has been successful.

We are broadly content to proceed with the provisions and to work with our agencies.

Malcolm Graham (Scottish Courts and Tribunals Service): Thank you for the opportunity to come here today. I broadly agree with Laura Buchan, but I might go a little further. Many of the temporary provisions not only have been useful but have become essential for efficiency and effectiveness. During the years in which the provisions have been in place, there has been a shift towards more person-centred and trauma-informed approaches, and we will seek to continue approving that shift in the joint working that lies behind many of the measures. It would be a retrograde step if we were unable to retain the use of electronic signatures, many aspects of virtual attendance and remote balloting.

I understand that there are practical, logistical and technical issues with some of the aspects of virtual attendance that have been piloted, such as those for custody hearings. Those issues have resulted in various pilots being paused or stopped. We will do a wholesale evaluation of all the lessons learned before moving forward. To make progress in that area, it will be essential to do in-depth work with all court users, professional bodies, the legal profession and justice agencies to ensure that any steps that we take work for everybody.

I believe that a lot of the measures not only underpin efficiency but underpin transparency and

fairness and give opportunities to access justice that we did not previously have.

There are some questions about resources. A lot of the costs, which have been captured in the written submissions, are entwined in other measures that we had to put in place very quickly as part of the response to Covid. There will be a lot of indirect costs, and it is safe to say that some of the changes that the bill would facilitate and some things that we do not do at the moment are likely to have significant implications for the built estate and for information and communications technology. However, that is not a reason not to have the bill, which is what will allow us to move forward.

Superintendent Richard Thomas (Police Scotland): I absolutely agree with my colleagues about those welcome proposals, which will provide swifter access to justice and better outcomes and will bring us up to date with the technology that is available. We already have that technology in place in some cases, particularly for virtual attendance at the High Court.

From the outset, Police Scotland's position has been that we welcome and support the provisions in the bill, but I caveat that by saying that our greatest concerns are about their pragmatic and practical implementation, because of the operational, logistical and, in some cases, administrative obstacles that would have to be overcome in order to make them workable in reality. As recently as last Friday, efforts to stand up virtual courts during storm Éowyn could not be facilitated, for a number of reasons, which causes us some concern about the bill.

As I said, we welcome the bill and agree with its content and the sentiment behind it, but there are real questions about the feasibility of implementation on day 1. That is particularly true of virtual courts, as the bill suggests that the court could direct, or might well expect, virtual attendance to be available at every opportunity, which is simply not deliverable under the current operating model.

Although we welcome the proposals, we recognise that there is considerable work to be done between now and December to allow us to put in resources, facilities and information technology infrastructure among other on-going transformation work, which is not funded. This is one of several pieces of significant transformation work that are on-going in Police Scotland, and we need to be supported and funded if we are to deliver them.

The Convener: That was really helpful. A clear theme is emerging around the practicalities and cost implications.

I have one follow-up question, and I would welcome hearing from anyone who wanted to come in on it. Last week, we took evidence from, among others, Stuart Munro of the Law Society of Scotland, who referred to a piece of work that is supported by a working group convened by Sheriff Principal Aisha Anwar. It is looking specifically at the development of a virtual custody process to address the concerns that had been identified in the pilot of that process. Are any of you involved in that working group?

Superintendent Thomas: Police Scotland is represented on the working group. I am not involved personally, but I believe that Mr Graham is.

Malcolm Graham: I have a key role in reinvigorating that working group. As I mentioned briefly in my opening comments, we are going to take an approach that is slightly different from the path that we were on. An awful lot of work had been done on the basis of a variety of pilots that had operated in different places and different ways, but we perhaps attempted to move too quickly towards the notion of a national solution. As a result, when I came into this role a number of months ago, I wanted to ensure that we had an opportunity for a bit of a stocktake with regard to what had been learned from the different pilots, and that we were taking on board all the views of the different court users. I have worked very closely on that with Stuart Munro and other colleagues.

That work is linked to our work to try to get a fully trauma-informed end-to-end court process up and running through the trauma-informed domestic abuse model in the north-east. I am keen to make progress on that, and I want to bring together the learning from and engagement on both pieces of work—Stuart Munro also sits on this other group, which I chair—and ensure that, when we move forward, we do so in lockstep with each other. I think that we can achieve that.

The Convener: That is super. I take it that you are involved, too, Laura Buchan.

Laura Buchan: Like Richard Thomas, I am aware of the group, but I do not sit on it. Malcolm Graham has probably given you the most up-to-date information on it.

We know of, and are—and have been—involved in, various pilots, and we know of a specific pilot on trauma-informed process that has been running in Grampian and in the Highlands and Islands. We are supportive of any model to progress that.

The Convener: That is great.

Liam Kerr (North East Scotland) (Con): Good morning. Superintendent Thomas, I would like to explore something that you brought up earlier.

Section 2 of the bill allows the court to permit virtual attendance, but the Police Scotland submission suggests that it is not always "practicably possible" for the police to do that, and it notes that the police's ability to facilitate it is not part of the court's consideration. The submission also says that the current budget will not allow the police to increase that kind of support without cannibalising from other areas. Do you know how much extra will be required to make the provisions feasible? In any event, does the committee need to amend the bill in any way to, for example, make Police Scotland's ability to facilitate that a factor in the court's consideration?

10:15

Superintendent Thomas: It is probably a bit early to apply specific price tags to the implementation of the legislation. At this stage, there are still questions about what Police Scotland's estate will look like in the future. We are undergoing a transformation review, particularly with regard to custody and the type and number of custody facilities that we have available. There are also other factors at play, such as the GEOAmey contract, which is potentially up for retendering, so there might well be cost implications with that.

With regard to preliminary cost estimates, we submitted a separate response to the financial memorandum, which I note is in the committee's papers, but our response is not, so that explains why they are not in there. Depending on the particular options around how many police custody units we have and what shift allowances are required to match the court schedules, the additional criminal justice police custody and security officer recruitment that would be required to facilitate virtual courts would cost anything between £1.7 million and £4.5 million. Capital investments to improve virtual courtroom infrastructure to allow implementation of the act would vary from £12,000 to £44,000, depending on how many rooms we needed to put in place across the estate. That would be for the virtual courts.

There are other costs that might well be accrued as a result of the DESC or digitalisation of productions. The current DESC projects involve about £33 million, which I think has pretty much been spent, if not overspent. In implementing the digitalisation of productions, other costs would arise as a result of changing processes and procedures to accommodate that.

There are other unknown costs at this time, but we would work closely with partners to ensure that any costs were captured across the CJ process, not just within Police Scotland. However, those estimates are an indication of the financial costs that might be incurred as a result of the act.

Liam Kerr: Do you have any thoughts on amendments?

Superintendent Thomas: That was the second part of the question. The way in which the bill is written implies an expectation that a virtual court would be available at the instruction of the court. It might be as simple as adding something to suggest that that would be contingent on the availability of a virtual court or the feasibility of delivering it.

I was at St Leonard's police station this morning, and I was quite keen to see the upgrade that has taken place in the custody facility there. There is one virtual court facility in St Leonard's. On a Monday morning, there could be upwards of 20 people there waiting to go to court. I asked the sergeant on duty whether it would be possible to facilitate virtual courts for 20 or so people, and I was told that it was simply out of the question. In a court as large as Edinburgh sheriff court, the bottleneck is obvious. It is about the estate and the ability to facilitate that, which would require a significant increase in investment in IT facilities, staffing and the like.

Liam Kerr: I understand. Thank you.

The Convener: I think that Sharon Dowey would like to follow up on that.

Sharon Dowey (South Scotland) (Con): It is on the same line of questioning. The bill basically says that the default position is that the police would still attend in person. Will you outline the everyday strain on officers who are requested to appear at court, and the pressure that that puts on the service? What are the current pressures on police in attending court?

Superintendent Thomas: Physically being required to attend court implies time—not just the court's time, but the officer's time. It means time away from front-line duties. There are workarounds whereby officers are allowed to work from a police station, although they are not deployable operationally when they are on standby for court. There are lost opportunity cost implications of being on standby to attend court in person.

As I said at the outset, anything that streamlines the process or reduces the impact on front-line policing, such as deferring court attendance, allowing virtual attendance or agreeing evidence in advance, as has been done in the summary case management pilot, would improve conditions and allow us to deploy more officers to front-line duties than is possible with the current model. We would welcome that approach, but we want to flag up the

pragmatic issues that we would have to overcome for the legislation to take effect.

Sharon Dowey: I am looking at the practicalities of the proposed approach. Virtual court appearances could ease the strain on officers, but are you confident that a virtual system would be practical for officers in their everyday work? I am wondering how officers could be deployed operationally and therefore whether a virtual system would be of any benefit. An officer would not be able to go out on front-line duties if their case might suddenly be called at the court, because they would have to be available to give their evidence virtually. Is that correct?

Superintendent Thomas: Yes. The demand for an officer to be available to give evidence is going to be the same, whether they have to attend a physical court or a virtual court. The efficiencies are realised across the criminal justice system—probably for other agencies as much as for the police. However, I recognise that there is still a demand on police officers to give evidence. That has to be done, whether that is in a virtual court or a physical court.

Laura Buchan: Police officers in Grampian and the Highlands and Islands who are cited to attend High Court cases in the central belt have seen the benefit of being able to appear in court virtually. I think that, in his submissions, Malcolm Graham provided the numbers of professional witnesses who had appeared virtually. Albeit that Richard Thomas's position is that officers would require to be at a police station to give evidence virtually, they would not need to travel from a remote location to the central belt, so time would be saved, and they could carry out other duties at that time. Again, as is the case with many of the bill's provisions, it is not about all police officers or all professional witnesses giving evidence virtually. It is about the benefit of police witnesses and professional witnesses, such as doctors and nurses, being able to give evidence from another site and not having to take the time to travel to court. Savings and efficiencies are achieved in that regard, too.

Sharon Dowey: Again, this might just be my understanding of what witnesses have said, but I had thought that, when you go to court, you go to a witness room so that you cannot hear any other evidence that is given. If that is the case, would that not mean that, even if the police were giving evidence virtually, they would still have to be in a separate room so that they could not hear anything that was going on in the court?

Malcolm Graham: We are not talking about creating a virtual court whereby everybody would be in different places. The provisions are for the remote provision of evidence by certain witnesses, which, in effect, would mean that those witnesses were separate from the rest of the court proceedings. I fully understand the issues about the requirement for the police to have facilities with the connectivity and the technology to connect to the court at the scale that is required, and the fact is that that is not in place at the moment. However, in effect, those individuals will be able to go about whatever business that they need to in the building that they are in. I think that that answers your question about whether someone could carry out full operational duties—possibly, they could not.

We have provided examples of situations in which, for some people, giving evidence remotely is a really significant saving. My understanding of the intention behind the measures is that they are not meant to be restrictive or to compel witnesses to attend court virtually; they are meant to be enabling. The police have asked for that provision, and other expert and medical witnesses have asked for it and welcomed it. Over the past six months in particular, we have seen a steep rise in the number of people who are making use of the provision. However, the court is not compelling people to appear virtually; the measure can be facilitated where it is of mutual advantage. There are some benefits for the court and for the Scottish Courts and Tribunals Service, but those are not on the same scale as they are for the individuals who are giving evidence as witnesses, and for their organisations.

Sharon Dowey: One of the issues that we hear about with officers having to attend court is that they have to come in on their days off and sometimes have to cancel or fly home from holidays. I take it that the provision for virtual appearances will not help that in any way.

Superintendent Thomas: That is not directly related to the bill, but there are other pieces of work with colleagues at the Crown Office with regard to court scheduling to help to reduce the amount of time for which, and the occasions on which, officers are required to attend when they are on annual leave, days off or night shifts. That is a perennial issue. It is probably slightly separate from the bill, because it is work that has been going on for a long time to try to improve the system. I am hopeful that we will address it in future, because it is clearly in nobody's interest for officers to attend court when they could be otherwise deployed or on annual leave.

Pauline McNeill (Glasgow) (Lab): Good morning. First of all, so that you understand where I am coming from, we are all agreed that virtual attendance can be helpful to the court system when everyone is content with its use. I am trying to drill into the detail of the balance between the saving of time and the fairness of the processes. That is what I am interested in.

This might be a question for Laura Buchan or Malcolm Graham. Defence agents have raised a lot of concern about the importance of their ability to talk to their clients, which needs to be tied up. I attended a virtual custody session in Glasgow sheriff court about 18 months ago and could see that there were lots of issues. In fact, the sheriff had a break and said to me that that was just what it was like and that it was impossible, which speaks to the importance of the quality. To be frank, I could not even identify the accused on the screen from what I could see. We all want to be in a different place from that.

We all know how stretched defence agents are. Simon Brown gave evidence last week that they cannot easily be in two places—a virtual hearing and one that is not virtual. How will you ensure that defence agents can deal with the virtual attendance of accused persons?

Laura Buchan: That question is properly for Malcolm to answer, so I ask him to go first on the practical set-up of virtual custodies.

Malcolm Graham: I welcome the question and understand the legitimate concerns about the operation of some of the pilots. However, the purpose of a pilot is to test things and learn, recognising that they will not always work but then moving forward with something that acknowledges the feedback that you receive. That is why, as I explained, we will take a slightly different approach going forward.

The points raised about defence agents having to be in more than one place at once are legitimate in certain circumstances. I understand that a defence agent who operates in one court manages cases by moving to different courtrooms in that building, but there are also defence agents who operate across different courts. They cannot do that in person at the moment, but some form of virtual custody hearings, for instance, could facilitate their attendance between Aberdeen and Inverness or Dundee and Perth—whatever facilities they would not have the opportunity to travel between.

This also goes for the trauma-informed domestic abuse practice model, but the crux of ensuring that the approach is successful is to find a way to provide adequate facilities for defence agents to be able to do virtual hearings or remote consultations with their clients within the court building. A lot of the pilots did not have that because the court estate does not facilitate it at the moment.

Pauline McNeill: Have you now discussed with defence agents whether they think that that will work?

10:30

Malcolm Graham: They think that it is the right way to go. However, I think that, understandably, they will want to wait and see what we can provide.

We are already seeking to do that in similar circumstances in High Court premises. I am in quite advanced discussions with the Faculty of Advocates about providing additional facilities along the lines of those that are already running at the moment. Advocates will be able to move between the court building and a facility that they can book but which we manage on their behalf to ensure that the scheduling of court hearings and the availability of defence agents or counsel are considered together. Although we have not yet completed that work, those conversations have been really positive.

We have had a similar set of conversations with the Aberdeen Bar Association about the trauma-informed domestic abuse practice model, and it is supportive of us progressing on that basis.

Laura Buchan: We would be supportive of all those measures. I was involved in one of the pilot schemes. As far as the quality of the consultation is concerned, it was clear that the partners were working together towards improvements.

There is also a benefit for accused persons. At times we deal with vulnerable accused who, for example, might have to be transported for up to three hours for a brief procedural hearing at court. If there were to be better use of such facilities and more opportunity for such accused to have consultations and appear virtually, that would limit the amount of travel required. The default is, of course, that people will appear in attendance, and for some appearances people absolutely will require to be there in person. However, there are other hearings where personal appearance would not be required.

Pauline McNeill: I now want to ask questions about the other power that the Lord Justice General can exercise, which covers whether other people can appear virtually. Just so that I have got this right, Malcolm, is it the case that the Lord Justice General will decide on that question for each individual court hearing, and it is not a blanket power?

Malcolm Graham: There is provision for a direction to be issued, which, as a matter of default, would allow certain types of witnesses to provide their evidence remotely.

Pauline McNeill: Is that intended for public officials?

Malcolm Graham: Yes—and for medical and other expert witnesses. In effect, such a direction is in place at the moment.

Pauline McNeill: That makes sense. I am interested to hear which test will be applied to other witnesses at trials. I am sure that we all agree that, at the end of the day—and quite apart from all the technology that is involved—what matters is that there is fairness in criminal justice. I cannot find anything that tells me which criteria would be applied in the Lord Justice General's decision making on an individual trial. Will guidance be issued on those?

Malcolm Graham: I understand that there is a requirement for any such direction to be made public. As I said earlier, the rationale that the direction would contain would tend to support transparency, fairness and access to justice.

That question is more properly directed to the judiciary than the court service. I know that, in their submission on the bill, the senators of the College of Justice suggested a number of options that could be explored. However, I do not seek to speak on behalf of the judiciary; I am part of a separate body.

Pauline McNeill: That is fair enough. We will need to go back to them, then.

I was quite concerned about some of the evidence that was given to the committee last week. I can understand why people would want to give their evidence in the comfort of their own home, but there must be some limitations on all this modernisation. I do not see how you can control the environment if you extend the circumstances in which virtual proceedings are allowed.

Can you help me with that? As far as you are concerned, what requirements must be met for a witness to give their evidence virtually? Must it be given in a particular setting that you have prescribed? Should there be no one else in the room, as Sharon Dowey suggested? As far as I can see, the only way in which you could monitor that would be if the evidence had to be given in designated places. I would like to hear your view on that.

Malcolm Graham: I will offer a view, as I have the floor. I do not think that that has been fully thought through as part of the wider provisions. At the moment, the measures that we are talking about relate to police officers in facilities such as police stations or medical and other expert witnesses who provide evidence from a professional setting. Those experiences have been positive so far, but that is different from broadening out that facility more generally.

The circumstances for vulnerable witnesses are absolutely critical. The facilities that are used for remote attendance are provided either by the courts service, which provides evidence suites, or by one of the third sector victim support and advocacy organisations, which are well equipped and able to support witnesses and to provide a suitable environment where evidence can be given, either on commission in advance or via a live link in the circumstances that we are talking about here.

One point that I have not raised before is that some of the provisions that the bill will put in place that it is essential that we retain are also of intrinsic importance to what the Victims, Witnesses, and Justice Reform (Scotland) Bill says about how the proposed sexual offences court would operate. If we do not get some of these measures in place, we will not have the underpinning provisions that will enable us to take forward the other elements of the sexual offences court in future. I understand that that is a separate conversation, but it is worth flagging up.

Pauline McNeill: If that aspect has not been fully thought through, what needs to happen to make the arrangements robust?

Malcolm Graham: The elements that are proposed in the bill have been fully thought through, but the elements that you asked about in relation to all witnesses giving evidence in such a way have not necessarily been thought through. You rightly spoke about the practicalities of preserving the sanctity of the court and ensuring the integrity of the evidence. The work on what it would mean if people chose to give evidence from certain settings is still to come.

Laura Buchan: We regularly have witnesses giving evidence remotely, but not from their own homes. As Malcolm Graham indicated, they speak from places outwith the court building. That very much ties in with the on-going work on the Victims, Witnesses, and Justice Reform (Scotland) Bill to look at trauma-informed approaches, specifically in relation to victims of sexual offences.

I have only ever seen a civilian witness give evidence from their own home on one occasion. That person had significant health issues, so it was a case not of them attending court remotely but of the court, in effect, being set up in their home, with a bar officer there to ensure that the process was followed. That is not my understanding of what the bill proposes, which is a continuation of the flexibility that we currently have.

Pauline McNeill: We are not given much indication of where evidence could be given from. Let us imagine a murder trial, in which a lot is at stake and a witness's evidence could be crucial to the defence. In what conditions should a witness give such evidence? Would that be done in a designated space or could it be done in any old place?

Laura Buchan: Absolutely not. The court has control over that, so there would be a discussion.

Pauline McNeill: As a parliamentarian, I am asking you to persuade me to pass this particular provision. What can you tell me about the conditions? I would not be happy if I did not know that both the Crown and the courts system would have a specific place or a designated set of circumstances. Without that, how can I possibly be satisfied that a trial will be fair? Do you see what I mean?

Laura Buchan: My colleague wants to come in.

Dr Emma Forbes (Crown Office and Procurator Fiscal Service): At the moment, the Scottish Courts and Tribunals Service has its own remote evidence site. For example, when people give evidence by commission, they do that from a remote site.

Pauline McNeill: I know: I have seen that.

Dr Forbes: That site is run by the Scottish Courts and Tribunals Service.

Last week, the committee heard from Kate Wallace. Victim Support Scotland is in the middle of expanding its remote—

Pauline McNeill: Can I stop you? I know all that, but I am asking about something else. If the Lord Justice General, using the powers in the bill—because permission has to be granted—tells someone that they can give trial evidence remotely, is there a requirement for them to use those facilities? Do you see where I am coming from? Could someone say, “We’re not going to use those facilities,” and use others instead? People would have to take the oath and so on.

Dr Forbes: That is definitely a matter for the court.

The Convener: Can I come in there, in the interest of time? I know that this is an issue that you are very keen to drill down on, Pauline, but perhaps the witnesses could follow up with a written—

Pauline McNeill: I would like to get an answer, if that is all right. I need to be satisfied. I have seen the facilities and they are really impressive. Will you expect every witness who has been granted permission to give evidence virtually to use those facilities to give evidence? Do you see what I am saying? Is that a yes?

Laura Buchan: Ultimately, that is a matter for the court. That is why the Lord Justice General’s permission is required. However, from a prosecution perspective, our expectation would be that evidence would be given from one of those court suites or from one of the approved places.

Pauline McNeill: Right. I am happy. That is what I needed to hear.

Dr Forbes: We want to support the victims and witnesses who come to give evidence in trials that we cite, and we also want them to feel safe. That is about their physical safety and their emotional safety. Those suites and the capacity for evidence to be given remotely provide an opportunity for that. All the evidence that we have shows that Scottish courts’ witness muster areas are not places where victims and witnesses feel safe. That is not because there is no security or closed-circuit television; they do not feel emotionally safe, because the environment is very stressful for them. There is a lot of evidence on that. That is another reason why we think that the possibility of giving evidence remotely is helpful.

Pauline McNeill: I agree.

The Convener: Mr Kerr is going to pass, so I will bring in Ben Macpherson.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I have two questions to follow up on some of the points that have been raised by colleagues. First, it is important to note that the points that Sharon Dowey raised about police officer time also apply to expert witness time. It is important for us to keep in mind that other initiatives are on-going to have the Crown and the defence agree more evidence in advance to reduce the necessity for police officers and other witnesses to attend court.

I see nodding heads, so I presume that that is taken as read, but it is important to acknowledge that for our wider consideration and for the record.

Laura Buchan: As Richard Thomas indicated, a significant amount of work is being done by the Crown Office and Procurator Fiscal Service and Police Scotland on minimising the amount of time that police officers require to spend attending court, although that has been impacted by the current level of court business and the increase in the number of police witnesses that are required to attend.

The summary case management programme looks at front-loading disclosure so that evidence can be agreed very early in the process. That would mean not only that police witnesses would not have to attend court, but that the citation of police witnesses in the process would not be required at all. As we know from Police Scotland, scheduling police time, off duty, holiday duty and shifts is complex when we are looking at scheduling for court time, too.

If we can have a system in place in which citation is not required because police evidence is agreed at the outset, that whole process goes away. I know that, in the summary case management programme, we have seen success from that in the early resolution of cases and also

in a reduction in the number of citations for police witnesses and other witnesses.

Superintendent Thomas: I concur with that. The summary case management pilot was successful and is now being rolled out nationally. It was piloted in relation to domestic abuse cases, but it is applicable across the range of summary cases and potentially beyond that. That is all to do with agreeing evidence so that police officers do not have to attend court to give evidence, given the demands that exist and the lost opportunities elsewhere that have been highlighted.

Ben Macpherson: That is helpful. It is important to acknowledge the wider context and the work that is on-going.

We have seen the success of the pilot, and there seems to be consensus among the witnesses that the pilot has been positive and has had good outcomes, and that good progress is being made.

In relation to the bill that is in front of us, my colleague Liam Kerr emphasised the issue of finance, and Mr Graham and Superintendent Thomas made some points about practicalities. As well as finance and resourcing, I think that we need to think about time. It would be helpful for the committee to know, now or as a follow-up, whether you think that the commencement provisions in section 28 of the bill are appropriate. I asked last week's witnesses the same question. If you do not think that they are appropriate, what, in your view, would be a realistic commencement date that would enable all parties involved to ensure that they had worked through the practicalities, created the infrastructure and appropriately organised the facilities so that the bill could be implemented in the right way?

10:45

Superintendent Thomas: That is the big question that is hanging over everyone. My colleague Adam Brown will speak to part 2 of the bill, which is probably at a much earlier stage than part 1 in relation to the implications for practical application. Our concern, which is mentioned in our submission, is that we do not want another bill to be enacted that cannot be operationally supported until years later. The Domestic Abuse Protection (Scotland) Act 2021 is an example of that. It received royal assent in 2021 but it has yet to be fully implemented. Similarly, it took two years for the Age of Criminal Responsibility (Scotland) Act 2019 to be implemented after it was enacted. We really want to avoid that.

To answer your question, how long it will take very much depends on thinking through some of the questions that have been raised in the working group but also on securing the appropriate funding. That is my main concern about this really well-intentioned bill.

Ben Macpherson: As well as thinking about funding, my request to you is that you help us to think about time. You do not necessarily need to do this today, but, as we move forward in the bill process, it would be useful for the committee to know whether you can give a more definitive position on what a reasonable timeframe for commencement would be.

Malcolm Graham: That is a really reasonable question. As Richard Thomas has pointed out, the implementation challenges of different types of legislation might not apply here. As I said earlier, the vast majority of the proposals in the bill are already being used in one way or another, or to some extent.

The policy intent behind the bill is for it to be enabling, as opposed to there being a compulsion, in the vast majority of cases. Having those enabling provisions in place allows us to progressively realise where the benefits are, at the pace at which we can seek agreement, secure funding, rebuild the estate and do all the things that we have talked about already. My view is that the commencement arrangements are appropriate in that context and framework.

I go back to where I started. Some of the measures in the bill are absolutely essential for us to be able not only to continue with a more efficient justice system—I absolutely agree that some of the case management work has been and will be transformative—but to move forward with a more victim-centred and trauma-informed set of approaches and court processes. That links into other legislation, too, as I said earlier.

Laura Buchan: I simply echo what Malcolm Graham has indicated. The vast majority of the provisions are already in place. For example, electronic signatures are totally embedded in the work that we do, and the vast majority of the work between organisations is done electronically.

If the provisions are not extended on 1 December, I presume that there would be a period in which they would no longer be in place. Our concern is that a lot of work would have to be done to return to pre-Covid processes and that it would take some time to work back to where we are now. Although I accept Richard Thomas's position that work will need to be done to get the full benefit of the provisions, as they are drafted, the vast majority of them are currently workable and working well.

Ben Macpherson: Is there anything else that Richard Thomas or Emma Forbes would like to add?

Superintendent Thomas: I reiterate that I absolutely agree with my colleagues. I think that it is not reasonable for us to go back, once the temporary provisions stop; we want to continue to have the enabling opportunities around the bill, and we totally agree that that is the way forward. All the digitisation and IT processes that should be used should continue to be used and to be available. For us, it is simply a matter of having the wherewithal and the resources to support them.

The bill is written in a way that suggests that it is an enabling piece of legislation, but it also implies that the expectation is that this would be a default position. That is the bit that we are slightly concerned about. If that is the expectation on day 1, as things stand at the moment, we would really struggle to deliver that, and we would not want to disappoint anybody by being in that position.

Ben Macpherson: It sounds as though, rather than struggling to be able to deliver it, you would not be able to do so.

Malcolm Graham: Perhaps I can offer some reassurance. Broadly speaking, the bill is drafted in the same terms as those for the remote provision of evidence, as it is facilitated just now. There is no expectation on the part of the court that police officers, experts and medical witnesses will be compelled to provide their evidence remotely if they do not wish to. It is a facility that, if the court can be assured that it can be properly done, can be enabled for the advantage—in the main, as I said earlier—of the witnesses giving evidence, as well as preserving the sanctity, transparency and fairness of the court process.

Ben Macpherson: Thank you very much, all of you. That was really helpful for our evidence taking.

The Convener: I still have a couple of members who are keen to come in on part 1 of the bill, and then we will move on to part 2. I call Katy Clark, to be followed by Fulton MacGregor.

Katy Clark (West Scotland) (Lab): My questions, which are perhaps best directed at Laura Buchan or Emma Forbes, focus on the right to a fair trial and on ensuring that we prevent miscarriages of justice.

I believe that some of the early pilots required agreement from both sides for virtual attendance, but I do not believe that that is what is being proposed here. We know that a lot of professional evidence is disputed, and we know, too, that the courts have not always accepted police evidence. We really should have a system in which, for example, early pleas are encouraged and cases are fully prepared to enable that to happen. Moreover, if witnesses are expected to go through a trial to which there is a guilty outcome, the inconvenience to them of having to travel what are sometimes very considerable distances should be taken into account in sentencing. Do you see advantages in, say, police giving evidence in person to ensure that that evidence is tested? In what kinds of scenarios do you think that evidence should be given in person?

Laura Buchan: It is a balance that, as a prosecutor, you have to weigh up when you look at the evidence. As we have said, and as you quite properly note, it is not the expectation that all police witnesses will come, and the same will apply to professional witnesses. However, in cases in which medical evidence is being submitted for both the Crown and the defence, and there is a dispute over what that evidence says, you might wish the professional witnesses to attend court, and the defence might request that they do so. There will still be a process in which we look at the evidence of witnesses and either party can say, "I want this witness to attend court, because this is something that should be discussed before it." Ultimately, the sheriff or judge will determine the matter if the parties cannot agree.

However, there are regular discussions between the Crown and the defence, as a result of which, if we are talking about procedural evidence from police witnesses that is not disputed, one might argue that that should already have been agreed. However, if there is evidence that is required to be taken, and the defence does not have an issue with it, that evidence can be given virtually or remotely. There will be police witnesses about whom the defence agent will say, "I do not agree with what they have said", or "My accused has a different version of events to the version put forward by the police", and they will request that that witness come to court.

Katy Clark: What test will be applied by the court when the defence objects?

Laura Buchan: The court will listen to the position. In the vast majority of cases, such witnesses will not appear before the court, because there will be an agreement between the defence and the Crown. They would appear only if the Crown said, for example, that a police officer, for a health reason, wanted to give evidence from a police station, and the defence said that it needed them to appear in court. That might be a matter that we would air before the court. We would explain how we could satisfy the court that the necessary protection would be there by virtue of the evidence being given in a police station, and the defence would explain why it wanted the officer to give evidence in court.

Katy Clark: Is it your understanding that, when the defence objects, it would normally be the case that evidence would be given in person, and that it

would not be the default for evidence to be given virtually?

Laura Buchan: I think that the bill is set up in such a way as to ensure that it will not continue to be the case that all witnesses must come to court all the time.

Katy Clark: Yes, but we must look at what is in the bill and the black letter of the law. That is not clear in the bill, is it?

Laura Buchan: From my reading of the bill, I understand that the defence will still have the opportunity to say that it wants a witness to come to court and for the court to determine whether they should. The court will not be presented with an arrangement whereby the witnesses will definitely give evidence in a particular way. If the defence wished its witnesses to give evidence remotely and we disagreed, we would want to have the opportunity to address the court on why we wanted those witnesses to come to court.

Katy Clark: I presume that the test that the court would apply would be whether it would be in the interests of justice for a witness to give evidence remotely or in court.

Laura Buchan: Yes.

Katy Clark: There is no further test. Are there no other criteria set out in the bill?

Laura Buchan: I am not aware that there are any other criteria on how such consideration would be undertaken.

Katy Clark: Thank you.

The Convener: I apologise—I was distracted. Fulton MacGregor is next.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. The committee has had a really good discussion on virtual attendance—we have got a lot out of that.

I want to move on to the fiscal fines provision in the bill. My questions are probably for the three legal representatives, but the police representatives are free to come in. You will know that the bill proposes to make permanent the temporary provisions on a higher maximum level of fiscal fine—£500 as opposed to £300. How is the higher level of fines being used at the moment? What would happen if the current temporary measures were not made permanent? Do you have any concerns about that?

Laura Buchan: The rationale for prosecutors having the power to use direct measures such as fiscal fines is that it delivers a swift and proportionate response to the alleged offending. The increase in the level of fiscal fine that is laid out in the provisions is broadly in line with inflation over the years and allows deputes to offer a range of fiscal fines for a particular type of offending.

The committee has been written to regularly in relation to the use of fiscal fines, but I have some further updates, specifically in relation to the higher band of fiscal fine. I reassure the committee that the power in question is not one that deputes have been using regularly. The issuing of higher fiscal fines is not done regularly. Since the implementation of the revised scale, 2 per cent of individuals who have been offered a fiscal fine, and less than 0.5 per cent of individuals who have been offered a combined offer, have been issued with a fine of between £300 and £500. Only a very small proportion of individuals who are reported to us are given that level of fiscal fine or are offered that amount as a combined offer.

We would like to see that provision continue. From the justice of the peace court disposal data, we can see that about 4 per cent of cases in the justice of the peace court are disposed of by way of a fine of between £300 and £500. If we can identify such cases at an earlier stage and issue a fiscal fine, that removes those cases from the court process while, ultimately, providing the same outcome.

To reassure the committee, I note that the police report those cases to us. A prosecutor has a broad range of disposals open to them when they are considering the circumstances of a case, and they do not have to offer a fiscal fine; they can determine that certain cases should go to court.

11:00

Fulton MacGregor: That has been helpful. You have been quite clear in your view on the temporary provisions being made permanent.

In relation to fiscal fines more generally, you probably heard the evidence session last week, when we heard concerns that there are times when fiscal fines can be used inappropriately. One of the examples given was when the same individual has had multiple fines and has not paid them. Is there anything that you would like to say on the appropriate use of fiscal fines?

I will combine my questions, in the interest of time. Will you also comment on what information victims are given when a case has been dealt with by way of a fiscal fine?

Laura Buchan: I heard last week's evidence. We would need more examples of where there is a feeling that fiscal fines have been used inappropriately. There is a robust process in relation to the consideration of cases. All our cases are reported, and the vast majority are dealt with by a national initial case processing team.

There are specialist case prosecutors who deal with marking cases every day.

We have guidance around the type of cases for which fiscal fines should be considered. Part of that will involve consideration of previous convictions and whether people have been previously offered fiscal fines. I do not know whether any of you heard it, but, at the end of last year, the Lord Advocate gave a statement to the Parliament about the pressure on the prison population. Part of that statement was around deputies and prosecutors thinking about what alternatives to prosecution could be offered to offenders. We know and hear from our criminal justice and community justice partners that, just because somebody has failed on a number of occasions to take the offer of diversion, intervention or assistance, if they are offered it another time, they might take that intervention. We have to take all that into consideration.

If somebody does not pay a fiscal fine, we can prosecute them, so that is not the end of the matter. There is an opportunity for them to accept responsibility and pay a fine, which negates the requirement for them to come to court. That saves time in relation to victims having to attend court to give evidence, and it is a far swifter and more proportionate response than having to cite people for what can be quite a lengthy court process in what would ordinarily be a justice of peace court.

Fulton MacGregor: Will you comment on the point about victims?

Laura Buchan: Whether they would be updated on the outcome if a fiscal fine had been offered would depend on what type of offence had been reported. If they contacted us, we would inform them that a fiscal fine had been offered.

Fulton MacGregor: Thanks.

The Convener: I have two final requests to ask brief questions, to which, I hope, we will get succinct answers. I will bring in Liam Kerr and then Pauline McNeill.

Liam Kerr: Malcolm Graham, I will ask about a matter that Ben Macpherson raised. The bill does not look to address the temporary provisions that extend some time limits in solemn cases—provisions that are due to expire in November. Will the system be on track to deal with the pre-Covid time limits by November?

Malcolm Graham: The short answer is no. When I was before the committee at the tail end of last year, I expressed great concern about the level of business that is likely to come, particularly into the High Court, and about the Crown's projections set against the capacity that the system—of which SCTS is just one part—will have to deal with.

There is a substantive volume of cases that will need to be dealt with. The issue of the time bar is, I understand, under active consideration. Laura Buchan might be in a better place to answer on that.

From an SCTS perspective, in relation to court scheduling, we have made great progress with summary cases, and we have made very good progress in reducing the overall volumes and journey times of solemn cases in the sheriff court. However, at the moment, the volume of cases coming into the High Court, set against the capacity that we have to deal with it, is running at a sustainable level. We predict that the number of indictments coming into the High Court will increase, and the likelihood is that the journey time of those cases will increase and that the number of active cases in the system will increase significantly during the year.

Liam Kerr: I will bring in Laura Buchan to comment, although Malcolm Graham might want to come back in, too. What is to be done, in that case?

Laura Buchan: Thank you for raising the issue. We are in discussions with our colleagues in the Scottish Government about that in relation to solemn cases. As Malcolm Graham indicated, there has been significant process on summary cases. There is still a significant number of solemn cases, which is partly because of the Covid pandemic but also partly because of the recent increase in the number of significant serious offences, including serious sexual offences. That pattern has continued over the past five years. There has been much planning, and we have done a significant amount of work with other criminal justice partners to reduce the case load.

We are not suggesting that, from 1 December, the cases that call when those provisions expire should not revert to the time bars that were in place before Covid. We are talking about the cases that are in the system now and those that are calling today. We would like clarity about the time bars that will be in place for those.

As Malcolm Graham highlighted, the High Court and the solemn courts are currently working at capacity on cases that are already there. As for the cases that are currently in our system, both in the High Court and in sheriff and jury, if we want to ensure that they do not time bar on 30 November, we will have to almost double the number of cases that we indict into the High Court each month from February to October. That will remove the risk of their being time barred, but it will also simply move the case load into a system that is already working at capacity. As Kate Wallace highlighted in her evidence last week, it will not mean that cases are dealt with more quickly. It will inevitably lead to delay as pressure is put on various parts of the

system, including SCTS and the Scottish Prison Service, given the amount of work that is there. We are working on planning, and we are having discussions with the Scottish Government on providing extensions for cases that are already in the system, so that we can manage that case load.

The other consequence will be that, as we move towards the end of the year, resource will need to be redeployed from trial courts to daily extension courts, where we will have to make applications to extend the time bars. The court will require to have a judge or a sheriff, and defence agents will require to be there to argue against such extensions, all of which will simply move resource away from the trials that are required to run.

I heard the evidence that was given last week about the concerns of the Law Society of Scotland and members of the defence bar. We would welcome a discussion with them. We will speak to the Law Society so that we can set out the impacts across the criminal justice system, including those for the accused and for defence agents.

Liam Kerr: Do you want to come back in, Malcolm?

Malcolm Graham: I do not disagree with anything that Laura Buchan has said. However, I see a slightly more optimistic picture for the longer term.

You asked what is to be done. I hope that, to some extent, this will be a transitional issue as we move towards the creation of a sexual offences court, as proposed in the Victims, Witnesses, and Justice Reform (Scotland) Bill, which I referred to earlier. It is hoped that that could be the solution to enable us to deal with the sustained increase in the number of serious sexual offences, which continues to grow. Through a series of policy interventions and legislative changes, as well as culture and practice changes across all the justice organisations, there is a trend towards redress for the past, together with greater identification of current crimes. We can predict now that that trend will continue. It is a good thing for society, but it puts pressure on the system. Without pre-empting the will of the Parliament on the proposal for a sexual offences court, we have to deal with the existing increase in the number of sexual offences cases, which, given their nature, tend not to be resolved prior to trial.

We have put other measures in place—for good reasons, which we support—that take up additional resource. They include dealing with vulnerable witnesses and taking evidence on commission, the processes for which use judicial time. Those are all positive measures, but the size of the system that deals with them needs to be recognised.

When I was before the committee at the tail end of last year, I said that, if there were to be budget changes across justice organisations, they needed to be done through the Government recognising balance in the system. The Crown Office has received an uplift to its budget, which, at least in part, should facilitate the work that Laura Buchan alluded to. The SCTS and other parts of the system did not receive uplifts, so there is not capacity to develop the High Court system in the short term. However, I have great hope and ambition about the prospect of having the sexual offences court that is proposed in the other bill that I mentioned.

Liam Kerr: That is very interesting. I am grateful to you.

The Convener: We will have a brief question from Pauline McNeill, after which we will have to move on to consideration of part 2 of the bill.

Pauline McNeill: My question is about national jurisdiction, which we have not yet covered. I will do my best to be brief.

Through my line of questioning last week, I established that the national jurisdiction question is quite separate from that of virtual custody. Initially, I thought that that would make sense if we are aiming to deal with custody courts. However, on my second reading of the explanatory notes, I thought that there was a bit more to that aspect.

Section 7 of the bill, which would insert new section 5B into the Criminal Procedure (Scotland) Act 1995, says that the Lord Advocate will decide the jurisdiction, which is quite different from the established legal principles in Scotland, and that sheriffs can sit in any sheriffdom. I would like you to help me with subsections (6) and (7) of proposed new section 5B, which seem to me to go further than the current rules. I will read out the explanatory notes on those subsections. Subsection (6) allows the continuing jurisdiction to go on

"until the conclusion of proceedings",

unless they

"come to an early end".

On petition cases, which I am particularly interested in, the notes say:

> "Subsection (7) means that a court which began dealing with a case at the petition stage can continue dealing with it ... In practice, because jurisdiction under subsection (5) ends with an accused being fully committed for trial".

I presume that the Crown Office had input into the drafting of those provisions. I am trying to understand why you would want to go further than the current rules, because that would seem to involve a lot of additional change. Sheriffs can already sit in any sheriffdom. Unless it could be

challenged, the Lord Advocate would decide on jurisdiction anywhere in Scotland, but those rules will go beyond the custody courts.

At last week's meeting, I put that question to the witness from the Scottish Solicitors Bar Association because, in all honesty, I was struggling to understand the provisions. He confirmed that the association has a bit of a concern about them, too. Could you possibly speak to those provisions?

Laura Buchan: I will try to cover that. First, it is not a new principle that the Lord Advocate determines jurisdiction. It is a long-standing principle that prosecutors will want to decide that. For example, when there are multiple cases and there is a potential cross-over, we already do that.

We saw that question being raised in last week's evidence session with the bar associations. My colleague and I discussed it and agreed that we could probably do further work in discussion with the Scottish Government about the use of the word "may". The reality is that we almost always want to prosecute in the jurisdiction in which the crime was committed. That makes sense if witnesses and the accused are there. I suspect that the word "may" is in the bill to allow flexibility if there is an occasion when a solemn case might require to stay outwith the jurisdiction. The only example that I can think of is one for which we already have provision. If a sheriff or a fiscal attached to a certain court were to be the victim of an offence in that area, we could transfer the case to another jurisdiction to ensure that it was dealt with fairly. There is already provision for that to be done.

However, I agree that we could do further work, in discussion with the Scottish Government, to clarify when it is intended that the provisions will be used. Such a case could call on petition in any court, but then we would almost always look for it to be transferred to the court where the case would be prepared.

Malcolm, do you have any views on that part of the bill?

Malcolm Graham: Yes. I am hugely supportive of it. As the system currently stands, the provision is used to good effect when, for example, there is transport disruption, severe weather or another public health emergency.

An arrangement has also been put in place, under the current provisions, for people who are being transported on warrants from England and Wales to appear at Dumfries as opposed to being taken to Inverness or Aberdeen, which might have been the jurisdiction of their offence, when they are not going to be held in custody. That is really a human rights issue, and all sorts of practical but also human rights decisions are being made in using the national jurisdiction.

In the main, the benefit from the SCTS perspective, as is outlined in our written submission, is around custody cases and the flexibility for those.

11:15

Pauline McNeill: I agree with that, but I am also concerned about those provisions. To be honest, it looks like a case of "We'll take all these powers just in case we need them." Your assurances are really helpful, but, as Katy Clark said earlier, we must deal with the black letter of the law, and, as it stands, I am not entirely comfortable with a subsection that says that only one person decides the jurisdiction and that the case can be taken in any court. I would want reassurances that pleadings could be made to apply the common sense that we have had all along, on the grounds of special reasons. The bill really opens up that power.

The Convener: Thank you very much. We will move on to part 2 of the bill. I will bring in Detective Superintendent Adam Brown initially, and then I will go to Emma Forbes—they have both been waiting patiently. My question is really the same as my introductory question on part 1. The bill sets out a framework for a system of domestic homicide and suicide reviews. I am interested in your general comments on that provision—what is welcome, and do you have any issues or concerns?

Detective Superintendent Adam Brown (Police Scotland): Good morning, and thank you.

Broadly, we are very supportive of the principles in the bill and the introduction of a model that deals with learning across agencies when domestic abuse has resulted in a death. We are committed to helping to develop the model, and our head of public protection sits on the task force—we are sitting in the task and finish groups in relation to that development. We are embracing that process.

We are keen—as, I am sure, all our partners are—that the model, when it lands, is robust and fit for purpose and that it encompasses the principles of being person centred and trauma informed. We are also keen that, at the point of implementation, we are well prepared in terms of our readiness, our processes, our resourcing, our guidance and our systems. Earlier, my colleague Richard Thomas mentioned some recent examples of something having been implemented that, years later, we are still waiting to bear fruit. Given the potential scope of the deaths that could be considered for review and that the definition of a "reviewable death" might expand in the future,

as per the provisions in the bill, there are observations that that state of readiness might be a challenge, given the potential timescales.

In respect of domestic abuse-related suicides, as a notifying body, we would welcome a clear understanding of expectations in relation to the question whether there is a demonstrable link between domestic abuse and a subsequent death. Currently, the proposal includes deaths in which domestic abuse might be a contributing factor. The explanatory notes speak about causality, but it is not particularly clearly defined, which creates a very wide scope with regard to the deaths that could be considered subject to review under the model.

The impact on the Police Scotland budget and resources could therefore be significant. It could create challenges in the ability to participate appropriately in reviews without impacting service delivery elsewhere. As Richard rightly pointed out, we are at an early stage in the development of the model and exactly what it will look like, so it is even less possible to be prescriptive around costs, resources and demands.

The financial memorandum that accompanies the bill is silent on the anticipated financial impact on the police budget. Although development of the model is very much on-going, we would welcome further consideration of how the provisions for the model will be appropriately funded and capable of being given operational effect within the expected timescales.

The Convener: Thank you. I will go straight to Emma Forbes for some general comments.

Dr Forbes: Like our colleagues in the police, the Crown Office and Procurator Fiscal Service supports the introduction of domestic homicide and suicide reviews and the placing of those on a statutory footing. However, I ask the committee to remember first principles in relation to why we want to introduce those. We are working from the premise that we can learn from horrific, tragic circumstances to prevent them from happening again and that we can do so in a way that is unbiased, blame free and victim centred.

In Scotland, we have a unique definition of domestic abuse that is different from the definition in any other country or jurisdiction worldwide, and I fear that part 2 of the bill borrows too much from other jurisdictions when we should be setting our own path. The Domestic Abuse (Scotland) Act 2018 defines domestic abuse as taking place between partners or ex-partners and the children of that relationship who are affected by that abuse. It is a clear definition and it recognises the dynamics of intimate partner abuse in quite a brave way, because no other jurisdiction in the world defines it in quite the same way.

The definition of domestic homicide in the bill is much wider than that, but what is of greater concern is that it gives the Scottish Government the opportunity to extend it further at a later date. We are really concerned about that, because the definition is also in our joint protocol with Police Scotland for all our operational investigation and prosecution of domestic abuse. It is the foundation of the equally safe policy—your own Government policy. We are concerned about having inconsistent Government policy and inconsistent definitions. It really matters that, when we talk about domestic abuse, we are all talking about the same thing, and in Scotland we recognise that that is intimate partner abuse.

Not for a minute does the Crown suggest that that means that those other deaths should not be investigated. The Lord Advocate is responsible for the investigation of all sudden and suspicious deaths and will consider whether there should be a fatal accident inquiry or a criminal prosecution. We have a charter for bereaved families that sets out the Lord Advocate's commitments to bereaved families. If somebody dies in tragic circumstances, the individual death will still be investigated. However, in the case of domestic homicides, we want to learn how we can prevent predominantly women and children from dying in their own homes in a domestic relationship. I fear that the bill goes further than that and dilutes the approach.

If we look to England and Wales, which is what the drafters of the bill have done, we can see the evidence of how the law operates there, and we see that just under half of their domestic homicide and suicide reviews relate to intimate partner relationships. Many of those cases relate to extended family, such as other children staying in the household and adult children. Less than half of those cases relate to what we mean by the term "domestic abuse" in Scotland. That is a large number, and we have just heard from the police about the impact of such a large number and how we could possibly do justice.

Therefore, in considering how we would finance this approach, we have to think that, if we want to be trauma informed and to do justice to those families, deal sensitively with them and pay tribute to the memory of those they have lost, the budgeting should not be only about how much it costs to run the reviews and, for us as organisations, conducting review panels and investigations; it should be about what we do with the learning afterwards. The budgeting must also be for a proper infrastructure that means that we learn from those cases and listen to the feedback. Unless we can afford to do that properly, we should not be doing it at all.

We completely agree in principle with having domestic homicide and suicide reviews, but we ask that the globally recognised gold standard of the approach to domestic abuse in Scotland be respected and that the definitions in the bill be tightened.

The Convener: Other members are interested in your points about definitions, but you also spoke about the review process. The bill proposes two tiers, if you like, of process in that the review oversight committee would make the initial assessment and judgment, I presume, about which cases would then go to a case review panel. That sounds relevant, given the potentially expanded number of cases that might fit within that provision. I am interested in hearing your thoughts on the proposal to have an arrangement in which there is an oversight committee and a review panel.

Dr Forbes: You are fortunate to be hearing from Professor John Devaney after us, on the second panel. On the basis of previous research, he suggested that there should be an oversight committee, and we welcome that, because the independence of such committees is key.

One of the key lessons from England and Wales is that it is very difficult for review panels to remain independent. In England and Wales, reviews are done from police force to police force whereas, in Scotland, we have one police force and one prosecution service. We are a small nation. If we are being realistic, we know that the same kent faces will be on each review panel; therefore, having independent chairs and an independent oversight committee is fundamental. It ensures community, collegiate learning that is not blame based or biased and that helps us to learn for the next time.

However, that alone is not enough of a safeguard against the broadness of the definitions in the bill. We are concerned about the lack of definition of what is meant by a domestic suicide. We are supportive of the definitions being included, but we would like some clarity on the causation. Prosecutors want to be satisfied that there is a causal link, mainly because domestic abuse is a continuing offence; in almost all cases, it is not one discrete incident. If suicide is going to be included, that should be because it is part of the course of abusive conduct. In many cases, it is, and we can establish that, so those incidents should be included in the review. The parameters are important.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. Emma, you have answered most of the questions that I was going to ask you, but, given your vast experience in domestic abuse crimes and your commitment to that subject, I want to clarify some things. I heard and understood what you said about the bill being widened to extend the definition. Do you think that, as it stands, the bill dilutes the Domestic Abuse (Scotland) Act 2018?

Dr Forbes: That is what we are worried about. I appreciate that there is provision in the bill for the Government to extend the definition and that it is the intention that the definition will eventually include near misses—which is a separate concern of the Crown because of the vast number of those and the dilution of the intention. Right now, if somebody is murdered in a domestic relationship or if an attempt is made on their life in a domestic situation, a different definition will apply as to whether that is domestic abuse. We need to use the same definition. It should not matter whether someone lives or dies; there should be one definition that everybody understands. It is about access to justice, transparency, fairness and everything else that we have been talking about this morning.

Rona Mackay: You put that very powerfully. We are running out of time, but I will ask another quick question. Section 25 of the bill proposes that the Scottish Government should issue written guidance on how review bodies should carry out their functions. What do you think of that, and do you have any views on what should be included in that guidance?

Dr Forbes: We think that that is helpful, and we hope that it will give some direction to the make-up of the review panels, the independence of chairs and the independence of the oversight committee. However, we do not want to have to rely on that. We would like to see the rest of the bill more tightly drafted.

Rona Mackay: Laura Buchan, do you want to comment on any of that?

Laura Buchan: No, thank you.

The Convener: Okay. I will flip the question on the scope of the review around a wee bit and ask whether there are relationships that are not included that you think should be. Based on what you have said already, I suspect that the answer is no, but it is worth asking the question.

11:30

Dr Forbes: If the committee feels that other relationships should be included, it would be appropriate to consider whether the definition in the 2018 act and our current policy is adequate and, if it is not, to seek to change it rather than to have two definitions and a muddled understanding.

The Scottish Law Commission is currently looking at civil remedies for domestic abuse. I

have been part of the advisory panel on that, and we have discussed the importance of having a common definition. It is one of the matters that the panel is consulting on. We are keen to ensure that there is a common understanding.

The Convener: Thank you. Ben Macpherson has a question.

Ben Macpherson: My question is on part 1, and concerns digital productions, which we did not get to earlier.

At last week's meeting, we discussed with witnesses whether, in situations in which an image is used in evidence instead of a physical item, that item will be retained to allow the defence to access it and whether it would be retained until the case is concluded and any appeal is dealt with. Do you have a view on that matter?

Superintendent Thomas: I saw that the committee had had that discussion, and it raised a few questions, which I spoke to Laura Buchan about earlier.

One question involves a situation in which, to use the classic example, a knife has been used in a crime and it is decided that a digital image is the best evidence for use in court, but the defence agent might want to forensically examine the original article. The knife could be kept until the end of the trial and, potentially, the appeal process, but the concern that that would arouse is that it would defeat the object of having the item digitally captured, because of all that retaining a physical production entails in relation to time, storage and everything else. It could be facilitated, and probably would be, so, in cases where a digital item was produced in court, the original would still be retained for a period of time. However, that would clearly raise questions around whether the existing processes and procedures would need to be reviewed.

Nevertheless, there are benefits to having digital productions. We retain a huge number of physical productions that will never come to court or see the light of day, and there would still be the opportunity to digitise those in the event that they are required, which would free up an awful lot of storage space.

It raised a wry smile when I heard the suggestion that we should just keep the items. On balance, the ability to dispense of an awful lot of stuff that we keep that we do not really need would be beneficial. I hope that that answers the question.

Ben Macpherson: It is helpful feedback.

Laura Buchan: I appreciate that we are pressed for time, but I would like to quickly add one point. To go back to previous discussions, I point out that the bill contains protections that allow the presumption to be overruled, so, if the Crown or the defence say that they want a certain physical product in court, it would be available. Of course, there would be the opportunity for the defence to examine an item, forensically or otherwise.

If the police go into a house and seize 25 knives, the defence might be content with digital evidence, taking the view that pictures of all the knives are more than sufficient for court, which would enable an agreement to be reached that the knives do not require to be produced. However, the situation might be different in a case in which a knife has been used in an assault. In such a case, the Crown might want that physical evidence to be produced in court, and, ultimately, the matter would be up to the court to decide.

Superintendent Thomas: That is a good example of the kind of question that remains unanswered at this point. In principle, there is real support for the idea of digitising evidence, but there are still questions about practicality in such instances.

Ben Macpherson: You are obviously far more experienced in those matters than I am but, based on what you have said and what we heard last week, I wonder whether there is a compromise position. For example, could there be an opportunity for defence solicitors to examine the item or to make a decision within three months of the date of charge, before the physical item is destroyed and photographs are used instead? Do we need to give further consideration to that?

Superintendent Thomas: The answer is probably that there is more work to be done.

The Convener: I am aware that we have run over our time a little, but it has been important to let this part of the meeting run.

I have a couple of final questions about part 2 of the bill, which would allow reviews to be carried out in parallel with other proceedings, namely criminal ones. However, the Lord Advocate would have the power to pause or end a review process to prevent other proceedings from being prejudiced. I am interested in hearing the views of Laura Buchan and Emma Forbes on that provision.

Dr Forbes: We welcome that provision. We have been supportive of the concept of having the domestic homicide and suicide reviews and are keen to support those. However, there will be occasions when an on-going fatal accident inquiry or criminal prosecution might be prejudiced by having a review running in tandem and therefore there might be occasions when the Lord Advocate would have to use that power, which we would welcome.

Laura Buchan: We have child death reviews, which can come with similar issues. There may be a criminal prosecution or other investigations and there are protocols about evidence sharing. There is also an understanding that there are situations in which reviews might have to be paused to allow those procedures to take place, so we have a good grounding for knowing how that would work in practice.

The Convener: That is a helpful clarification.

I have a final question for Detective Superintendent Brown. The police submission seems to raise some concern about section 20, which will place a duty on the chief constable to co-operate with the review process. Would you care to share a wee bit more on that particular point?

Detective Superintendent Brown: I would not say that there is concern about having a duty to co-operate, to partake in reviews or to share any information that is required of us as part of a review. The concerns relate more to what that participation and that duty to share information would look like.

You spoke earlier about there being two tiers, but I would say that there is a third tier, which is the preceding notification process. Some of the concerns relate to the potential demand, as well as to what we put in place to implement the process, including guidance and training.

I have reviewed the financial memorandum and, without being able to be forensic about it, I think that the number of deaths that might be classed as reviewable has probably been underestimated. Our concerns relate to how we deal with those challenges.

The Convener: Liam Kerr has a quick follow-up question before we finish.

Liam Kerr: The question is for Emma Forbes, so that I can fully understand what she said earlier. I think that your concern is that the definitions in section 9 are different from those in the 2018 act—you mentioned something about their amending the 2018 act. However, this is the bill that we have before us. Are you telling the committee that we should at least consider porting the definitions from the 2018 act into the bill to ensure consistency?

Dr Forbes: Yes, that is what we would like. The 2018 act defines domestic abuse as abuse between partners or ex-partners and section 5 of that act includes children of the relationship who are affected by the abuse. That is the definition that is employed in Scotland, and the 2018 act is recognised as the gold standard worldwide, because it recognises the unique dynamic of offending between partners and ex-partners in that intimate relationship.

It is difficult. When you read the bill, you see that other people might, of course, be affected by the domestic abuse—that is not to be refuted. It reminds us of the ripple effect of domestic abuse and the fact that it can affect so many different people, such as friends, family and people visiting the house—the example that is given in the explanatory notes is that of children on a play date. It will affect young women's decisions about whether to go on a date and whether they do or do not feel safe. It affects the whole of society; it really does have a ripple effect.

We will investigate and prosecute on any occasion when criminality affects such individuals, and we will investigate when there has been a death. However, the fact that they have been affected by domestic abuse does not mean that they should be included in the definition of it. The definition in Scotland is tight—indeed, other jurisdictions look to us and say that we have been brave in recognising that there is a unique dynamic between couples in a relationship. The 2018 act privileges that, and I fear that the bill might dilute Scotland's whole approach.

Liam Kerr: I understand. Thank you.

The Convener: We have massively run over time, but I hope that it has been worth while. Thank you all for your attendance. We will have a short suspension for a changeover of witnesses.

11:42

Meeting suspended.

11:50

On resuming—

The Convener: Welcome back, everyone. We now move on to our second panel of witnesses. I am pleased to welcome Professor John Devaney from the University of Edinburgh; Professor Neil Websdale, director of the family violence centre at Arizona State University, who is joining us remotely—a warm welcome to you, Professor Websdale; I hope that you can hear us loud and clear—and Dr Grace Boughton, criminologist. Thank you all for attending today's meeting. I apologise for the slight overrunning of the first panel.

I thank Professor Devaney and Dr Boughton for their submissions, which have been circulated ahead of today's meeting. I particularly thank Dr Boughton, as she has travelled from England to join us this morning. As I said, Professor Websdale is joining us from Arizona, where it is maybe 4 am or 5 am—if he disappears for another cup of strong coffee, we will understand why. Thank you all for coming.

I will allow up to 75 minutes for questions. Before we start, I propose to members that, in order to allow enough time for this session, if required, we will defer our private session, which is a review of today's evidence. We will see how the timing goes.

I start with a general opening question on part 2 of the bill, which sets out a framework for a system of domestic homicide and suicide reviews. I hope that John Devaney and Grace Boughton were able to listen to some of the evidence that we took earlier on part 2. I will come to John first, followed by Grace; then I will bring in Neil Websdale.

What are your general views on the principle in part 2 of having a statutory system of reviews in this area?

Professor John Devaney (University of Edinburgh): Thank you, convener, for the opportunity to come along today and to address the committee. Certainly, there are many benefits to having a statutory review system for such matters. One is that the bill creates a legal framework in which there is clarity for individuals and agencies that might contribute to a review, but also for the families of victims. It allows them to have confidence that the review is an important matter to be taken forward.

There are certainly lots of mechanisms in Scotland for looking at culpability and reviewing such matters through the criminal justice system and professional regulatory bodies, but what is being proposed is a system that will help services and organisations to reflect on the learning that might arise whenever these terrible tragedies happen.

In Scotland, there are relatively few such tragedies at this moment in time, but when we look back 30 or 40 years, we see that there were many more. It is a credit to Scotland that processes such as the equally safe strategy and its various iterations have been put in place to think about a suite of ways in which we can understand not only the issues but the services and responses that we want to use to reduce deaths, while also ensuring that we provide support to those who are victimised, as adults and as children. Learning reviews are a crucial instrument in all of that.

In those jurisdictions where such mechanisms have been put in place—Neil Websdale can probably speak to the fact that there are not many of them internationally—they give services an opportunity to do their own reflection alongside sharing that with other agencies and services, by way of having a much more joined-up approach to how we address the issue.

The Convener: Thank you. I might come back in a moment with a question on learning lessons. Grace Boughton is next.

Dr Grace Boughton: I thank the committee for having me. I am in full support of the Scottish Government and the Scottish Parliament going forward with domestic homicide and suicide-related reviews. First and foremost, it is really important to have that legislative footing. As you are aware from the wider remit of the bill, there is a lot going on in criminal justice and in other areas of work. Putting such reviews on a legislative footing means that they have to be done and makes agencies' involvement in the process mandatory.

Although that statutory footing is important, I highlight the importance of the minutiae of the reviews—how they will be conducted, who will be involved and what approaches will be taken—because, ultimately, that is what will contribute to the recommendations and the lessons learned. That is why such reviews are in existence across other parts of the United Kingdom and elsewhere. The purpose is to learn from such cases, with a view to—we hope—reducing the number of homicides, and of suicides, the inclusion of which in the future scope of the reviews I can expand on later.

The Convener: Thank you. I will bring in Professor Neil Websdale. I hope that you can hear us okay. We are interested in your initial thoughts on the proposals on the domestic homicide and suicide review process.

Professor Neil Websdale (Arizona State University): Thank you very much for inviting me and involving me in this process. I have had the pleasure of working with some of the folks who have put this together. I am impressed by the level of detail and the comprehensiveness of the discussion.

I, too, am in favour of the bill, although I recognise, as our friends from the law enforcement community have said and as Emma Forbes has mentioned, that there are some definitional issues that are perhaps challenging, both from a practical point of view and from the point of view of the fiscal implications.

Broadly speaking, such homicide reviews and suicide reviews have been undertaken in functional democracies. The process started in the United States in the 1990s and spread to Canada, Australia, New Zealand, the UK and a number of other functional democracies. It is very important to keep the big picture in mind.

In Scotland, the question of the definition of an intimate partner is of key significance, but we must also recognise the complexity of such relationships and how challenging they are in that respect. Over the past 30 years, one thing that has impressed me in doing such reviews and serving on teams is how the reviews, if they are done well,

get at the complexities of the relationships and the compromises that victims and perpetrators sometimes face in their lives as they move towards making such decisions.

I favour a broad-based, wide-angle lens approach. I favour using a large number of witnesses, but I also understand the fiscal and practical complexities of that. I am broadly in favour of the process if it is done well, but I have seen a lot of international situations in which it is not necessarily done well. I admire the careful approach that the committee is taking, which I think is very wise.

The Convener: Thank you very much, Neil. Those were helpful opening comments.

I want to link the point about learning lessons with the question of what the experience of other jurisdictions has been. First, I will go to John Devaney and then I will jump back to Neil Websdale. Are there similar review systems in other jurisdictions that could inform our approach to considering the process of learning lessons from reviews? Do you think that the bill reflects what is necessary in that space—if that makes any sense?

12:00

Professor Devaney: That is a really good question. I have been fortunate to have been involved in developments and discussions over the past 18 months. When I became involved, I raised the danger of developing a system in which we think of the review as a stand-alone process that is only about getting people together, analysing information and writing a report, and of thinking that the learning will automatically flow from that process. When we talk to people such as Neil Websdale and others internationally who have been involved in this work for much longer—and we have looked internationally and at the other three jurisdictions in the UK—it is clear that, if we do not have a system that allows us to take forward learning from the reviews and give that the same amount of attention, there is no point in doing reviews. They just become something that is very costly, and there is a danger that, if there is no avenue or vehicle for the learning to be disseminated and incorporated into practice, they would detract from professionals being able to get on with their day jobs.

At the end of the review process, two things might arise. The first would be a series of recommendations directed at agencies about how they might strengthen what they do going forward. There are lots of examples of very good practice in Scotland already, so we would not be trying to cause agencies to think that they are not doing a good enough job. We know that there have been improvements over the past 30 years and there are likely to be further improvements over the next 30 years, but, unless there are ways to identify what needs to improve, it is hard for systems to incorporate the learning. It is likely that recommendations would be made and there needs to be a mechanism for taking them forward. If agencies are not in a position to be able to take recommendations forward, we need to consider a mechanism for them to account for that or to explain themselves. There might be very good reasons why a recommendation cannot be taken forward. However, the family members who are left behind need to understand those reasons, rather than them thinking that things will change after the review, but there then being no changes or enhancements to front-line provision.

Secondly, in addition to recommendations, there can also be learning. That might be less tangible and cannot be turned into a recommendation, but it could encourage individual practitioners, professions or organisations to think about how they conduct business in a way that is more joined up. Some of that can be translated into a recommendation, but, quite often, it is about raising awareness about, and understanding the complexity of, domestic abuse. That has happened. When I trained as a social worker 40 years ago, if we talked about domestic abuse at all, we spoke about physical abuse and incidents. Now, we have a much broader understanding of domestic abuse and know that it can also be a whole series of conduct or behaviours, or an atmosphere that has been created. We have gained that learning over time.

The bill tries to put in some of the architecture for learning, so that individual reviews can be brought together by the oversight committee. That committee will have a legal responsibility to put mechanisms in place to ensure that learning and recommendations are taken forward and that we have a better understanding of domestic abuse as a society. Organisations should also feel that they have to account for what they do after a review has taken place.

The Convener: I was going to go to Neil Websdale, but I will bring in Grace Boughton. You have come from south of the border to join our meeting, so you might have some reflections on what we can think about in the context of what happens elsewhere in the UK, as well as internationally.

Dr Boughton: Yes, definitely. For me, the recommendations and the outputs are some of the most important aspects of the review processes, which has been a challenge south of the border. England and Wales have been grappling with that issue, particularly if the same recommendations

have come out of individual reviews over a period of time.

I like the bill's inclusion of periodic reports, which I think is really interesting. I am not sure whether the review oversight committee would play a part in that process, but I think that that committee would be perfectly placed to help with the recommendations and with the part of the process that involves holding organisations to account.

John Devaney is completely right about holding organisations to account regarding how far they have progressed with making changes or implementing recommendations, or ascertaining why progress might have stalled. Things can be left and might get into the weeds if no one is holding the organisation to account and looking over that. As I say in my written submission, a repository system that collates and hosts all reviews could help here. England and Wales have such systems. England has the domestic homicide review library. Wales has a slightly different arrangement: there will be a safeguarding repository with closed access, whereas anyone can access the English one via the gov.uk website. Having those repositories will help with the holding-to-account measures and with seeing what is going on.

The biggest challenge in this arena is that the progress that we want, as a society and as professionals, is a reduction in homicides and suicides. Ultimately, it will be incredibly difficult if not impossible to measure whether something is going to have a direct impact on someone not taking a life or not taking their own life. If we put in mechanisms and have stringent oversight over the recommendations, however, I hope that we can at least develop some sort of correlational evidence to see whether one thing has impacted on the other.

The Convener: I will bring in Neil Websdale on the broad question about lessons learned. I have a specific question within that about timescales. Once we have undertaken or completed the learning process, should timescales apply to how lessons are applied in changing practices?

Professor Websdale: Learning and the implementation of recommendations have been the central issues in doing fatality reviews or homicide reviews, not just in the United States but globally—everywhere. First, it is hard to implement recommendations. Dr Boughton is absolutely right that we can never show that something did not happen—that there was not a killing—because of the impact of homicide review. We are never going to be able to show that, although the correlational data is important.

It might help to have more feedback loops for recommendations and findings. Historically, some jurisdictions in the United States have reviewed cases and then convened focus groups—listening groups of survivors of domestic abuse, say—to get feedback on the appropriateness or potential relevance of draft recommendations. In other words, how meaningful are they for people's lives? I thought that the language of the bill would have benefited from a little bit more by way of feedback loops—on what we need to look for.

You might want to extend that even more broadly. It is a question of encouraging teams to become a bit more granular. In the United States, advocacy organisations, shelters, domestic violence programmes and so on have listening groups of survivors. It is not that difficult to organise, and survivors often feel empowered—well, empowered is perhaps too strong a word, but they feel appreciative of being asked.

It is important to bear in mind that these reviews are, in some ways, about confronting democratic backsliding. The airing of views and the deliberations of the group, which includes community members and others who might be lay members rather than professionals, is important.

In the United States, we have learned a lot about the role of strangulation and serial strangulation in dangerous and severe intimate-partner violence cases, for example. Emma Forbes made the point earlier that we prosecute the dangerous cases. Yes—that is important, and we want to do that. However, the research is clear that there is also a lot of domestic violence and domestic abuse that does not rise to the level of what some researchers would call intimate terrorism, or what my former colleague Evan Stark has referred to as coercive control. The majority of the cases do not rise to that level, and we have found that the domestic homicide reviews have been quite discerning in teaching the community, through public education and, on a broader level, through cultural change, to speak about the things to which we need to pay attention.

For example, the police in England have worked up some marvellous large data sets—Sara Thornton's work is one example, but there are others—that talk about the emerging role of suicidality with offenders. Traditionally, we have had the sense that offenders use their power and control to tyrannise and domineer in these relationships. In some ways, that is an aspect of those relationships—no one wants to deny that. However, when we interview perpetrators in prison—which is a very important part of the reviews, as we need to access perpetrators' perspectives—we see, in many of these cases, a powerlessness and vulnerability on the part of the perpetrator, too. The reviews have taught us to appreciate a more rounded set of interpretations in these cases.

That is a public learning that matters, and it speaks to the issue of cultural change. If these men are seen simply as powerful, controlling and domineering, we miss the opportunity culturally to frame them as dependent, vulnerable and, in many cases, bullies. That obviously excludes the psychopaths or the people with antisocial personality disorders; they are a little different, but I digress.

There is the suicidality, and there is also the seemingly counterintuitive behaviour of victims. As victims move through these cases and navigate systems, we need to know how they perceive those systems. It does not matter if we think that we are offering an array of services here and there, with this and that. We need to know how victims, and perpetrators, make decisions. The reviews, if they are done well, enable us to look at those compromises and appreciate the seemingly counterintuitive behaviour of victims. We have a major problem with that in the criminal justice system.

In the United States, with our police training, we have spent a lot of time working on the risk assessment interface. It is a question of asking not just what the risk markers are, but how we do this. That is where the system can benefit from the reviews.

I will leave it there.

The Convener: Thank you—there are some really interesting points there. We might be straying slightly from the provisions, but you are helpfully circling them back to the review process that is being proposed.

With that, I bring in Liam Kerr.

Liam Kerr: Good morning. Professor Devaney, in the previous session, you will have heard Emma Forbes of the Crown Office raise concerns about the definitions in section 9. She seemed to feel that using definitions that do not correlate with those in the 2018 act could lead to issues, and that, in any event, the definitions with which we have been presented might need tightened. Could you give us your view? What should the committee do on that point?

Professor Devaney: Emma Forbes raised a valid and important point. The bill should not do anything that seeks to undermine the commonly understood definition of domestic abuse in Scotland.

12:15

We should also be mindful of what the reviews are seeking to achieve: they are seeking to identify learning that can resource the wider systems and supports around victims of domestic abuse, and they cannot be seen in isolation. In some instances, if we stuck tightly to a definition that relates only to domestic abuse as defined in the 2018 act, there might be unintended consequences. For example, somebody might be killed along with somebody else in the same incident, and therefore only one death, rather than two, three or four, would be looked at in that context. It would be hard to explain to a layperson—such as the family of a victim—why that would be the case.

The other side is that one limitation of the current definition—which is recognised in the explanatory notes to the bill—concerns what we mean by "family". For some communities in Scotland, both new communities and those that have been here for a long time, that may mean that what might be seen as honour crimes could end up being excluded from being reviewed. I do not think that that is the intention. The intention is that, when we think about domestic abuse, we do not think only about very western ideals of what makes a family and what is an important relationship in somebody's mind.

The reason why I think that the scope of the domestic abuse definition should be broader relates to a consultation exercise that took place with services and with those with lived experience of domestic abuse. Many individuals with lived experience said that, if the definition of domestic abuse is limited to what is in the current legislation, a lot of learning could be missed. If we are trying to strengthen the support around victims and their families, we need to be more mindful of that.

In our domestic fatality reviews, we have learned from other places about the number of women who are killed by adult sons. That issue is not currently covered in the proposed legislation, but looking further afield gives us a sense of where there might be types of deaths in Scotland that are not currently covered by any review system, but which happen in the context of family relationships.

It is a balancing act between, on the one hand, not undermining the definition in Scotland of domestic abuse and, on the other, trying to think about not being so constrained in that regard that we do not generate learning that will be important for how we move forward.

Liam Kerr: Just so that I am very clear, are you fairly comfortable, then, with the section 9 definitions as they are presented to us?

Professor Devaney: The statutory guidance, and the work that is done around that, can definitely support people to say that the new legislation is not changing the legal definition in Scotland of domestic abuse but recognises that, when we talk about domestic abuse, other people

are impacted by that abuse who might not be covered by the definition as it applies in the civil and criminal courts. There are very important protections that need to be applied in those arenas in respect of which the definition needs to be very clear.

Liam Kerr: I am grateful for that clarification.

Dr Boughton, on that exact point, you talk in your submission about the categories of people who are currently captured in section 9(2) of the bill. You suggest that the committee should find out whether that has been "discussed" at Government level, but you do not say what we should actually do with regard to definitions. Now is your opportunity—could you tell me what I should do?

Dr Boughton: Oh, if only it were that easy.

For context, the Domestic Violence, Crime and Victims Act 2004, which covers England and Wales and which is the legislation in which domestic homicide reviews currently sit, widens the scope of the victim-perpetrator relationships that are looked into by a review to include

"a member of the same household as himself".

That includes victim-perpetrator relationships that are not strictly classified as intimate partner, former intimate partner or even familial but are between people who share the same living space, where abusive behaviours can also come to fruition.

I have learned a lot this morning from listening. I put that bit in my written submission for consideration because, as I said, it is looked at in England and Wales. The domestic homicide review library, which I linked to in my written submission, includes reviews of such types of cases.

Obviously, it is ever so slightly different but, in cases in which individuals are perhaps living together, similar abusive behaviours and tendencies can become evident. In Edinburgh, for example, there is a big university community with Edinburgh Napier University and the University of Edinburgh, so what happens if you have a collection of individuals who come together in the same living space and abusive tendencies come out within those particular types of relationships? Coercion and control can manifest in various ways in relationships and through financial abuse and so on.

That point was added to my submission before listening to the conversations that we have had this morning, obviously. I was just interested as to whether the issue had been taken into consideration. I come from the English and Welsh background, predominantly, so I was interested as to why the issue seemed to have been omitted from the bill as drafted.

The Convener: Unless members have more questions about definitions specifically, which was something that we covered in the first session this morning in some detail, I will move on to the actual process.

I have a question on your written submission, Professor Devaney, which relates to the possibility of a joint review process. I am quite interested in that. You correctly referenced the fact that the bill promotes consideration of the possibility of a joint review with mutually agreed terms of reference and you—I think that it was you—set out thoughts on the importance of terms of reference because, sometimes, their absence really compromises a review process. I would be interested to hear more of your thoughts about a potential joint review process, perhaps also pulling in the importance of terms of reference.

Professor Devaney: There are a couple of really important considerations. One is always thinking about what the impact will be on surviving family members of multiple processes going on at the same time and about how we can reduce the demands on them at a time when they are coming to terms with their grief and particular horrors around whatever has happened, whether that is a homicide or a suicide. It is about thinking about how we, as professionals and as a state, take responsibility for being more trauma informed in how we engage with families at that time.

The other point, which we have already heard this morning, is about the challenges that many services face at the moment in meeting the demands and need for what they do with the resource that they have available. Therefore, helping agencies to bring things together and do one thing well—rather than them being asked to do two or more things and struggling to resource those appropriately—is a very good principle to follow.

When I lived and worked in Northern Ireland, where I chaired the child death review arrangements, we quite often commissioned reviews with other public bodies, whereby we had legislative responsibilities to undertake a review but, for the two reasons that I just set out, thought that it would be better to conduct a single review. The key was about both organisations feeling comfortable that their legal responsibilities could be fulfilled through a single review process—with the terms of reference becoming part of the architecture that supported that—and feeling that they would get what they needed out of it in order to fulfil those responsibilities.

However, it went beyond the terms of reference; it was also about the review panel or whoever was

undertaking the review having sufficient expertise and knowledge to cover the wider range of issues that needed to be explored through the review process. There had to be a way to ensure that each body felt that the issues would be sufficiently covered for them to have confidence in whatever conclusions the review reached.

Therefore, joint reviews are definitely possible and they happen in other jurisdictions; the key thing is to have a protocol that facilitates the process from the outset and that the organisations and bodies concerned are committed to working together as opposed to feeling that carrying out a joint review in some way diminishes the status of what they are responsible for looking at.

Dr Boughton: All the points that John Devaney made are really important, particularly when you are looking at the reviews being conducted on the ground, as it were, given the number of people whose time is taken up in the reviews. They are often staff of criminal justice agencies who are doing the work in addition to their day jobs, which is also something to consider. In England, we can have joint or parallel reviews, albeit that joint reviews are now the preferred vehicle.

However, of late, there has been some diversification in the process in Wales, because the Welsh Government now has the single unified safeguarding review process. This was a piece of work that was undertaken by Liane James and colleagues from a Welsh Government perspective but underpinned academically through work by Professor Amanda Robinson at Cardiff University, whose paper was published in 2018. They looked at similar review processes across the criminal justice sector. Amanda Robinson's paper basically concluded with the idea of streamlining review processes—obviously, that pertained to processes in England and Wales. The processes of concern were child practice reviews, adult safeguarding reviews and reviews of mental health homicides in particular.

As of late last year, the Welsh Government has gone live with the single unified safeguarding review process. That process incorporates five different types of review, including those mentioned as well as offensive weapon homicide reviews, which are relatively new. The idea is to funnel the review processes into one overarching process so that they all follow a similar trajectory. As John Devaney mentioned, the idea was to be very victim centred and victim driven to ensure that the process does not retraumatise family members as a result of their being asked the same things multiple times by, more often than not, the same professionals but for different purposes.

One of the findings from my doctoral research was about the timeliness of the reviews taking place—they take a very long time—as well as the timeliness of the lessons learned and of the recommendations that we talked about earlier. Lessons need to be identified quickly and recommendations need to be put into practice as quickly and appropriately as possible. I am sure that colleagues in the Welsh Government would be more than happy to help and to correspond with the committee.

The Convener: Thank you; it might be worth while for the committee to follow that up.

Neil Websdale, do you want to add anything? The original question was about the possibility of holding joint reviews and, as John Devaney and Grace Boughton have outlined, the potential benefits of that process.

Professor Websdale: If you are blending processes, it is very important to keep the terms of reference clear. As a very crude figure, probably half of the child maltreatment deaths in the United States are preceded by adult intimate terrorism or coercive control. Therefore, there is clearly an overlap and a need to address that. It is important to get the terms of the process correct, and you could make that argument with a number of other review types, too.

12:30

I want to follow up on a couple of points that John Devaney and Grace Boughton made. If we do not have adequate feedback loops from families, communities and survivors, there is a little bit of a danger of assuming that we traumatise families. My concern is twofold. First, we need families to speak about how they are traumatised and what the reviews might mean to them. Even if there are multiple, parallel, overlapping and blended reviews, we need to have the input of families. That is very important.

The second thing is related. Grace talked about setting up a repository—a library of cases—which, for researchers, is very valuable. However, at the moment in the UK, because that interface is publicly available, any member of the public can go in and read the minute details of family members' lives, including medical issues, mental health diagnoses and medication patterns. Potentially, that is extremely invasive, and we ought to be concerned about it if we are concerned about family traumatisation. In the United States, in no way could you drill down into that level of detail about families' lives. I therefore caution on the repository idea. If you do it, you need screening. Maybe researchers should have access; that might be very helpful, I agree. However, for anyone—the media included—to be able to just jump in willy-nilly and look at those fine details is troubling, and I would want to take family guidance on that before going down that path.

The Convener: Thank you. Rona Mackay, did you want to come in to follow up on definitions?

Rona Mackay: No, I think that we have explored that. I have a question for Neil Websdale, on a different topic.

It is proposed that the Scottish Government give guidance for the review bodies on how to carry out their functions and so on. What key points should be included in that?

Professor Websdale: There should be a brief overall statement on the philosophy of the idea and where it came from. The reviews arose out of successful aviation crash reviews and the desire to have transparency and candour without blaming and shaming. In some ways, they are a form of deliberative democracy. It is valuable to keep that point in mind, because, over the past 50 years, the improvement in aviation—the decline in crashes per mile flown—has been dramatic in the democracies that have such reviews. The National Transportation Safety Board was our linchpin for doing that work in a way that was politically non-partisan, objective and scientific. In comparison, reviews in medicine or nuclear power, for example, have not been as candid, and we have had other tragedies. Keeping that broad philosophy in mind might be helpful.

Rona Mackay: I understand that. What you are saying is that, possibly, a bigger emphasis should be put on the evidence base and that the advice that the Scottish Government gives to the review bodies should perhaps be more targeted in order to get the ethos over.

Professor Websdale: Yes. The idea for the review bodies is to tap the massive talent that is available at those review tables. That is what happened in aviation crash reviews, which included, for example, pilots, co-pilots, people who sold tickets and people who served drinks. They had multiple perspectives, and multiple perspectives make the difference. Sometimes, there are respectful disagreements between professionals. Those disagreements—or differing interpretations—are critical for moving those debates forward. Those are complicated cases. That is one of the reasons why I favour looking at a sample of cases. It will be challenging, in practical terms, to review a lot of suicides, so it is better to select one or two cases in a five-year period, or you select a case where a son kills a mother. As John Devaney said, those are important cases, because, often, in cases in which sons kill parents, there is a long history of emotional abuse and intimate terrorism tactics within that household that we need to flesh out. That is what I am trying to say; apologies if I am not being particularly specific here.

Rona Mackay: That is helpful. Thank you.

The Convener: I want to come back to the issue of process, and to the proposal for an oversight committee and case review panels. In her submission, Grace Boughton was looking for a wee bit of clarity on that. The oversight committee and the case review panels have fairly distinct roles—the committee basically provides oversight and the panels do the hard work, as it were. I am interested in your views on whether that is the right proposal for what we are seeking to do in the bill.

Professor Devaney: One of the things that I have learned from looking at different types of review model, internationally, not just around domestic abuse but around child maltreatment, is that there are different approaches. One of the key things has been that, where you have a model in which you are reviewing an individual death, and a bespoke group of people are carrying out the review, the quality of the end product can be quite variable. We definitely see that in England, and we have seen that in other places, too. There needs to be some sort of way of standardising how reviews are undertaken. I am picking up on Rona Mackay's point about what support and preparation the people who are involved in reviewing that individual case get. There is the person who is reviewing the panel, who will build up expertise over time, but there are also people who may be representing the police, social work or health. How do you help them to tune in to what the task is and feel supported in doing that?

Another issue is the fact that what is produced as a report can be variable. The oversight committee that operates in England and looks at reports there has a very big task to try to ensure that reports are of the standard that is required: first, that they meet the terms of reference that have been set; secondly, that it is clear that the recommendations and learning relate to the facts of the case and what has happened; and thirdly, that the report is forward thinking and analytical in some way, as opposed to looking backwards and trying to give an account of what did and did not happen. The oversight committee has a really important function there. It has to set out the framework in which individual reviews will be carried out, but it also has to ensure that individual review panels have the right people around the table, that those people are supported to do the job that they are being tasked to do and that there is a way of quality assuring what they produce at the end. As Grace Boughton mentioned, the oversight committee can then start to take the learning from individual cases, observe that some themes are starting to emerge that might not concern only a local area and might be things that we should be paying more attention to nationally, and think about how to aggregate that learning in

a way that informs further iterations of the equally safe strategy.

The Convener: On that point, if we are learning lessons for the future, data is quite important. Can you comment on how we integrate the collection of data into the review process so that that can inform future policy and direction?

Professor Devaney: One thing that the oversight committee can do is think about whether there is common data that it wants to collect around all of the deaths—not just the ones that end up being reviewed, but the ones that were considered, as well.

Another thing to think about is whether there might be a common way of reporting. In some jurisdictions, it is very much left to the person who is chairing the panel to determine what the final report will look like. That makes it more difficult to look across the reviews and to, as Professor Websdale and Dr Boughton mentioned, identify the commonalities as well as the differences, which might be equally as important as the commonalities.

How does a body such as the oversight committee pull all that together on a periodic but regular enough basis to be able to share that learning with a wider audience? It must also consider, as Professor Websdale said, who the audience is. Is it victims' families, professionals or the wider public? The body must think about how the information is communicated in a way that is appropriate to the audience in question and is useful and helpful, rather than perhaps just voyeuristic.

The Convener: Thank you. Professor Websdale, do you have any views on the process's structure in regard to the oversight committee and panel proposals?

Professor Websdale: Professor Devaney's points about standardisation are well made. Having ethical standards, guidance and quality assurance in place is really important. I caution against having quality assurance that rises to the level of ideological scrutiny or something that forces certain interpretations or models of the data to be made. That is dangerous, and I have certainly seen a little bit of that in some of the homicide reviews in England.

I would hate for opportunities for innovation to be ruled out because of standardisation. I have been a part of many reviews in which something new and different has been introduced. I was chairing and facilitating a review in one state—I cannot mention which one—where the team brought in a defence attorney, who reshaped our entire interpretation of the case. It came as an unexpected development when we brought in community members to testify and give evidence in a rather ad hoc manner, but it was incredibly valuable as it stretched our interpretation and what we learned from the case. We need standardisation and quality assurance. Ideology is less desirable, but we ought not to rule out the possibility of innovation.

Finally, we have to ask how we hold dialogue with families and community members after the review. How do we understand the catharsis that families might feel as a result of the review process? In other words, those are quality assurances that we need to loop in.

The Convener: Grace Boughton, do you have any final points on that issue?

Dr Boughton: No, but I will say that the review oversight committee in Scotland will benefit from the fact that, according to the statistics provided in the policy memorandum, the number of homicides going through the process will be a lot lower than the number that is dealt with by the Home Office quality assurance panel in England. There are areas in England that are experiencing issues with the amount of traffic that is going through what we might call quality assurance processes, but that should not be much of an issue in Scotland because you are going to have a much smaller number.

On the case review panels, you will appreciate, as you are all here as members of the Parliament for your respective areas, that it is exceptionally important that the local aspect is not lost but is appropriately reflected at case review panel level because, as has been mentioned, different areas have different levels of community cohesion and feeling.

The Convener: We will wind up the evidence session in a moment. Liam Kerr will ask the final question.

12:45

Liam Kerr: Professor Devaney, you will have heard the concern that was raised earlier about the risk that it would always be the same faces on the review panels in Scotland, so they therefore might not always be completely independent, or they might be seen as not being completely independent. Do you share that concern? If so, how can that be avoided? Is there any element of legislative change that we can make?

Professor Devaney: That is a really good question relating to the confidence that we want society to have that the reviews will be done in a way that does not try to favour or excuse what might be poor practice or limitations in services. That is why it is helpful to have a separation of functions between an oversight committee and what happens on a local panel, with a report

coming to the Parliament every two years, so that it has some sort of overview and scrutiny of the process, ensuring that it is operating in the way that you intended at the time when you passed the bill, whatever the legislation finally ends up addressing.

To pick up on a point that Grace Boughton made, I note that individual case review panels are likely to be more localised, with people representing local services on the panel alongside some people from national services, such as Police Scotland, and with some representation from third sector organisations that advocate on the relevant issues. Having a panel hopefully creates the opportunity for challenge within it—but done in a respectful way that involves analysing what is going on, rather than holding another agency to account.

The oversight committee then becomes important, with a feeling that there are some elements of independence. I refer here to what the bill proposes about the chairs for individual case review panels and the chair and deputy chair of the oversight committee being publicly appointed. I would hope that thathatuld give greater assurance that those chairs are not representing an organisation or defending a sector but are bringing a critical, constructive questioning approach so as to maximise the opportunity for the reviews to serve as learning opportunities. If we do not grasp that opportunity, we should not be doing the reviews, as they will take up a lot of resource, and people will have to step back from their day jobs to be involved in the review process. We have to be able to balance out the gains that will be achieved from the reviews—which I believe are there—against the downside, which is the resource that needs to go into them so that they can be done properly.

Dr Boughton: That is a really interesting point, and it was evident in my doctoral research regarding how people perceive panel membership. Some people quite liked the familiarity of seeing the same people on panels. Certain organisations would have safeguarding leads or public protection leads, who would take on the responsibility of going to such reviews.

People will naturally get a bit more comfortable with one another. The question is whether that hampers or hinders people's ability to challenge an organisation comfortably. It all comes down to the approach that the review committee wishes to take—the shape and methodology of the reviews that are to take place. That needs to be considered with regard to whether the same people are on the panels. I would hazard a guess that it might be the same people going from some organisations, as they will build up a knowledge base and an awareness: they know what to do and how to prepare for a review. That might perhaps call their independence into question. Equally, third or voluntary sector organisations have fewer people to call on to attend reviews on behalf of their agencies. They can send only so many people, so it will be a balancing act for sure. However, to pick up on Neil Websdale's point on innovation, this might be the perfect opportunity for Scotland to consider diverging from what other places have done and piloting different methodologies for the reviews.

As suggested in my submission, if the review oversight committee wants to go down the panel membership route, why not have organisations putting up two individuals, such as two senior staff members? In my doctoral research, I found some evidence that junior personnel were going for such roles when they perhaps should not, because they struggled with authority and hierarchy within certain organisations. However, they could be paired up with a more senior member of staff. That would mean that they would get to be involved and get their continuous professional development. It would grow the knowledge base and awareness within organisations but there would still be a person with authority who could say whether the organisation could commit to something or consider certain recommendations and who could pursue matters in house.

That is just a suggestion. However, for Scotland to consider introducing reviews now is an exciting opportunity because, more than ever, you have at your disposal research-based and practice-based evidence on such reviews that partners elsewhere in the UK have not had.

Liam Kerr: That was very interesting. Thank you both.

The Convener: That brings us up to time. I thank the witnesses very much. I thank Neil Websdale for joining us from Arizona—he can head off to bed now.

I am conscious that it is coming up to 1 o'clock. Are members happy for us to defer agenda item 2, which is consideration of evidence? We will pick that up next week if we are all happy with that proposal.

Members *indicated agreement.*

Meeting closed at 12:52.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba