OFFICIAL REPORT
AITHISG OIFIGEIL

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Criminal Justice Committee

Wednesday 12 March 2025

Session 6

The Scottish Parliament
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CRIMINAL JUSTICE COMMITTEE
9th 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:

Siobhian Brown (Minister for Victims and Community Safety)
Maggie Chapman (North East Scotland) (Green)
Angela Constance (Cabinet Secretary for Justice and Home Affairs)
Russell Findlay (West Scotland) (Con)
Pam Gosal (West Scotland) (Con)
Jamie Greene (West Scotland) (Con)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 12 March 2025

[The Convener opened the meeting at 09:30]

Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 2

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

Item 1 is consideration of the Victims, Witnesses, and Justice Reform (Scotland) Bill at stage 2. I ask members to refer to their copy of the bill, the marshalled list of amendments and the groupings.

I welcome to the meeting Angela Constance, Cabinet Secretary for Justice and Home Affairs, and her officials. We will also be joined at various points by the Minister for Victims and Community Safety, and officials will swap round at various times. I remind the officials that they are here to assist the cabinet secretary during the stage 2 debate. They are not permitted to participate in the debate. For that reason, members should not direct any questions to them.

I also welcome to the meeting other members of the Parliament who are here to speak to their amendments. Russell Findlay should be joining us. We have Jamie Greene here, and we will have Pam Gosal and Maggie Chapman.

I will stop at various points to allow for a short break in proceedings.

Section 1—Victims and Witnesses Commissioner for Scotland

The Convener: We start with the group entitled "Victims and Witnesses Commissioner: title and definitions". Amendment 94, in the name of Liam Kerr, is grouped with amendments 95 to 103, 107 to 109, 111 to 118, 140, 119 to 121 and 134. I point out that, if amendment 57 is agreed to, I cannot call amendment 134.

Liam Kerr (North East Scotland) (Con): All the amendments in the group, with the exception of the cabinet secretary's amendment 140, proceed from the principle that I shall outline for amendment 94. The same arguments that I will make for amendment 94 apply precisely to the others, so members will presumably agree with them all or with none at all.

My amendments were suggested to me by the Law Society of Scotland, of which, I remind members, I am a member. They are entirely about ensuring that, should the office of the victims and witnesses commissioner for Scotland be established—which, of course, will be debated later—the law that establishes it is as clear as possible in its terminology and powers, which it needs to be.

My concern when I initially considered the bill was whether, if it is passed and establishes the commissioner role, it is sufficiently legally precise. My worry is that, without meaning to do so, the Government risks excluding from the ambit of the commissioner's role a category of people against whom a wrong has been done. It hinges on the definition in section 23(1), which tightly defines what the bill means when it refers to a victim.

Section 23 specifies—I will simplify for brevity—that a victim is someone against whom

"an offence … has been, or is suspected to have been, … carried out."

Further, I note that section 2(1), for example, says:

"The Commissioner's general function is to promote and support the rights and interests of victims".

My concern, and the reason why I lodged the amendments, is that, by limiting the defence of rights and interests to the category of "victims" as defined by the bill, we might inadvertently exclude people who do not fall within that definition but, nevertheless, have a legitimate concern that they have been subject to criminal behaviour and who also need and, indeed, deserve support.

To ensure that that category is widened and becomes inclusive rather than exclusive—that is, to ensure that the net for protection, support and aid is wider—I have tried to define "complainer" in my amendment 118. My amendments propose to insert, alongside the defined term of "victims", the category of "complainers" so that the commissioner's role, functions and support might be engaged not only in support of the category of people defined as victims by section 23 but in aid of those against whom an offence is suspected to have been committed.

My amendments are about ensuring that, if a commissioner is created, the widest possible number of victims of crimes are brought within the commissioner's remit to ensure that, at all times, the law truly works in favour of victims of crime and does not inadvertently exclude those who ought to be able to secure the commissioner's assistance.

I am keen to hear the cabinet secretary's thoughts on that and whether her interpretation is that the current drafting encompasses all victims who need to be in scope.

I move amendment 94.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning, convener and colleagues. I begin with my minor technical amendment 140, which adjusts the wording of the definition of "child" in section 23 of the bill so that references to age are internally consistent in the bill.

I will now address the rest of the amendments in the group, which were lodged by Mr Kerr. I understand that the intention of the amendments is to establish the different legal meanings of the terms "victim" and "complainer" and to add "complainers" to the title of the victims and witnesses commissioner. I will respectfully outline my concerns about Mr Kerr's amendments and why, for a number of reasons, I am not able to support them.

Most importantly, the commissioner is to be a champion for all victims and survivors of crime. Many people who are victims of a crime might not report it or pursue it beyond an initial report. One of the main drivers of the bill is to improve the experiences of all victims and survivors to ensure that they come forward, seek justice and are supported to do so. Although I do not think that it is Mr Kerr's intention, there is a danger that his amendments would send a message that the commissioner distinguishes between victims. That is unhelpful and goes against the aims of the victims and witnesses commissioner and of the bill.

Of course, I recognise the legitimacy of the term "complainer". Indeed, the bill uses it where legally required—for example, in section 64 in relation to independent legal representation. In fact, members will note that the terms "victim" and "complainer" are used in different parts of the bill. Those words are used deliberately and intentionally to befit the legal status of the individual being referred to.

I disagree with any notion that a victim is not a victim unless a person has been tried in a court of law. I also resist any suggestion that using the term "victim" is prejudicial and assumes guilt. I know that Mr Kerr did not do that in his remarks, but the term "victim" attaches to the individual who has been harmed, rather than implying anything about who has caused the harm.

Victim Support Scotland has told us that the term "complainer" is particularly problematic for a large number of victims and survivors. It makes them feel that they are seen as complaining in the ordinary sense of the term, rather than having a legitimate right to seek justice. It makes them feel as though their experience is being trivialised as a complaint, rather than seen as a life-changing event. Therefore, it is important for us to acknowledge that victims do not need to have gone through a formal legal process to have been harmed, to be victims and to know that the commissioner has regard to them.

I urge the committee to oppose Mr Kerr's amendments and agree with me that there should be no change in the name of the commissioner.

That said, I already plan to lodge an amendment at stage 3 in relation to the current definition of "victim" in the bill, taking account of the Government amendments on the victim notification scheme. I would therefore like to end on a conciliatory note and offer to discuss the definition with Mr Kerr ahead of stage 3. Having listened to Mr Kerr's commentary this morning, I think that we actually have the same aims on these matters.

The Convener: As no other member wishes to come in, I call Liam Kerr to wind up and say whether he wishes to press or withdraw amendment 94.

Liam Kerr: I will be brief. Thank you, cabinet secretary—that was an interesting discussion with much to consider. I entirely see the points that you make. I very much enjoy the working relationship that we have, and I am pleased in particular that you will look to work with me on the definition of "victim". I think that you take my point—we share a concern in that regard, and I look forward to working with you on the definition. I think that there is an issue, but let us explore it together and make the bill as good as it can be.

With that in mind, I will not press amendment 94 to a vote.

Amendment 94, by agreement, withdrawn.

The Convener: The next group is on the establishment of a victims and witnesses commissioner. Amendment 1, in the name of Russell Findlay, is grouped with amendments 2 to 25, 235, 55 and 57. I point out that, if amendment 57 is agreed to, I cannot call amendment 134.

Sharon Dowey (South Scotland) (Con): I will speak to Russell Findlay's amendments, convener.

The amendments in the name of Russell Findlay would remove the establishment of a victims commissioner from the bill. Although the proposal is well intentioned, we already have seven different commissioners in Scotland, and the Finance and Public Administration Committee has said that creating a new commissioner

"has ... been seen as an 'easy win' for the ... Government",

as the Government can show that it has done something

"without the need to provide oversight or ensure effectiveness."

I believe that the same logic applies in this case.

Concern has also been expressed over the potential overlap between a victims and witnesses commissioner and the Children and Young People's Commissioner Scotland. Despite the name of the proposed commissioner, they would have no power to champion or intervene in the individual cases of victims. That was highlighted by the chief executive of Rape Crisis Scotland, who expressed concern about managing the expectation that a victims commissioner would be able to help people directly.

We have heard from organisations such as Scottish Women's Aid that do not support the creation of a victims commissioner because they fear that it will add another layer of bureaucracy and impact on victim support service budgets. If we had unlimited resource, that would be one thing, but we must be realistic. At a time when there is huge pressure on the public purse, it is hard to justify the cost of almost £1 million that would come with the establishment and office running costs of a victims commissioner who will not be able to directly help individual victims.

As Scottish Women's Aid and the Finance and Public Administration Committee have said, that money would be better spent both on improving front-line services and on practical measures that would directly benefit individual victims and witnesses. However, I know that the committee is likely to support the establishment of the victims commissioner, so my amendment 235 offers an alternative to ensure that the commissioner does an effective job in the way that victims deserve. It would sunset the office after five years unless the Scottish Parliament votes to make the role permanent before that time. That was recommended by this committee, which said:

"If ... a Commissioner post is to be established, ... we recommend that in the first instance it should be for a time-limited period in order to allow for an assessment to be made of the value of the role."

I hope, therefore, that the Government will support my amendment to ensure that the commissioner is acting in the interests of victims.

I move amendment 1.

09:45

Angela Constance: As the committee has heard, this raft of amendments seeks to prevent a victims and witnesses commissioner from being created. I would strongly oppose such a move; the proposals for the commissioner have been significantly shaped by discussions with victims, victim support organisations and the victims task force, which is co-chaired by me and the Lord Advocate, and many victims and victim support organisations have fought very hard for this commitment from the Government.

We know from victims, survivors and victim support organisations that victims often feel unheard and cannot access information, despite the existing landscape of organisations that advocate for their rights and interests, and that they are supportive of the establishment of a commissioner. The commissioner will monitor criminal justice agencies' compliance with their standards on trauma-informed practice in order to provide independent scrutiny and accountability.

Under section 16 of the bill, the commissioner will have to produce and publish an annual report on their functions, which must include any recommendations, and the bill specifically provides that those recommendations can cover trauma-informed practice, too. By monitoring how victims' rights are being upheld, the commissioner will have an important role in holding criminal justice agencies to account, which is an area that we will come on to in the fifth group of amendments.

No existing public body or organisation, including the Scottish ministers, has the statutory power to hold criminal justice agencies to account in relation to how the rights of victims and witnesses are being met or upheld, nor can that role be given to a third sector organisation. The victims and witnesses commissioner will therefore be able to provide that function and the mechanism of accountability that is lacking from the criminal justice system. They will also have statutory powers to monitor criminal justice agencies' compliance with the standards of service and the "Victims' Code for Scotland", and will have a role in establishing a victims charter, which we will come to in the next group of amendments.

I respectfully oppose Ms Dowey's amendment 235, which seeks to insert a sunset clause into the role of the victims and witnesses commissioner, such that the role would expire within five years of the commencement of section 1. The commissioner will champion the rights of victims and witnesses and provide them with an independent voice—why would anyone not want that for victims, survivors and witnesses, or want its role to be for a temporary period? I remain convinced that the role is needed and should be permanent; it is not a role to be set up, only to potentially expire within a few years. I therefore urge members to oppose amendment 235.

Liam Kerr: I am listening carefully to what the cabinet secretary is saying. How does she respond to the challenge posed by Children 1st in the documents that it has supplied? It is saying, "Okay, the commissioner can be brought in, but

now is not the time." What we really ought to be concentrating on are things that make a difference now, using the limited resource that we have in place.

Angela Constance: There will always be an argument to be made with regard to how we use our resources now to impact on change. I do not demur from that, but there is also the argument that there is a very strong case to be made for having a victims and witnesses commissioner to uphold and undertake specific statutory functions—those arguments are not mutually exclusive. We should bear in mind that criminal justice agencies are independent from Scottish ministers—and rightly so. After all, we do not want undue ministerial interference in independent decision-making functions. I contend, therefore, that there is a gap that can be filled by a statutory victims and witnesses commissioner who will fulfil statutory functions that cannot be undertaken by anyone else.

I acknowledge the concerns about finance that Ms Dowey has raised consistently throughout stage 1 of the deliberations on the bill, but I contend that, although the recruitment of a victims and witnesses commissioner and the establishment of their office will, of course, incur a financial cost, making such an investment only for the post to be removed a few years later would not seem to be a wise use of resources.

My instinct is to seek consensus where I can, but, on some issues, you are either in or out. When it comes to the debate on the victims and witnesses commissioner, I remain fairly in.

I urge members to oppose all the amendments in the group.

Pauline McNeill (Glasgow) (Lab): Good morning. I will rehearse similar arguments about creating a commissioner. My question is not whether a victims commissioner could make a difference but what, overall, could make a difference to the framework for victims.

The commissioner is not able to represent individuals; it is a monitoring role. I know that the Government has tried to beef up the role—I would certainly welcome that if it happens—but leadership makes a bigger difference. The leadership shown by the current Lord Advocate, the Government and the criminal justice agencies has made the biggest difference to victims' experiences. I know that that rests on who is appointed to those roles, but that is what I firmly believe.

I support where Scottish Women's Aid is coming from. There is limited money to spend on improving victims' experiences and I would rather that it was spent on what the Government is already doing on independent legal representation and making court transcripts available to victims. We are also going to discuss whether advocacy, as set out in Jamie Greene's and Maggie Chapman's amendments, could make a difference to individuals. If the Government is going to spend money on improving victims' experiences, I would rather that that money was focused on individuals than the system itself, if there is a choice—sometimes it is a choice. I do not object to there being a victims commissioner, but the question is about how you want to spend your money and resource.

We must be mindful that the Parliament has created a number of commissioners and that they are not all equal. It could be more important to have some commissioners than others. For example, it might be that an older persons commissioner is needed because there are different gaps in provision, so I do not think that all commissioners should be treated in the same way. However, a review is on-going and the Government did not even consider whether there could be an overarching commissioner who could appoint individual commissioners for certain things. That was debated and we have not looked at that model; the only model that is being put to us is what is in the bill.

For those reasons, I am minded to support amendment 1. If Sharon Dowey does not press amendment 1, and if she moves amendment 235, I will support that, so that we can at least test the commissioner for five years and see whether it makes a difference.

The Convener: Cabinet secretary, do you wish to respond?

Angela Constance: Convener, I had finished my remarks and I did not appreciate that I had a right to reply, but I will take a brief moment to respond to Ms McNeill.

I understand the points about resources. We have to carefully consider every pound that is invested. I hope that members will be cognisant of that as we proceed through stages 2 and 3, because cost is much more of a germane factor in some of the other amendments that we will come on to.

The financial memorandum sets out that approximately £600,000 would be required to set up the commissioner's office and that there would be approximately £600,000 in recurring costs, which is not an insubstantial amount of money. However, to put that into context, the victim-centred approach fund is £48 million and, over the past five years, the justice portfolio alone has invested £92 million in victim support and related matters. There are ways to reduce costs, although it would be up to the Scottish Parliamentary

Corporate Body to do that by sharing services or premises.

Finally, I understand Ms McNeill's point, but in order to best serve individuals we also need a robust system that is held to account.

The Convener: Ben Macpherson wants to make a point, and I will then bring the cabinet secretary back in to respond to it.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I am conscious that colleagues around the table have mentioned the SPCB Supported Bodies Landscape Review Committee, which I convene. Although the Parliament has been tasked with reviewing the landscape in relation to the bodies that are funded by the Scottish Parliamentary Corporate Body, some of the points that have been raised relate to bodies across the board and those that are funded by the Government. While that work is under way, the Government must uphold its commitment to establishing a victims commissioner—that was the mandate that it got from people in the election. The work that the Parliament has commissioned regarding existing commissioners does not prohibit, or give any indication regarding, the creation of a victims commissioner. That is an important point of clarity.

The Convener: Do you wish to respond to that, cabinet secretary?

Angela Constance: I have reminded the committee on a number of occasions that I must adhere to our manifesto commitment. I am aware that the Parliament agreed to a moratorium, but it also acknowledged that, out of respect for the legislative process and the work of committees, individual decisions would have to be made on a victims and witnesses commissioner and a disability commissioner. Given that the work on those matters was in process, Parliament acknowledged that full consideration would have to be given to them and so the Parliament's position does not bind decisions that could be made in relation to this bill.

The Convener: I call Sharon Dowey to wind up and to press or seek to withdraw amendment 1.

Sharon Dowey: In her remarks, the cabinet secretary asked why we would not want a victims commissioner. If we had an endless budget, I think that we would welcome one, but I still have the concerns that I have raised when the committee first discussed the proposal.

The Finance and Public Administration Committee has said that the creation of such commissioners has been seen as an "easy win" for the Government, as it shows that it has done something. When this committee passes legislation, I want to ensure that it will make a difference to, and have an impact on, victims. We should not be doing something just because it looks good and would be a quick win.

Ben Macpherson: Victim Support Scotland and other organisations have argued strongly in favour of the creation of a victims commissioner, so a large constituency of those who support victims and engage with them every day support the creation of a commissioner.

Sharon Dowey: There are mixed views among people who currently support victims. Some of them support the creation of a commissioner, because they think that a commissioner would champion victims, but some do not, because they see it as adding another layer of bureaucracy.

Victim Support Scotland has said that it hopes that the money will not come from the support services that it already provides, but I do not think that we should be hoping—we need concrete assurances that the money will not come from the services that Victim Support Scotland, Rape Crisis Scotland and Scottish Women's Aid already provide. If the money comes from those services, there will be a detrimental impact on victims and, instead of helping the people whom we want to help, we will end up making things worse for them.

Therefore, although I still have concerns, and I agree with all of Pauline McNeill's comments, I am conscious that the amendments will not be agreed to, so I will not press amendment 1. However, I want to put all my concerns on the record.

10:00

I want to make a big difference for victims, and I am concerned about the substantial amount of money that will be required for a victims commissioner. I think that some victims have a mixed view of whether it will help or not, so I will not press the amendment.

Amendment 1, by agreement, withdrawn.

Section 1 agreed to.

Schedule 1—The office of Victims and Witnesses Commissioner for Scotland

Amendment 2 not moved.

Schedule 1 agreed to.

Section 2—Functions

Amendments 95 to 97 and 3 not moved.

Section 2 agreed to.

Section 3—Civil function

Amendment 4 not moved.

Section 3 agreed to.

Section 4—Engagement

Amendments 98, 99 and 5 not moved.

Section 4 agreed to.

Section 5—Advisory group

Amendment 6 not moved.

Section 5 agreed to.

Section 6—Power to work with others

Amendment 7 not moved.

Section 6 agreed to.

Section 7—General powers

Amendment 8 not moved.

Section 7 agreed to.

Section 8—Restriction on exercise of functions

Amendments 100, 101 and 9 not moved.

Section 8 agreed to.

Section 9—Strategic plan

Amendment 10 not moved.

Section 9 agreed to.

After section 9

The Convener: The next group is on a victims charter. Amendment 234, in the name of Jamie Greene, is grouped with amendment 236.

Jamie Greene (West Scotland) (Con): Good morning, convener, cabinet secretary and colleagues. I thank the committee and the convener for letting me attend to speak to my amendments.

I put on the record my thanks to the parliamentary clerks who have assisted with much of the drafting of my amendments. As members will know, it is often difficult for individual members to draft stage 2 amendments, as we do not have the assistance of a bill team behind us, so I thank the clerks for helping with some of the drafting at very short notice. That might present me with problems down the line when we come to some of them, but we have done the best that we can.

I also thank my office team, who have worked extremely hard on the amendments and the supporting documents that I have sent to committee members.

All my amendments, starting with the amendments in this group on the victims charter, have come out of my proposed member's bill—the victims, criminal justice and fatal accident inquiries (Scotland) bill—which I first consulted on some three and a bit years ago and which was the original victims bill. That proposed bill stemmed from a manifesto commitment of my party at the previous election, but also from when I held the justice brief and sat on this committee.

Aside from two substantive elements of my proposed bill—on the not proven verdict and fatal accident inquiries—most of its elements will feature in our discussion this morning. The amendments that I have lodged have some central themes that are very relevant to my proposed victims bill, on which I consulted widely and which, I have to say, was received well by stakeholders.

I launched my proposed victims bill before the Scottish Government published what is now its victims bill. The Government's bill was originally to be called the "Criminal Justice Reform (Scotland) Bill", because it makes substantive changes to Scotland's criminal justice system, but it miraculously became the Victims, Witnesses, and Justice Reform (Scotland) Bill. I always take impersonation as the best form of flattery, convener.

It is important that the first word in the title of the Government's bill and of my original proposal is "victims". People who are watching this morning's proceedings should note that, because it proves that we all come at the issue from the same place. We all want to improve outcomes for victims as we work on the amendments at stage 2. We must use this opportunity—for me, it feels like an opportunity—to work collaboratively as a Parliament to improve the legislation and put victims at the heart of any reforms that we make. This is also a chance to set right some of the wrongs of the past, some of which have been well documented and high profile and have led to devastating outcomes for victims of serious crimes, including loss of life and the ruination of others' lives.

Amendment 234 and others have come from discussions directly with victims of crimes, victim support organisations, victims' rights campaigners and other third sector organisations, which often carry a lot of the heavy load in assisting people who have been victims of crime. Indeed, the briefing that all committee members will have received on Monday from Victim Support Scotland supports every one of my amendments. Whether it supports them as worded or in principle is another matter, but I hope that committee members will reflect on that, should the committee vote on any of them.

The victims charter is a good place to start. Amendment 234 seeks to place a duty on the new victims and witnesses commissioner for Scotland, should the Parliament be minded to create such a role, to prepare and publish something called a

victims charter within one year of section 1 of the bill coming into force. In essence, the aim of having a victims charter is to improve victims' knowledge and understanding of the justice system, which is an issue that has been raised by many stakeholders I have met. That is notwithstanding the live conversation on the definition of "victim" or whether a commissioner should be created at all—that is not for me to decide.

When researching for the amendment, I discovered that there is already something called the victims code in existence, although I have to say that no one I have spoken to knew of it or was aware of it. That tells me that the victims code was probably published with some well-meaning intention in historical legislation but that it has not featured as a key part of the justice system or in victims' understanding of their interactions with it.

I am not in favour of duplicating work. If the victims code exists and could be made better, that is perhaps one approach that we could take. However, if we are to create a victims commissioner, surely we should make clear their duties. I appreciate that section 1 of the bill does that, but I would like to see something in addition to that through a victims charter.

An issue that became quite fundamental to amendment 234 was that many victims expressed a lack of understanding of how the justice system works in practice and what their rights are. Many are unhappy with the form and method of the communication that they receive as they journey through what is often quite a traumatic process. We should bear in mind that victims of crime are probably already in a vulnerable position.

In my view, a simple and well-worded victims charter would be a single, comprehensive and understandable source of information that would let victims know what their rights are, how the process works and what their various points of contact will be. According to amendment 234, that could include, among other things, a description of the justice system and how victims may interact with it; victims' rights in relation to criminal investigations and proceedings, at all stages when they may interact with the system; the processes available to a victim for upholding their rights in relation to investigations and proceedings; and, more importantly, in subsection (2)(d), the manner, frequency and methods of communication with victims to which criminal justice agencies must adhere.

Katy Clark (West Scotland) (Lab): I am very sympathetic to the case that Jamie Greene is making, but what does he believe would be the legal status of a victims charter and why would the victims commissioner be the one to draft the charter? The victims commissioner would, in essence, have an advocacy role. We could have a victims charter whether or not we have a commissioner, but, if there was a commissioner, why does Mr Greene feel that they should draft the charter?

Jamie Greene: On the latter point, the victims commissioner seems like a good place for the charter to live, because, if we are to create a commissioner's office, it is important that it is more than just an expensive quango—it needs to have teeth. If the commissioner's remit is very much to have a social contract with the public, in that they know that there is an advocate out there who is looking after their rights and whose sole focus and raison d'être is to improve outcomes for victims, the relationship should be between the commissioner and the public—in this scenario, victims.

I have drafted another version of the amendment—amendment 236—which would place the onus on ministers instead of the victims commissioner. It could be argued that the charter should be the responsibility of ministers. However, when I have lodged such amendments in the past, there has been quite a lot of pushback from ministers. Both options are available for the committee and, ultimately, it can vote on either option. I am interested in hearing what the cabinet secretary has to say.

Amendment 236 is a back-up, if amendments are agreed to that would remove the commissioner from the bill. I would still like to see the charter in place, so placing the duty on ministers is a fallback position. Personally, I am not that fussed. Victims want improved outcomes and all justice agencies to work together with a shared common goal. The charter is one method of achieving that. I will stop there and listen to what other members have to say.

I move amendment 234.

Angela Constance: I am very mindful of the discussions that I had with Mr Greene early on after my appointment to the position of Cabinet Secretary for Justice and Home Affairs. At the time, he was a very active member of this committee. I say to him and colleagues that we will always do what we can to work together collaboratively. We have done our very best with the 50-odd amendments that Mr Greene lodged at the end of last week. I assure him that we are working at pace. We might not have all the answers today, but I hope that, as we proceed through stage 2, we can demonstrate a willingness to make further improvements to the bill and discuss other work that is in train and beyond.

10:15

On group 3, I agree with Mr Greene about the importance of ensuring that victims understand their rights and how the criminal justice system works. I strongly agree, in principle, with his amendment for a victims charter to be the responsibility of the victims and witnesses commissioner. However, I cannot support amendment 234 in its current form, as it would require the victims and witnesses commissioner to prepare and publish the victims charter and to lay it in the Parliament within 12 months of section 1 of the bill coming into force. The recruitment process for the commissioner cannot start until section 1 has come into force, and we anticipate the recruitment process taking between six and nine months. Assuming that a suitable candidate was appointed, the commissioner's role might have been filled for only a couple of months prior to the deadline in the amendment, which would not allow the commissioner the time needed to develop and produce a charter.

My suggestion to Mr Greene is that he does not press amendment 234 and that we work together ahead of stage 3 on an amendment that provides that the charter should be produced within 12 months of the commissioner taking up their role.

Given that I agree with the principle of the commissioner being responsible for the charter, I urge Jamie Greene not to move amendment 236, which would place a duty on the Scottish ministers to prepare and publish the charter.

The Convener: I call Jamie Greene to wind up and to press or seek to withdraw amendment 234.

Jamie Greene: We are off to a good start—we have found some agreement on my first amendment. I hope that that has set the tone for the rest of the morning.

I take on board the cabinet secretary's point. I am pleased that the Government accepts the need for a charter. I see it very much as a non-binding but moral contract with the public. I am very happy to work with the Government on the wording of an amendment.

I take on board the point about the introduction of the charter. I have sat on a number of recruiting panels in the Parliament for other public roles, so I know that it can take time to get the right person, and we do want the right person in that role. It feels reasonable that the charter should be produced 12 months after that person takes office. If my or the Government's team would like to propose an alternative amendment ahead of stage 3, I will bring it back to the Parliament, and I hope that we will get agreement on it.

Amendment 234, by agreement, withdrawn.

Section 10—Carrying out investigations

Amendments 102, 103 and 11 not moved.

Section 10 agreed to.

Section 11—Initiation and conduct of investigation

Amendment 12 not moved.

Section 11 agreed to.

Section 12—Investigations: witnesses and documents

The Convener: The next group is on victims and witnesses commissioner: powers and reporting. Amendment 104, in the name of Liam Kerr, is grouped with amendments 105, 106, 135 to 139 and 110.

Liam Kerr: I will speak to amendments 104, 105, 106 and 110.

Amendments 104 and 105 relate to the section of the bill that describes how the commissioner will carry out investigations into whether an agency has—colloquially speaking—stood up and accounted for victims and witnesses. Both amendments are to section 12, which sets out how the commissioner may gather evidence and from whom, as part of their investigation. Section 12 says that

"The Commissioner may require any person .. to give evidence"

and "produce documents" if they are conducting an investigation under that section. Section 12(4)—rightly and understandably, in my view—clarifies that representatives of the Crown Office and Procurator Fiscal Service need not provide the information required by the commissioner if, according to the Lord Advocate, doing so could

"prejudice criminal proceedings in"

a particular

"case or ... be contrary to the public interest".

Amendments 104 and 105 introduce a similar exception for defence practitioners—or "legal representatives", as they are tightly and precisely defined in amendment 105. Members will note that such representatives are bound by a duty of confidentiality with regard to their clients. To keep things in good order, I again remind members that I am a practising solicitor, although I do not do criminal work, and have not done any for around 20 years.

For those who are not aware—these are my words, but members can check this if they wish to—the duty of confidentiality is fundamental to a solicitor or legal practitioner. It is non-negotiable. It is an obligation on a solicitor; it is a core principle

of the solicitor-client relationship; and it is essential in maintaining trust in the legal profession. Were a solicitor to breach that duty, which is enshrined in various codes of conduct, in laws and in professional ethics, there would be very serious consequences indeed. Accordingly, my amendment 104 simply looks to replicate the protections in section 12(4) for legal representatives—that is, defence counsel—and to clarify that the commissioner's investigative powers do not override the duty of confidentiality and that the principle of equality of arms is upheld between the prosecution and the defence by giving similar protections to both.

Amendment 106 also relates to the commissioner's investigations, but applies to section 14, on the power of the commissioner to gather information. It is my belief that if we are to have a commissioner, and if they are to be effective, they have to have some teeth. What struck me when considering the bill was that the commissioner did not seem to have those teeth. Under section 14, they can "require" an "agency to supply information", serve a notice demanding it and revoke such a requirement. However, they cannot enforce it.

My amendment 106 tries to give the commissioner teeth by ensuring that they are provided with enforcement mechanisms by which to exercise the power to ingather information. However, I am mindful of the fact that the committee has not, I think, had an opportunity to discuss during our evidence taking what those enforcement powers might look like. Moreover, more widely, I think that the Scottish Parliament is currently discussing other bills that provide Scottish ministers with the facility make regulations on enforcement powers when information is required by public agencies for different purposes. Therefore, instead of trying to come up with a specific enforcement power, I thought that it would be more sensible—and, I dare say, more palatable to the committee—to reserve to Scottish ministers a power under the bill to bring in, by regulations at a later stage, whatever enforcement power would be appropriate. That is what my amendment 106 seeks to do.

Amendment 110, which is my final amendment in the group, concerns section 21, which sets out that, in order to assist the commissioner in doing their job, they "may request" the co-operation of specific criminal justice agencies. Section 21(2) deals with the legitimate response of an agency upon receiving such a request, which will be either yes or no. Again, however, the commissioner has no enforcement power if they receive a no, and my concern was whether the committee would prefer them to have that enforcement ability. Absent any evidence taking, I do not feel comfortable proposing the extent and scope of such an enforcement power. It seems to me that, as with amendment 106, the sensible thing would be to reserve to Scottish ministers a power under the bill to bring in whatever enforcement power is appropriate by regulations later.

I am grateful to the committee for considering my amendments, and I move amendment 104.

The Convener: I call the cabinet secretary to speak to amendment 135 and other amendments in the group.

Angela Constance: I will start with Mr Kerr's amendment 104, which is on protections for defence agents in relation to requests from the victims and witnesses commissioner to answer questions or provide documents for investigations that the commissioner is carrying out. The amendment speaks to the direct relationship between a defence agent and the accused, and the role of legal privilege, and is specifically aimed at protecting such privilege.

Although I very much understand the intention behind seeking that protection for a defence agent and the accused, section 12 already outlines that a person is not obliged to respond to a request from the commissioner where they would be entitled to refuse to respond to the same request in court proceedings. Investigations by the commissioner, as referred to in Mr Kerr's amendments, would not call on defence agents to provide information that was not already available to the court. As such, I am unable to support amendment 104 and, consequently, amendment 105.

In relation to amendment 106, committee members might recall discussions at stage 1 on the need—

Liam Kerr: Will the cabinet secretary take an intervention?

Angela Constance: Yes.

Liam Kerr: Forgive me for the delay—

Angela Constance: That is okay.

Liam Kerr: I just want to track back to amendment 104. I think that what you are saying, cabinet secretary, is this: "Look, Liam, you don't need amendment 104, because it's already covered entirely by section 12(3)." That is reassuring, and I see where you are going, but have you checked the position with any of the legal agencies to ensure that they are comfortable that this is definitely not a lacuna in the legislation?

Angela Constance: In short, it is my view that the amendment is not required. Obviously, I have discussed the matter with the bill team, which is supported by the Scottish Government legal directorate. However, I can make a commitment to

Mr Kerr to have further direct conversations with the Law Society of Scotland. If that reassures him, I am happy to do so.

Liam Kerr: I am very grateful.

Angela Constance: In relation to amendment 106, committee members might recall discussions at stage 1 on the need to ensure that the victims and witnesses commissioner has sufficient powers to take action, should criminal justice agencies not comply with a request for information. The amendment provides for the creation of enforcement powers in relation to requests for information.

I hope that this does not make me sound too churlish, but the reason for my not supporting amendment 106 is, quite simply, that I support my own amendment 135, which makes clear the enforcement action that the victims and witnesses commissioner may take if a criminal justice agency does not supply information that has been requested. It provides parity with enforcement powers held by other commissioners in Scotland, including the Scottish Biometrics Commissioner and the Patient Safety Commissioner for Scotland, and provides certainty for criminal justice agencies on what action may be taken against them. Given that amendment 135 sets out enforcement powers on the face of the bill, the regulation-making powers provided by amendment 106 are therefore not required, and I urge Liam Kerr not to move the amendment and to support amendment 135 instead.

I want to encourage the commissioner to work with criminal justice agencies and to foster co-operative working relationships with them. As a result, amendment 136 provides the commissioner with an obligation to send a copy of the draft annual report to each of the criminal justice agencies and any victim support organisation named in the report.

Amendment 137 is a consequential amendment that is related to the early sharing of those draft reports. Sharing reports in advance of publication already happens with other public bodies and is considered to be good practice.

Amendment 138 empowers the commissioner to "publish" additional reports, and amendment 139 provides that such reports must be laid in Parliament and sent to the criminal justice agencies.

10:30

Mr Kerr's amendment 110 would provide for regulation-making powers in relation to enforcing co-operation from criminal justice agencies. Regulation-making powers in relation to enforcement might seem heavy-handed for setting the tone of how the commissioner would wish to work with the criminal justice agencies; nonetheless, I would be more than prepared to discuss that with Mr Kerr before stage 3. If his amendment is agreed to, I would want to engage with the Crown Office to ensure that no unintended consequences arise from how it is interpreted, and I would reserve the right to return to it at stage 3.

I urge the committee to support the amendments in my name and oppose the rest of the amendments in the group.

Pauline McNeill: Having listened to the exchange between Liam Kerr and the cabinet secretary, although I was minded to support amendments 104 and 105, the cabinet secretary has satisfactorily answered the question. The fact that the Law Society of Scotland is going to be consulted is a good belt-and-braces approach.

I want to raise some issues in relation to the enforcement powers. Cabinet secretary, you said that you would check with the Crown Office. I think that that is vital, and I will say why. If we are going to give the commissioner enforcement powers against criminal justice agencies, I note that amendment 135 is quite far-reaching, in that the commissioner can report the matter to the Court of Session.

I do not know what the mechanism is—I am not familiar with it. Is it a new mechanism, or does a mechanism already exist? Usually, there is a process to get into the Court of Session, but the amendment does not say what that will be. Is it something completely new? We did not discuss that at stage 1.

My primary concern is about the requirement to supply information. If there was a dispute between the commissioner and the Crown Office as to whether the information to be supplied was relevant to the commissioner's work, it seems quite a jump that the commissioner could, theoretically, just report the matter to the Court of Session, and the Crown would then have to defend itself in the Court of Session, which would consider the matter.

I am not saying that that understanding is correct, but I have been reading the provisions in the past few days, and I think that we perhaps need to qualify that further. The aim of the bill is to bring about a culture change as much as anything else, and there would be co-operation, but the black letter of the law always has to be clear.

I am a wee bit concerned that the powers of the commissioner should not necessarily override the view of the Crown Office that information is not relevant. Again, a bit more consideration could be given to the issue of supply of information in particular. That is my primary concern—there

might be a difference of opinion about whether information is relevant, and we could end up with a battle in the Court of Session between the commissioner and the Crown Office as to the use of their enforcement powers. That may be an issue to consider for stage 3.

Angela Constance: I am grateful to Ms McNeill. I point out that the process with regard to the Court of Session already exists in other legislation—namely section 45 of the Court of Session Act 1988, on being able to order the performance of a duty.

The purpose of my amendment 135 is to provide clarity on the right of the commissioner to make a referral or application to the court under the said legislation. I reiterate that that replicates the statutory enforcement powers that apply to other commissioners. In addition, I assure Ms McNeill that the Scottish Government proposed amendments 135 to 139 following our discussions with Crown Office and Procurator Fiscal Service officials last year. It was during those discussions that the Crown Office suggested that the bill be amended to require the commissioner to share reports with criminal justice agencies prior to publication, for example.

The Convener: As no other member wishes to come in, I call Liam Kerr to press or withdraw amendment 104.

Liam Kerr: I am grateful to the cabinet secretary and to my friend Pauline McNeill for their comments. I think that it has been a good debate; I have enjoyed the back and forth of it.

The cabinet secretary's point on amendment 104 is well made. I am concerned to absolutely ensure that everything is covered, so in order to preserve the position while reassurance is sought, I will not press amendment 104.

On amendment 106, after listening to the cabinet secretary, I am persuaded that amendment 135 covers what I was trying to do—I think that amendment 135 was lodged after I had already lodged amendment 106, hence the crossover. My intention with amendment 106 was to give the commissioner teeth, and I am persuaded by the cabinet secretary's remarks that amendment 135 does that. Amendment 106 is therefore not required and I will not move it when asked to do so later.

The point about the unintended consequences that could arise if I pressed amendment 110 to a vote and if it were agreed to is interesting. None of us, whatever our persuasion, wants unintended consequences, and we are all working very hard to make the bill as good as it can be. Again, I find myself persuaded by the cabinet secretary's course of action to avoid unintended consequences of any drafting and by the sensible suggestion that we always check what could happen with the Crown Office. I shall preserve my position on the matter and work with the cabinet secretary to ensure that the bill is as good as it can be. Therefore, I will not move amendment 110 when asked to do so.

Amendment 104, by agreement, withdrawn.

Amendments 105 and 13 not moved.

Section 12 agreed to.

Section 13—Reports on investigations

Amendment 14 not moved.

Section 13 agreed to.

Section 14—Power to gather information

Amendments 106 and 15 not moved.

Section 14 agreed to.

After section 14

Amendment 135 moved—[Angela Constance]—and agreed to.

Section 15—Offence of Commissioner disclosing confidential information

Amendments 107 and 16 not moved.

Section 15 agreed to.

Section 16—Annual Report

Amendment 136 moved—[Angela Constance]—and agreed to.

Amendments 108, 109 and 17 not moved.

Section 16, as amended, agreed to.

Section 17—Requirement to respond to annual report

Amendment 137 moved—[Angela Constance]—and agreed to.

Amendment 18 not moved.

Section 17, as amended, agreed to.

Section 18—Publication of responses to annual report

Amendment 19 not moved.

Section 18 agreed to.

Section 19—Reports

Amendments 138 and 139 moved—[Angela Constance]—and agreed to.

Amendment 20 not moved.

Section 19, as amended, agreed to.

Section 20—Protection from actions of defamation

Amendment 21 not moved.

Section 20 agreed to.

Section 21—Co-operation with Commissioner

Amendments 110 and 22 not moved.

Section 21 agreed to.

Section 22—Application of public authorities legislation

Amendments 111 and 23 not moved.

Section 22 agreed to.

Schedule 2—Application of public authorities legislation to the office of Victims and Witnesses Commissioner for Scotland

Amendments 112 to 116 and 24 not moved.

Schedule 2 agreed to.

Section 23—Interpretation of Part

Amendments 117 and 118 not moved.

Amendment 140 moved—[Angela Constance]—and agreed to.

Amendments 119 to 121 and 25 not moved.

Section 23, as amended, agreed to.

10:45

After section 23

Amendment 235 moved—[Sharon Dowey].

The Convener: The question is, that amendment 235 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

The vote is tied. As convener, I use my casting vote to vote against the amendment.

Amendment 235 disagreed to.

Amendment 236 not moved.

Sections 24 to 29 agreed to.

After section 29

The Convener: The next group is on trauma-informed practice. Amendment 60, in the name of Katy Clark, is grouped with amendments 86 to 88, 93, 170 and 171. I point out that if amendment 93 is agreed to, I cannot call amendments 170 and 171 due to pre-emption.

Katy Clark: Thank you for the opportunity to speak on this group. Amendment 60 would require that a review of trauma-informed practice in the justice system be undertaken by Scottish ministers within five years of royal assent. We know that our justice system has, unfortunately, often been a hostile environment for victims and survivors who have experienced traumatic events. I welcome the bill's commitment to trauma-informed practice and standards, but there might be a risk that that becomes a slogan that does not materialise into substantive changes to practices in our justice system. The term "trauma-informed practice" may be used but the practice might not change—or might not change significantly.

My amendment would require a review of how a trauma-informed approach through the bill had changed practices in all parts of our justice system. That would include

"the functions and standards of service"

in the courts, in the parole system, in the police and in other parts of the justice system in so far as it relates to victims and witnesses. That could also include examining what changes we have seen in how our courts work, in the rules of court, in the guidance that is issued by the courts, and in the way that court staff, the Crown, the defence and other parts of the justice system, including prisons, have changed their behaviour as a result of the drive that we hope would take place as a result of the bill becoming an act.

The amendment would require the Scottish ministers, as soon as reasonably practical after completing the review, to prepare a report that included recommendations to ensure the continued

"effective implementation of trauma-informed practice".

That report would be published and laid before the Scottish Parliament.

I move amendment 60.

Sharon Dowey: My amendments in this group would ensure that trauma-informed practice and training worked in the best interests of victims across the justice system.

My amendment 86 would mandate that people who work with victims and witnesses in criminal investigations or proceedings should complete a training course in trauma-informed practice. That would ensure that victims of trauma were dealt with sensitively at a very difficult time for them.

My amendment 88 would require the Law Society of Scotland to include trauma-informed training in its training regulations, which would mean that a person would not be admitted as a solicitor until they had completed that training. I know that the Law Society has concerns about amendment 88 and has said that, due to the legal aid sector being in a real state of crisis because of the number of practitioners, it does not support further barriers to practising. I have listened to the Law Society's concern about the proposal for mandatory training. It highlighted various commitments that it has made to recognising the importance of trauma-informed practice, including in relation to work conducted across LLB law courses in Scottish universities, which demonstrates progress in the field.

I understand the Law Society's views, and for that reason I will not move amendment 88. However, the amendment has the best of intentions to improve the experience of victims and witnesses in the criminal justice system. Although I will not move amendment 88 at this time, we need to ensure that all solicitors—those who are new to the system and those who have been in practice for years—receive the relevant trauma-informed training, and that training must be kept up to date.

My amendment 87 would require five named criminal justice agencies to report directly to Parliament, rather than the victims commissioner, on whether they were performing trauma-informed practice up to the legislative standard. The five named agencies are the Lord Advocate, the Scottish ministers, the chief constable, the Scottish Courts and Tribunals Service and the Parole Board for Scotland. It is important that Parliament has oversight over those agencies, so that concerns and areas of improvement can be addressed most effectively.

My amendment 93 would better define trauma-informed practice so that it would be carried out in the interests of victims and support their recovery.

Angela Constance: I will start with amendment 60, from Ms Clark, and amendment 87, from Ms Dowey, on reviewing and reporting on trauma-informed practice. I understand their position, but I cannot support the amendments, as section 24 already requires criminal justice agencies to set and publish standards on how they carry out their functions in relation to victims and witnesses in a way that reflects trauma-informed practice. The agencies will have to report on those standards annually, setting out whether the standards have been met and how they plan to meet them during the following year.

Importantly, the victims and witnesses commissioner will monitor compliance with the standards for trauma-informed practice, so there will be independent scrutiny and accountability. Also, under section 16, the commissioner will have to produce and publish an annual report on their functions, which must include any recommendations. The bill specifically provides that that can include recommendations on trauma-informed practice.

To further strengthen the measures that are already in the bill, I have lodged amendment 169, which we will come on to in group 32. If that amendment is agreed to, it will place a duty on the Scottish ministers to undertake two reviews, five years apart, on the operation of the whole bill, once it is enacted. That would include reviewing the operation of the provisions on trauma-informed practice. I am therefore confident that there will be sufficient legislative measures to ensure that the implementation of trauma-informed practice is reviewed and reported on. I say respectfully that, in my view, amendments 60 and 87 would not add meaningfully to those measures and could require significant resource to duplicate existing work.

I will turn to training and to amendment 86. Part 5 of the bill already requires all solicitors, advocates, judges and clerks in the new sexual offences court to complete trauma-informed training, as trauma-informed practice is central to the principles and operation of the new court. I do not believe that legislating for mandatory training would be helpful or proportionate, especially given that amendment 86 would capture such a broad range of people. The amendment would cut across existing responsibilities of independent professional groups to set training for their members, and it would appear to apply to prosecutors, which could infringe on the independent role of the Lord Advocate.

I reassure the committee that legislation is not the only tool that we have to embed training. We funded the development of the trauma-informed justice knowledge and skills framework, which helps organisations to identify the training that their staff need to respond to victims and witnesses in trauma-informed ways.

All members of the victims task force have committed to implementing the framework, and the Scottish Government has been funding NHS Education for Scotland to support that work. As part of that, two online training modules were launched last November. NHS Education for Scotland has also worked directly with justice organisations, including Police Scotland, the Crown Office, the Scottish Courts and Tribunals

Service and the Law Society, to support their development and implementation of training.

The Judicial Institute for Scotland has developed and delivered a substantial programme of enhanced trauma training for the judiciary. All salaried sheriffs and summary sheriffs will have attended a course on trauma-informed judging by the end of March, and trauma training now forms part of the induction for new senators and sheriffs. A new trauma course that is focused on sexual offence cases has also been rolled out for High Court judges. For solicitors, several universities now incorporate learning on trauma-informed practice into their diploma courses.

Amendment 88, as written, would mean that use of the regulation-making power in section 5(1) of the Solicitors (Scotland) Act 1980 at any time for any purpose would trigger the requirement to make provision for training on trauma-informed practice and handling sexual offences cases. That would be highly impractical. Regulations under that section might be made for various purposes, and it would not necessarily be appropriate to include provision for such training every single time that the power was used. I therefore cannot support amendments 86 and 88.

Finally, I will speak to the definition of trauma-informed practice. Amendments 170 and 171, in my name, expand the definition of trauma-informed practice in section 69. That responds to a committee recommendation at stage 1.

Amendment 171 adds two new limbs to the definition of trauma-informed practice in the bill, to reflect two additional aims of the knowledge and skills framework. The amendment specifies that trauma-informed practice involves

"adapting and implementing processes ... to ... avoid, or minimise"

hindering a person's recovery from trauma and to enable a person who is affected by trauma

"to participate effectively in court proceedings"

so that trauma is not a barrier to effective participation and they can give their best evidence.

Amendment 170 makes it clear that, in a justice context, trauma-informed practice involves understanding that trauma can impact on the quality of a person's evidence. Practices and processes should then be adapted to take that into account where appropriate. That is an important part of helping to ensure that people can give their best evidence and that the effect of trauma on their evidence is not misinterpreted.

We have developed the amendments in collaboration with justice partners and have consulted Dr Caroline Bruce of NHS Education for Scotland. I was pleased to be able to lodge the amendments in response to the committee's recommendation, and I hope that members will support them.

I am concerned that the language of Ms Dowey's amendment 93 is not workable or meaningful in a justice context. As the committee heard from witnesses at stage 1, unfortunately, we cannot remove all the risk that justice processes will cause people distress, so the amendment's wording of doing "no harm" goes beyond what is feasible. Similarly, although it is right that people working in our justice system should do all that they can to minimise trauma and retraumatisation, supporting people's recovery, which is what Ms Dowey's amendment calls for, generally goes beyond their roles.

I therefore hope that the committee will support amendments 170 and 171, in my name, and oppose the other amendments in the group.

The Convener: I invite Katy Clark to wind up and to press or withdraw amendment 60.

Katy Clark: I will seek to withdraw amendment 60.

Amendment 60, by agreement, withdrawn.

Amendments 86 and 87 not moved.

The Convener: That takes us to the next group. Given that it is spot on 11 o'clock, I propose that we have a short suspension of around 10 minutes to allow for a comfort break.

11:00

Meeting suspended.

11:10

On resuming—

The Convener: The next group is on the victim notification scheme and referrals to victim support services. Amendment 172, in the name of the Minister for Victims and Community Safety, is grouped with amendments 173 to 178, 61, 237, 238 and 243 to 245.

I call the minister to speak to and move amendment 172, and to speak to the other amendments in the group.

The Minister for Victims and Community Safety (Siobhian Brown): I want to address a number of amendments in this group, including my own amendments to reform the victim notification scheme, also known as the VNS, as well as those that the committee has just heard about. I will take some time to explain what our amendments will achieve.

As I have indicated to the committee in writing, we want to combine the two criminal justice VNS

elements: the current scheme for victims of offenders who have been sentenced to 18 months or more, and the victim information scheme, which is more limited and is currently available to victims of offenders sentenced to fewer than 18 months' imprisonment. We want to provide all victims with the same entitlements to information, no matter the offender's sentence length, and to expand the rights of all victims to be able to make representations when the offender is released on licence. That is what amendment 172 does.

Amendment 173 provides a legal gateway for the COPFS to directly provide victims' personal data to Scottish ministers for it to be lawfully processed; that will enable their details to be automatically referred to the victim contact team, who can then discuss with victims their options in relation to registering with the VNS. That is necessary to underpin the establishment of the victim contact team, which is a key feature of the reformed VNS.

On the VNS amendments that have been lodged in the context of offenders subject to mental health orders and directions, amendment 174 amends section 2(3)(b) of the Victims and Witnesses (Scotland) Act 2014 to include mentally disordered offenders—those subject to a compulsion order with a restriction order, known as a CORO; a transfer for treatment direction; or a hospital direction—among Scottish ministers' functions for the purposes of the standards of service that must be published.

Such a move will allow for the standards to be updated, following the VNS's introduction for mentally disordered offenders in the Mental Health (Scotland) Act 2015. The amendment means that those standards of service must be met in relation to victims of mentally disordered offenders and when making and resolving complaints, which will help ensure consistency of service and oversight across the whole VNS.

Amendments 175 to 178 amend the Criminal Justice (Scotland) Act 2003, which I will refer to as the 2003 act from now on. Amendment 175 amends section 16A of that act to enable registered victims to continue to receive information through the CORO VNS when an offender on a CORO has been transferred out of Scotland, been made subject to corresponding measures and subsequently been transferred back to Scotland. It resolves a known difficulty, arising from the fact that, on return to Scotland, the offender is not subject to an order made in court proceedings in respect of the offence. The amendment also amends section 18B of the 2003 act to allow Scottish ministers to amend section 16A of the 2003 act by order, to include other offenders, such as those who transfer from other jurisdictions into Scotland for the first time and to other mentally disordered offenders in the future.

11:15

Amendment 176 relates to victims of offenders subject to a CORO, a hospital direction or a transfer of treatment direction. It amends section 17D of the 2003 act so that, where a victim has been afforded the opportunity to make representations under section 17B of that act, they are told that a decision has been taken and what the actual decision is.

The amendment inserts new subsections (5) and (6) into section 17D of the 2003 act to allow for victims to be informed of appeals against a decision by the Mental Health Tribunal for Scotland to make no order under section 193 of the Mental Health (Care and Treatment) Scotland Act 2003. When such a decision cannot competently be appealed against and is therefore final, a decision to make no order effectively means that the CORO has not been varied or revoked by the tribunal.

Amendment 177 relates to victims of offenders subject to a CORO. It inserts new subsections (3A) and (3B) into section 18A of the 2003 act to create a power to vary what is a "relevant condition" to a victim for the purposes of the conditional discharge of a CORO patient. Currently, victims are required to specify names and places that they are interested in, and that information determines the conditions relevant to them.

However, some victims do not provide that information and therefore miss out on information that they might receive under the CORO VNS. In other cases, when there is more than one registered victim, victims might specify different people and places and therefore receive different information on conditions, which can be confusing. This amendment will allow for consultation with victims on what conditions they consider to be relevant to them and the process of delivering that information to them, in order to inform changes to those aspects of the CORO VNS.

Amendment 178 also relates to victims of offenders subject to a CORO, a hospital direction or a transfer for treatment direction. It seeks to amend section 18A of the 2003 act by amending subsection (2) and inserting new subsections (2A) and (2B), with the aim of ensuring that victims receive information about a suspension of detention—that is, the first occasion that an offender is granted unescorted suspension of detention, allowing the offender to leave hospital grounds unescorted—that is relevant to them.

I will now turn to the rest of the amendments—

Jamie Greene: Will the minister give way?

Siobhian Brown: Yes.

Jamie Greene: I suspected that you were about to move to other amendments in this group, minister.

Before you do so, though, I have a point of clarification. In your opening remarks, before you spoke to the individual amendments, you said that this series of amendments will ensure that all victims have access to the same information, irrespective of length of sentence, and—I might need to check the *Official Report* for this—will expand the rights of victims in relation to, I believe, release. It might have been temporary release, but we can check that, too. Which of the amendments that you have just spoken to actually does that? My gut feeling is that it is amendment 172, which is part of the move to unify the different systems. However, having read the amendment, I am unclear as to how it will achieve the outcome of ensuring that all victims have access to the same information, irrespective of the sentence. Can you clarify how it does that?

Siobhian Brown: It is amendment 172, which enacts our decision to merge the victim notification scheme and the victim information scheme. As we move forward with this, all victims will be contacted by the victim contact team. This is the underpinning legislation. You will see, when we move to the other amendments, that there will also be a legal gateway for the Crown Office and Procurator Fiscal Service to provide data to the victim contact team so that victims can be contacted.

In short, this is the underpinning legislation to allow for data to be given to the victim contact team so that victims can be contacted.

Jamie Greene: Is it subsection (6), which seeks to repeal section 27A of the 2003 act, the part of amendment 172 that does that? That is a technical question on which you might want to seek some guidance.

Siobhian Brown: Yes, it is.

Jamie Greene: Thank you.

Siobhian Brown: Turning to the other amendments in the group, I am sympathetic to their underlying aim of ensuring that victims are able to effectively exercise their right to access information and support services.

Katy Clark's amendment 61 would, in effect, mean that all victims would automatically be registered for the VNS without their knowledge or consent, even if they did not know about the scheme, understand it or want to sign up to it. I am keen to try to avoid the terminology of "opt in" and "opt out", if possible. My amendments seek to ensure that victims are able to make informed and supported choices and to fully exercise their entitlements to information at a time and a pace that suit them best, as individuals.

I know that amendment 61 is well intentioned, but, if my amendments are agreed to, it will fundamentally change the context in which the VNS operates in future by providing the same entitlements to all victims. If entitlements were expanded to victims in cases where the sentence was under 18 months, there would be, in many cases, only a short period in which there would be an opportunity to opt out for those who wished to do so. The victim might be presented with information that they did not want and had not asked for, without an opportunity to express their preference.

Instead, as I have set out, the existence of the victim contact team will allow for automatic referral to that team, which can discuss a victim's rights and entitlements directly with them. That will help ensure an informed choice and agency for the victim.

In addition, amendment 61 would not allow for sufficient consideration of a child victim's best interests or their views. There might also be significant data protection issues in relation to the sharing of data in order, in effect, to register an individual for a scheme in which sensitive and potentially distressing information could be communicated to them without their express consent. I know that the committee received a letter in relation to that yesterday.

I am clear that criminal justice agencies throughout the system must be as proactive as possible in ensuring that victims are aware of their rights and able to exercise them. I have set out how the victim contact team will enable that for the VNS, and wider work is being taken forward under the auspices of the victims task force, which will consider the matter across the whole system. However, it is important that, in doing that, we respect as far as possible the victim's choices and their ability to express them and have them respected. I am concerned that amendment 61 does not adequately take that into account, so I urge the committee to oppose it.

Again, I understand the intentions behind Jamie Greene's amendments. Amendment 237 would place a broader responsibility on Police Scotland to refer victims to support services unless the victim explicitly chose not to be referred. I can see benefits in ensuring that connections are made to all support organisations and that the offer of support that might follow remains subject to the victim's choice.

However, before I can give the amendment my full support, I would like to engage with Police

Scotland and victim support organisations on the matter and ensure that due diligence on data requirements is carried out, including by the Scottish Information Commissioner. I suggest to Jamie Greene is that, if I can carry out that work ahead of stage 3, we can discuss the issue further, with the aim of agreeing a suitable stage 3 amendment that would meet Mr Greene's underlying policy aim.

I also make the same offer in relation to Mr Greene's amendment 238, which would require the Parole Board for Scotland to refer victims to support services, unless the victim explicitly chose not to be referred. Again, the amendment is well intentioned, but I want to engage with the Parole Board for Scotland to understand the operational implications and the data requirement issues with that amendment. My offer to Jamie Greene is that I will do that work ahead of stage 3, and I am happy to meet and discuss it further with him.

Convener, I will jump to amendment 244 and again make an offer to Mr Greene to discuss further detail ahead of stage 3. I agree that certain areas with regard to the timing of the provision of information could be improved, and I am happy to work with Mr Greene on achieving that.

As for the final two amendments in the group, I do not support amendment 243 from Mr Greene, because it reflects existing processes and legislation and does not take into account the changes that we are seeking to introduce with the merging of the VNS and the victim impact statement and the underpinning for the victim contact team. I am happy to discuss the aims and intentions for the VNS and the contact team in more detail with Mr Greene.

I accept the principle behind amendment 245 of seeking to give victims more choice to make oral representations in the parole process. However, I understand that primary legislation is not required to make such a change, as relevant powers under section 17(13) of the 2003 act allow for that to be done by regulation. There might also be questions of proportionality and appropriate resourcing in applying that right to all parole cases, where the option is currently limited to life sentences. I would be happy to discuss the matter further with Mr Greene ahead of stage 3, and to consider how it is done in other jurisdictions.

I urge the committee to support the amendments in my name, and ask members to oppose the other amendments in the group, if they are moved. The committee should also note that I am happy to discuss any other details further with members.

I move amendment 172.

The Convener: I call Katy Clark to speak to amendment 61 and the other amendments in the group.

Katy Clark: I listened to what the minister said with great interest. I have to say that we were not able to scrutinise these issues at stage 1, which would have been appropriate, and it is unfortunate that the Scottish Government is lodging such complex amendments at this stage. The issues are of massive concern to the committee and the Parliament. Very few victims opt in to the victim notification scheme. Concerns about that have been raised by victims, victims organisations, MSPs and many others on many occasions.

Amendment 61 relates to the victim's rights to information. It was initially lodged as a probing amendment, seeking to shift the onus so that the presumption is that victims will be provided with information about, for example, the release of an offender, but also that they would always be given the clear opportunity to indicate that they do not want that information. I suspect that every member of the committee will have spoken to victims who have been greatly concerned about finding out something about their situation, their case and an offender that they have not been told about in the appropriate way or did not get information about until much later.

The amendment would remove from the victim the onus of having to go through what I understand is a complex process to seek and complete a form and submit the completed application. As the minister knows, our understanding of how the process works is that the issue is usually raised only at the beginning of proceedings.

I appreciate that the Scottish Government has looked at the issue, and I listened carefully to what the minister said about her proposed reforms. However, we need to look at introducing an opt-out process, so that victims are provided with appropriate information unless they indicate that they would prefer not to have it, as will be some victims' preference. We should give them adequate opportunities to explore whether they want to have such information, and we need to get the legal framework correct.

11:30

I also listened to what the minister said about children. I have dealt with a number of cases that involved children as victims or, indeed, children whose family members were victims—for example, perhaps the father was the victim. That is not a scenario that my amendment covers, but the minister is absolutely right that we have to get the scheme's detail right on that. We also have to accept that children often want access to

information, which needs to be provided in an age-appropriate way, and that the process might involve family members or guardians. As the children get older, they might wish to have more information, particularly in serious cases in which an offender has received a lengthy custodial sentence or the offence has had a life-altering impact on the family.

I will not move amendment 61 on this occasion, but I am greatly concerned about the detail in the Government amendments that have been lodged and not completely convinced by what the minister has said. If we had had a proper scrutiny process at stage 1, we would have benefited by ending up with far better legislation that would perhaps have received the committee's full support. It is not acceptable that the Scottish Government has introduced such complex amendments at this stage.

The Convener: I call Jamie Greene to speak to amendment 237 and the other amendments in the group.

Jamie Greene: First, I apologise, as I have five amendments in this group, and they are fairly substantive. They are not technical or consequential—each has a specific purpose—so I will talk my way through them. Given that the minister has already spoken, I want to reflect on what has been said, and we might hear more of that if she responds to my arguments when summing up.

My amendments principally relate to the information that is given to victims and the methods by which they can be notified. As I outlined in my opening comments, amendment 237 seeks to obligate Police Scotland to proactively refer all victims for support unless the victim requests otherwise. I am not using the language of "opt in" and "opt out", because the minister is absolutely right—we want a system that provides enough flexibility so that people understand what they are signing up and agreeing to. Equally, as my amendments will show, the system should be flexible enough for victims to be able to change their mind at any point during the process, which is not the case at the moment. We agree that, whatever system we end up with, that aspect needs to improve.

As the minister said, amendment 237 would shift the responsibility on to Police Scotland, which would require a discussion to be had with it. I have not had time to have such a discussion, but I appreciate that the minister will do so. I hope that there will not be any reluctance on Police Scotland's part to move to a new world in which it plays a much more proactive role in communicating with victims.

Amendment 237 would amend section 3 of the Victims and Witnesses (Scotland) Act 2014, which is the only way that I thought that I could go about making such a change. The amendment states that a victim, or someone who a constable believes to be a victim, must be referred to a victim support service

"unless that person intimates that they do not wish to be referred",

which would mean that the decision would always rest with the victim.

In practice, that would mean that Police Scotland would not have to wait for a victim to ask for a referral, and it would give the victim more choice. A few years ago, Victim Support Scotland and Police Scotland did a joint survey on the information that is given to victims when a crime has occurred, and found that, in 2021, only 14 per cent of victims received a care card, for example. I would like to think that the situation has improved a lot since then—I could not find more up-to-date statistics, but it would be helpful to know whether it has.

Essentially, we are saying that, at the point of reporting a crime, someone is at the most traumatic point of their experience, having only recently been subject to a crime. It should not be up to the victim to be proactive to get support; rather, the system should be proactive. I am glad that the minister is willing to work with me, and I will take her up on her offer to sit down and look at any consultation that needs to happen. I am even happy to be part of that conversation if required, given my historical relationship with some of those stakeholders.

Amendment 238 provides for a different scenario, which is after someone has been convicted and sentenced. When that person is serving their sentence, they will at some point come up for parole. At the moment, according to my conversations with Victim Support Scotland, the victim will receive little more than a letter in the post informing them of the forthcoming potential for a parole situation. Again, it is up to the victim to contact a support organisation.

Amendment 238 would change section 20 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to require the board

"to ask whether the victim wishes their details to be disclosed"

to a victim support service. Again, it is not an automatic transfer of data, but one that would happen at that point of contact, which often, interestingly, will be the first such contact that a victim might have had for many years. For example, if someone has been sentenced to 10 years, not all victims are aware of the early release mechanisms or any changes to it that

have happened—it applies at either 50 per cent or 40 per cent of the sentence, depending on the nature of the crime—so that can come out of the blue, and it can be traumatic for the victim when the letter pops through the letterbox.

In fact, the chair of the Parole Board, in a recent interview with *The Courier* newspaper, agreed with that point, saying:

"It comes as a real surprise to them and can have a significant impact on them".

He went on:

"There should be a system where there is no surprises."

That is the view of the Parole Board and of victims organisations, and it is certainly my view as well.

Again, amendment 238 would place the onus on an organisation that is part of the justice system to contact victims and make a proactive offer to pass on their information, subject to the protocols that I think the minister is seeking to investigate. I understand that there will be implications around the sharing of data but, ultimately, if someone wants more information, they should be entitled to it and the system should take more ownership of doing so.

Amendment 243 is one of the amendments that the minister indicated that she does not support. It would amend section 16 of the Criminal Justice (Scotland) Act 2003, which governs the

"victim's right to receive information concerning release etc of offender",

which currently happens via the VNS scheme. My amendment would insert a new subsection stating that any victim who had previously stated that they did not wish to join the VNS must be given "a second opportunity" to do so prior to the offender's release.

I made the same point in relation to the previous two amendments: victims are often asked whether they want to join the VNS at a highly distressing time and they might or might not make the decision that is good for them in the long term—indeed, they might make an immediate decision based on the situation and the circumstances in which they find themselves. It is important that they be granted a second opportunity to be involved in any notification scheme.

If, as Ms Brown's amendment 172 proposes, we are moving to a merged scheme that enhances the rights of victims to receive information, irrespective of the length of sentence, that is a good thing. However—this is the point that Katy Clark made with regard to the devil being in the detail—the amendment does not state at which point, and how, victims will participate in the new scheme; whether it is a one-off opportunity; or whether victims can change their minds and, if so, at which point in the justice process. If someone says, "No, I do not want to participate in the current scheme or any new scheme," they should be given secondary or even tertiary opportunities to do so, and it should be made clear to them how they would go about doing that.

I appreciate that amendment 243 as drafted might not quite fit the bill, but I ask the minister, in the spirit of her offer to work with me ahead of stage 3 on other amendments, to sit down with me and work out how we can amend amendment 243 in a way that enhances any new scheme that might be forthcoming. If that new scheme is to come forth in regulations or in other secondary legislation, so be it, but it is important that the committee understands its nature and how victims can opt in or opt out—to use the language that we said that we would not use.

The reason why it is important is indicated on page 9 of the Victim Support Scotland briefing, which sums up the underlying premise of my amendments in this group. If you do not mind, I will quote what it says:

"Victims ... do not take linear journeys when healing from, and processing, their trauma."

Their

"needs and circumstances ... after a trial, may be very different than their needs or circumstances in the future."

Our

"justice system and processes must reflect this and must"

help

"people ... make informed choices ... Choice and control, access to information, and removal of barriers are the key aspects of a trauma informed system."

I agree with that.

On amendment 244, I will double check with the minister whether she said that she was supportive of it in principle—she can nod at me, but I think that the answer is yes—but it relates to victims being notified of a prisoner's pending release. At the moment, the 2003 act sets out the information that a victim is entitled to in relation to the release of an offender; more important, though, the victim is to be notified of the date of release. My short amendment 244 would not change the type of information given to the victim, but it would make it clear that they should be told of the release of the prisoner prior to release.

That might seem basic, but it is actually quite fundamental. Essentially, it would mean that all victims would be informed of a prisoner's release before that person walked out the door of the prison. Why? The answer is self-evident. When I sat on this committee, I heard numerous examples of victims not knowing that someone had been released, and I have heard more since then. That

happened for two reasons: first, they should have been informed and were not, even though they had signed up to notification schemes; and secondly, they were not signed up to a VNS, because they might have forgotten that they were offered the choice at a very early stage in their trauma.

That is not good enough. When I did the consultation for my member's bill on victims, we submitted a freedom of information request on instances of people being released and their victims not being notified—or their families, if the person, sadly, was deceased. There were 17 very high-profile cases in which sexual offenders had been released on compassionate grounds, due to, for example, terminal illness, and the victims had not been notified. I can provide copies of that FOI response. Seventeen might not sound like a lot, but it is still 17 individual families and victims.

I should also note that we as a Parliament have been asked on a number of occasions to approve emergency early release, and of course, there have been other changes to the point at which people are eligible for release. We can debate those separately, but the point that was made repeatedly throughout those debates—I made it, too—is that in no circumstances should someone find out that a person has been released after their release. That is just commonsense logic.

I understand that there are exceptional circumstances in which that cannot happen, such as day release. It would be unreasonable and impractical to notify the victim that someone was leaving prison for a day to attend a funeral or for some other compassionate reason—say, to go to hospital. Moreover, the emergency release powers made it very difficult to notify every victim, given the volume of people who were released. In my view, it should have happened, but it did not, and I understand the rationale for why it did not.

11:45

Katy Clark: Although it might not be appropriate for a victim to be notified on every occasion—such as when an offender was attending a funeral, as they would usually be escorted—does Jamie Greene agree that, if an offender was starting to be let out on day release, it would be appropriate for the victim to know that they might see them? Pre-warning would enable the victim to plan and to deal with that.

Jamie Greene: I do not disagree with that. The minister will perhaps share her feelings on the matter, but my personal view is that the victim should be informed of any sort of release, including when someone will be released on licence when they have come to the end of their sentence or when someone will be released for other purposes. For example, as part of the reintegration process, some people go back into the community to work and to participate meaningfully in their community.

I do not have a problem with that, but we do not want a victim to bump into that person on the platform of a train station or in a supermarket, which happens too often. There have been high-profile cases in which family members of someone who has been murdered have bumped into the offender because they have not been told in advance. At one end of the spectrum, no one is told, and, at the other end, everyone is told. I understand that, in the real world, it is not always possible for everyone to be told.

If my amendment 244 in its current form does not work, I would like to sit down with the Government and come up with wording that will make the system better, so that as many people as possible are informed, with as much time as is practically reasonable, in advance of release. I will not reiterate that point too much, because I think that I have made it.

The Convener: I just point out that Jamie Greene's microphone is not on. [*Interruption*.] Oh, it is.

Jamie Greene: I am hiding the light with the fluffy bit, but I will move the fluffy bit for your benefit, convener.

The Convener: Thank you very much. That is most appreciated.

Jamie Greene: That is now in the *Official Report*, but there we go. I have said worse.

Other groups of amendments will focus on parole, and I appreciate that there is a wider discussion to be had on that issue, but I want to mention amendment 245, which is a small but important one, although the minister indicated that the Government might have issues with it. The amendment would remove restrictions on victims being able to make oral statements as part of parole proceedings. I say that it would "remove restrictions" because restrictions exist in the current system.

Section 17 of the 2003 act states that a victim must be afforded an opportunity to make written representations to the Parole Board ahead of a decision to release somebody. However, they may make oral representations to the Parole Board only in circumstances in which

"the convicted person is serving a sentence of life imprisonment".

The minister understands that point.

My understanding is that oral statements are currently given not by a victim physically making representations at the hearing. I appreciate that

there are lots of arguments as to why that would be problematic. At the moment, victims may make an oral statement to a member of the Parole Board but not to a member who is sitting on the panel of that hearing. Why that is the case has never been made clear, so perhaps that could be addressed. The board member then relays the oral statement to the hearing panel. I am not proposing to change that method. If that system works, so be it, but, if it could be improved, please let us do so.

However, I have a problem with oral representations being limited to circumstances in which

"the convicted person is serving a sentence of life imprisonment".

People can be serving lengthy sentences for many other serious offences, and I believe, for many reasons, that those victims should be able to give oral representations, not just written representations. Victim Support Scotland points to the fact that it is about choice and flexibility. If a victim chooses to make an oral statement rather than a written statement, they should be given the opportunity to do so, and the circumstances should not be restricted solely to life sentences. I am not proposing any changes to the methodology, but there is a wider discussion to be had.

The minister said that there could be issues with amendment 245 in relation to resourcing and proportionality. On proportionality, I understand that it might be problematic if, at one end of the spectrum, all victims were given the right to make oral representations at parole hearings. However, I think that they should have that right so, if there are logical and practical reasons why that would not be possible, I would like to know what they are.

The other issue is resourcing. I understand the argument, but resourcing is not an argument in itself. Of course it will require more resource, perhaps from the SPS or the Parole Board for Scotland, or from other parts of the justice system. That should not be a barrier to making improvements. Resourcing cannot be the reason why members cannot support an amendment such as this.

Amendment 245 is one of two of my amendments in this group that the Government is not minded to support, but I will take up any offer from the minister to work with me on the amendment, which asks whether there is more that we can do and whether we can expand the franchise in any way so that more representations can be made by more victims in more scenarios and in relation to more sentence types. The status quo is not good enough, to be honest.

I think that I have covered all my amendments in the group, so I will leave it at that.

The Convener: I will open the discussion up to other members.

Pauline McNeill: I recognise the power of work that Jamie Greene has done for victims, and I will try to support as much as I can of what the Government supports because of that. You have done an incredible amount of detailed work, and that is to be applauded. However, I will address some technical issues about whether we should be having the debate now, especially the debate on amendment 245.

I agree with virtually every word that Jamie Greene said about the right of victims to be notified in advance, as well as the statement by Victim Support Scotland. However, here is my problem. I have been doing this for some time, but I have never understood why amendments are grouped in the way they are. It is a mystery—I think that other members agree with that—and I have unsuccessfully challenged groupings in the past. The reason why groupings are important is that, if unrelated issues are debated in the same group, it detracts from the quality of the debate. This grouping started off being about notification, so that is what we were discussing. However, amendment 245 seems to stand out from that, from my point of view, because it deals with the release of prisoners, albeit that it relates to victims. I therefore think that amendment 245 has been wrongly placed.

Everybody in this room knows about all the work that goes into the bill process—I cannot imagine what it must be like to be the bill team or the officials trying to put it all together—but we do not see the groupings until Friday evening, and it is not possible to challenge them. I think that amendment 245 has been placed in the wrong grouping, and I will say why. Katy Clark also mentioned this.

The scrutiny of the bill gives me cause for concern. I am sure that all members, regardless of where they come from, know that we spent an awfully long time on sections 4 and 5 of the bill, which are about the size of juries and the sexual offences court and which are really complex, although it was probably not as much time as I would have liked to spend focusing on the detail of amendment 245. I am being candid about the ability of a committee to deal with a bill of this size and to do it well. In that context, the groupings are really important.

We have not asked the Parole Board for Scotland for its view, although that is fundamental to my view about how I might vote on the amendment. I would like to hear the other side of

the argument, but I am very sympathetic to Jamie Greene's arguments.

Jamie Greene: Will the member take an intervention?

Pauline McNeill: Of course I will.

Jamie Greene: Pauline McNeill is right that I have not sat through all the evidence sessions. I know that it has been a long period, but I agree with the approach that we have taken in the past. Given that the Government has said that the amendments come from a good place, and given that we are all trying to seek the same outcome, we have a little bit of time—although perhaps not enough—between stages 2 and 3 for the Government to get on with some of that stakeholder engagement and for committee members to be involved. I hope that there is a process by which that information could be fed back to the committee, so that, when we come back to the bill at stage 3, we can make the right, informed decisions.

Pauline McNeill: I agree with that. I was also going to say that, between stages 2 and 3, the committee should do something in relation to the Parole Board for Scotland. There has been a long delay between stages 1 and 2—to be fair, I imagine that the Government is trying to resolve other issues in parts 4 and 5—and, arguably, there might have been scope to do a bit more consultation. However, I think that everybody knows that the demands of scrutinising the bill are all-encompassing.

For those reasons, I will probably abstain on most of the amendments if they are put to a vote. That is because, although I agree with what Jamie Greene is saying, I am not comfortable with not hearing from the Parole Board. If, in principle, victims are able to say what they feel about the release of a prisoner—and it is right that they should do so—that could impact on whether that prisoner is released. If I have understood the principle behind it, and if it is not just a talking shop that a victim would go along to in order to say how they felt, we would expect the Parole Board to consider that.

Amendment 245 is about the release of prisoners, which requires a separate discussion.

There are other amendments on the Parole Board, and I feel strongly that we need to hear from the Parole Board on all of those. I hope that whoever makes the decisions about timetables, in consultation with the committee, can allow some time for that.

Siobhian Brown: There is a lot to respond to there. First, I will respond on Katy Clark's amendment 61. I appreciate that it is unusual for this issue to be introduced at stage 2, with the minister and cabinet secretary leading on different parts of the bill, but I think that everybody appreciates that we really wanted to expedite VNS reform and the bill was the only vehicle through which to do that. I appreciate that, when Ms Clark initially lodged the amendment, it was unclear where we were going to end up today, but the amendment would not sit well in the bill. Having said that, I support the intention behind the amendment and am willing to work with Ms Clark before stage 3, so that we have support in place for victims.

A lot of issues have been raised by Mr Greene and Ms Clark. The victim contact team will be providing support to all victims. I have a spiel about it to read out, but I think that I did that at an earlier meeting, so I will not go through it now. I am happy to sit down with any member who wants to know exactly what the victim contact team hopes to achieve and discuss how we will take it forward from there. Ultimately, we do not want victims finding out that people have been released from prison by bumping into them at the supermarket. We are expediting reform of the victim notification scheme so that we have the victim contact team up and running. All victims will be contacted and can make an informed choice about what information they want.

Moving on to Mr Greene's amendments, I can see the benefits of amendment 237, as I said, and I am happy to speak to Mr Greene about it. The same applies to amendment 238, which is well intentioned. However, we would need to engage with the Parole Board.

On amendment 243, it is not clear how the provision would operate within the current opt-in model. The amendment relies on the victim electing to receive notifications. However, it is not obvious how the amendment would work, as it suggests that the victim would have turned down an opportunity to receive information when they simply did not request it. A victim can elect to join the VNS at any point, and not just at the first point of contact. Amendment 243 may inadvertently suggest that that is not the case and that it is limited to a second chance-like timescale. That also applies to the changes that have been sought to section 17, whereby a victim is afforded an opportunity to make representations before an offender is released. I am aware that the amendment is, arguably, not trauma informed, but I am happy to discuss it further with Mr Greene.

12:00

On amendment 245, I am sympathetic to the principle of giving victims the choice to make oral representations in a greater number of cases in which parole is being considered, and I know that Pauline McNeill has raised the issue as well.

However, as I mentioned, given the issue of proportionality and the need to consider the resource implications, I do not know whether it would be right to agree to the amendment at stage 2. Obviously, we would have to look at the financial memorandum, and we would need to scope the cost of all of that. That is why I ask members not to support amendment 245 at this stage.

Amendment 172 agreed to.

Amendments 173 to 178 moved—[Siobhian Brown].

The Convener: Unless any member objects, I will put a single question on amendments 173 to 178.

As no member has objected, the question is, that amendments 173 to 178 be agreed to. Are we agreed?

Members: No.

The Convener: In that case, we will go through each of the amendments in turn.

Pauline McNeill: Apologies, convener—I thought that we could vote on them all at the same time.

The Convener: I am afraid not.

The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP))

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 173 agreed to.

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP))

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 174 agreed to.

The Convener: The question is, that amendment 175 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP))

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 175 agreed to.

The Convener: The question is, that amendment 176 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP))

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 176 agreed to.

The Convener: The question is, that amendment 177 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)

Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP))

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 177 agreed to.

The Convener: The question is, that amendment 178 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP))

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 178 agreed to.

Amendment 61 not moved.

The Convener: We will have a short suspension to allow for a changeover of witnesses. I thank the minister for attending.

12:07

Meeting suspended.

12:08

On resuming—

The Convener: The next group is on electronic monitoring. Amendment 67, in the name of Katy Clark, is the only amendment in the group.

Katy Clark: My amendment 67 was lodged last summer. Since then, the cabinet secretary has appeared before the committee, and I understand that there has been progress in starting work to bring in GPS electronic monitoring in a very narrow set of circumstances. I welcome that.

However, Scotland is well behind most other countries, including England, in the use of electronic monitoring generally, and specifically in relation to the use of GPS technology. The Scottish Government agrees that such monitoring would be suitable in many types of cases. Large numbers of people are in prison in Scotland and we know that many victims legitimately fear offenders, some of whom are a significant risk. However, some risks could potentially be more effectively managed and addressed by forms of electronic monitoring. Given the slow progress on the issue in Scotland, giving it more parliamentary scrutiny and attention could help it to become a Government priority. I hope that ministers in the justice portfolio find that helpful.

Amendment 67 calls for a report on the

"effectiveness of electronic monitoring requirements in protecting victims and witnesses"

to be published

"no later than 1 year after Royal Assent"

and laid before the Parliament. In particular, the report would set out

"whether the Scottish Ministers consider that the use of Global Positioning System (GPS) technology would improve the effectiveness of electronic monitoring requirements in protecting victims and witnesses"

and perhaps the range of circumstances in which that would be appropriate.

GPS-based electronic monitoring is a technology that is used successfully in many countries worldwide and offers the potential to enhance victim safety through proactive and real-time safeguards. GPS technology's beneficial aspects include: the geofencing feature, which sets up virtual boundaries and allows for quick responses if offenders enter or leave designated areas; continuous surveillance; and more precise location flagging. Those features provide greater peace of mind for victims, particularly in domestic violence or stalking cases, and, depending on how the technology is used, could potentially reduce and prevent crime.

I know that the cabinet secretary has given thought to the issue and is working on it already. I hope that an amendment of this nature will be helpful in driving the use of technology in Scotland's justice system and I look forward to her response.

I move amendment 67.

Angela Constance: I very much appreciate that Ms Clark's amendment 67 was lodged some considerable time ago. She has alluded to the fact that a lot of work in the area of electronic monitoring has been progressed since she lodged it. Consequently, I do not think that the amendment is necessary and I cannot support it, for reasons that relate to other on-going work, which I will talk about in a moment.

My starting point, and where I agree with Ms Clark, is that providing more help and support for victims and witnesses is key to building a better criminal justice system. It is important that we

have the right information available to help us to achieve that. Electronic monitoring is tried and tested. It is a feature of Scotland's justice system and a key tool that can be used as people move on from prison or as an alternative to custodial sentences. The amendment's premise is that GPS offers an opportunity to improve monitoring in order to better protect victims. I reassure Ms Clark and the committee that I agree with that, which is why we are progressing with the technology.

As alluded to, Ms Clark's amendment has been superseded by policy developments. On 31 January, regulations came into force that enabled the use of GPS monitoring devices for eligible individuals who have been deemed suitable for release on home detention curfew after the completion of an individualised risk assessment process. We will progress further GPS developments carefully and the timescales for future uses will depend on the learning from home detention curfew.

That means that subsection (2)(b) of Ms Clark's amendment, which would require the report to set a timescale for prescribing GPS devices, has been overtaken, and that is one reason why I do not support the amendment. Another reason is that we have already committed to publishing, after a year of use, evaluation and learning from the first phase of the roll-out of using GPS with HDC. That evaluation will include a number of feedback elements, including on the performance of the technology's protective aspects.

Any further expansion of electronic monitoring with GPS would require regulations to be brought back before the Parliament, and the published evaluation may be part of what the Parliament wishes to consider at that point. The report that the amendment would require would duplicate that work. In addition, there are on-going mechanisms, including regular multipartner meetings, to assess GPS. That will continue over the first year of operation, so that feedback can be collected in real time and the service can be responsive to all aspects of operational practice. I consider that that will be a more effective way of determining impact in this important area in swifter timescales.

12:15

There are also practical challenges for the amendment. It is not currently possible for the relevant evidence to be collated in the way that the amendment requires—that is, to show the impact of electronic monitoring on protecting victims and witnesses—as electronic monitoring requirements can be in place across a range of different court orders. I believe that the qualitative evaluation that is already planned for GPS will be a better means by which to surface important learning about it and the future role that it can have in protecting victims.

I therefore respectfully urge the committee not to support amendment 67.

The Convener: I invite Katy Clark to wind up and to press or withdraw amendment 67.

Katy Clark: It is not my intention to press the amendment today—I want to withdraw it.

Amendment 67, by agreement, withdrawn.

The Convener: The next group is on the allocation of business. Amendment 78, in the name of Russell Findlay, is the only amendment in the group.

Russell Findlay (West Scotland) (Con): I thank the convener and the clerks for facilitating my being here today. It feels like I have never been away, and I see that you have not thrown away my nameplate, which is good news.

The reason why I am here is that, for years, I have worked with crime victims, both in my current job and in my previous job as a journalist. I regard some of my amendments to be unfinished business, and I have given an undertaking to some of those people that I would see this through to a natural conclusion.

First, I will explain what amendment 78 would do and then I will turn to why we need it. When an individual is involved in criminal and civil court proceedings at the same time, the amendment would require the Lord President or the sheriff principal to consider allocating the same sheriff or judge to both sets of proceedings.

The reason why we need that is that domestic violence and abuse victims, who are mostly women, often find themselves simultaneously involved in civil disputes with ex-partners—those could be divorce, child custody, financial or even business-related proceedings. Abusers are using the legal system to inflict further harm on their victims, which comes at a huge cost to those victims, both emotional—obviously—and financial. Abusers use those parallel processes to seek delays in either the criminal or the civil case, and sometimes both, in order to prolong the distress. During the stage 1 evidence-taking sessions, witnesses told the committee that that also has a detrimental impact on children in some family disputes.

I have been raising the issue for a number of years, previously as a journalist and now as a politician, and it is important that we attempt to address it. I will quickly touch on some of the evidence that we have heard. In a written submission, Rape Crisis Scotland said that civil courts should

"stop their processes being used as a means of abuse."

In September 2023, I raised the issue with the cabinet secretary in committee, and she seemed receptive to the principle that we are proposing. In response to the committee's stage 1 report, she said—I summarise—that that would be quite a big undertaking, but that it was worth exploring. In addition, she said that some workshops would be held this year, so I would be interested to hear more about them today.

I will close with a few words from Dr Marsha Scott of Scottish Women's Aid, who told the committee 17 months ago that

"Every sheriff I have spoken to thought it was a good idea."—[*Official Report*, *Criminal Justice Committee*, 4 October 2023; c 26.]

She also said:

"Frankly, I do not think that it is too much to ask."—[*Official Report*, *Criminal Justice Committee*, 8 March 2023; c 26.]

Neither do I, and nor do the many victims of what is being called legal system abuse. A significant reform would be the allocation of a single sheriff or judge to deal with simultaneous criminal and civil cases, where it is practical to do so. That would help curtail legal game playing and system abuse.

It is important to point out that the amendment does not impinge on judicial independence. It requires the Lord President only to "have regard to"—

Pauline McNeill: Will the member give way?

Russell Findlay: I will just finish this up, then I will give way, if that is okay. The amendment requires the Lord President only to "have regard to" the same sheriff or judge sitting in both sets of proceedings. It does not compel him to do so.

For victims whose suffering is made worse by legal system abuse, amendment 78 is necessary, and I also think that it is fairly straightforward.

I am happy to give way.

Pauline McNeill: I agree with what you have said about the abuse that goes on, but do you agree that what is not helping women, particularly those in domestic abuse cases, get to court and in front of a sheriff in the first place is the lack of legal aid provision? Some people see this as a criminal matter—and it is—but the situation is really impacting on women who are trying to access legal aid for such cases.

Russell Findlay: Absolutely. It is part of the difficulty being faced by victims and complainers in such cases. We have also seen in the civil courts how one of the parties—in some cases, the male abuser—can have access to funds and is able to pay for legal representation to pursue cases that might not, on the face of it, have much merit, simply to weaponise the process against the person with regard to whom they are facing criminal allegations. In those cases, the female victims often struggle to find the resources—whether it be legal aid or their own—to defend such actions, which might relate to, say, small claims or to divorce or child custody matters.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I totally agree with the sentiment behind the amendment, but I think that you used the phrase "where practically possible" in your speech. Have you done any research into how practical this would be, given the pressure on courts and court staff?

Russell Findlay: No, and I do not think that that would be necessary. Even if this were to act as a signal from the Parliament to the judiciary that this was a reasonable ask, I have been very careful not to go near saying, "The judiciary must do this." It might well be that sheriffs principal—to whom this will mostly relate rather than the Lord President, who deals with the upper courts—are having these considerations already. I do not know, but I think that, by putting this in legislation, it effectively gives them a nudge and says, "This would be a sensible thing to do. It is a fairly commonsense measure." However, we will see what the cabinet secretary has to say about it.

I move amendment 78.

The Convener: As no other member wants to come in, I invite the cabinet secretary to respond.

Angela Constance: I very much recognise the issue that Mr Findlay's amendment is trying to address. Let me reassure him, and the committee, that the Scottish Government is taking forward work on the criminal-civil interface and I will, in a moment, put on record the breadth of that work. At this point in time, though, I have major concerns about the significant changes that the amendment would make to the running of our courts without any further consultation or engagement.

The effect of amendment 78 is that the courts would have to consider whether a related civil case should be allocated to the same sheriff or judge hearing the criminal case. The civil case might be a family case, such as a child contact case, where domestic abuse is often raised. I very much understand the logic behind the suggestion that the criminal and civil cases be dealt with by the same sheriff, but in practice, amendment 78 could make court programming increasingly complex. If the same sheriff were to be allocated to related criminal and civil proceedings, court programming would need to depend on that sheriff's availability, which would, almost inevitably, take up more judicial and court time and lead to delays in the case being heard. For all the benefits that such integration might bring, the

introduction of further delay is the last thing that families in that situation need.

In addition, the related proceedings could be at different court levels, which could make allocation to the same sheriff or judge problematic. For example, there might be a prosecution in the High Court and a child contact case in the sheriff court. However, as I said, I recognise the issue, which is why the Scottish Government has been progressing improvement work on how the civil and criminal courts interact, particularly in the context of domestic abuse.

We have held two workshops to date—one with justice agencies and another with voluntary sector bodies—and we are actively working on potential reforms. Mr Findlay asked about feedback from those workshops: we are currently identifying and scoping potential change ideas to take forward, which, in broad terms, fall into 10 areas—training, data sharing, court processes and structure, case management by the courts, judicial consideration, support and guidance for parties, child welfare reporters, child contact centres, implementation of the Children (Scotland) Act 2020 and research data and improvement work. I am conscious that integrated domestic abuse courts, or IDACs, were raised in the context of that work and I know from discussions with Scottish Women's Aid that it would like to see them in Scotland—indeed, as Mr Findlay reiterated, the matter was raised during stage 1.

I can very much see merits in the approach, but the introduction of a major change in our courts would mean a lot of work, discussion and engagement, and the involvement of all stakeholders. We need to ensure that any proposed changes are in fact feasible and could be delivered without any significant adverse effects on court timetabling. As with any significant change of that nature, it would also be fundamental to ensure that both the resourcing of the immediate change and the wider implications had been considered. I respectfully say to the committee that, without any of that work having been carried out, a stage 2 amendment to the bill is not the time to make that change.

The Scottish Government carried out and published research in 2019 to look at the effectiveness of IDACs in other jurisdictions. We are building on that work. I am happy to tell the committee that the Scottish Government will carry out and publish further research on IDACs, which will examine models in other jurisdictions, including the pathfinder pilots in England and Wales. The research will be published in time to support the next Government and Parliament to assess whether legislative and non-legislative changes should be progressed in relation to IDACs.

Russell Findlay: To clarify, what is an "IDEC"?

Angela Constance: Well, that was the issue that you raised at stage 1, Mr Findlay. I referred—it was probably a page and a half ago in my notes—to the integrated domestic abuse courts, or IDACs.

Russell Findlay: Ah, it is A. I am sorry, I misheard that. I thought it was an E and I could not work it out.

Angela Constance: It will be my enunciation.

Russell Findlay: While I have you, have you had any feedback from the judiciary about my proposal?

Angela Constance: Yes, I have.

Russell Findlay: Can you share it with us?

Angela Constance: I have intimated some of it. We have had detailed feedback, Mr Findlay.

I appreciate that, in your amendment, you have attempted not to interfere with the independence of the judiciary or the Lord President. However, the Scottish Courts and Tribunals Service has raised many practical issues with me—indeed, the subject came up when I had my first formal meeting with the new Lord President and the Lord Justice Clerk last week. A number of issues have been raised and I have highlighted some of them.

12:30

If I may, I will go on to talk about what we are doing over and above the research, although that research is important in helping us to learn from other jurisdictions, such as England and Wales, and we want that research to be published in time to support the next Government and the next Parliament.

Another reform that emerged from the workshops deals with the potential to make changes to court rules to ensure that civil courts get information about domestic abuse and sexual assault at the early stage of the civil process. Although court rules are made by the courts and not by ministers, the Scottish Government intends to send a policy paper to the Scottish Civil Justice Council. That paper will propose changes to court rules about the information regarding domestic abuse and sexual assault that is provided to the civil courts. A draft of that policy paper will be ready by the start of stage 3.

On the basis of the steps that we are actively taking to improve the interface between the civil and criminal courts, and because such significant change should not be dealt with by an amendment to this bill, I ask committee members to oppose amendment 78.

The Convener: I invite Russell Findlay to wind up and to press or withdraw amendment 78.

Russell Findlay: I am not wholly convinced by the argument that amendment 78 would create a whole lot of difficulties for justice and the administration of the courts because it is entirely discretionary and the Lord President or the sheriff principal would make a decision based on what is in front of them. That same argument also would not fly if a case was in a different level of the court system where, once again, that would be entirely discretionary.

I am encouraged, as I am sure that victims will be, to hear that there have been workshops and to hear about the various other bits of work that the cabinet secretary has referred to. That is good, but, if I am reading the cabinet secretary correctly, it sounds as if the judiciary do not like this one bit and might not be minded to proceed with something similar, even if it is non-legislative.

I have to decide whether to press amendment 78. Is there any scope for the cabinet secretary to give the idea some consideration between stages 2 and 3 and perhaps for a conversation in which some of those matters could be discussed in greater detail to see whether there is any common ground for some form of amendment that might attempt to go some way towards addressing this very important issue?

Angela Constance: I reiterate that, in my engagement with stakeholders, there is always a commitment, from Government and from stakeholders—including the most senior ones—to move forward and to deliver more for victims, although within a context of ensuring that the rights of everyone involved in the court process are protected.

Notwithstanding Mr Findlay's attempt at a very discreet amendment, putting a reform of such magnitude and scale into practice is a significant operation. He will not be surprised to hear that there are concerns about there having been no prior consultation. There are complex issues with court scheduling. We might not like that, but it is the reality. There is also concern about taking the judiciary away from specialist courts.

Russell Findlay: On that point, I have been raising this directly with you, with the Government and with others for almost two years. As an MSP, I do not have the capacity to launch a consultation. The legislation in front of us is supposed to be a victims bill and if there had been a will from Government from the outset, perhaps some of that work on amending the legislation would have been done by the Government. The Government has done that in the past and we have seen quite dramatic amendments to other legislation, often at the last minute and without consultation. It seems to me that there is no real appetite for this.

Angela Constance: I think that that is a complete misrepresentation of the position. The committee will know well enough that I am always minded to take opportunities where they arise, and indeed I sometimes incur the wrath of the committee for doing so. I do not want to repeat the debate that we have just had on the victim notification scheme, but I am always keen to make improvements, whether that is with VNS, parole or wherever we can.

With respect, I think that this is of a different magnitude. Although some of the practical reasons might be irritating to politicians who are always looking to practise the art of the possible, we have to give those reasons proper cognisance. I hope that I have demonstrated to the committee and to Mr Findlay that, since he raised the issue with me at stage 1, we have continued to pursue it with great seriousness. I am very interested in that policy area. However, in this instance, I would much rather come back with something at a future point, when all the irksome practicalities have been bottomed out. We are undertaking serious work on the matter.

On Mr Findlay's request to have further discussions, the only thing that that will cost me is time. That is not a problem, but I want to put it on the record, as I did at stage 1, that this is a substantial area of work and I would not like to make promises that I cannot keep. There are other areas of work, such as in relation to anonymity for the families of deceased children that, with all sincerity, I have looked at including in the bill but that I am not proceeding with. It is not that we are unwilling; it is just that I will not make false promises. However, it is always good to talk.

The Convener: I call Russell Findlay to wind up and to press or withdraw amendment 78.

Russell Findlay: I do not agree with the cabinet secretary's defining of this issue as being one of great magnitude, and certainly not when it is compared with the example that she just cited, which was the proposal to anonymise the child victims of murder. That is a whole different ball game and raises all sorts of issues related to freedom of speech and what is and is not in the public record.

I understand that the amendment would present practical difficulties for the judiciary. Having raised the issue on multiple occasions over the past 18 months or so, I also think that the Government has been talking to the judiciary. I do not think that we have had any formal feedback on that; it sounds as though it has all been fairly unofficial.

However, my position now is that, rather than trying to do the right thing but doing it badly, I will

not press amendment 78 today. I do not intend to take up the cabinet secretary's time if doing so would be fruitless or futile, but if there is scope for a brief discussion between stages 2 and 3 to see whether there is a way of bringing the matter back in an acceptable way, that would be very welcome.

Amendment 78, by agreement, withdrawn.

The Convener: The next group is on plea adjustments and prosecution decisions. Given the time, I propose that this be our last group today. Amendment 79, in the name of Russell Findlay, is grouped with amendments 80 to 84, 90 and 239.

Russell Findlay: I have six amendments in the group. One aspect of the criminal justice system that causes significant distress to victims is plea deals. We all understand and accept the premise of those: when an accused pleads guilty at an early stage, it spares victims from giving evidence. We do not oppose plea deals per se—they have long been an important feature in the justice system. Our concerns are about the way in which they are sometimes used and the general lack of transparency around those decisions.

My six amendments in the group—amendments 79 to 84—all relate to plea deals. Amendments 79 to 81 deal with solemn criminal proceedings, which cover more serious cases involving a jury, and amendments 82 to 84 deal with summary cases, which are of a less serious nature.

Counterintuitively, I will start with amendment 81 and talk only to the three amendments relating to solemn cases in order to avoid repetition, because my amendments relating to summary cases seek to do exactly the same thing in the lower courts.

Amendment 81 would require Crown Office prosecutors in solemn cases to inform victims if a plea deal was reached with an accused. Amendment 80 would require Crown Office prosecutors in solemn cases to take the views of victims into account before agreeing a plea deal. Amendment 79 would require Crown Office prosecutors in solemn cases to discuss plea deals with victims and would give victims a veto on any plea deal decision. For what it is worth, I believe that amendment 79 overreaches, as it could be seen as meddling in the independence of the prosecution service, but I lodged it to demonstrate the seriousness of victims' concerns and to seek the Government's views more generally.

As I said, amendments 82 to 84 seek to do exactly the same things as amendments 79 to 81, but they would apply to summary cases.

I have been raising issues about plea deals for many years—predating my time as a politician. In one particularly shocking case, it took four years for the Crown Office to prosecute the perpetrator of extreme and prolonged domestic violence. The victim suffered relentless retraumatisation as her abuser used his lawyers to play the system. Despite all that, four years down the line, he was offered a very favourable plea deal—the seriousness of some charges was watered down, and other charges were dropped altogether. In that case, the victim was not even told about the plea deal, which, in my view, was an affront to justice.

More recently, the BBC broadcast a "Disclosure" documentary called "Surviving Domestic Abuse", which put a spotlight on the culture of plea deals in domestic abuse cases. The documentary featured seven cases and five plea deals. Again, solid charges were either watered down or dropped altogether, and victims were not informed. It was due only to the presence of a BBC journalist in court that they knew what had happened. In one of the cases, there was video evidence of a woman being choked by her male partner. It was black and white—he was guilty all day long, in my opinion—but the charge was dropped from the indictment. That was perhaps for convenience; it was certainly not in the interests of justice.

On behalf of the brave women who featured in the documentary, I raised the issue of plea deals with the cabinet secretary in the chamber last March—almost 12 months ago—and she said that she would be willing to engage with me on any amendments that I wanted to lodge. Last December, I raised the issue directly with John Swinney, and the First Minister also said that the Government would look at my amendments. I believe that the Government has had sufficient time to do so. Fixing the problems is long overdue.

I accept that amendment 79 and the corresponding amendment for summary cases overreach by giving victims a veto, which could be harmful to the justice process, so I do not intend to press amendment 79 or to move amendment 82—if it is not premature to say that now.

However, amendment 80 is entirely reasonable, because it would give victims a voice and the right to be informed while stopping short of providing a veto. If the Government does not like amendment 80, surely it must deem amendment 81 and the corresponding amendment for summary proceedings to be acceptable. All that the amendments would do would be to inform victims if plea deals were struck and inform them of the details. In many of the horrific cases in which I have been involved, the deals have been hugely harmful and distressing, and being deprived of that basic information, as commonly happens, can often add to that distress.

My amendments would go some way towards tackling a recurring problem in the justice system: a lack of transparency. Disclosing that basic

information might even give prosecutors greater cause to consider the impact of plea deals and whether what they are agreeing to is, in fact, reasonable and in the interests of justice. Basic transparency is the very least that victims deserve.

I move amendment 79.

12:45

Sharon Dowey: My amendment 90 would ensure that, when a prosecutor decides not to prosecute a person for an offence or alleged offence, that prosecutor must, as soon as possible, inform the victim of the offence or alleged offence of the prosecutor's decision. That was first recommended in the "Thematic Report on the Victims' Right to Review" back in 2018 but has still not been implemented. Victims of crime deserve transparency, and ensuring that they are informed of decisions that directly impact them and are likely to traumatise them is the right thing to do.

Jamie Greene: I will follow on from the general theme of decisions to prosecute and the deals that take place. There is another important aspect, which is where the Crown has decided not to prosecute or to discontinue proceedings. I lodged amendment 239 because I feel that there is still much work to be done in that area, and I hope that the Government will accept some of the points that I am about to make.

Amendment 239 would put in legislation the victim's ultimate right to be informed when a decision has been made not to prosecute a crime or alleged crime or to discontinue proceedings. The amendment would achieve that by adding a new section to the Victims and Witnesses (Scotland) Act 2014, which would state that, where a prosecutor decides to discontinue prosecution or not to prosecute a case, the prosecutor must, as soon as reasonably practicable, inform the victim of that. The definition of "prosecutor" could include the Lord Advocate, Crown counsel or a procurator fiscal. That could of course be expanded at stage 3 to make it more appropriate or to include any other relevant justice partner or stakeholder that the Government sees fit to be that point of contact.

Ultimately, why have we got to this place? I consulted on this very issue in relation to my original proposed member's bill at the end of 2021. I refer members to pages 19 to 21 of the consultation document, which was published by the Parliament at the time. The question asked was whether we should enshrine the right of victims to be notified of a decision not to prosecute. Of the 146 individual responses, there was an 83.6 per cent positivity rate in answer to that question. That told me, even back then, that there was an appetite for change.

The numbers speak for themselves. At the time of that consultation, the only data available was from 2019-20, which showed that there were around 88,000 summary cases in court that year. Since then, I have had more up-to-date information from the COPFS. Its published data for the year 2022-23 shows that 13,000 cases were marked for no action at all and 24,500 cases were marked for no further action.

Of course, not every one of those 38,000 cases that came before the Crown would have had a direct victim, but there were a substantial number of cases in the system in which somebody made a decision not to proceed, and one can only assume that a vast number of those will have had an alleged victim somewhere in the process. That same year, only 192 victims exercised their right to request a review of the decision not to prosecute. Of the 192 who requested a review, only 29 cases had the decision not to prosecute overturned.

Of those 38,000 cases, two or three dozen led to a reversal of the decision not to prosecute. Why is that? Because the percentage of people who request a review is tiny. I suspect—in fact, I am led to believe—that that is because very few people are aware of their right to request a review. Many are in a difficult and traumatic position and are probably not aware of how to go about doing it. The procedure is published on the COPFS website, but goodness knows how many people get told about their right to review or how to go about exercising it, or how many are even fit and capable of doing so at the time. We should bear in mind that, at that point in a decision, we are generally talking about the first couple of months after a crime has been reported.

The Crown Office says that, when a decision is made, you can request a review. Anecdotally, though, the numbers seem to stack up and bear out my submission that not enough people are being told about a decision not to prosecute. However, we can fix that, and amendment 239 is one way of going about it. I would be interested to hear what the cabinet secretary has to say.

I ask members and the cabinet secretary to listen to the views of Victim Support Scotland. When I asked this very question about notification in my consultation some three years ago—it was question 10 in my consultation document—its response was:

> "We strongly believe that it should not be for a victim of a crime, or their family ... to actively seek information about whether the crime against them is being prosecuted. It should be for the ... (COPFS) or their representatives to proactively contact victims to inform them of such decisions."

We can amend the bill in any way that the Government sees fit. I am not entirely sworn to my proposed wording. I have gone about this in the

way that I think will meet the objective, although it might be argued that it is unresourceable or impractical; that it will be too difficult; that the volume of cases will make it unreasonable; and that people will not have given permission to be contacted. That is not the point—the point is that far too many decisions are being made at the moment, without victims, or alleged victims, being told about them. That has to change, and I am happy to work with the Government ahead of stage 3 on any amendment that it sees fit.

Russell Findlay: Will the member take an intervention?

Jamie Greene: Happily so.

Russell Findlay: I am sure that, as a former member of the Criminal Justice Committee, Jamie Greene will recall, as I do, the heartbreaking testimony of countless victims, including those who talked about being bystanders at their own cases. Does he agree that, if the Government were serious about this victims bill helping those victims with their experiences of the justice system, a little bit of transparency would go a very long way?

Jamie Greene: The word "transparency" is key here. One of the themes that has come up in my meetings with victims, of which I have had a few ahead of this session, and in my conversations with Victim Support Scotland—I suspect that the cabinet secretary will have had similar conversations—is about having accountability and transparency in the system. They are big asks. However, those are just words; how you go about putting them in legislation can be difficult. My amendment, and a number of other amendments to which I have spoken already and which I will probably speak to when we come to the next couple of groups of amendments, do exactly that through practical means and measures.

This is stage 2, so I am looking for the Government to look on these amendments positively and favourably. They are signs that we are serious about changing specific pieces of legislation to improve communication, transparency and accountability. That is what people are asking for. We can go about that in different ways, but this is one practical way of doing so.

I support other amendments in the group, although I appreciate that they might well need some work ahead of stage 3. I am willing to do the same with mine ahead of stage 3, because I believe that this is a fundamental change that we could and should make, and I look forward to hearing what the Government has to say about it.

The Convener: Pauline McNeill, would you like to come in?

Pauline McNeill: Very briefly. These amendments are in keeping with the theme of a victim's right to know. As Russell Findlay and Jamie Greene have said, one of the takeaways for the committee when it listened to victims was that they did not feel part of the case in which they were the main complainer. I am very sympathetic to that.

I want to make a few points that are relevant here. First, I am not aware of the current situation. I remember that a former Lord Advocate—I think that it was Colin Boyd—announced to Parliament that, for the first time, the Crown Office would tell complainers and victims why it did not proceed with the cases, when it previously did not do so at all. I have no objection to putting that in law, but I want to know whether the Government is minded to say what the current position is and—

Russell Findlay: Will the member give way?

Pauline McNeill: Sure.

Russell Findlay: In 2021, the Lord Advocate told the committee that

"the complainer should be told the details of the plea, the basis on which it is accepted and the reasons or rationale for that."—[*Official Report*, *Criminal Justice Committee*, 22 December 2021; c 28-29.]

That does not happen—or it certainly does not happen as a matter of policy or routine. Something on a bit of paper somewhere might say that it should happen, but, as evidenced by Jamie Greene's amendment, my own experiences and the stuff that we have all heard, it is evident that it is just not happening.

Pauline McNeill: Okay—thank you very much for that.

Several committees have scrutinised the Crown Office and Procurator Fiscal Service—I think that Rona Mackay might have been involved in that work. The COPFS has gone through periods of change and it is probably a bit better resourced than it might have been a decade ago. That is relevant because Mr Findlay's and Mr Greene's amendments speak to notification, but there is a wider issue in relation to why pleas are taken.

I want to get on the record that it is very important that future Governments continue to resource the Crown Office and to recruit procurators fiscal who are particularly skilled at taking on cases that are not for every lawyer. I do not know whether the lawyers around the table would agree, but prosecuting is not for every lawyer. At the end of the day, you must prove that the person who is accused committed those crimes—that is what all prosecutors should be doing. Periodically, committees should look at their workload to see whether there are any barriers to their doing that.

The centralisation of decision making—the fact that discretion has become more centralised—has caused concern. We had a debate in the committee about how centralised decision making has become in the Crown Office. That is relevant, because it is all part of the picture of the impact on victims.

Jamie Greene: I will be brief as I am mindful of time. At our previous meeting, the cabinet secretary talked about the reform of the VNS, the integration of systems and what seems to be an enhanced role for the victim contact team. Perhaps it could be the responsibility of the latter to notify all parties involved about the decisions that the Crown makes. Clearly, the resource issue must be addressed, but a responsibility needs to be set in black and white, too, for someone to notify people about what is going on with their case—ultimately, if a plea deal is made or a decision is made not to prosecute, someone must notify the victims of that. That could be an area of enhancement as part of the reform that is happening anyway.

Pauline McNeill: Yes, I agree. It is a principle, but it is for the Government to see how it could bring it about, if it agrees, to make it an efficient part of the system.

Angela Constance: Unfortunately, I am unable to support any of the amendments in the group. If the committee will bear with me, I will go through the detail of my objections, so that they are on the record.

I want to flag up two issues. I think that we are all agreed that it is fundamental that we ensure that more victims know their existing rights as well as any new rights that they will receive under the bill. The point about the new victim contact team working well with the Crown Office is fundamental and of pragmatic importance.

I will start by commenting in detail on Mr Findlay's amendments 79 and 82. I understand that, sometimes, victims will not support or agree with a plea that prosecutors propose. However, requiring the prosecutor to seek their approval to amended charges before proposing or accepting a plea of guilty is contrary to one of the key principles of our justice system, which is that it is independent prosecutors acting in the public interest who make prosecutorial decisions, and they do so independently of any other person.

13:00

I am glad that Mr Findlay openly acknowledged his overreach in the amendments because the principle is enshrined in section 48(5) of the Scotland Act 1998, and amendments 79 and 82 are outwith the legislative competence of the Scottish Parliament. The prosecutor will weigh up all relevant factors in making their independent prosecutorial decision.

Alongside the issue of competence, there is a practical reason why I do not support amendments 79 and 82. They would risk adding considerably to delay and churn in the criminal justice system if, on each occasion that the prosecutor considers proposing or accepting a plea of guilty to alternative charges, they must contact and obtain the consent of any person who appears to be a victim of the offences.

In cases that involve multiple victims, it is unclear why the views of a victim who does not support a plea of guilty to alternative charges should take priority over the views of another victim or victims who do support that. That would lead to the possibility that all those victims would be required to give evidence in court, rather than a case being resolved by a guilty plea with which the majority of the victims are content.

Making decisions on acceptance of a guilty plea to amend charges dependent on the complainer would also put complainers in a position in which an accused person could pressurise them to accept or agree to accept a plea. That might be a particular risk in cases that involve controlling behaviour and it is another reason why it is not appropriate for prosecution decisions in individual cases to depend on the views of the complainer.

I turn to amendments 80 and 83. I understand that the impact on victims can be significant, particularly when they feel that their views were not considered before a decision was taken. However, the same competence issues apply, as the Lord Advocate would be required to consider the views of victims as a matter of law, rather than because she had reached the view that it would be appropriate to do so in a particular case. As with amendments 79 and 82, that is contrary to the Scotland Act 1998, which provides that the Lord Advocate makes prosecutorial decisions independently of any other person.

Alongside the significant competence issues, I am concerned about the practical impact of the amendments. Plea negotiations between the defence and the prosecution can be an iterative process, and requiring the prosecution to seek and consider the views of any person who appears to be a victim before making any decision about proposing or accepting a plea would add significantly to the time that it takes to resolve cases.

I turn to amendments 81 and 84, which relate to information on plea adjustments. They are well intentioned, but they do not take into account the fact that victims are individuals with particular needs and preferences. The approach to communication and support should be tailored to

those needs and preferences as much as possible, and a blanket approach is not the most effective way of doing that. In addition, removing individual choice could be traumatic when the victim has made an informed decision not to engage. The proposed approach is also resource intensive, as information might be given that is not wanted, which risks diluting available resource that could provide a more personalised approach.

Victims generally want to be able to understand their right to access support and information, and to exercise choice and control throughout the lifetime of their case. In that regard, we would all agree that there is certainly more to do, some of which is the raison d'être of the bill.

Through the bill, we are strengthening, but not duplicating, the rights that were enshrined in the Victims and Witnesses (Scotland) Act 2014. The establishment of the victims and witnesses commissioner and our reforms to the victim notification scheme place the needs of victims at the heart of the justice system, recognising their individual needs and preferences and ensuring that systems respect those in so far as that is possible.

Amendments 81 and 84, which provide no means by which a victim can choose not to receive such information or to exercise agency, no matter their individual preference, would create mandatory processes for specific points in the criminal justice process and therefore add complexity to the system that victims need to navigate.

I have the same concerns in relation to Sharon Dowey's amendment 90 and Jamie Greene's amendment 239, which also seek to introduce a requirement for prosecutors to notify any person who appears to be a victim of a decision to take no criminal proceedings. In addition, amendment 239 requires notification where criminal proceedings have been initiated and discontinued. I acknowledge the good intentions behind amendments 90 and 239, but, as with amendments 81 and 84, I am concerned that they do not provide any means by which victims can choose not to receive such information, which again removes agency.

Jamie Greene: I just want to get this clear. The Government is minded to agree with the principle that more people should be notified of a decision not to prosecute or to discontinue proceedings against an alleged offender—so, in principle, that is not an issue. Are you saying the issue is that people need an opt-out from that? I am just trying to understand. What is the opposition to amendment 239 as it is currently worded?

Angela Constance: I will try to summarise my concern. I would never demur from the acknowledgement that there is much more to do. In broad terms, my concern about the amendments is that they take us into an area of prosecution that can, at times, involve overreach. The water is being somewhat muddied by the fact that we are trying to build a system that is based on ensuring protection for victims, whether that is through a reformed victim notification scheme or other measures. This is a particularly complex area for us to dig into and it needs much more thought.

There are also limitations, including under the Scotland Act 1998; Mr Greene will be well aware of the limitations for ministers and parliamentarians in that regard.

Jamie Greene: Would you mind if I come back on that? I understand and agree with some of those points. However, I am looking at the amendment as it is drafted, and it is not about giving victims—or alleged victims, or whatever language you want to use—the ability to intervene, to influence, to agree or to disagree. It is about a one-way path of communication from the Crown to the individual who has reported a crime and is part of some form of criminal proceeding. The amendment simply says that when

"a prosecutor decides ... not to prosecute"

or "to discontinue" proceedings, they must,

"as soon as reasonably practicable, inform any person who is, or appears to be, a victim in relation to that offence or alleged offence"

of that decision. It is simply about improving communication and information. That is all that it seeks to do. It is not going beyond the reach of this Parliament or straying into the territory that you believe some of the other amendments in the group might be straying into; it is actually quite simple.

We agree in principle that people should be told about decisions. Let us reverse it: why should people not be told when there is a decision not to prosecute? If you can answer that, I would find that most useful.

Angela Constance: I suppose that the bottom line is that we run the risk of traumatising victims who do not wish to engage, notwithstanding that the entire system needs to become more proactive, focused on early engagement and outward reaching.

My fundamental point about the amendments is that they would best be considered as part of a wider piece of work. They focus on very specific points in the criminal justice system and therefore would potentially create lots of opt-ins or opt-outs. The proposed solutions certainly feel somewhat messy.

Katy Clark: Will the cabinet secretary give way?

Angela Constance: I will give way in a wee minute—I was interrupted mid-paragraph. I will make a wee bit more progress and then come back to Ms Clark.

The other important aspect is that we do not want the bill to duplicate existing legislative rights and current practices, and therefore to add to the complexity. That is the terrain that we are all in at the moment.

Victims who have chosen to be included in the Crown Office victim information and advice scheme will be proactively advised of the decisions in their case—notwithstanding that much more needs to be done to ensure that more people are informed of their rights and are aware of that scheme. The Crown Office is currently undertaking work to explore the possibility of extending proactive notification of no-action decisions to categories of victims and witnesses beyond those who are currently engaged with the victim information and advice scheme—although it advises that that work is on-going and complex and will carry resource implications. I am happy to engage with members and the Crown Office to get more information on the detail of that work.

I am happy to take Ms Clark's questions.

Katy Clark: Thank you. I wanted to ask about the issues relating to the rights of victims and complainers to information. The discussion on that was very similar to the discussion on the group of amendments about the victim notification scheme.

Does the cabinet secretary not accept that most victims and complainers want access to information and that we have to incorporate that into our systems? Obviously, we must make it clear that people do not have to get that information and that—I know that you do not want to use the word "opt-out"—they can decide not to get it. However, most victims and complainers want that information. Does the cabinet secretary accept that?

Angela Constance: By and large, I accept that. However, I point out that, particularly in the context of legislation, blanket approaches can be problematic. I will not rehearse the arguments that I have made about that.

We have already touched on the Victims and Witnesses (Scotland) Act 2014, under which victims have the right to request information about their case, including when a decision has been made not to prosecute or to discontinue proceedings. I will not repeat what I have said about the work that the Crown Office is currently undertaking. I know that members of the committee will be aware of the specific right to access the victim's right to review scheme. There has also been discussion about Police Scotland's your care card.

For the reasons that I have outlined, I cannot support any of the amendments in the group, and I urge the committee to oppose them.

The Convener: I ask Russell Findlay to wind up and to press or withdraw amendment 79.

Russell Findlay: As I stated and as the cabinet secretary acknowledged, I have no intention of pressing amendment 79 or moving its corresponding amendment on summary proceedings, which I think is amendment 82—although I think that the numbers have been jumbled up in some of the testimony so far.

I will start with the positive: the cabinet secretary made some very smart and interesting points about amendment 80 and its corresponding amendment on summary proceedings, on what happens in cases where there are multiple victims and complainers. She also made a good point, which I had not considered, about what happens when individuals are subject to pressure from an accused, whether through coercion domestically or even in the context of organised crime or things of that nature. Her point makes sense and, therefore, I do not intend to move amendments 80 and 83.

However, I turn to a negative point: I absolutely do not buy the novel argument put forward by the cabinet secretary that some victims appear to want to be kept in the dark. That is absolutely not my experience.

There should be universality, exactly as in Jamie Greene's amendment 239. Communication, respect and transparency are fundamental issues. If you are the victim of a crime, you put your faith in the hands of the police, the prosecutors and the court. At the very least, it is reasonable to expect to be told whether no further proceedings are being taken. The Lord Advocate is on the record, telling me and the committee three or four years ago that that should already happen in respect of plea deals, but we know that it does not. Much as Jamie Greene is struggling to understand the rationale behind the Government's opposition to amendment 239, I do not understand the rationale behind its opposition to amendment 81.

13:15

Liam Kerr: Will the member take an intervention?

Russell Findlay: Yes.

Liam Kerr: I am very grateful. My intervention will be slightly out of order, in the sense that it is really an intervention on the cabinet secretary, but you have the floor, Mr Findlay. Did you understand from the cabinet secretary's remarks that she would look to work with Jamie Greene on his amendment 239? I understood the objection to be

to the wording that there "must" be notification, whereas the provision might need to be wound back to say "may be notified, subject to". Did you get the sense that the cabinet secretary was saying that she would work with Jamie Greene on amendment 239, or did you not have that impression?

Russell Findlay: I have spent a couple of years engaging with the cabinet secretary, and it is sometimes very hard to read between the lines and decipher what meaning is implied. I do know that she is—

Angela Constance: Will you take an intervention, Mr Findlay?

Russell Findlay: If you would like, yes.

Angela Constance: In the interests of transparency, I note that amendments in this area are fraught with difficulties. I will not reiterate what I outlined earlier, but work is on-going with the Crown Office to look at how more victims—not all, but more of them—are informed.

I am relaxed about whether there is a further discussion for me to have with the Crown Office, one that I facilitate between the Crown Office and members, or something that we do collectively. I am always prepared to engage in more discussions. I am just being upfront and transparent: I think that amendments to legislation in this area are particularly tricky and difficult, and I am not in the terrain of making false promises.

Russell Findlay: No—indeed. However, even when we are told that those things are happening, they are not, and as my colleague has pointed out privately, the problem is that if they are not written into the legislation, they will continue not to happen unless we do something.

I want to make a quick point in respect of Jamie Greene's amendment 239. There are increasing numbers of direct measures and cases of quite serious crimes, including crimes of violence, being dealt with as non-prosecution cases—with no court case and absolutely no way that a complainer or the public can find out what is going on. The increase in such disposals—for tens of thousands of cases, I believe—is yet another reason why a complainer should absolutely be told the outcome of a case, whether it is prosecution, non-prosecution or direct measures.

I cannot quite read between the lines as to whether the cabinet secretary is opposed to that in principle or whether there is scope to communicate further. If there is such scope, I know that my colleagues and I would be happy to do so, but I will also acknowledge if it is a dead duck. I think that the cabinet secretary is in a strong position, if the will is there, to make a pretty fundamental change that would benefit a huge number of people.

I will not press or move my amendments at this stage.

Amendment 79, by agreement, withdrawn.

Amendments 80 to 84 not moved.

The Convener: I will draw proceedings to a close, but I want to say a couple of things before I do so. I am conscious that group 10, which we had hoped to get to today, contains several very important amendments of great interest to victims. Maggie Chapman and Pam Gosal were here to speak to the amendments, but I do not want to curtail our ability to have a good debate on those important issues.

As this has already been quite a long meeting, I propose to finish at this point this morning. We will begin next week's meeting with the group on non-harassment orders, and Pam Gosal and Maggie Chapman will join us then. I hope that members are content with that proposal.

We will pause stage 2 proceedings at this point and resume consideration of amendments at our next meeting on Wednesday, 19 March. I thank the cabinet secretary, the minister and their officials for attending this morning.

Meeting closed at 13:21.

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