OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 10 December 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 10 December 2025

CONTENTS

CRIMINAL JUSTICE COMMITTEE
34th 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)
*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Detective Superintendent Adam Brown (Police Scotland)
Dr Emma Forbes (Crown Office and Procurator Fiscal Service)
Pam Gosal (West Scotland) (Con)
Professor Liz Gilchrist (Law Society of Scotland)
Glyn Lloyd (Social Work Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 10 December 2025

[The Convener opened the meeting at 09:01]

Prevention of Domestic Abuse (Scotland) Bill: Stage 1

The Convener (Audrey Nicoll): A very good morning, and welcome to the 34th meeting of the Criminal Justice Committee in 2025. We have received no apologies this morning. Fulton MacGregor will join us presently, and we are joined by Pam Gosal.

Our first item of business is to continue our evidence taking on the Prevention of Domestic Abuse (Scotland) Bill. We have one panel of witnesses today, and I intend to allow up to 90 minutes for questions. I refer members to papers 1 and 2.

I welcome Dr Emma Forbes, national lead for domestic abuse at the Crown Office and Procurator Fiscal Service; Professor Liz Gilchrist, member of the criminal law committee of the Law Society of Scotland; Detective Superintendent Adam Brown, from Police Scotland; and Glyn Lloyd, chief social work officer and head of children's and community justice services at Dundee City Council, and chair of the justice standing committee at Social Work Scotland. A warm welcome to you all, and thank you very much for the written submissions that you have provided.

Before we start, I remind members and our witnesses to be succinct in their questions and answers. I also remind members that they can select specific witnesses to respond to their questions. That will help us to get through as many questions and responses as possible.

I will open up with a question relating to part 1, which is on notification requirements and monitoring under the multi-agency public protection arrangements, or MAPPA. I will come to Dr Forbes first, and I will then work along the panel, bringing in Professor Gilchrist, Detective Superintendent Brown and then Glyn Lloyd.

Could you set out the role of your organisation in the current multi-agency approach to domestic abuse? That could include the use of the multi-agency risk assessment conference, or MARAC, the multi-agency tasking and co-ordination domestic abuse programme, or MATAC, and the disclosure scheme for domestic abuse. In your view, does the current approach work? Could it be improved? Do the provisions of the bill improve or add to the current approach? I know that you may come to this from more of a philosophical perspective, Professor Gilchrist.

I ask Dr Forbes to open up.

Dr Emma Forbes (Crown Office and Procurator Fiscal Service): Good morning. The Crown Office and Procurator Fiscal Service does not sit on MARAC meetings. As the sole prosecuting authority in Scotland, by default we deal with cases once they have been reported, but we recognise that not all offending is reported to us. We have very close working relationships with our colleagues across the justice sector and the third sector. MARAC meetings and the information that we get from them about risk, as well as the work that goes on around the criminal justice system—rather than within it—are fundamental to our ability to do our job as prosecutors.

We may receive a report on a contravention of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010—in common language, a breach of the peace—and it may be aggravated by being within a domestic relationship. Let us say that we receive a report relating to one charge, breach of the peace. If the complainer comes up as 3 on the risk indicator that the police have carried out—the domestic abuse questionnaire—and has never been discussed at MARAC, and if there is nothing on the vulnerable person's database, that is a very different case from one that may be reported to us of a single, one-charge section 38 offence where the person is 15 on the risk indicator, is therefore at high risk and has been discussed at the MARAC, and we know that there is a co-ordinated intervention to manage that person's safety. Regarding our presentation to the court on risk, the protective measures that we might be seeking and prioritisation—everything that we can do to robustly and effectively prosecute—the MARAC provisions are really important.

We are here today to talk about prevention of domestic abuse. We work closely with Scottish Government colleagues and other colleagues across the sector in the implementation of the equally safe strategy. We support that and all of the work involved in it. Prevention is one part of the equally safe work in eradicating violence against women and girls. Such violence is recognised as broadly offending, although it can affect anyone.

The language in the equally safe strategy is borrowed from the Istanbul convention. It is fitting that we are here today to discuss this subject during the 16 days of activism. The Istanbul convention discusses pillars, and it is important, in this discussion about prevention, to view prevention as one pillar, as it cannot stand up on its own. One of the other pillars is prosecution, and another is co-ordinated policies. That is why it is

so important that we have a joint protocol with the police, that we work with our partners and that we prosecute effectively.

When it comes to prevention, it is very hard to eradicate domestic abuse so that it does not happen in the first place, because that would involve a society where everybody was equal and there was no inequality. We do not have that. However, we can intervene to prevent further offending, and that is what we try to do through prosecution.

The Convener: I will pull your response back to the bill. Having outlined that, what are your comments, from a Crown Office perspective, on the notification requirement provision in the bill?

Dr Forbes: Anything that works to prevent domestic abuse is a good thing. I have a concern about the provision in part 1 of the bill to create a register, in that I do not feel that there is an evidence base to show that that will prevent domestic abuse. I am concerned that, although that provision is well intentioned, it might have unintended consequences in relation to the safety of those reporting.

Evidence from England and Wales suggests that it is extremely expensive to implement such a register, that it is unlikely to do very much to improve the safety of women and girls, and that it detracts crucial funding from elsewhere in an already effective landscape.

Professor Liz Gilchrist (Law Society of Scotland): Speaking on behalf of the Law Society's criminal law committee, I do not think that we would have any response to your question: we would remain neutral on the matter.

If I am permitted to talk as a forensic psychologist and risk assessor in domestic abuse who is running trials of interventions across justice at the moment, I would say that MAPPA and MARAC are incredibly important, and that monitoring the right to ask and the right to tell—the equivalent of Clare's law—is really important, so that high-risk victims can be told of the risks appropriately in terms of disclosure, so that the police have the tools to monitor and manage risk, and so that we can engage in appropriate safety planning with victims.

I am not sure whether the addition of a register would achieve the purposes that the bill sets out to achieve. The Law Society, like me personally and all colleagues, is absolutely in favour of trying to do everything possible to identify, support and manage the risk of those who perpetrate the offences. I am concerned that we might have a broad definition of domestic abuse—the criminal law committee has identified that issue as well—and that that would mean that the bill would gather up too many cases.

In England, the authorities find that, the longer that the sex offenders register goes on, the wider the remit is and the more people they are trying to manage at a high level. They also find that the system is disproportionately focusing on lower-level risk rather than the highest-level risk. Registration and the additional protections that might come from it need to be focused on the right people—that is, at the highest-possible level. I am not sure whether that will add to MAPPA level 3. I would not be averse to it—the Law Society is positive about the support—but there is a question about the practicalities.

Detective Superintendent Adam Brown (Police Scotland): Good morning, convener. To answer the first part of your question, the police have a prominent role in all the processes that you referenced. We are responsible for the administration, delivery and convening of meetings in our disclosure scheme and, of course, the police are the ones who have to deliver the disclosures.

We are prominent at every MARAC across Scotland. We attend in every area. Although there are differences in how a MARAC is structured, administered and chaired across Scotland, we are present at all MARACs and our role is to gather information, share it at those meetings and then collaborate with other agencies on actions that can be taken to improve the safety of the victims who are being discussed.

MATAC is a police-led process in which high-risk perpetrators are identified—often, but not exclusively, by the police. They could be serial perpetrators or it could just be that their conduct is of high risk. Following a similar multi-agency discussion, agencies can take away actions; the principal action for the police is that we normally undertake a large-scale investigation into the perpetrator, which looks at previous partners, previous offending and any other interventions that we can implement to intervene in the conduct.

To answer the second part of your question, overall, we are not supportive of part 1 of the bill. Like everyone else, we recognise the intentions behind it. Any opportunity to talk about potential interventions in domestic abuse is always welcome, but we have concerns about how the statutory management of domestic abuse offenders in the way that the bill proposes might draw our focus and resources away from some of the other processes. We are involved in those other processes not because we have to be but because we believe that they are the right thing to do.

A key difference between those processes and the proposals in part 1 is that those other processes do not require a criminal conviction for interventions to take place. Criminal convictions are, of course, taken into account, but they do not necessarily illustrate the totality of risk that a perpetrator poses. The risk with part 1 is that our resources, time and attention will unavoidably be diverted into the management of perpetrators who do not necessarily pose the highest risk. Basically, we will end up doing what we are obliged to do, rather than what we should do. Of course, people who are convicted of the most serious violent offences, including sexual violence, can be and already are managed in that way under existing legislation.

I am happy to touch on resources, but even if sufficient resources existed, it is unclear how part 1 would fit with those other processes without creating multiple forums across agencies with an overlap of responsibilities and duplication of effort on their administration and delivery. To my knowledge, no detailed analysis of that has been completed. The structures that exist for MARAC, MATAC and our disclosure scheme are complex. They have been established over time, and I am not sure what the impact would be on that established but complex network of professional relationships that exist across Scotland.

The Convener: The implications for resources were certainly brought out in your submission. Thank you for that.

09:15

Glyn Lloyd (Social Work Scotland): Good morning, convener. I speak from a justice social work perspective. We are one of the responsible authorities under MAPPA, so we are a key part of the current risk assessment and risk management of category 1 to 3 offenders. In relation to domestic abuse perpetrators, we prepare court reports to assist the court in making sentencing decisions and we deliver the accredited Caledonian programme in the community to a small number of domestic abuse perpetrators.

We are a key part of MAPPA, MARAC and MATAC. We are also a key part of child protection arrangements. It is important to emphasise that around 50 per cent of children who are subject to the child protection register are there because of domestic abuse within the family.

One of our concerns is the high attrition rate between the number of incidents and the number and type of programmes delivered. For example, in Dundee in any given year, there are between 2,500 and 3,000 domestic abuse incidents, between 350 and 400 court reports with a domestic abuse marker and only 59 community payback orders with the Caledonian programme. There is a fallout in terms of the number of domestic abuse incidents, court reports with a domestic abuse marker and the number of perpetrators undertaking the Caledonian programme. That is a concern.

Another concern is the availability of programmes. Until recently, the Caledonian programme was delivered to different degrees across different local authorities and it is the only accredited programme that is available to domestic abuse perpetrators. Specific criteria need to be met to access that programme.

We also have concerns about the growing number of young people who are beginning to display inappropriate attitudes and behaviours in their relationships with one another and, in the context of the bill, about the availability of victim data and how it can be used to inform longer-term planning and support to victims.

The bill is helpful—we understand the principles behind it and what it tries to achieve—but that comes with some caveats and implications. We have reservations about whether the notification requirements should be mandatory, even if they are restricted to the cohort that the bill outlines. There is an argument that they should be discretionary, with a focus on higher-risk perpetrators to enable the better management and targeting of resources.

We also have concerns about the availability of not only the Caledonian programme but other programmes when people do not meet the criteria. Education is helpful, but it needs to be delivered in the context of getting it right for every child and the team around the child arrangements. We have the three categories in MAPPA but, if a domestic abuse perpetrator is assessed as high or very high risk, they could fall into category 2, violent offenders, at the moment.

Overall, we are supportive in principle but have concerns about some of the implications.

The Convener: There is quite a bit for us to think about in those answers, so I will not ask any follow-up questions at the moment. However, I will probably come back in later.

Sharon Dowey, do you want to come in on this line of questioning?

Sharon Dowey (South Scotland) (Con): I want to ask about the reporting requirements under section 1, on which there are differing opinions. In its submission, COPFS said that restricting the definition of people who would be on the register to those who had been sentenced to

"12 months or more in prison or … a community payback order … is potentially confusing and is inconsistent with the importance placed by criminal justice agencies and third

sector organisations in Scotland of a consistent definition of domestic abuse."

However, would the bill not mean that being put on the register would become a deterrent to somebody who had a lesser charge—perhaps somebody who was a first offender? COPFS said that it wants more people to be involved, but that might lead to more bureaucracy, whereas the bill is intended for high-level offenders.

Meanwhile, the Law Society said:

"We consider that the proposed provisions in Part 1 could create a real risk of labelling people as inherently dangerous … In our view, a higher threshold for registration would produce a more meaningful register".

Should the bill ensure that only those who pose a higher level of risk would go on the register, as opposed to what it proposes at the moment?

Finally, Police Scotland said:

"On review of Part 1 to the bill, we are not of the opinion that the significant investment of budget and resources needed to meet its requirements are proportionate".

If you had the resources required, would what is proposed in the bill fill a gap in the system, with the result that you would be more supportive of the bill?

Detective Superintendent Brown: I do not think that the level of investment of budget and resources that would be required would be proportionate to any potential benefits. We must acknowledge that this is untested ground. The specific model that is proposed has not really been replicated anywhere else—there are no other jurisdictions that we can refer to that have adopted it—but I have seen no evidence of the potential benefits of managing offenders in the way that is proposed that would be proportionate to such an investment of our efforts and resources.

I am not refuting the suggestion that there could be benefits—there might well be. A point that seems to come up fairly frequently, which we would echo, is that such an approach might enable us, in some way, to recognise that someone might be in a new relationship, and it might offer an opportunity to deliver a disclosure to their new partner. However, we absolutely cannot extract any data to inform us how frequently that would happen or how often offenders would comply with requirements to advise us of a change of circumstances. Therefore, it is very hard to gauge the extent of any potential benefits, but we know that the investment would be significant.

Sharon Dowey: If you had more detail on how the proposed system would fit in with the current structures, do you think that it could be beneficial?

Detective Superintendent Brown: I think that I would need to have that detail before I could answer that question.

Let me take MARAC as an example. I would say from my experience as chair of MARAC here—when I say "here", I mean in Edinburgh—that there would be complexities in overlaying MAPPA-type structures on to MARAC. In Edinburgh, we have the comparative benefit of dealing with one local authority and health board and a local network of women's aid groups and other support agencies relatively on hand that can contribute, while only a few miles away, Dalkeith sits in a single policing division—J division—that deals with four local authorities, two health boards and a different network of support agencies.

It is therefore not enough just to say that this will overlay and complement MARAC; detailed analysis of the impact on, say, MARAC across Scotland and in all our communities will be essential before we can really answer that question. For me, that is a fundamental question.

Professor Gilchrist: The criminal law committee has suggested that, if we are going to have a register, there should be a higher threshold, primarily to focus resources.

There are a couple of things to highlight in that respect. First, the idea of being on a register and therefore part of that broad and inclusive category might, in fact, act as a deterrent and put people off pleading guilty, which would lead to more court time being spent on cases instead of being saved.

Separate to my role on the criminal law committee, speaking as a forensic psychologist, I would say that, if we thought that the consequences of people's behaviours—that is, the idea that they might be on a register—would stop them at the time of the offending, I might be more in favour of it. However, I am not sure that that is true. The one thing that we know about domestic abuse is that the people in question tend to breach orders managing their risk and safety, so I am not sure that that would pose a deterrent at that point.

I draw the committee's attention to the pilots that are currently running south of the border on domestic abuse protection notices and domestic abuse protection orders—DAPNs and DAPOs—under which an order with a condition for treatment can be made. However, as that work is still at a pilot stage, we do not really know whether protection orders with a requirement to do something, which might stop earlier than the more serious convictions, will be of help.

Sharon Dowey: You want there to be a higher threshold. Even if people who have committed such serious offences do not plead guilty in advance, would there not be more evidence in those cases to get a guilty verdict?

Professor Gilchrist: I do not think that it would prevent the prosecution and conviction of people

at the high end. However, at the lower end—that is, cases in which there is perhaps more difficult evidence, where there has not been physical injury, where there might be coercive control and where the number of witnesses giving evidence is limited to the two parties—people who would plead guilty now might not plead guilty if they would also end up being put on a register and if it were to be unclear how long that would be for. There is also a lack of clarity about who would be sharing that information.

At the moment, there is a lot of multi-agency work going on, involving the police, procurators fiscal, victim support agencies, education and social work. Making that work well is probably the best thing that we can do and invest resources in. That is my personal opinion rather than the opinion of the criminal law committee.

I am not against having a register—I do not think that anyone is—but there is a question about the practicalities of how it would work and the resources that would be involved.

Sharon Dowey: So, there needs to be more detail on how it would work.

Professor Gilchrist: We also need to think about the unintended consequences.

Sharon Dowey: Thank you. Dr Forbes?

Dr Forbes: We know that a range of people commit domestic abuse, many of whom are also involved in other offending. A significant number of them will breach court orders. There is a lot of research to show that, within that group of offenders, there is a power few. For example, one study in Suffolk Constabulary analysed 36,000 domestic abuse cases and found that 80 per cent of the harm was perpetrated by 2 per cent of the perpetrators. Similarly, a 2017 study of Thames Valley found that 90 per cent of offending was perpetrated by 3 per cent of perpetrators. Therefore, there is a very small number of abusers—the thin end of the wedge—who are committing the most pernicious and dangerous domestic abuse and causing the most amount of harm.

Those 2 to 3 per cent are who we want to target, but I do not see evidence that the register would target them. Many of the highest-risk offenders will be convicted of an offence that leads to an outcome of a custodial sentence or a community payback order, but we also know that many people will give a partial disclosure when they report. Many people do not even feel that they can come forward to report.

Therefore, the beauty of the current MARAC, MAPPA and MATAC structure—with the three orbiting one another and having the same multi-agency teams—is that we are able to identify the victims who are most at risk and those who are most at risk of perpetrating further abuse, and we can try to dismantle that. I do not feel that the register would do that.

I also worry that the stigma of a register would prevent people from pleading guilty, which would simply prolong the justice journey for victims and compound their retraumatisation throughout the process. That would make it harder for us to engage with those victims and to bring cases to court.

Sharon Dowey: Should the register have only the top 3 per cent of offenders in it, or should it be opened up to more people? I thought that you were suggesting in your submission that you wanted the register to include more people.

Dr Forbes: No. Our position is that we do not consider that there is currently an evidence base that the register would add value, and we are concerned about unintended consequences. I am sorry if our evidence was not clear, but the part that you are referring to was trying to show that we feel that the way in which the categories have been selected is inconsistent, and that there is not a clear rationale for why those categories were selected and not others. I hope that that makes sense.

Sharon Dowey: Yes—thank you.

Pauline McNeill (Glasgow) (Lab): Good morning. I am interested in the submissions from the Law Society and the Crown Office and Procurator Fiscal Service on the point that you made to Sharon Dowey about how a register might result in fewer guilty pleas. The COPFS submission goes on to talk about

"more victims being required to give evidence at trial, and an increase in disputes within trial about sensitive information such as … the precise nature of the parties' relationship".

That is an important part of the submissions from the Law Society and COPFS. Do you want to elaborate on why people would be less likely to plead guilty and the point about

"disputes within the trial about sensitive information such as the precise nature of the parties' relationship"?

09:30

Dr Forbes: At the moment, we have two ways of prosecuting domestic abuse. One involves a contravention of section 1 of the Domestic Abuse (Scotland) Act 2018, which is a single offence of a course of conduct. Separately, we can add a domestic abuse aggravation to any common-law charge when we believe that it has been committed in the context of a relationship between partners and ex-partners.

Our concern is that there might be more defence contest of that aggravation and the fact that the parties were in a relationship if it was perhaps a new relationship and the parties had not known each other for a long time. We are concerned that there might be more challenges if the consequence is that, if the person is convicted with the aggravation, it will lead to them being added to the register. Being on the sexual offences register, which is the only register that we have as a frame of reference, has significant consequences for an individual, and the courts think very seriously before imposing that because of the impact that it has.

Pauline McNeill: I just want to make sure that I have understood that point. You are saying that the accused would be less likely to plead guilty if they would be put on the register.

Dr Forbes: We do not know. That is just one of the concerns that we would raise. We do not really have much of an evidence base about whether it would work. The Essex report, which the member in charge of bill referenced in the financial memorandum, was referenced to show the costing of the provision.

The Essex report is of a significant study in England and Wales that shows that a register would do little to help victims. London's victims commissioner said that the research showed that

"proposals for a Domestic Abuse Register would not significantly improve the management of perpetrators, due to the limitations of focusing on a small cohort of convicted offenders."

That is the only evidence that we have to go on. We do not really know about Scotland. Our evidence contains hypotheticals, but those are our concerns, based on our experience of prosecuting a broader range of offending.

Pauline McNeill: Thank you. Does the Law Society have anything to add?

Professor Gilchrist: What I would say is similar. People tend to plead guilty on the basis that there might be a reduction in their sentence and a reduction in monitoring. If that monitoring is not going to go away, the incentive for the guilty plea goes away.

There is some evidence from England that monitoring can also be lost. People change their names or they go underground and seek to avoid the registration, so they are technically being monitored but they cannot be followed up. I am even more concerned that having such a register would make it harder for the more manipulative offenders to be tracked and traced.

Liam Kerr (North East Scotland) (Con): Good morning. I will address my first question to the Law Society and COPFS. For good order, I remind colleagues that I am a practising lawyer and am regulated by the Law Society of Scotland.

If the bill gets to stage 2, it is important that we tighten all the definitions and make the bill as good as it can be so that it achieves its aims. In its evidence, COPFS commented on the definition of a domestic abuse offender, and the Law Society made a similar point about the definition of offences involving domestic abuse. Dr Forbes, what is your concern about that definition? More importantly, perhaps, how might the committee look to tighten that definition through amendments to make the bill do what is intended?

Dr Forbes: I have given evidence to the committee before about the importance of having a single definition and understanding of domestic abuse. Scotland has the gold standard. Research has just come out in England and Wales that shows that their broad definition, which involves family violence and lacks focus on the relationship and unique dynamic between partners and ex-partners, is leading to less focused interventions and prevention. It is important that we protect the definition of domestic abuse in Scotland, because we have found it to be effective so far.

As my friend has already mentioned in evidence, the issue with the bill is that, for certain offences, rather than it being at the court's discretion, it would be mandatory to impose a sentence that would involve someone being added to the register. My concern is that we manage to prove offences in court beyond reasonable doubt by categorising the offending, which does not reflect the totality of someone's lived experience of abuse, our understanding of domestic abuse, or where the most high-risk offenders are. The fundamental sticking point is that we do not know enough about the effectiveness of a register to be able to get into the whys and wherefores of how we might improve what we have, because it is predicated on the assumption that a register will work, but I am not convinced that it will.

Liam Kerr: To be clear, on the definition of a domestic abuse offender, your evidence is similar to the evidence that you gave to the committee previously, which is that it needs to align more closely with what is already in the statute book.

Dr Forbes: Yes.

Liam Kerr: I understand.

I will put the same question to Professor Gilchrist. You talked about the definition of an offence involving domestic abuse. What are your thoughts on that?

Professor Gilchrist: I premise my answer on the basis that, although I represent the Law Society of Scotland's criminal law committee, I am

not a lawyer; I am a forensic psychologist who has some experience of the law.

The criminal law committee's view is that the definition does not include all the offences against ex-partners, and it needs to do that so that it is not misleading. The bill needs to include a broader definition, so that we can define other offences as domestic abuse. Those might include drink driving and all sorts of other offences that would have a domestic violence flag, but which would not fall under the current definition in the bill.

However, having said that, creating a broad definition of domestic abuse would broaden the requirements for registration. My personal view is that, in order to address that, you would have to introduce a risk assessment so that you could narrow it down to those who posed the highest risk who had been convicted of domestic abuse offences under the general definition.

The Law Society of Scotland suggested that we would have a two-tier system, where some people who had committed an offence that hit the level would be on the register, and those who were of variable risk and did not meet the definition would not be on the register. We would end up with some people who had committed offences against partners being registered and others who would not be, which could be misleading for new partners, employers and others. The two-tier system would be a problem.

Liam Kerr: Glyn Lloyd appeared to be signalling his agreement with some of Professor Gilchrist's remarks, so I will come to him. Social Work Scotland's submission highlights that a positive amendment that the committee might consider would be to include a notification requirement on a change of partner relationship. The submission also highlights that many families remain together following a conviction, so additional requirements might lead to retaliatory action. If that is right, is there not a risk that the Parliament might not legislate for fear of what an abuser might do—almost, that it would not do what is right for fear of how an abuser might react? Surely that is the wrong end of the telescope. How might the bill be adjusted to address that possibility, so that it achieves its aims without posing a risk to families?

Glyn Lloyd: Putting aside the definitions and legalities of hypothetical guilty or not guilty pleas, we think that placing the notification or registration requirement before the assessment requirement would be back to front and that it should be more nuanced. The assessment should dictate whether someone is required to register and to be subject to notification requirements and that assessment should be carried out on a case-by-case basis, with a focus on the circumstances of the offence, the offender and their broad network, including—perhaps even especially—their family.

Registration might be entirely appropriate, necessary, proportionate and helpful in some cases, but it might not be in others. Imposing a mandatory requirement could be problematic, but giving the court the ability to impose a discretionary requirement could be helpful. For example, at the moment, we have community payback orders and there are nine requirements that can be attached to those, including supervision, unpaid work, programme attendance and substance use treatment. It seems feasible that an additional requirement could be added to that list of nine to focus specifically on domestic abuse perpetrators and oblige them to register or notify.

Liam Kerr: I understand.

Katy Clark (West Scotland) (Lab): I have some questions about part 2 of the bill, which is titled "Assessment of offenders for rehabilitation programmes and services". Glyn Lloyd has already referred to the lack of availability of programmes. Are there any gaps in the current assessment process for offenders' suitability for rehabilitation programmes and for services that take place in court, during custody and prior to release from prison that would be addressed by part 2 of the bill?

Who wants to speak about part 2 of the bill?

Glyn Lloyd: The Caledonian programme is restricted to a small cohort of people who meet certain criteria. Until recently, the landscape across Scotland involved individual local authorities applying to the Scottish Government for funding to deliver that programme and the funding was based on those individual bids.

More recently, in an effort to roll out the Caledonian programme and make it as consistently available as possible across Scotland, the Scottish Government changed its approach by moving away from an individualised bid arrangement, increasing the funding quantum and applying a standard funding formula across the 32 local authorities. That formula involves cleared-up crime, CPOs as a proportion of the population and rurality. There is a correlation between that and the number of domestic abuse incidents, but it is not a complete correlation, so there are already questions about whether the new approach provides enough capacity to deliver the Caledonian programme. We are at the start of testing that and will escalate it if necessary.

No other accredited programmes are available for people who do not meet the criteria for the Caledonian programme. That gap is one reason for the attrition rate that I alluded to earlier. At

present, if someone who is a perpetrator of domestic abuse and is subject to a CPO without a programme or Caledonian requirement needs an intervention, that intervention will be designed on a local authority, case-by-case and individual basis, which means that there is no consistency across the 32 local authorities.

Professor Gilchrist: I am not speaking on behalf of the Law Society's criminal law committee but speaking as the former chair of the Scottish advisory panel on offender rehabilitation and as someone who is currently running a trial of a new programme in justice, with the support of justice social work in Scotland and probation staff in England and Wales. We have known for years that there is a gap in provision. Over the past 15 years, a group of us have developed a short intervention in order to address some of that gap with perpetrators who use substances and that intervention has been trialled in Scotland.

The Scottish Government is supportive of those new developments, and I think that there are moves towards addressing that gap, but we are not there yet. We will be applying for the Sacro accreditation as well, so there are moves to address that. However, I heartily endorse the view that we do not have a great deal of kitemarked provision at the moment to address the needs in Scotland, and we need that. The is not the assessment but the availability of intervention.

Jury Trials

09:45

Katy Clark: Does either of the other witnesses want to come in? It would be helpful to know how significant the gap in availability is and to have an assessment of the extent to which rehabilitation is available, not just where specified criteria apply but where, ideally, it should be available.

Professor Gilchrist: It is difficult to quantify. In the latest Caledonian evaluation, although the number of people who came through was in the 500s, by the end of the evaluation researchers had managed to follow up—in reports and so on—only 59 of those people, so it is difficult to know what the attrition rate for the Caledonian programme is.

With regard to people meeting the criteria for the Caledonian programme, which are stringent, high and required, there is a great deal of attrition at that point. There is a huge gap, because people do not have time on their sentence—they are given different sentences and they are sent to prison. At the moment, the Scottish Prison Service does not have a programme that specifically addresses cases of intimate partner violence, but it does have programmes that will address some of the criminogenic need behind that. It is difficult to quantify the gap, but a great deal of resource is required, and I think that everybody would be happy to see more resource going towards that.

Katy Clark: I will ask about the financial memorandum relating to this part of the bill. Pam Gosal, the member in charge of the bill, has told the committee that she believes that, if the obligations set out in the financial memorandum were met, there would be sufficient capacity in the system in relation to part 2 of the bill. What are your views on that? I do not know whether you have had an opportunity to look at it in detail. For example, are the finances the only issue, or is it to do with recruitment and whether we have people available who would be able to carry out those functions? Have any of the witnesses looked at the costings around some of these proposals? Would Glyn Lloyd like to come in on that?

Glyn Lloyd: We did not look at that specifically. There would be resource implications, though, and it is difficult to quantify them. However, I will try to illustrate the figures that I quoted earlier. In Dundee, for instance, in a given year, there are 376 court reports with a domestic abuse marker and 59 result in a Caledonian programme, so 317 do not. If those 317 cases needed some form of rehabilitation programme, that would have significant resource implications, depending on what that rehabilitation programme looked like. We would need to cost that, but I do not have that detail immediately available.

Katy Clark: I understand. Are there any non-legislative changes that could be made to improve opportunities for and success of rehabilitation programmes and services for domestic abuse survivors? Obviously, this is a legislative mechanism. Do you think that we need a legislative mechanism for that? Quite often, this Parliament thinks that legislation helps to drive change that could happen without legislation, but the legislation is a way of trying to ensure that that happens. Do witnesses have any comments on whether we need legislation?

Professor Gilchrist: Again, this is my view and not necessarily that of the Law Society, because I do not think that the Law Society would talk about resource. If legislation were to bring resource into focus, that would be helpful. If there were a positive requirement for intervention to be provided, and resource followed the requirement, that would be helpful. Measures such as the DAPO in England and a positive requirement for a range of interventions and those interventions being funded would be helpful. However, legislation is probably not the only way of doing it.

Katy Clark: Thank you very much.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. A lot has been covered so far, so my questions will be pretty broad brush, just to clarify some of the points that have already been raised. One of my questions would have been about whether the register would act as a deterrent. I am picking up that most of you do not think that it would be a deterrent to offenders. I just wanted to clarify that.

Professor Gilchrist, you said that you are not against the bill as such but that you are concerned about the practicalities involved. Do you think that the issues with regard to the practicalities of the bill could be resolved by amendment, should the bill get to stage 2? I know that it is a hard question to answer.

Professor Gilchrist: The question of practicalities is very broad. A bill could be enacted and, if definitions had been refined and resources followed, absolutely, those issues could be resolved. However, it feels as though a huge amount of resource would be needed to enact the bill appropriately and effectively. If we are going to be pushed for money, because we do not have unlimited resource, it does not feel as though the enactment of the register is necessarily the best place to focus those resources. Identifying the gap in provision with regard to behaviour change is maybe a more effective place to focus resource.

Rona Mackay: Last week, one of our witnesses said that the bill is an unnecessary layer of bureaucracy. Is that something that witnesses identify with when they think about the bill?

Glyn Lloyd: I can only add to and perhaps emphasise what has already been said. Sledgehammers and nuts spring to mind. We perhaps need a more nuanced approach that makes better use of the available resource in a way that targets it proportionately at different types and levels of risk. I am not confident that the bill in its current format helps us to do that.

Rona Mackay: Does Detective Superintendent Brown want to comment?

Detective Superintendent Brown: Are we still talking about part 2 or about the bill in its entirety?

Rona Mackay: I am talking about part 1.

Detective Superintendent Brown: Part 1 would absolutely introduce another heavy layer of bureaucracy. I discussed earlier the complexities of layering that with existing processes. Duplication of effort and overlap of responsibilities would all be concerned, and it would be very challenging to implement that in a coherent way without unintended consequences.

Rona Mackay: And from the Crown's point of view?

Dr Forbes: I am not sure that we have seen evidence that the bill would deter. Perhaps if that evidence were available, our evidence might shift a little. Because the police target the most high-risk offenders and work to protect the most at-risk victims, what we have is an effective model. The official crime statistics have just been published, and the number of prosecutions under section 1 of the Domestic Abuse (Scotland) Act 2018 has gone up by 19 per cent. That might not sound like we are deterring, but we are, because it means that we are prosecuting more offences that reflect lived experience and we are managing to reflect the totality of someone's experience and tell their whole story to the court. When we prosecute under the 2018 act, we have an 86 per cent conviction rate. That is down to the work of the domestic abuse task force—it is about the higher tier of policing and that specialist approach. To my mind, as a prosecutor, that is what deters.

Rona Mackay: I want to raise one other point. Last week, the witness from Shakti Women's Aid raised the point about unintended consequences and the fact that any woman who was defending herself and had to fight back could end up on this register. Do you recognise that as a danger of having such a register?

Dr Forbes: I will explain how that happens. We have a joint protocol with Police Scotland, which we have had in various iterations since 2004. There is quite clear guidance to police officers on how to deal with dual reporting, when both parties in a relationship report criminality at the same time.

In that situation, the police role, which is difficult, is to identify the primary perpetrator.

Let us assume in this scenario that it is a man and a woman—it would not always be. If there has been retaliation for self-defence and self-protection, that woman should not be prosecuted and there should not be a report. We do not see very many of those cases.

What is much more difficult is a scenario in which somebody lives with domestic abuse over a long period of time and, finally, through fear or whatever other motivation, in some way violently resists and commits an offence. If it is a very serious offence and there is significant injury, the police will report that to the prosecutor. We have a presumption in favour of prosecution; very few of our domestic abuse cases do not go to court for prosecution and very few are diverted, but those are the cases that would be more likely to be diverted. However, if the bill were passed and there was a scenario in which the offending was so significant and serious that we prosecuted in the public interest and that person was convicted, they would find themselves on this register.

Rona Mackay: That would be a loophole, albeit rare, with the register.

Dr Forbes: This is where risk management and trying to prevent that from happening comes in. We cannot prevent domestic abuse from happening in the first place, but we can disrupt it, and we want to try to prevent those scenarios.

The Convener: We move to Jamie Hepburn.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Apologies. I have a heavy cold today. I have a few questions for the witnesses, predicated on some of the written evidence that you have provided, with some questions that are specific to specific witnesses. The first is for the Crown Office and Procurator Fiscal Service and is on the area of data collection and reporting. In your helpful submission, you set out your concern that the provisions in the bill

"provide for a victim of domestic abuse potentially being asked for the same comprehensive personal data multiple times".

Will you expand on that a little further and set out why that might be a concern?

Dr Forbes: Yes. Thank you for the question. Witnesses come along to this committee and each member of the committee asks us a different question. However, if we came in and each of you asked the same question, it would start to have the effect on us of feeling as though we were not being believed. I would start to think, "I've already answered this question; why are you asking again?". We know that the impact of asking a victim of crime the same questions over and over again is that it compounds their feeling of not being believed and makes it very difficult for them to engage with the criminal justice process.

Under the bill, the data collection would happen at quite an early stage of that process. We absolutely recognise the need for more data to be collected, and we want to collect better data. In fact, in England and Wales, they do not aggregate domestic abuse and stalking statistics annually in the way that we do, and they have commended Scotland for our approach. We still know that we could do better, and we recognise that this would be helpful data to have. However, I suggest that there is a way of doing it through the work of the victims task force to ensure that data is collected in a co-ordinated way, rather than imposing a legislative duty on every agency. I fear for victims being re-traumatised by being asked the same questions over and over.

Jamie Hepburn: In effect, you are saying that there would be another way of collecting the data without a statutory requirement for victims to be repeatedly asked to provide details.

Dr Forbes: Yes. The Scottish Government runs the victims task force, which is co-chaired by the Cabinet Secretary for Justice and Home Affairs and the Lord Advocate. It meets twice a year and has wide representation from across the sector. One of the working groups under the task force is the victim-centred approach committee, and a report submitted to the task force by that committee has advocated for each organisation having a single point of contact and a single front door for victims. There is an on-going digital piece of work to ensure that every agency uses the same language on their website and has the same description of the court process, the same explanation and the same answers to questions. There is also a victim's passport: when a victim gives certain information to one agency, it is shared with other agencies appropriately so that they are not having to repeat their story, which all the evidence shows is re-traumatising.

Jamie Hepburn: I will stick with data collection and reporting for a question to Professor Gilchrist in relation to the Law Society's written evidence, in which you set out concerns regarding the proposal. Perhaps you can respond more widely on what those concerns might be, but I notice that you say specifically that, as an organisation, you wonder

"whether it would be more useful to analyse data regarding the offence itself rather than the complainers' characteristics."

Will you say a bit more about that?

10:00

Professor Gilchrist: I suppose that it is about the reason for collecting the data. As a researcher, I would not collect data unless I was clear about the purpose for doing so.

At the moment, in justice social work, a tool is used to do a risk assessment that looks at the offence characteristics—the nature of the offending—and what the perpetrator's characteristics are, which includes their deficits, issues and the criminogenic needs that might have contributed to the offence being committed; it also looks at victim vulnerabilities. Therefore, that information is already in the risk assessment.

For the Law Society, and for me, it is probably more helpful to identify the nature of what happened, when things happened, what the highest risks are and what we can do to intervene and reduce the risk of reperpetration, rather than focusing solely on the needs of the victim. That is not to say that victims are not crucial. If a victim has come from a certain background and has different vulnerabilities, and their needs are not being met as a result, we should be able to address that. However, if the focus is on reducing the risk of offending and reoffending, we need to look at the nature of the offending and the offender.

Jamie Hepburn: That is helpful.

I turn to issues related to resourcing. Katy Clark asked a question on part 2 of the bill, but issues have also been raised about resourcing in relation to part 3. The submission from the Crown Office sets out its concern that

"the Bill's Financial Memorandum … suggests that implementation of Part 3 within COPFS will be low and met within existing budgets."

It goes on to say that

"Given the range of data to be collected … and the interface of COPFS systems, implementation is likely to require significant system updates with corresponding resource implications."

Will you say a bit more about that? Has any assessment been done as to the likely resource implications for the organisation?

Police Scotland said something similar. It said that it is

"… generally supportive of the principles of Part 3",

but that

"implementation would require Police Scotland to develop training mechanisms to ensure that the relevant data was collected appropriately and sensitively, along with updates to internal systems to ensure that data is recorded and reported accurately."

I therefore put the same question to Detective Superintendent Brown.

Dr Forbes: I confess that we have not done precise costings, but given the significant commitment that would be required, although we support part 3, we recognise that it would involve additional resource and we are concerned that our systems, as they are at the moment, would not allow us to easily capture the required data. Therefore, if system updates are required, we would need to go to our information technology department and ask it to cost that.

Jamie Hepburn: Is there potential for the cost to be quite significant?

Dr Forbes: If it involved technology updates, yes. If it could be done using the current systems, although the cost might not be absorbable, it would not be as significant. We would not know until we tried to troubleshoot that.

Detective Superintendent Brown: My response is the same. We have not done the exact costings. The cost certainly would not be as significant as the cost related to part 1. We are also in a slightly more advantageous position than other organisations because a lot of our systems have been upgraded as we have evolved from eight organisations 10 years ago into one.

I cannot make specific comments about the cost. There would inevitably be a cost involved for the IT element regarding part 3, but there would also some cost involved in how we would guide and train officers and ensure that they ask those questions in a sensitive way, because that is very important.

When people call the police to talk about their relationship, they often do so at an acute moment of crisis and they might not be in the right mindset to answer personal questions. They might just want to talk to the police about why they have called in the first place. We are cautious about the ways that we ask such questions, and we need to acknowledge that sometimes people might not want to answer them. Therefore, even with the right intentions, the data will not always be 100 per cent complete and accurate.

Jamie Hepburn: That sounds as though it could be an extensive process for Police Scotland.

Detective Superintendent Brown: We would have to do the costings and more analysis and come back to you on that. It is a complex issue, and it is probably outwith my expertise to comment specifically on it just now.

Jamie Hepburn: Thank you.

I have one final question, if I may, and it relates to education in schools. In its evidence, the Crown Office and Procurator Fiscal Service highlights the right given in the bill to withdraw pupils from domestic abuse education and suggests that there

could be implications for the United Nations Convention on the Rights of the Child. I found that an interesting observation. Can you say any more about it?

Dr Forbes: The education part of the bill is not really a matter for the Crown; we simply made the observation because the Scottish Parliament recently embedded the United Nations Convention on the Rights of the Child into Scots law, and therefore we all have an obligation in that respect. The bar set by that convention is that we always have the best interests of the child in mind. For a child living in a household with domestic abuse, a class discussion about the dynamics of offending could be retraumatising and not in that child's best interests, and that would need to be carefully managed.

The question, then, would be: who is going to manage it? If it is to be the teacher, they would need to know that the abuse was on-going. If it is to be mum, that would mean that, to have the child's best interests in mind, she would need to disclose to the school and to an authority that there was domestic abuse at home, which she might not have done already and might not be ready to do. If it is to be dad, or the perpetrator of the abuse—I realise that I have used a male in my example, but that will not be the same in every case; it is just easier for this scenario—they are going to withdraw the child from the class to prevent them from hearing the lesson, and that will certainly not be in the child's best interests; it is obviously another form of control. Finally, if a parent decides to withdraw their child from the class without giving any reason, that raises the question of what is in that child's best interests and what is actually going on at home. It is, therefore, a bit of a Pandora's box.

Education is absolutely important, but the committee will want to ensure that, if schools are going to be under a legislative duty, their UNCRC obligations are considered, too. There should also be a recognition of where the provision might sit with the excellent work done through the equally safe strategy, which takes a broader look at education on gender and intersectional inequalities rather than looking at one specific kind of offending.

Jamie Hepburn: Do you get the sense that not enough thought has been given to the issue of compliance with the UNCRC at this stage?

Dr Forbes: I did not see it addressed in the policy memorandum, I have to say.

Jamie Hepburn: That was helpful.

I know that you did not cite this issue, Professor Gilchrist, but I saw you nodding along to what Dr Forbes was saying. Do you have an observation on this area?

Professor Gilchrist: The criminal law committee does not have a view on it, but as a psychologist, I very much echo the point that has been made. Last week in the sheriff court, I was listening to how the rights of the child could be incorporated into adult criminal courts. The rights of the child are absolutely something that we need to think about, and I think that any such education would have to be really safe and trauma informed. We take a trauma-informed approach in Scotland, and this issue should be considered in a similar way to, say, safe touch policies, to ensure that you were looking at positive requirements of positive relationships, while thinking about how and why people might be removed from such education. Echoing what the fiscal has just said, I worry that it would be the people at highest risk who, for whatever reason, would not hear those lessons.

Jamie Hepburn: I presume that the answer to this question will be yes—please correct me if I am wrong—but, just to round this off, I wonder whether, if you feel that the issue has not been given due consideration, there is a possibility that the bill as drafted might fall foul of our legislation with regard to compliance with the UNCRC.

Dr Forbes: If that part of the bill is to go any further, there will need to be consideration of the rights of the child, their best interests and the UNCRC implications, so the answer to your question is yes.

Jamie Hepburn: Thank you.

The Convener: On the wellbeing of children who are caught up in domestic abuse, as Jamie Hepburn was asking his questions—and I think that this came out in our earlier lines of questioning—I was thinking that parts 1 and 2 of the bill have the potential to impose an additional layer of bureaucracy. Some might consider that that activity could be better used elsewhere in the overall effort to tackle violence against women and girls. That layer of bureaucracy would potentially be placed not only on services and organisations, but on families and, indirectly, children. I am thinking about families in which children are already grappling with getting through daily life, and the potential for registration or for participation in the assessment process for rehabilitation. These are all things that families have to negotiate and insert into their daily lives, at a time when life can already be quite difficult. I am interested in the witnesses' views on the extent to which what we are trying to achieve via the bill's provisions, particularly in parts 1 and 2, could result in unintended negative consequences for families, victims and, in particular, children and their

wellbeing. Glyn Lloyd, do you want to come in on that from a social work point of view?

Glyn Lloyd: In its current form, the bill's provisions are too heavy and too crude, and I would emphasise some of the nuances that we have all alluded to throughout the evidence session. It is also important to emphasise existing arrangements in relation to GIRFEC, such as named persons; the team around the child arrangements; child protection arrangements; and the safe and together model. That is all already in place for families who are experiencing domestic abuse, including, especially, children.

Another aspect that we need to examine is the issue of children who are perpetrators of domestic abuse. We possibly need to look at that in the context of the Children (Care and Justice) (Scotland) Act 2024, given that 16 and 17-year-olds will no longer be prosecuted in court but processed via the children's hearings system. Whether there are any complications or complexities with regard to the interface between the bill and the 2024 act warrants some exploration.

The Convener: Detective Superintendent Brown, do you have any views on that?

Detective Superintendent Brown: The position was well articulated by Glyn Lloyd and by you, convener, in that this is, at the best of times, a confusing, frightening and complex situation to be in for a victim. The processes that we have spoken about do not work in isolation from child protection processes and adult support and protection processes, and that is before we get to the criminal justice process itself and the prospect of going through the court system.

We have discussed the management of offenders. In effect, the point of the bill is to keep them in line, but there will be instances when they step out of line, and we need to consider the impact of that on victims, including children and families, because, a lot of the time, information that the offender has breached notification requirements might come from victims and families, and then there will be the prospect of another criminal justice process, in addition to all those other things. The reality is that there will be another complexity in what is already a very complex situation for families.

The Convener: Thank you for that. That is kind of what I was getting at in my question.

Professor Gilchrist: To pick up on evidence that was given in the sheriff court last week by Professor Nancy Loucks, we could potentially have a positive requirement for a child impact assessment in anything that we are doing. That might be something that we need to think about.

10:15

Dr Forbes: I echo what others have said. It is already difficult to meaningfully take the views of a child in a criminal process and to ensure that they are not lost and forgotten about. We struggle with that and try to improve our approach daily.

We are also concerned about children who come into conflict with the law, which has just been referenced, in relation to the age of criminal responsibility moving from 16 to 18 and the fact that, since Covid, we have seen a worrying rise in the number of reports of domestic and sexual offending in that 16 to 18-year-old age group. Having a register brings with it a risk of creating quite a significant stigma at a very young age.

The Convener: Pauline McNeill, do you want to come in with any questions beyond the supplementary questions that you asked earlier? If not, I will open up the discussion to any members for final questions. We have a wee bit of time in hand.

Pauline McNeill: I think that my questions have largely been covered.

The Convener: As no other members have any further questions, I bring in Pam Gosal.

Pam Gosal (West Scotland) (Con): I have a couple of questions. The first is for Adam Brown.

At our meeting in August, you indicated that you wanted to provide evidence to the Criminal Justice Committee, so it is good to see you here—thank you for coming. I recall that, in that meeting, your colleague DCS Sarah Taylor said that the bill would be "groundbreaking". She also mentioned that having details in the register such as the perpetrator's address at the time of the offence would be helpful, especially when the police have to go out looking for the perpetrator. There is a lot of information that you do not have currently, and having such information in the register would help with that issue. Similarly, the Scottish Police Federation signalled that it supports the bill, if it is provided with proper resources.

Domestic abuse costs the public sector billions of pounds each year, and the police have been underfunded by the Scottish Government for years. Therefore, do you agree with the Scottish Police Federation when it says that, with proper resources, the bill could work? Given your expertise, how do you think that we can make the bill work and bring down bureaucracy through amendments at stage 2?

Detective Superintendent Brown: There is quite a lot to unpick in that question. I do not necessarily agree that, even with sufficient funding and resources, we know enough about how the bill may operate to enable me to say that we could make it work. To be 100 per cent honest, I do not

think that it would work, for all the reasons that I have outlined and because of the other concerns that have been raised about unintended consequences that I have not personally referenced but which I do not dispute. In that respect, my answer is no, I do not think that the bill would work.

Could you repeat the second part of the question? As I said, there was quite a bit to unpick.

Pam Gosal: At the meeting that I mentioned, DCS Sarah Taylor said that the bill is "groundbreaking" as it will give you more information about the perpetrator than you currently get. What is your view on that?

Detective Superintendent Brown: I have already acknowledged this morning that there might be some potential benefits—I noted, for example, that the potential amendment around changes in relationship status could lead us to make disclosures. I do not deny that the provisions in part 1 might be beneficial, but we just do not know enough about the extent of those benefits, what they would bring in addition to what we have already and whether they would are proportionate to the significant cost. That is where the concerns lie.

Pam Gosal: I have some questions for the other witnesses—thank you all for responding to the call for views and coming here today. It is interesting to listen to the feedback, as it helps us to make better legislation.

While putting the bill together, I consulted many survivors who believe that the current system is not working and that perpetrators are simply let out with a slap on the wrist and are allowed to reoffend. We know how high reoffending is: the statistics show that it occurs in more than half of reported cases. Domestic abuse cost the public purse £7.5 billion in a three-year period, while the estimated cost of the bill is around £23 million, which is less than 0.5 per cent of the justice budget. Do you not believe that, in the long term, the bill could help to save money? What changes would you like to see made at stage 2?

Dr Forbes: We have all raised questions about the financial memorandum. First, you said that domestic abuse cost Scottish society £7.5 billion over a three-year period, but the research that I have read says that it costs that annually. The cost to society of domestic abuse is significant and I think that you have underplayed that cost. Secondly, the cost of implementing the bill has also been underplayed, because a lot of the costs of the mechanics and how things would work have not been factored in, and we have given evidence on that. Such a small percentage of the criminal justice budget to prevent or deter domestic abuse would be a positive thing, but I do not think that we have seen the evidence that the provisions in the bill would deter and prevent domestic abuse in the way that is intended.

We only just have the MARAC in every local authority area, but that happened relatively recently. It took more than 20 years to get there and it has been patchy. We still do not have national advocacy provision to support victim engagement through the process everywhere; that is still patchy. Also, the Caledonian project is still not available to every sheriff and every court in Scotland. If we had that money available, it should be used for enhancing and reinforcing the multi-agency partnership working that we have at the moment and that we know targets highest-risk offenders and the victims who are most at risk.

Professor Gilchrist: The criminal law committee supports doing something to address the issue of domestic abuse, and we would support having more resource put in.

I also highlight the potential unintended consequences of registration—fewer potential guilty pleas, people going underground and the vast resource needed to track the variable-risk or lower-risk individuals.

Personally, I would like to see the resources going to make the systems that we already have in place work better and on the development of more interventions and funding of behaviour change programmes. We fully support early education to address some of the issues around positive relations and relating. We would also like the data that we already have to be used better. It is more about enhancing existing systems and making provisions more available across Scotland to change the behaviour of perpetrators. We absolutely agree with most of what you are suggesting, but we would not do it in the same way.

Glyn Lloyd: I agree. There need to be tools to help us to assess and manage risk, but they need to be targeted proportionately and forensically in the right way, on the right people.

In the bill, the assessment of the offender, the offence and the circumstances should be front and centre. Any registration notification requirements should be discretionary rather than mandatory, based on the level and type of risk. In the context of new legislation and bureaucracy, there could be an opportunity to refine existing arrangements through the legislation that created community payback orders by adding another condition to them, although they are already at nine.

There are gaps, inconsistencies and resource issues around rehabilitation, as there are around victim support.

Pam Gosal: Thank you.

The Convener: Pauline McNeill wants to come back in, and then I will ask a couple of final questions.

Pauline McNeill: I have a question about the effectiveness of rehabilitation programmes, which Professor Gilchrist might be able to answer. I presume that, if we make them mandatory, they will not work for everyone. Is there an extent to which it is important that the person agrees that they want to go on that journey? Can you tell us anything about how effective rehabilitation programmes can be and who they are most effective for?

Professor Gilchrist: The international evidence says that all programmes have a small positive effect. Well-managed programmes that are delivered by well-trained staff who are supervised well and that focus on criminogenic need are well received and have a small positive effect. However, they are not a magic wand. At the moment, the international evidence says that the most effective programmes are CBT based and have a motivational element to them.

Regardless of whether people who take part in such programmes have not been mandated to attend, have been voluntold to attend, have volunteered or have been mandated by the court to attend, there must be a motivational component. It is necessary to work with the offender and to do so in the context of risk. The Caledonian system is a well-thought-through programme that requires a high level of motivation at the beginning. People have to agree to take part in it before the assessments are made and before that suggestion is made in the pre-sentence reports to the court. There are other, shorter programmes that do not require the same level of motivation that could be effective. There is hope that we can hold people accountable, help them to change their behaviours and reduce the risk.

We do not have this at the moment, but we are doing research to look at longer-term follow-ups. That involves using routine data to follow up to see whether interventions have the impact of changing behaviour so that people do not come through in health or justice data. We are working with Police Scotland, which is supporting that research. We are looking at following up using data safe havens to see whether particular interventions that are being used in Scotland at the moment have the impact, in two years' time, of changing the outcomes in terms of justice call-outs and suchlike. It is extremely important that we collect such information.

Pauline McNeill: Thank you for putting that on the record. That is helpful to know.

Dr Forbes, you told the committee that you were concerned about the offending behaviour of 16 and 17-year-olds. The committee and the Parliament are interested in this whole area, and we had some exchanges at last week's meeting about what we should focus on from an educational point of view. If we are seeing higher levels of offending behaviour among 16 and 17-year-olds in this area of law, do you have any views, based on your experience, on what we need to do? Should we tackle boys' attitudes rather than teaching them about domestic abuse?

Dr Forbes: I do not know why there has been a spike. The Crown Office and Procurator Fiscal Service has seen an increase in 16 and 17-year-olds being reported for sexual offending and domestic abuse. Our colleagues at Advocacy Support Safety Information Services Together have dedicated advocacy workers for children and young people, and they are supporting more 16 and 17-year-olds than they ever have before. That has been reported in their bulletin.

We know that such offending has been increasing, and that that seems to have been happening since Covid. I hesitate to say much more than that. However, the Women's Support Project has recently told the committee—in its evidence in relation to the Domestic Abuse (Scotland) Bill or to the Prostitution (Offences and Support) (Scotland) Bill—that it believes that that increase is a result of access to pornography online, especially during lockdown, when there was less peer influence, less parental influence and more online influence. That might be a factor, but I am not entirely sure.

You also asked about perpetrator programmes. Professor Amanda Robinson at Cardiff University has done some really good research on perpetrator programmes. She has recently published work on three new initiatives that she has evaluated, and it is partly down to her that we have MARAC in Scotland. I commend her work to the committee.

Pauline McNeill: Thank you very much.

10:30

The Convener: Professor Gilchrist, do you want to come in at all?

Professor Gilchrist: The only thing that I want to say is that there is a dearth of information and research on dating violence, and there is a recognition that you cannot just translate adult models on to young people. There is a question mark around exploration of sexual misbehaviours in adolescents, but there is a really big question mark about whether the current psychoeducational models in schools are enough. All I can say is that we know that we do not know, so there is a need to find out more.

The Convener: Thank you very much. We are near the end of our time, but I would like to follow up on a couple of points. In our previous line of questioning, we talked about existing practice and arrangements. Emma Forbes spoke about how long it can take for processes and arrangements such as MARAC to roll out—I remember when MARAC was first introduced in Scotland, and it feels like a lifetime ago.

To come back to Detective Superintendent Brown and Glyn Lloyd on the disclosure scheme, would any of the bill's provisions change how decisions are made around disclosure or what would be disclosed? Is there sufficient awareness of the disclosure scheme? I do not think that we teased out those points earlier, so any comments that you have would be helpful.

Detective Superintendent Brown: Since its inception, the disclosure scheme has grown every year. In October, when it reached its 10-year anniversary, the fact that there had been 20,000 disclosures over the decade was publicised. Breaking that figure down, we are talking about receiving 20 applications a day and processing 600 applications a month. That means that the past few years have typically been marked by average annual increases of around 20 per cent.

In the past couple of years, the biggest increase has been in the use of the right-to-ask pathway, which is the pathway through which members of the public, whether they are in the relationships in question or are concerned family members or colleagues, can apply to the scheme. We feel that our efforts to publicise the scheme and raise awareness internally and with our partner agencies have driven that increase. We are working with stakeholders, including representatives from the Scottish Government, to look at how we can improve the scheme's reach and better engage seldom-heard communities, because there is always room for improvement.

The bill will probably not have a great impact on the scheme with regard to what we disclose or how we disclose it because, as is the case with the other processes that have been referenced, it is not based on convictions. Convictions play an important part, but so does the wider narrative of a perpetrator's character, which is one of the scheme's strengths.

The Convener: Thank you. Glyn Lloyd is indicating that he has nothing more to add on that.

This might have come out in some of your earlier responses—if so, I apologise because I must have missed it—but the committee has heard evidence about MAPPA, which was not designed to be used in relation to domestic abuse offenders. To return to Detective Superintendent Brown and Glyn Lloyd, based on your experience, would MAPPA work to assess managed domestic abuse offenders, as defined in the bill, given that the system is designed to be used to deal with a specific group of offenders?

Detective Superintendent Brown: Not without significant research being done and training being developed. Having policed domestic abuse extensively and also having, on a more limited basis, policed in the MAPPA framework, my opinion is that we are talking about creating a new discipline within policing, in which a domestic abuse lens is applied to offender management practices.

In correspondence, Pam Gosal referenced expanding the cohort of offenders who come under MAPPA, but it would be far more complex than that when you consider how we train officers. I am not a forensic psychologist, but I know that MAPPA is designed to deal predominantly with sex offenders. We are talking about offenders whose motivations and actions are different from those of sex offenders. Coercive and controlling behaviour is a very different issue, so the management techniques would need to change and adapt.

The Convener: Those would have to be robustly evidence based.

Detective Superintendent Brown: Absolutely.

Glyn Lloyd: I agree. MAPPA could potentially be used as a framework, if it were focused on the right perpetrators of domestic abuse and there were people around the table who had the right level of knowledge and skills to understand, assess and manage risk. I am also conscious that the landscape is complicated. We have referenced MARAC, MATAC, MAPPA and the team around the child, and there are multiple multi-agency assessment and planning meetings. If we could, it would be helpful—as far as possible, and without increasing risk—to streamline that landscape and make it more understandable, not just to practitioners but to perpetrators and victims.

The Convener: Do you agree that there would be significant implications for the operational officers and staff who would have to inform that process? That is my concern. It would ultimately be another new responsibility that, to a certain extent, would draw people away from front-line responses. Is that a fair assessment?

Detective Superintendent Brown: Yes. We would have to create 13 new teams across Scotland. Those would need to be recruited from either the front line or from other detective disciplines, but the impact would ultimately be felt on front-line resources down the chain, depending on how we recruited the teams. Due to statutory responsibilities, such teams are often ring fenced from supporting other operational duties, whereas,

with other specialisms, we might have flexibility for detectives to go out to support the policing of events such as football matches. Our event management teams are typically more ring fenced because of the heavy responsibilities that they carry. Therefore, that process would have an impact on the front line.

The Convener: We are just over time, so I will draw the evidence session to a close. Thank you very much for joining us this morning—some helpful points were raised in response to our questions.

10:38

Meeting continued in private until 13:02.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

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

The Scottish Parliament
Pàrlamaid na h-Alba