

## Victims, Witnesses and Justice Reform (Scotland) Bill

Roundtable event – 8 March 2024

### In attendance

- Iain Bonomy, Lord Bonomy.
- Patricia Thom – Law Society of Scotland (LSS) President-elect 2025-26
- Stuart Munro – Convener of the Criminal Law Committee of the LSS.
- Katy Clark MSP.
- Sharon Dowey MSP.
- Prof James Chalmers – University of Glasgow.
- Dr Gabrielle Watson – University of Edinburgh.
- Dr Grant Barclay – University of Edinburgh.
- Andrew Tickell – Glasgow Caledonian University.
- Prof Cheryl Thomas – University College of London.
- Agnes Tolmie - Scottish Women's Convention – SWC.
- Sandy Brindley - Rape Crisis Scotland.
- Melody McIndoe - Edinburgh Rape Crisis Centre.
- Lyndsay Fleming - Just Right Scotland.
- Carol Eden - Victim Support Scotland.
- Seonaid Stevenson - JUSTICE Scotland.
- Laura Buchan – COPFS.
- Alisdair Macleod – COPFS.
- Stuart Murray – Scottish Solicitors Bar Association.
- Craig Dewar – Glasgow Bar Association.
- Ronnie Renucci KC – Faculty of Advocates.
- Jennifer Paton – Law Society of Scotland.
- Alan McCreddie – Law Society of Scotland.
- Liliana Torres Jimenez – Law Society of Scotland.

### Notes on the meeting – Made by Lord Bonomy

#### General

It was said in opening remarks that all involved in the roundtable could agree at the outset that they support the principal stated aim of the Bill, namely, to try to improve the experience of victims and witnesses in the justice system. In the ensuing general discussion about that aim reference was made to the continuing prevalence among women of negative experiences of the system in action, a lack of flexibility in the system, and concern that the system does not really help to get to the truth. Concern was also expressed about the time taken for cases to be dealt with. Since criminal justice involves prosecution by an independent public

authority and is not under the control of the complainer, communication is key to improving the experience for complainers. While it was recognised that there have been improvements in communication with complainers to keep them informed about their cases, and to familiarise them with the court, the effectiveness is patchy, leaving many complainers unprepared for what confronts them when the case is heard. At the same time it was accepted that for some a court experience and all that goes with it will not ever be a positive experience. However, that is not a reason for giving up on the idea of further improving communication. It was recognised that further improving communication and making a real difference to the experience of complainers will undoubtedly have resource implications for the Criminal Justice System, but those are matters of such importance that the resources necessary should be allocated. Stress was placed on the importance of being treated with decency and respect throughout the proceedings. Education was seen as crucial to improving the experience, be that in the context of school or preparations for court. There was seen to be scope for the role of the Victim Commissioner to include devising positive and imaginative initiatives to address these issues. Again there was concern that the success of the introduction of a Victims Commissioner is dependent on the commitment of the appropriate resources.

## Part 4

There was recognition that there is research which indicates that a jury of 12 is likely to result in the engagement of more of the jurors in active deliberation and more interaction among the jurors than one of 15. There was widespread concern about the absence of reliable data about the verdicts currently reached in cases involving sexual offences. Associated with that is concern that the implementation of the changes proposed in relation to juries and verdicts may have unintended consequences, in particular a reduction in findings of guilt. A reliable data base is necessary to demonstrate that a change, and what change, is necessary, and then demonstrate later that the change has worked. Anecdotal evidence suggests that verdicts are currently returned not infrequently by a narrow majority. However, there are no research findings to confirm that. There appears to be a reluctance in Scotland to commission research into the workings of juries. Although the terms of the Contempt of Court Act may be seen as a barrier to such research, that is not the case. It appears that among the general public there are various views about the meaning significance of the 'not proven' verdict. A professional study of into the public perception of the meaning of the verdict would be very useful. It was noted that the unique requirement for corroborated evidence has a bearing on how the jury system works at present, but it, unlike the 15-person jury, the three verdicts and the simple majority requirement, is not part of the discussion around these reforms. A matter of major concern was the qualified majority provision proposed. No one appeared to be clear about the reason for the selection of 8 or 7 for a majority guilty verdict, and why the requirement of unanimity or near-unanimity widely employed in the Common Law world for a 'guilty' or 'not guilty' verdict to be returned was not

selected. The resulting possibility of an accused being acquitted where a majority of the jury voted 'guilty' was troubling. If there was concern about the possible impact of retrials where the jury is 'hung', it should be noted that in England and Wales there is a retrial in only around 1% of cases. The fear was expressed that there is a danger that the proposed system of verdicts could compound the difficulty complainers have in finding closure. One particular concern expressed related to the composition of the jury, in particular whether the list of those exempt should be reviewed on the basis that the available pool should be as wide as possible.

## Part 5

At the outset of discussion on this Part it was clear that the move to pre-recorded evidence is widely seen as a positive, subject to the caveat that every effort should be made to accommodate those who wish to give evidence live, with the judge required to give weight to the wish of the witness in deciding what is best. There was concern that moving cases to another court or building will not provide any improvement unless the court is properly funded. The success of the specialised Sexual Offences Court is, like the Victims Commissioner, dependent upon adequate funding. The equipment provided should be of high quality. The importance of the delivery of appropriate training and the quality of that training were stressed a number of times. The main thing was to find the best way of giving maximum effect to special measures. There was concern about the status of the new court and its place in the hierarchy of courts. An earlier proposal that it should have maximum sentencing powers of 10 years suggested that it was intended to be an intermediate court between the High Court and the Sheriff Court. There was a view that it should simply be part of the High Court to remove any concern over its status and the fear that it may become home to 'downgraded' rape cases. Fears were expressed about the capacity of the Faculty of Advocates to staff the court. Sexual offences account for a substantial majority of trials in the High Court, resulting in a general feeling of weariness among the counsel engaged there, which could lead some to turn to other work. There will also be increased demands on advocates as the result of the provision in Part 6 for independent representation for complainers in relation to applications under s275 of the Criminal Procedure Act. In spite of that it was important that the quality of legal representation in sexual offence cases should not be diluted. Complainers find reassurance in knowing the date of their appearance in advance and that that date will be adhered to.

## Part 6

The provisions on anonymity and restriction on publications were generally welcomed, as were those providing for individual legal representation for complainers. Stress was placed on the importance to complainers of support, advice and being listened to. In relation to the judge-only trial experiment there was concern that an earlier proposal that the consent of the accused should be required had been departed from.

## Conclusion

This event brought together representatives of several different interests to debate the terms of the Bill. Much of the content of the Bill was welcomed but a number of important concerns were expressed. Although all members of the Justice Committee were invited, only 2 were able to attend. It is unfortunate that the majority did not hear this vigorous and well-informed debate, and did not have the opportunity to appreciate fully the reasons for the concerns expressed. This note of the meeting has been compiled as a record of these concerns and a means of relaying them to the members of the Committee.