



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 13 June 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Tuesday 13 June 2017**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>DOMESTIC ABUSE (SCOTLAND) BILL: STAGE 1 .....</b>	<b>2</b>

---

**JUSTICE COMMITTEE**

**22<sup>nd</sup> Meeting 2017, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*Mairi Evans (Angus North and Mearns) (SNP)

\*Mary Fee (West Scotland) (Lab)

\*John Finnie (Highlands and Islands) (Green)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

\*Liam McArthur (Orkney Islands) (LD)

\*Oliver Mundell (Dumfriesshire) (Con)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ronnie Barnes (Action on Elder Abuse Scotland)

Kevin Kane (Victim Support Scotland)

Alan McCloskey (Victim Support Scotland)

Girijamba Polubothu (Shakti Women's Aid)

Dr Marsha Scott (Scottish Women's Aid)

Alison Waugh (Abused Men in Scotland)

Heather Williams (Scottish Women's Aid)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

*Tuesday 13 June 2017*

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Margaret Mitchell):** Good morning, everyone, and welcome to the Justice Committee's 22nd meeting of 2017. No apologies have been received.

Our first item of business is a decision on whether to take in private item 3, which is consideration of the committee's approach to scrutiny of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill at stage 1. Do we agree to take that in private?

**Members indicated agreement.**

## Domestic Abuse (Scotland) Bill: Stage 1

10:00

**The Convener:** Item 2 is our fourth evidence session on the Domestic Abuse (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

It is my pleasure to welcome Dr Marsha Scott, chief executive of Scottish Women's Aid, and Heather Williams, chair of SWA's board of directors and formerly the manager of Ross-shire Women's Aid. I also welcome Girijamba Polubothu, who is from Shakti Women's Aid. I am grateful to Scottish Women's Aid for providing a written submission; that is always helpful for the committee. We move to questions from members.

**Mary Fee (West Scotland) (Lab):** Good morning. I am really pleased that you could all come and I thank you for the evidence that you have submitted.

I will ask a specific question about the effect that the bill will have on women from an ethnic minority background, because there is sometimes little understanding of the religious and cultural differences that separate women. From meetings with Shakti that I have had in another committee role, I know that there are specific issues around arranged marriage, honour-based violence and the family dynamic. I will start with Shakti. What potential does the bill have to impact on women from different cultural backgrounds?

**Girijamba Polubothu (Shakti Women's Aid):** First, I thank the committee for recognising coercive control; that is so important. I was just saying to Marsha Scott that, if a woman was asked to record the times that coercive control happened and the times that physical abuse took place, I am absolutely sure that we would see a large amount of coercive control happening, but we have not previously recognised coercive control—we always look for physical abuse and the bruises.

It does not matter what a woman's culture or ethnicity is; we are dealing with gender-based violence. The perpetrators use the roles that we set for men and women. To assert his power, a man uses against a woman the role that society sets for a woman—to cook, clean, nurture and do all those things. We have to look at this first as gender-based violence; it does not matter what a woman's culture or religion is or where she comes from.

All of us have to follow the legislation in this country, because we live in this country; we are not living in our country. I look at it as

discrimination against black and minority ethnic women if the legislation is not followed.

I will raise two or three points about what happens to ethnic minority women under coercive control. When the woman is controlled, I would not say that there is blackmail, but the approach is more about the perpetrator telling her that if she does not do something—or does do it—he will harm her family abroad. That is not seen in the main stream, because most of the woman's paternal family will live in her country. That fear is there.

Another thing that the perpetrator normally does is create rumours against the character of the woman or her female siblings. That will bring shame to the family and lead to honour-based violence. Sometimes men use that. When we talk about cultural things, that is what I would raise, but please do not look at the issue in that way; we should come back to gender-based violence.

Another thing that happens in BME communities and is not seen as much or at all in the main stream is dowry-related abuse, where there is constant demand from the perpetrator or his family members for the woman to bring in more money or expensive gifts from her parents. Sometimes, the parents are quite poor. They might have given some dowry at the beginning for the girl to get married and have a better life but, later, they do not have that kind of money. That is when things turn into physical abuse. I have not heard of any killings here but, in India and elsewhere, women are burned as part of dowry-related abuse, and sometimes they commit suicide. I look at that as murder, rather than suicide, because the woman has been forced into taking that action.

The bill will benefit ethnic minority women in another way. I do not know how many committee members know about the no recourse to public funds legislation and how it applies to domestic abuse, immigration status and the destitution domestic violence concession. If a woman is fleeing domestic abuse, she can apply under the destitution domestic violence concession, but the problem is that she has to evidence the domestic abuse and, when there is coercive control, she cannot produce enough evidence, because she has not told anybody what is happening to her. When she discloses to her closest relations, such as her mum or sisters, the abuse that has happened to her, that is seen as going back to the role of a woman and how society expects a woman to be—to cook and clean and all. For those reasons, her fears are dismissed. People say that that is her role and that her husband is just asking her to cook for him.

We have had cases where the husband wants the woman to stay size 10 all the time. The way in which he talks about that is, "It's about your health.

I want you to look pretty. I want you to wear these pretty clothes that I have brought for you." At the beginning, the woman enjoys that, because she does not know what is happening, but the day when she is not feeling well or something and says no is when the physical abuse takes place. That takes us back to coercive control and how many times it happens, as well as physical abuse. If someone tells her mum, "He always buys stuff for me and wants me to dress up," will the mum look at it as abuse? No. She will just say, "He loves you." However, that is part of such abuse.

It is becoming difficult to evidence coercive control, so women are failing to get secure immigration status, which puts them at risk because, once they go down the destitution domestic violence concession route, they lose their current immigration status, which could come from a spouse visa. They are then supposed to be deported; they are supposed to leave. Can you see that that is like a carrot? There is this thing that women can do but, if it fails, they are in more trouble than before.

**Mary Fee:** Does Dr Scott think that there should be a way of reflecting in the bill the use of religious and cultural abuse almost as an aggravator to domestic abuse? Would that help?

**Dr Marsha Scott (Scottish Women's Aid):** I am sorry; I got distracted by my water. Let me just make sure that I understand—are you asking whether I think that there should be something in the bill?

**Mary Fee:** Yes—something that more explicitly reflects cultural and religious abuse almost as an aggravator.

**Dr Scott:** There is a crossover between the thinking about how we approach hate crime and the specific nature of domestic abuse. I support what Giri Polubothu said, which is that we need to remember that this is really about gender and that perpetrators use all kinds of things. They absolutely use culture, which includes familial permission giving and cultural permission giving.

I would be interested in expanding our approach to hate crime to include gender and allow some crossover with looking at how other protected characteristics are used to exacerbate existing abuse. Until we have a sound framework for thinking about gender and hate crime, it will be difficult to deal with that in the bill.

**Mary Fee:** Does Ms Williams have anything to add?

**Heather Williams (Scottish Women's Aid):** The experience that we had in Ross-shire concerned women from eastern European countries. As Giri Polubothu said, if women have insecure immigration status—there are issues for

women from eastern Europe around the right to be here, particularly given Brexit, and around their right to access benefits and such things—that gets used against them. Men will say, “If you leave me, you’re not going to be able to stay here on your own.” That gets used against such women if they are not originally from the United Kingdom, but how the bill is set out and the factors that it looks at probably cover that. In response to the original consultation, we consulted women we were working with and the approach has expanded to cover the behaviours and tactics that abusers use. We need to look at this as part of the tactics that abusers use on the whole, as opposed to seeing it as something that sits separately. That is about the abuse; abusers will use whatever they can to maintain control.

**Girijamba Polubothu:** I do not know what Mary Fee meant by whether to include religious or cultural factors. We have to be mindful that we do not want perpetrators to hide behind their culture. That has happened in the past, when judges have said, “Oh, this is a cultural thing. That’s fine—it’s manslaughter, not murder”. That has happened, so we have to be careful when we think about including something about culture or religion.

**Mary Fee:** You are saying that a perpetrator could use that as an excuse to say that their behaviour was reasonable.

**Girijamba Polubothu:** A person might say, “This is my religion,” or “This is my culture.” We have to be mindful of that.

**John Finnie (Highlands and Islands) (Green):** Good morning, panel, and thanks for your evidence. I particularly want to pick up on the references in the Scottish Women’s Aid submission to the human rights obligations that are placed on the Scottish Government and the comment that

“The Bill is not perfect”.

I know that practical experience will shape understanding. We heard last week from the police—I do not know whether you followed that evidence—that there is already awareness of controlling and coercive behaviour. It is important that we pass good and practical laws. Do you see challenges in policing the bill—if it is passed—in its broadest sense?

**Dr Scott:** The bigger challenge is policing in our current context. As we said in our response, the bill will chart new land—new legislative territory in Scotland. Implementing anything new is always a challenge, but the biggest risk to us is from not challenging the status quo.

Women have told us for 40 years that the impact and the traumatic effect of psychological violence and coercive control are worse by far

than that of any other abuse that they experience. What kind of a risk-averse response would we have if we did not try to create legislation that reflected their experience?

I think that the Crown Office and the police—I followed their evidence session—are already working to address the challenge of reflecting coercive control in how they train their officers, deal with first-response calls and review cases for prosecution. The question is whether we will give them in the bill the tools that will allow them to do their job better.

I do not want that to sound like pie in the sky and I do not think that things will go terribly well right away. Because of how policy is implemented, it will also be years before we see the impact on policing. We have choices about whether we provide the police with the resources that they need to do a better job, rather than a worse job, on this, but the last thing in the world that we and the police are saying is that we should shy away from doing the right thing because we think that our police are not capable of policing it.

10:15

**John Finnie:** Can I clarify what you mean by resources? Do you mean knowledge and the legislation?

**Dr Scott:** Thank you for that question. Our biggest concern, which is one of a number, is that we fought really hard for a coercive control bill for a long time, but we are very aware—as a policy geek, I am extremely aware—that a policy instrument is only as good as its implementation. We have a history in Scotland, as in lots of other places, of creating good policy but seeing little change in people’s lives as a result of it because we have not paid attention to the challenge and task of implementation.

The biggest worry about implementation is that there is a massive resource gap in training in Scotland for implementing the equally safe strategy. The police will have a big challenge not just of dealing with the new law but of addressing behaviour change at the coalface for police officers, providing support and supervision in their structures and undertaking partnership working so that social workers, healthcare workers and all those folks understand the challenge.

The bill could be transformative, but only if we pay attention to having a competent judiciary and legal system and to making the rest of the system fit for purpose. I am sorry that that was a bit of a rant, but I implore the committee to help in making sure that, when we put the bill through, there is a chance that it will actually transform the lives of women and children.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning. I wanted to ask you about the defence of reasonable behaviour. I know that you expressed concern about that in your submission. Would you expand on your worries about that? You state that it could be open to manipulation by abusers.

**Dr Scott:** Absolutely. It is important for us to note that in the final assessment we were very happy with having the reasonableness test in there. We are worried, because one of the features of many domestic abuse perpetrators is that they seem rational, reasonable and righteous. If you were to look at a particular incident, for instance, the test of reasonableness would be scary for us because, often, from the outside an incident does not look like it is part of a pattern of coercion. The context of the bill reassures us, in the sense that we now have an opportunity—a demand, actually—for the criminal justice system to look at coercive behaviour and examine an incident in the context of that relationship. As we are confident that the vast majority of professionals, officials and, indeed, the public in Scotland do not think that it is reasonable to threaten your children, threaten to kill their pets, financially abuse them or do any of the things that we know are regular features of coercive control, we are content that, as long as the nature of the abuse is seen in the context of the relationship, the reasonableness test will be all right.

Again, it is about implementation. Prior to this session, Heather Williams and I were talking about the fact that we need to pay close attention to the threshold for reasonableness and distress and all the things that have been discussed at such length with the committee. It needs to be the same across Scotland. That means that, in rural and remote areas in particular, the infrastructure that supports understanding and the application of the law needs to be as robust as it is in the central belt, where we have lots more resources.

**Rona Mackay:** Was your concern mainly that what is reasonable behaviour would be open to interpretation in individual cases?

**Dr Scott:** The construct of the bill is sound. Again, the proof of the pudding will be in the understanding of the judiciary in interpreting the bill. I cannot bang on enough—I bang on about it a lot in public—about the importance of any sheriff or judge who is hearing a domestic abuse case having, even now, specialist training. Sadly, most of ours do not. In the context of this legislation, that is an even more critical need.

**Heather Williams:** Coming from a rural area, I think that what we have often heard, particularly with the current offence of stalking, is women saying, “Well, he was at the shop at the same time as me,” or, “He was in the same places as me.”

We often hear, as an explanation of the reasonableness of that, “Well, actually, why wouldn’t he have been there? It is the only shop in the area”. However, when that happens all the time and that person is turning up in your environment, that can become very distressing. In rural areas, we hear, “Well, where else would he go?” or, “Why would that be a problem? You both have to live in the same small area.” That is already a concern in how current legislation plays out in remote and rural areas.

It is also about recognising the tactics that can be used by an abuser who lives in a remote and rural area through isolation. Maybe he is the only one who drives and he gets all the shopping. It makes sense because he drives and can get it on his way home from work, but what he is actually doing is controlling the food that comes into the house and what the woman gets to eat. He is controlling the sustenance that she can get and her ability to do those tasks. He is maybe saying to her, “Well, it makes sense for me to do it; I’m doing it on my way home from work,” but what he is really saying to her is, “You cannae manage to do a shop. Every time you go shopping, you spend far too much money.” He checks the bin when he comes home to see what food she has eaten that day and what the kids have eaten. It is about recognising that remoteness and rurality can make some of the tactics that abusers use look slightly more reasonable than they would in other circumstances.

Marsha Scott is right about the structures and the infrastructure in rural Scotland. They are not the same as in the central belt. For the bill to be successful and for it to make the transformational change that we believe it can, it has to come with proper training for the sheriffs and judges, the Crown Office, the police and other professionals. At the moment, there are too many people who still do not understand domestic abuse and its dynamics.

**Rona Mackay:** What you have just said highlights what Dr Scott was saying about the need for specialist training. Thank you.

**Girijamba Polubothu:** When it comes to BME families, you need to consider the extended family members’ involvement. Sometimes the woman and man have the same family because, in Islam, women and men marry their cousins, so his family is her family. Sometimes the coercive control is there when there are issues to do with contact with the children. If she is visiting her family and that family is also his family, he could be there. That is arranged by the extended family members, and she does not know anything about that. She is just visiting her sister or her cousin, and he happens to be there. Although he has court orders not to approach her, how will you say that he is doing



wrong? He is not doing wrong. He will just say, "I didn't know you were coming here. I'm here." That kind of manipulation goes on as well.

**Mairi Evans (Angus North and Mearns) (SNP):** A couple of the issues that I was going to raise have already been touched on by Mary Fee and Rona Mackay. What you said was very important. Quite a few of the things that you have mentioned this morning are issues that we heard privately from victims of domestic abuse, and we had a Shakti representative at our group as well. One woman we spoke to talked about the influence of her mother in that situation and about being encouraged just to put up with it. Another issue was the impact on people of having no recourse to public funds. In a situation where immigration status is up in the air, they are entitled to nothing, which is especially an issue when they have children. I was glad to hear that raised.

Marsha Scott mentioned a few other concerns that she had with the bill, and I want to tease those out, as well as to ask about a point that she raised in her evidence about emergency barring orders. Could you expand a bit on that? Are there examples of such orders being used in other countries? I would also be interested to hear other panel members' views on that.

**Dr Scott:** Thank you for that—I was just sitting here going, "Oh, I hope to get to talk about emergency barring orders."

Although we think that this is a good bill, we think that it could be improved a bit. One of the clear issues—this crosses over with some of our obligations under human rights instruments, which John Finnie asked about—is that, at the moment, Scotland does not have sufficient legislative interventions to help women in a crisis relating to domestic abuse. Unlike most countries in the western world, we do not have legislation that is effective in terms of emergency barring orders. Down south, for instance—I do not suggest that we use the model there, because it is not very effective—there are domestic violence protection orders that can be used by the police in a crisis situation. In order to be compliant with the Istanbul convention but also to help women to stay safe in their own home and not have to move their children out of their school or be the one who pays the price of domestic abuse all the time, we need a legal mechanism that allows women to stay at home and the perpetrator to be removed for a short period.

There are many versions of this legislation around Europe. We have a briefing paper that we are happy to share with the committee, if that would be helpful. Especially on the back of research that we did in Fife with women who had been made homeless as a result of domestic abuse, it is very clear to us that current practice in

housing and homelessness departments has been essentially to make women become homeless in order to access services. An emergency barring order would be an enormous improvement to the bill and, essentially, is required for the bill to do what it says on the tin of our commitments to women's human right not to be made homeless in order to access support.

The other thing that I would say about the bill—I think that you will have seen some of this in the consultation responses from our colleagues in the children's organisations—is that we have struggled long and hard. I need to put down a marker that, as Michael Matheson pointed out when the bill was launched, there has been unprecedented engagement with the voluntary sector organisations on the development of the bill. We hated the first version, which was years ago, and the extraordinary transformation of that into a bill that we can support shows the way in which policy should be made.

There has been a lot of engagement about the role of children. The critical principle, which it seems to me is not that difficult for people to get but is not reflected well in the bill, is that we have libraries of evidence to say that children in families where there is coercive control and domestic abuse experience coercive control and abuse. It does not matter whether they are in the room, in the house or in the country at the time of an incident; they are harmed by it. Some are harmed more than others, but the reality is that that is the very nature of domestic abuse: children are used but also controlled.

We wanted that reflected in the bill somehow so that, in particular, when the bill left the criminal justice sphere and moved into the civil justice sphere, children being victimised by a perpetrator of domestic abuse did not get completely lost in the process looking at contact and visitation decisions made in the context of civil law.

10:30

We were hoping that we could have something in the bill to say that children are victims of domestic abuse when their parent is a victim of domestic abuse. It is a difficult way to construct it, but we wanted the bill to reflect the fact that, if there were children in the family, there were child victims.

It took us a while to get that principle across. I think that the bill team understood it in the end but struggled with finding a way to frame it in the bill. We have had commitments from officials that they will try to take it up in other legislation and policy, but I think that there is a way in which we can do it somehow and make sure that children are seen all the way through in our responses when they are in

a case as needing support and services and needing to be covered by non-harassment orders. Those issues are so important for women and children's safety. The emergency barring order and some way of better acknowledging children's experiences of domestic abuse are the two big improvements that could be made to the bill.

**Mairi Evans:** You neatly almost answered my second question. We were going to ask about non-harassment orders and some of the other evidence that we have received, particularly from the likes of Children 1st, which talked about imposing non-harassment orders and how those should involve the child as well. I want to tease out your thoughts on that, but I take it that you would support it.

**Dr Scott:** We would. Actually, it was our idea, so we are happy to support it. It is important that we understand that, at the moment, non-harassment orders do not work well for the vast majority of cases in Scotland. I know that one of the consultation responses was from an anonymous person who has been in touch with us. She was citing research that she did in her area that said that, out of 500 convictions for domestic abuse, there were 30 non-harassment orders. They are not working. They are a problem for women and for the system itself. We think that, if we were to put in an expectation that non-harassment orders would be issued in the context of domestic abuse convictions, it would save money, save trauma and send a clear message to perpetrators about their expected behaviour post-conviction.

It is critical that the non-harassment orders cover children, because if they cover just the mother, there is then a massive tool for further abuse through approaching the children. Non-harassment orders that cover children are a feature in many different forms of legislation across Europe, so it is not as if we would be ploughing a whole new furrow around that—excuse the cliché. It could make the bill transformative for children.

**Liam McArthur (Orkney Islands) (LD):** Good morning. I will follow up on a couple of points that colleagues have raised and then move on to a substantive point that has not yet been touched on.

Dr Scott, your earlier suggestion that you do not necessarily anticipate that the bill, if implemented, would have a dramatic effect immediately was interesting and rather refreshing. I contrast that with what we heard last week from the Crown Office and Procurator Fiscal Service and Police Scotland representatives, who talked about their expectation that the bill would give greater confidence and certainty and that the number of women who come forward to raise concerns and

complaints would increase. Is that distinction to do with the timeframe? Do you expect that the bill will lead to an increase in referrals and reports, which we heard last week?

**Dr Scott:** It is probably as much about time, but my suggestion also reflects our understanding—I think that our colleagues in the police and the Crown Office would support this—that some of the victims of coercive control are already in the system. I go back to what I said about the police and the Crown Office already trying to make the victims' experiences, which they see as abuse, fit into our current system and go to court. In general, any policy that is implemented takes quite a long time to have an impact, particularly if it relates to what is, seriously, the biggest violation of women's and children's human rights in Scotland, which has massive numbers attached to it. The bill will be most challenging not for the police and the Crown Office but for people in health and social work and officials in the public sector who engage with women and children who experience domestic abuse every day and never see them. If we had the capacity with a bill on coercive control to help people in those areas to understand how their outcomes could be delivered better, cheaper and with less harm and trauma to everybody, there would be a sea change in Scotland, but it will take time.

**Liam McArthur:** I want to follow up on a couple of points that Mairi Evans probed with you. Do you support a system in which non-harassment orders would have to be considered by the courts in domestic abuse cases, or should there be a presumption that they would be applied? There is a nuanced difference between the two.

The other point relates to coercive and controlling behaviour and its impact on children. I know that there is concern about any requirement that the children had to be present in the room or within earshot but, given what you have already said about the context in which coercive and controlling behaviour takes place—there must be a course of action over a period; I presume that the impact on children would be viewed in a similar vein, and there would have been a course of behaviour over a period—a child's having been within earshot or in the room is rather irrelevant. Would the bill not be interpreted in relation to children in the same way that we would expect it to be interpreted in relation to women victims?

**Dr Scott:** I cannot remember what your first question was.

**Liam McArthur:** The first question was on non-harassment orders and the presumption that they would be applied.

**Dr Scott:** Yes—that nuance. I cannot see any problem with presuming that there would be non-

harassment orders. As in some of our legislation on contact that is not paid much attention, if a non-harassment order is not issued, somebody should have to make a really good case for why it was not appropriate. I absolutely come down on the side that the stronger we make that wording, the better it will be. Obviously, from the numbers that I have cited, it is clear that, even in the existing framework, in which non-harassment orders could be used more often and more appropriately, they are not.

**Liam McArthur:** An application requires to be made. The change would be that an application would not have to be made; it would simply fall to the court to have to consider the matter. I am not sure that there would be a huge difference, other than perhaps that the threshold would be set at a lower level than it is at the moment.

**Heather Williams:** The difficulty with the non-harassment orders at the moment is that procurators fiscal have to ask for them, and that often does not happen. It is starting to happen more regularly, but there are still reasons that sheriffs give for why a non-harassment order is not appropriate. Often, the reason will be that contact with children has to be facilitated. A recent example involved one of the women whom we supported in the Highlands. The non-harassment order was asked for, but the sheriff refused it because contact had to be facilitated. The sheriff felt that a non-harassment order would impact on the father's right to have access to the children.

When the procurator fiscal has to ask for a non-harassment order, that is a difficulty, because that does not happen regularly. The change that is proposed in the bill is one of the things that will make a massive difference to women's safety.

**Liam McArthur:** Unless the bill talks about how it impacts on contact, the court will potentially arrive at the same decision—that is, it will not apply a non-harassment order if that would interfere with contact. I am not sure whether the bill will address such situations.

**Heather Williams:** If we ask the court to consider the non-harassment order applying to the children as well as to the woman, whether it would impact on a father's right to have access to the children would need to be looked at. However, domestic abuse is a parenting choice, and it impacts on children and young people so, as a society, we need to ask, "If your behaviour impacts negatively on your children and you cannot behave in a way that is appropriate, do you have a right to have access to your children?"

The courts and sheriffs having to consider a non-harassment order as standard will be a big step forward. At present, if a non-harassment order is not provided, people have to look at going

through the civil courts for an interdict, which takes time and causes a lot of stress. Having to go through the civil courts can be distressing, and women who work have to pay for it. If an interdict is not defended, the person is looking at paying £1,000 at least; if it is defended, they are looking at paying upwards of £10,000. That is a barrier to justice for people who are in work in the process that they have to go through if there is a civil interdict as opposed to a criminal non-harassment order.

In your previous inquiry into the operation of the Crown Office and Procurator Fiscal Service, members of the Justice Committee heard from a woman whom we supported, who spoke about how she had an interdict with the power of arrest for the previous five years. The power of arrest lasts for only three years, and she had to go back through the courts to have it made again. That interdict has been breached, and she is now trying to take it back through the civil courts to have it looked at. We are almost a year down the road since all that happened. The interdict was breached, and she is still no further forward.

There are massive issues with how women get protection through the civil process. Having a criminal non-harassment order imposed by the court that says what standard of behaviour it expects and that, if the person does not meet that standard of behaviour, that will be an offence and they will come back before the sheriff will make a massive difference.

**Liam McArthur:** I want to follow up on a separate substantive point. We have heard pretty much universal support for broadening the definition of "domestic abuse" and recognising the extent to which it happens in non-physical respects. We have also heard concerns that the threshold for that abusive behaviour is perhaps lower than might be necessary. The bill has been contrasted with the legislation that was introduced south of the border from the end of 2015. In his evidence to us, Andrew Tickell suggested:

"The key aspect is ensuring that the thresholds for criminalisation are sufficiently high. In my submission, I directed you to the English legislation, which provides that the harm that is caused to the complainant has to be of sufficient severity and have a significant impact on their day-to-day life."—[*Official Report, Justice Committee*, 30 May 2017; c 12.]

Andrew Tickell suggested that there is a risk that we will criminalise what may be bad and possibly unpleasant behaviour but not necessarily what should be targeted as abusive or coercive and controlling behaviour. I am sure that you have had an opportunity to read and listen to the contributions that Mr Tickell and others have made. What is your response on the thresholds issue?

10:45

**Dr Scott:** With all due respect—I have lots of respect for Mr Tickell—that is just an academic and sophisticated way of saying, “It’s just a domestic.” There could not be more contrasts between the Domestic Abuse (Scotland) Bill and the Serious Crime Act 2015 down south. Our sister organisations down south say that that act is not working well; that there are very few prosecutions; that, in prosecutions that happen, physical violence is always involved; and that prosecution for coercive control is seen as the next best thing. There is a hierarchy of harms that absolutely does not reflect our experiences or women’s experiences of coercive control as the most harmful of those.

On a threshold, the Domestic Abuse (Scotland) Bill is unlike the act down south, which is quite simple. Down south, they have failed to grasp the nettle of the complications. The construct or frame of the bill is about looking at the perpetrator’s behaviour rather than trying to prove some kind of harm to the victim. Focusing on a threshold of distress, despite the fact that distress is an existing concept that is used in other Scottish legislation, is about asking, “Is it just a domestic? Are we somehow interfering in family life in ways that are inappropriate?” As members will know, there are multiple tests in the bill that trivial behaviour or mundane bad behaviour on the part of all kinds of folk in families will never make it through. There is no will in the system to make that happen. The critical distinction—

**Liam McArthur:** Sorry, but I will stop you there. To address the concerns that Mr Tickell and two or three others have raised, what would the safeguards be? What would give confidence that the distress levels, which are known and understood in the legislative context in Scotland, would be—

**Dr Scott:** I refer you to the testimony of Anne Marie Hicks, who spoke eloquently about the requirements for coercive behaviour and the tests to get a case that is robust enough into court. They mean that trivial events that are, in fact, just bad behaviour, are sometimes and should be responded to by the police appropriately, but they are not what we would call “coercive behaviour”. Heather Williams and I talked about that before.

The problem with looking at the threshold as an academic exercise—I think that Mr Tickell did that—is that that framework or perspective is not informed by what we see as a much bigger problem in the status quo: the huge number of cases of domestic abuse that never even come to the courts. The legal academics never see them and the professional societies never deal with them, because the vast majority of those cases never wind up in the criminal justice system. The

bill absolutely reflects the fact that we need to criminalise coercive control. From what I can gather, there is no appetite in the court system or the police system for creating domestic abuse cases out of trivial bad behaviour.

I hear from some of our colleagues that this is about intruding on family life. When family life delivers abuse, trauma and distress, we should absolutely interfere in family life. We do not want that kind of family life for anybody in Scotland. The focus on a threshold has always been an attempt to push the human rights aspect of women’s and children’s experiences of domestic abuse as applying only in public sectors. I am proud that the bill challenges that.

It is true that, if and when the bill is passed and is implemented, there will be misguided attempts to use it, but our biggest fear in Scottish Women’s Aid is that perpetrators will try to use it to control women, which is exactly what happens with our existing legislation. That is much more likely to happen but, even so, we are willing to take that chance in order to have an improved tool.

**Heather Williams:** The definition of “domestic abuse” and the threshold that there has to be a course of conduct probably provide a bit more protection than we currently have. Under the current legislation, if you and I were in a relationship and we had an argument out in the street and the police were called, that argument would be classed as a domestic incident. One of us would end up in court and would have to answer to that. We see that happening in our court system fairly regularly, but that is not what we are talking about when we talk about women’s domestic abuse. Domestic abuse causes fear. It is about control, and there will be an on-going pattern of behaviour in which various tactics are used. The bill and the thresholds in it allow us to tackle that.

Under our current law, people who do not necessarily use domestic abuse but behave badly, which we are all perfectly capable of doing in our relationships, end up before the courts. The bill, with the thresholds that are built into it in relation to the course of conduct, strengthens the basis on which we currently work. It is not okay that people have a domestic assault history or a conviction that relates to that because of an argument that happened between a couple, but we would not class that as “domestic abuse”.

**Oliver Mundell (Dumfriesshire) (Con):** The majority of the issues that I was going to raise have been touched on, but I want to return briefly to the defence of reasonableness. I am particularly interested in how that interacts with some of the cultural concerns that we heard about right at the beginning and whether behaviours that are maybe seen as normal or that have been normalised in

families or cultural settings might allow people to use that defence more easily.

**Girijamba Polubothu:** Some behaviour of perpetrators is normalised in the cultural context. Whether it is in BME communities or the main stream, some acts are accepted as normal. I have not read the document that you are talking about regarding reasonableness—

**Dr Scott:** It is in the bill.

**Girijamba Polubothu:** Okay. You have to be careful where you set the reasonableness threshold. It is important, because you do not want not only the perpetrators but society to look at their behaviour as normal and as if there is nothing wrong with it and it is not domestic abuse.

**Dr Scott:** I cannot put it more eloquently than Giri Polubothu did at the beginning. We hear about reasonableness or culture or people saying, “It’s the drink.” There are so many contexts in which abusive behaviour is explained away in our society. What seems unacceptable from one perspective is seen as eminently reasonable by perpetrators.

As we have said, the reasonableness defence is a bit scary for us. Domestic abuse was a perfectly reasonable response for centuries in Scotland. However, I have faith that the system, especially if the training that is needed to do this well is provided, will use that test to set a new standard in courts and in Scottish society about how it is reasonable for people to treat their partner and children.

**Girijamba Polubothu:** It also depends on for whom the behaviour is reasonable. Is it reasonable for the courts and for us, or is it for the woman? That is what we have to look at. It is not for us to say that one behaviour is reasonable. We have to look at whether it is reasonable for the woman. Does she feel that his behaviour is reasonable? That is important.

I will give one example that we often talk about. We had a client who was being coercively controlled. The guy used just his lighter. Every time that something was not done, he controlled her by threatening, “I will burn you.” When the woman’s statement was being taken and there were agencies round the table such as the support worker and the police, all that he did was take out his lighter and put it on the table. None of the other people understood what the lighter meant but, for the woman, it meant a lot. That is coercive control that we cannot see. Is it reasonable or not reasonable?

**Dr Scott:** The bill is constructed so that there is a requirement to understand the personal circumstances and the context of cases, which is its real strength. If you look at it as an incident,

putting a lighter on the table is absolutely a reasonable action, but reasonable people, if they understood the full context of that relationship, would not think it reasonable to threaten a woman with burning her, even if that threat is non-verbal and is referenced through putting a lighter on the table. Does that make sense? It is about understanding the behaviour so that a reasonable person sees the whole course of conduct.

**Oliver Mundell:** That makes sense. The point that I am struggling with is that, if you think that the thresholds are correct and that they correctly identify the relevant types of behaviour, and if we are not looking at the effect on the individual, why is the defence needed at all? We have the course of behaviour, but we are then asking people to do something else by looking at all the circumstances, and I wonder whether that is a way back in to justifying some behaviours.

**Heather Williams:** Certainly, in the work that we did on the original consultation with women whom we support, we found that they were concerned about the idea of reasonableness. They were concerned that it would be used in a way that would mean their experiences were not taken into account. Giri Polubothu gave you the example of the lighter, and I could give you a dozen similar examples.

Making the change from what we have now is about recognising that we are not taking an incident-based approach but looking at the full circumstances of somebody’s life and why they have done something. For instance, if I meet you in a shop and you say, “I notice that your son’s got a new bike. I hope he doesn’t have an accident,” that might appear to be a reasonable conversation. However, it could set off a lot of distress if, in the context of the relationship, you are threatening me and saying that if I leave or do anything that you are not happy with, you will hurt my son. If I have left you and I meet you in the shop and you make that statement, it appears to be a reasonable statement but, when taken in the full context, we can understand why it would cause harm and distress, and the bill allows for that to be taken into account.

Personally, I think that the defence of reasonableness can and will be used, particularly with regard to women with disabilities where the partner is also the carer and potentially in BME communities. It is in there for some reason. Somebody thinks that it needs to be there.

**Dr Scott:** I believe that people were concerned that the threshold would be too low and that trivial cases could get in. Therefore, the reason for putting the defence in the bill is as a safeguard. I am totally with you on that: if we did not need a safeguard, I would be happy with that, but I suspect that there would be an outcry.

**Oliver Mundell:** The issue with trivial cases getting through is that the defence really only comes into play once the accused is accused of the offence or charged, so it will not filter people out at an early stage. The defence will come into play only once cases go to court. Having heard the evidence today, I am worried by the idea that people's family members or other people who were involved in the situation will be brought in to give their view on whether a particular incident was reasonable and by the trauma that might be attached to that.

11:00

**Heather Williams:** Part of the difficulty is that none of us has a proper picture of what goes on in the lives of families or in their relationships. The difficulty with reasonableness, as Marsha Scott has said, is that a lot of perpetrators of abuse believe that their behaviour is perfectly reasonable and that the things that they do are okay. Also, the responses from people who are experiencing abuse do not always appear completely reasonable on the outside. That is certainly a concern. All we might see is a response to a text message that is not necessarily threatening or a comment that somebody has made that has triggered the whole flight or fight response or that fear in somebody. The response does not always appear completely reasonable, but it is because of the course of conduct that there has been through the entirety of the relationship.

The bill moves us away from an incident-based approach. Domestic abuse is not about an incident; it is about the tactics and patterns of behaviour that have an impact.

**Oliver Mundell:** That will work both ways and will affect the defence, too. Children or parents of the victim could be brought in to talk about long-term courses of behaviour and perhaps issues of mental health or disability, and there might be aspects of unreasonable behaviour on both sides. That does not necessarily mean that domestic abuse is not happening somewhere, but it might be possible to paint a different picture as a result. That is what worries me.

**Girijamba Polubothu:** It comes back to what I said at the beginning. The physical abuse takes place after a lot of coercive control has happened. You talked about bringing in family members as witnesses. In BME communities, the effort is to save the marriage, so people's own parents can go against them. They actually give evidence against their daughter, saying, "It's not him; it's my daughter's behaviour."

**Oliver Mundell:** That is exactly the point that I am worried about.

**Girijamba Polubothu:** Believe me, it happens. I have worked for Shakti for 18 years, and I am surprised by how many cases I have had in which a woman's own family did not want to support her and wanted to take her life away. I can never understand why. That will happen. The solicitors, lawyers, legislators and judges will have to be mindful that it can happen. It happened recently in a forced marriage case in Glasgow. The sisters of the victim, who had left home and gone away, were brought in to give evidence and to say that the parents were perfect and never did anything against their wishes, but that was rubbish—it was not true. Those young people were looking for an opportunity to get back with their family, and they got that one opportunity. If they supported the family, they would be welcomed back. It is difficult, but you cannot really trust what such people say.

**Dr Scott:** I think that David Mundell is saying that he is concerned about the reasonableness defence being used to bring in people to mitigate the perpetrator's behaviour. It is important. I have been trying to find the exact language around it, but I think that it was conceived of as a mechanism to allow us to focus on the perpetrator's behaviour without having to prove specific harms to a victim. There are a lot of good reasons for that, which we undoubtedly do not have time to go into.

I think the drafters of the bill felt that the reasonableness defence needed to be there for the very few cases in which there is some reasonable explanation for a series of behaviours that might, on the outside, look abusive—perhaps in the context of someone who has guardianship of somebody and whose job it is to control certain things that, in an independent relationship, they should never be controlling—but also to allow mechanisms for keeping the focus on the perpetrator's behaviour rather than the impact on the victim.

I hear your concerns and I share them but, in the long run, we would rather have the risk on that side than have a bill that required proving harm, which is enormously problematic.

**Oliver Mundell:** Okay—that is super.

I have a slightly different question that leads on from the point about family relationships. Does the offence cover all the relevant parties, or should we perhaps consider including elder abuse or the abuse of other family members and how that all interacts? Is it too narrow to just look at partners and ex-partners?

**Dr Scott:** Considering that we have fought for 20 years to have this definition, my answer is no. We are very happy with it.

Before I worked for Scottish Women's Aid, I was one of a team of University of Edinburgh

researchers who did the first research in Scotland—in the UK, actually—on older women and domestic abuse. It was shocking to find the invisibility of older women in police reports, social work assessments and all kinds of things. The problem was not that they were not covered by the law, because they were absolutely covered by it; the problem was that, the minute women got over a certain age, the issue became defined as elder abuse and people who ordinarily would respond robustly in the face of the domestic abuse of a younger woman did not see it, did not identify it and did not respond appropriately.

From our perspective—I know that there will be people who will provide evidence to the contrary—there are adequate protections in the bill for people of all ages, if it is used appropriately. The difficulty is that those who provide services for older women and older men need to understand domestic abuse, which is the biggest problem. I suspect that Giri Polubothu and I might disagree on other family members, but we are really committed to Scotland continuing in its proud tradition of understanding the issue as gender-based violence. We are absolutely concerned that, if you start to broaden the definition, the bill will be confused with child abuse legislation and there will be a variety of other difficulties that take our eyes off the prize of gender.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** A large number of the areas that I wanted to ask questions on have been covered, but I have one specific and one general query.

I want to absolutely clarify a specific point. The inclusion of recklessness in the definition has been discussed at previous committee meetings. I know that, in its written submission, Scottish Women's Aid has clarified its support for that, but it would be good to hear from Dr Scott and others why you agree with its inclusion.

In its written submission, the Crown Office and Procurator Fiscal Service made the same point that Dr Scott just made about gender-based violence, which is that the bespoke offence will raise awareness and confidence, increasing the number of cases coming forward and advancing social change in order to tackle gender-based violence more widely. Would you comment on the bill's potential in that context?

**Dr Scott:** I referred to the fact that for 40 years we have been hearing stories about the impact on women and children of domestic abuse in the form of coercive control. The failure to have a legal instrument that responded to what they have told us for 40 years sends a powerful message to women and children that their experiences of trauma are not of that much interest to us as people who make policy and law in Scotland—not

that I make policy and law, although I am happy to try.

The fact that we had such powerful testimony from the Crown Office and the police, who, along with our services, are closest to the coalface and to the experiences that you heard about in the evidence session with our survivors, shows that they have been trying to make law that is not fit for purpose work in these cases. It is in your gift as lawmakers to send a message that that is not good enough any more in Scotland and that we are listening to the voices of survivors and service users—and of the people who have never come into our system because they do not recognise their experiences in the things that we respond to. This is an opportunity for Scotland to stand above every other legislature that has made laws around domestic abuse and coercive control.

If the bill is passed, as Evan Stark says, it will be the gold standard for statements in law and in moral terms about what is okay. I cannot imagine that we would want to walk away after the 10 to 15 years that it has taken us to get to this point. The detail absolutely can and should be debated, but the challenge is clear in terms of law that acknowledges the rights of women and children as human rights. The opportunity is huge. The statement that it allows us, as a service provider and a policy advocate, to make to women and children is, "You are being listened to, your lives matter and your experiences count. We will be part of the transformation of your community that will mean that, if this happens to you, there is accountability in the system. You should come forward, and you should expect protection and support."

I know that I have had a wee rant there, but I thank you for the question. It is easy to get caught up in the nuts and bolts of legislation, especially because that is what you all do. From our perspective, the ability to go out to the 36 communities in which our services are based and say, "You have a bill that reflects what you have said you would like the Scottish Parliament to do about domestic abuse in Scotland. Now let's all make it so," is a consummation devoutly to be wished.

**Ben Macpherson:** For clarity, are you supportive of the inclusion of recklessness?

**Dr Scott:** Recklessness is very much connected with some of the discussions that we are having about reasonableness. What are the hurdles in the bill that ensure that the law will not be used for trivial purposes or to prosecute people who are not being abusive? We quite like the concept of recklessness, because, again, it helps us to create a focus on the abusive behaviour rather than on the impact on the victim.

Instead of having to prove what serious harm might be, which is what is in the law down south—as I said, it is hugely problematic—we have a statement about somebody either knowing that something is harmful or being reckless in the face of that. Recklessness in that context is not a new concept for us in law. Its application in the bill is quite nifty—I understand that “nifty” does not have a lot of gravitas—in the sense that it is a mechanism that comes quite easily to hand: “Well, you should have known. If you did not know, you should have known”. We talk about reckless driving and all kinds of things that come under the test of recklessness. In the bill, it is quite a good tool for helping us to create a robust case that abuse has happened, without having to prove harm. Is my reply specific enough?

**Ben Macpherson:** Yes. Thank you.

**The Convener:** I am conscious of time, so if the questions and responses could be as succinct as possible, that would be helpful.

11:15

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I thank the witnesses for their evidence today. It has been very rich, and I personally agree with it fully. It is great to see all three so enthusiastic about the bill.

I return to the issue of non-harassment orders. The witnesses have talked about why they should be used more—as I said, I agree with that—but how could they be made more robust when they are used? The number of orders that has been cited is small, but, in my experience in social work before I was elected, in many respects they are not particularly effective.

**Heather Williams:** You are absolutely right: sometimes non-harassment orders are not as effective as they could be, which partly relates to how they are policed. I can give you a specific example involving a woman whom we have worked with for quite some time. A non-harassment order was finally imposed as part of the sentence, but the order was breached on a number of occasions. The matter was finally taken back to court, but nothing happened because there was not a sufficiency of evidence.

Breaches of a non-harassment order often involve the stalking and harassing kind of behaviour that is on-going and is seen as low level. For instance, the person drives by and revs the engine at all times of the night, or is at the school when the woman picks up the kids. That behaviour sometimes trips things up. It is not a threat. It is not going up to the woman and using offensive language or threatening behaviour. The difficulty is that our system does not police that particularly well.

When we talk about domestic abuse, we expect there to be behaviour that is abusive—shouting, using offensive language or threatening—whereas a lot of the time the behaviour is more subtle than that. That does not lend itself to the orders being policed particularly well at this point in time. However, that type of behaviour would, potentially, be covered by the bill—there would be more scope for it to be dealt with.

It is about getting ourselves away from the idea that domestic abuse is about threatening abuse. We can intimidate people in lots of ways. One that comes to mind—we have used it recently in schools—is the debate between Hillary Clinton and Donald Trump. How did he try to intimidate her? It was by invading her personal space. On “Question Time” recently, David Davis went over to Leanne Wood and stared at her.

We can intimidate and try to control people in lots of ways that are not necessarily overtly threatening. The current system focuses on overtly threatening behaviour, and if something is not done in that way, we are not particularly good at following it up and the courts are not particularly good at dealing with it. The bill gives some leeway by saying that behaviour does not have to be overtly threatening. That gives some hope that we will be able to improve the lives of those affected by domestic abuse, because it fully breaks down what domestic abuse is and does not focus on just a single incident or thing.

**Dr Scott:** Let me just add to that. This is a bit of a techie response, I suppose, but there is an opportunity for better use of technology. For example, we are just beginning to explore the use of electronic monitoring and so on in Scotland. It would add robustness to and support policing and the response of the police if we were to explore and invest in the capacity to use electronic monitoring. It would help to provide evidence, but it would also provide a significant amount of reassurance to women who are not convinced that the perpetrator will abide by a non-harassment order and—it is an important “and”—that, if and when the perpetrator breaches the order, the police will respond appropriately. The opportunity to support some of that policing with technology could be fruitful.

**Fulton MacGregor:** I move on to an area that may develop only once the bill is implemented and in operation—it is one that has been discussed. On the management of non-harassment orders, is there something that can be done around the work that is done with the offender and the victim? Where does that fit in with the length of time that a non-harassment order is in place? As with other orders, you would not expect a non-harassment order to be indefinite. However, the nature of the relationship might not change at all or might take a



long time to change. There is work to be done in that area. What are your thoughts on that? Please be brief, given what the convener said.

**Heather Williams:** The reality of outcomes at court is that not enough work is being done with the perpetrators of abuse. The system, through the Caledonian project and so on, is very patchy across Scotland. In the Highlands, for instance, the Respect work is done on a one-to-one basis, but it is done only with very few perpetrators—those whose behaviour is seen as being at the higher end. The difficulty is that, unless we address the perpetrator's behaviour, they will either continue to abuse that partner or find another partner and start to abuse them. Ultimately, it is the perpetrator's behaviour that needs to be addressed and, at the moment, we are not great at doing that.

**Dr Scott:** If I am not mistaken, there have been some lifetime non-harassment orders—maybe they are down south. A lifetime order is a tool that will be used very rarely but may be needed in rare cases. There is a continuum of response, exactly as Fulton MacGregor describes, and an opportunity for work with perpetrators, which I am not an expert on. We could integrate work on compliance, and non-compliance, with a non-harassment order into understanding how behaviour change is needed in order for the perpetrator to respond appropriately to whatever treatment is being offered.

**Girijamba Polubothu:** For the BME community, implementation of non-harassment orders is a bit complicated, because of the family dynamic and the involvement of extended family members, as I mentioned. A man might have a non-harassment order, but implementing it can be difficult. In one case, the Caledonian programme was supporting the man and we were supporting the woman. Although there were interdicts and so on, the children were taken to their grandparents' house, which the man would visit. He was not breaking any rules—he was asked not to visit his family home, but he would visit the grandparents' house, and the woman would leave the children there. She did not want to do that, but did so because of family pressure. She did not tell us that that was what she was doing, and she was blamed for that, because she was the one putting the children at risk by taking them to their grandparents' house, where he would visit them.

Implementation is sometimes quite complicated. In forming the bill, we may have to take into consideration how we can protect women from being blamed in such situations.

I have given only one scenario, but it happens more often than that. There was another scenario in which there were interdicts against the guy, but the woman had no recourse to public funds and so

she had nowhere to go. Her in-laws—her husband's parents—offered her shelter and said that she could stay with them. He visited his parents' home—there was no interdict against him doing that. How can the order be implemented unless there is additional legislation to protect women from that kind of thing? In such a case, the woman is the one who is breaking the rules, not the man.

**The Convener:** I should stress that we are very much over time now.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I will try to keep this brief. I have heard differing views from the panel on whose "reasonableness" it is. In court, there are three reasonablenesses. There is the perpetrator's view of reasonableness, the victim's view of reasonableness and the societal view, or the bench's view, of reasonableness.

I just want to be clear about where the witnesses think we should go on this. There may be victims of abuse, the character of which has, over the long term, been such that the victim has normalised the perpetrator's behaviour to the extent that they no longer realise that it is unreasonable.

Secondly, the victim may lack mental capacity. In older couples, for example, the victim may suffer from dementia and therefore lack the mental capacity to assess the reasonableness of the perpetrator's behaviour.

Whose reasonableness is it? Given that judges will tend to come from a social stratum that may be disconnected from the day-to-day experience of the wider public, from where does reasonableness come?

Finally, I am convinced that we should not incorporate a definition of reasonableness into the legislation, because the facts and circumstances have to be brought to bear.

That was a long question. Can I have a short answer?

**The Convener:** That was the very opposite of a succinct question. Can we have succinct answers, please?

**Dr Scott:** I will try hard to be quick. First, do not be under the illusion that domestic abuse does not happen in the homes of judges. Let us just out that one.

**Stewart Stevenson:** That is all right.

**Dr Scott:** Secondly, I have pulled up some text from our response, which refers to reasonableness. It says:

"We would suggest that since the defence of 'reasonableness' specifically states that '... the *course* of

behaviour was reasonable *in the particular circumstances* ...' that this wording is replicated in relation to the references to the reasonable person's consideration of the behaviour."

That is, the bill would say:

*"a reasonable person would consider the course of behaviour, in the particular circumstances, to be likely to cause B to suffer physical or psychological harm"*.

That is all interesting, but the question was really on point: we are talking about the reasonableness of people in the courtroom who are making a judgment about whether a crime has occurred and whether the accused is the person who did the crime. That is the point about reasonableness.

**Stewart Stevenson:** Can I draw on that? I know that the convener is on my shoulder because of the time. Is the test of reasonableness determined outside the relationship, rather than inside it?

**Dr Scott:** Yes, absolutely.

**Stewart Stevenson:** Right. That is it, convener.

**The Convener:** There is one thing that I think Heather Williams might want the opportunity to come back on. The example that you used was of a situation outside a family, in connection with non-harassment orders, and you mentioned debates between Hillary Clinton and Donald Trump, and David Davis and Leanne Wood. We do not want to muddy the waters, because there is real fear about the far-reaching consequences of the bill.

**Heather Williams:** I gave those examples to show how it is possible to intimidate people, and those examples were very clearly in the public eye. Often, the difficulty with the current legislation and the way in which it is applied is that we focus on violence and actual threats and on what we, as a society, think is abusive behaviour: I might have to swear at you for what I say to be seen as being abusive, for example.

**The Convener:** I think that it was important to get that on the record.

I will pose one last question that seems to me to be germane. The committee thinks that there is definitely a gap in the bill in relation to coercive behaviour. What is the trigger? I note that the Scottish Women's Aid submission says that we should not ignore the existing law on stalking and other things, but how is it triggered? There might certainly have been a course of conduct. As Giri, I think, said in evidence at the beginning of the meeting, coercion could have been going on for years and years and could materialise as violence only at the point when the victim suddenly says, "No—I'm not going to do that." Can coercive behaviour stand alone as an offence? Do we have enough to deal with such situations?

**Heather Williams:** Absolutely. In my experience of direct delivery work, often the first time a person contacts us at Women's Aid, the first thing they say is "I don't know if you can help me, because he has never hit me." When they come in and we speak to them, we might then unpick a relationship in which there is a huge amount of coercive controlling behaviour that has had an absolutely negative impact on the woman's integrity in terms of her belief in herself and her mental wellbeing. There are lots of ways in which such behaviour can be uncovered.

Marsha Scott talked about health and social care professionals. Many of them, in particular health visitors, are really good at saying to women that there is maybe an issue, asking whether the woman is happy in her relationship, and suggesting that if there is a high level of control they should speak to Women's Aid. There are people who are involved in families' lives and who come into contact with women, and there are friends and family who might be able to say that the woman has changed and is no longer the person that she was. Such things come out a lot when there has been physical violence and a woman is talking to the police, but the police cannot do anything about it because it is not the specific incident that the woman is giving a statement about.

11:30

**The Convener:** Something usually triggers the physical violence—the woman saying, "Enough is enough", and leaving, for example.

**Heather Williams:** It might just be that a family friend or a family member notices a difference, or the woman recognises that something is not right and tries to fix it herself, which is often where it starts: we take responsibility for what is happening to us and try to change. We will have been making sure that dinner is on the table at the right time, that we wear our hair in a certain way or that we do not talk to our mum or our friends. When that does not work and the abuse continues, that is the point at which the woman starts to recognise that maybe the fault does not lie with her but with the person who is telling her that it is her fault and that it is her behaviour that causes the situation.

**Girijamba Polubothu:** It is difficult to evidence coercive control; physical abuse is easier to evidence. It takes much more listening and investigation to prove coercive control—you need to spend more time to do so. For that reason, we should not abandon the bill. We are trying to help women who are suffering coercive control. We should not be fearful of investigating and listening.

**Dr Scott:** I have a quick footnote to all of that. I absolutely agree. I hope that the trigger will be

sooner. Women call us all the time and say, “I’m not sure that this is domestic abuse”. There is the notion, when people ask why the woman does not just leave, that she does not mind being abused. Our experience is that no one likes to be abused, but the gendered expectations of women—especially if you look at the services we have for very young women—tell them that they are supposed to be a certain person. When young women have the same aspiration to having the space for action that all human beings have a right to—whether it is about economics, being able to have their voices heard in Parliament or whatever—those triggers will come a lot earlier and perpetrators will have far fewer tools. It is a bit about being ambitious for women and girls.

**The Convener:** This has been a long but very worthwhile evidence session that has brought out a lot of things that will help our scrutiny of the bill. I thank the witnesses very much.

11:33

*Meeting suspended.*

11:39

*On resuming—*

**The Convener:** I welcome our second panel of witnesses on the Domestic Abuse (Scotland) Bill: Ronnie Barnes, trustee, Action on Elder Abuse Scotland; and Alan McCloskey, director of operations, and Kevin Kane, parliamentary, policy and research officer, Victim Support Scotland. Following a late change to our agenda, Abused Men in Scotland is represented by Alison Waugh, who is a trustee of the organisation. You are all very welcome. I thank the witnesses from Action on Elder Abuse and VSS for providing written submissions, which the committee always finds extremely helpful.

We move to questions from members. I will start by asking about the relationships that are covered, which I know will be of particular interest to Action on Elder Abuse. Should the bill go further than partners and ex-partners?

**Ronnie Barnes (Action on Elder Abuse Scotland):** Thanks, convener. We feel that, because there are particular issues to do with people as they get older, it might be too restrictive to confine the provisions to partners and ex-partners. People find themselves living with sons, daughters and other extended family members who then become care givers. In such circumstances, in our experience, abuse, exploitation and all manner of such behaviours occur. In order for the bill to properly protect older people, its scope with regard to likely perpetrators and likely victims needs to be enlarged.

Furthermore, we think that there should be a specific aggravated offence of abuse of older people. We believe that not enough priority is given in the criminal justice system to the prosecution of offences against older people, given the number of older people, the rise in their number that there will be and the fact that older people require to be looked after in all manner of circumstances and situations. The good thing is that we are all living longer. We are all living healthier lives but, at certain points, we will all become vulnerable and frail. This is not just something for a constituency of people out there; it is about all of us. In developing laws and protections, it is something that we should consider.

**The Convener:** There is no doubt that there is a real issue there, but I suppose that the question to ask is whether the Domestic Abuse (Scotland) Bill is the appropriate bill in which to address it. We have heard from some of the witnesses that it is very much looked upon as a gender-based bill. Without doubt, neighbours and other people who are doing the looking after who are not family can be the perpetrators of abuse of the elderly. I think that some of the witnesses on the first panel—I know that you listened to their evidence—were afraid that including in the bill the abuse of older people might in some way water down the bill’s ability to deal with the specific issue of coercive control within a relationship. That is the issue that they want to make sure is covered, which has not been covered in the past.

**Ronnie Barnes:** I suppose that our question to you as politicians is this: if this is not the right bill, what is? I still think that we have to address the fact that the abuse of older people is a significant, serious and growing problem. It cannot be shied away from. Our charity will continue to campaign to ensure that we eventually get an aggravated offence that recognises the degree and type of offence that is committed day and daily.

We are also concerned about the fact that the criminal justice system does not take the issue particularly seriously, that the low level of reporting results in low levels of serious prosecutions and that we do not see the courts marking the fact that such offences are serious and giving sentences that reflect that. We think that that should be addressed, too.

**Kevin Kane (Victim Support Scotland):** We will absolutely take cognisance of that view as a group that supports all victims. However, as Scottish Women’s Aid mentioned earlier, it is important that we restrict the bill to partners and ex-partners. That tallies with what we know about domestic abuse and the figures that we have to hand. According to last year’s figures, out of all homicides in the UK, 44 per cent of female victims

were killed by a partner or ex-partner. That highlights once more the gender dynamic that is at play here and how specific the offence needs to be. For that reason, Victim Support Scotland is comfortable that, as it stands, it applies to partners and ex-partners.

**Alan McCloskey (Victim Support Scotland):** I take Ronnie Barnes's point absolutely, but there is a danger that the bill might be weakened. A real strength of the bill as it stands is its focus and scope, and we do not want to dilute it. Rightly, there is other legislation to protect older people that we should concentrate on, whereas this bill is about domestic abuse and domestic violence, the psychological effects and the violence aspect. That is the bill's strength, which we want to be taken forward. If we widen the scope of the definition, it might lose a bit of traction. The bill is an important piece of legislation that we very much welcome.

11:45

**Alison Waugh (Abused Men in Scotland):** I would agree with Ronnie Barnes, because when abuse is taking place in a home, the victim has no way of escaping—they have to live there and to keep returning there. I would have included such abuse, but it is not my speciality. I make that comment as an individual.

**The Convener:** Do you mean abuse in the wider context of the family?

**Alison Waugh:** Yes.

**Ronnie Barnes:** It should not be beyond us to frame that and to put it into clauses. It would not weaken the provisions in the bill about partners as perpetrators. To miss the opportunity to recognise in the bill the fact that people are being looked after by other care givers in domestic situations would be a grave mistake. I am not sure that the law as it stands covers the situations that I am talking about.

**Stewart Stevenson:** I am the only septuagenarian here, so this is more relevant to me. For example, I have been considering some of the provisions that I have made, one of which is the power of welfare, which I have given to two family members and a third, younger person in case they are not alive at the time. I would not necessarily be living with the person who has power over my life and circumstances—how my hair is cut, where I stay and so on. How should that interaction, with my making a choice in the last few years, as I have done on that front, sit with what happens subsequently when I become incapable of exercising my own power to make decisions? Where is the line crossed? For example, I have said about my future care that, if I am unaware of my surroundings, get the cheapest

possible provision—do not put me in a posh home or anything. Would that be caught by the reasonableness test? Might people in 10, 20 or 30 years—whatever it might be—think that unreasonable?

**Ronnie Barnes:** We are well served with good adult support and protection legislation in Scotland compared with what happens in the rest of the United Kingdom. We are good at protecting people and taking account of their wishes, needs and requirements, but we are not good at determining when that strays into criminal behaviour. I would have thought that the threshold for what is criminal behaviour could be clearly understood. If people are being exploited, abused and assaulted in whatever way, that should be clearly defined. There should not be any confusion about whether it is at the soft end of care giving.

That is not to suggest that this is not a complex area; clearly, it is. In any familial situation in which people are care givers and have responsibilities that they find difficult and therefore in a sense become abusers by default, a determination need to be made as to what to do about that. As I say, there is probably adequate adult support and protection legislation to deal with situations in which people recognise that they are getting into difficulties, but we are talking about behaviour that is not acceptable and which is criminal in its intent. Those are the situations that we need to deal with. Whether we like it or not, people get abused and violated. We must understand that. There is no trying to pretend that we can somehow soften that by saying that it is just to do with the circumstances and that it is necessary to understand that the perpetrator is under pressure as well. There are ways in which we can deal with such circumstances, but I am saying that abuse is abuse. Let us deal with it and call it what it is.

**John Finnie:** Good morning, panel. Thank you for your evidence.

Mr Barnes, I have a follow-up question. I do not know whether you heard the example that Dr Scott gave about the non-visibility of domestic violence as someone gets older. Could you comment on that? I thought that she made quite a powerful statement.

**Ronnie Barnes:** What we also know is that it is a vastly underreported situation. From the research that we did last year—this is mostly in England and Wales—we know that something like only 6 per cent of what we would regard as criminal behaviour is reported. People are very reluctant to come forward; we know that from our helpline.

I will give you an example of some of the behaviours that go on. Let us take financial abuse. In 2013, from 680 calls that were received by the

helpline, we uncovered £25 million-worth of abuse. That was the total monetary value of people being defrauded, having money stolen from them, being coerced out of their home and having their home stolen. Interestingly enough, although we did a press release at the time, none of the national papers took that up.

There is significant underreporting of issues to do with older people. The odd sensational thing will come out, but people are dying at the hands of their family and other cruel perpetrators, and those things are not being picked up. That is the scale of the problem that we are talking about. It is underreported because people are probably reluctant to come forward, and they are in a relationship with people who are their care givers and on whom they are dependent. We must ensure that there is zero tolerance and that we regard abuse of older people in the same way that we approach child protection. It is unacceptable, and until we make that mark and make such statements, I am afraid that the situation will continue.

We need to remember that this is about all of us; it is not about some group of people out there. We are all likely to find ourselves in vulnerable situations at some times in our life, and we might well be dependent on others. We need to ensure that the law is robust enough to deal with situations in which abuse is nothing other than what it is: abuse.

**John Finnie:** You touch on the underreporting. Indeed, you detail a number of issues that you cite as precluding people from coming forward: fear of loneliness, threats of being placed in a home, being embarrassed to report their own children or family members, feeling that they are a burden and being unable to find the words to explain what is happening to them.

I go back to the comment that some such behaviour could be picked up at the moment as straightforward assault and some of it could be picked up as domestic violence. Dr Marsha Scott from Scottish Women's Aid said that there was a concern that, as people became older, they became invisible in the sphere of domestic violence and domestic abuse, which is what we are focusing on here, and gender-based violence in particular, which is predominantly violence by men against women. Do you not feel that there is an enhanced position for older people in any case, were the bill to progress?

**Ronnie Barnes:** I would like to think so, but I still think that we will miss a trick if we are not more specific about whom we regard as being covered by such treatment and who the perpetrators are. We need to send a signal that the abuse of older people is not to be tolerated. That is something that we do not really have in the

current criminal court. The police probably find it difficult to prosecute in certain circumstances. There is the reliability or otherwise of witnesses, and older people themselves may not be very credible, particularly when there are issues to do with dementia and people's lack of mental capacity. How will the people who are likely to end up in court become credible? There is a way in which people are being diverted or discouraged from following through on situations in which they are being violated and abused. We need to find a means whereby we all take this seriously.

The other thing that we are concerned about is that, from our research—as you will see in our submission—out of more than 18,000 crimes against older people, there were only 194 successful prosecutions. Most of the penalties were attendance at police courses, community service or suspended or deferred sentences. I am not suggesting that everybody should be locked up, but there are certain crimes for which we would expect somebody to be in prison for a significant time because of the violation of trust. The current penal policy is that people are almost diverted from being seriously dealt with, and it is not sending the right signals to future perpetrators that this is a serious matter. That is what we want to do—to send a signal and to highlight the issue as a growing and prevalent problem that needs to be addressed.

**Mary Fee:** Good morning. I would like to ask Alison Waugh for a bit more detail about abused men in Scotland. I was struck by a couple of comments that Mr Barnes made in response to a previous question. He said that elder abuse was underreported and was not always taken seriously. I suspect that you could almost say the same thing in relation to male victims of domestic abuse. Will you comment on that?

Earlier, Dr Scott said that, if the bill progresses, training—particularly of sheriffs and judges in court—will be critical. I am interested in your views specifically on male victims of domestic abuse. The majority of support organisations are female-based support organisations. Is there a job of education to be done with all the support organisations to make sure that they are absolutely gender neutral?

**Alison Waugh:** Yes.

**Mary Fee:** Thank you.

**Alison Waugh:** We have concerns that men are sometimes forgotten, as are older people. The research that Dr Scott referred to was about older women, not older men, so we do not know much about older men.

As for training, we strongly believe that although the training does not necessarily have to be gender neutral—we acknowledge that there are

many gender differences—it must acknowledge the experience that many men have. We cannot quantify the proportion of domestic abuse that takes place that affects men—it could be anything between the 20 per cent of cases that come to the attention of the police and the figure of 50 per cent of cases that some researchers would come up with. The real figure is somewhere in between.

We also need to stress that coercive control affects men as well as women. In the initial research, when the terminology “coercive control” and “intimate terrorism”, which is similar, was first introduced, the authors insisted that such behaviour was predominantly what men did to women, but there has been quite a lot of research since then that illustrates that it happens a lot to men as well—it is carried out by other men and, more so, by women. It is very common. That needs to be recognised. It is being called “gendered abuse”. I presume that that is because it is between partners. It is possibly because it affects women more than men. However, it still affects a huge number of men and their children, who are in the homes where the abuse is going on, and we need to take it more seriously.

Men who are affected, and men we talk to, often say now that the police are quite aware of what is going on and understand. I think that the police were the first group of professionals to really get it. Social workers and doctors know that it happens; they all recognise it.

As it happens, I had an email yesterday from a man who suffered many years of coercive control at the hands of his wife. He raised a problem that he encountered that illustrated the need for training for judges and sheriffs. As he put it, when you are suffering coercive abuse,

“the unacceptable becomes not only accepted but expected”—

it becomes normalised. That was mentioned earlier. That means that when he talks about it, he is always minimising it and trying to excuse it. He had two cases of criminal assault that went to court and he found it very difficult to be critical of what his wife had done. He kept thinking, “Well, I was married to her once and she’s the mother of my children.” He was used to minimising it and explaining away the injuries or the awkward situations that cropped up. The problem was that there was a not proven verdict in both court cases because he did not seem to be affected enough.

That seems to be a gendered problem. On average, a lot of men do not show the emotion or the hurt or damage that has been done. Sometimes, they show anger, and that does not work in their favour at all. If they do not show any emotion at all and just try to stick to the facts, it

works against them because all that happened is dismissed. He was very much in favour of training.

We would say that the training must be gender inclusive rather than gender neutral, so that we can talk about issues that particularly affect men, issues that particularly affect women and those that affect people who do not identify as either. We need to make sure that everybody is addressed. Even if the figure were 1 per cent it would be important, but it is a lot more than that.

12:00

**Mary Fee:** Do you have any information on whether men are more likely to wait longer to report abuse?f

**Alison Waugh:** They seem to take much longer. Sometimes that is attributed to masculinity or a feeling of pride. Men sometimes believe they should be strong, and that to admit they are being abused by somebody whom others might consider to be weaker than they are makes them less of a man. That position is put across quite often.

Men also find it hard to find support. Our charity is tiny, and we sometimes realise that it is not well enough known. We are still working on that. However, we could not cope with all the cases if we were better known. There is a lack of services, and, in the past, there was an issue about going to a service and being laughed at and not being treated seriously.

The public narrative about domestic abuse always says that it is about violence against women and girls by men. I do not think the abuse of men was mentioned in the earlier evidence session today. Fair enough, it was women’s organisations, but sometimes the narrative that we just heard is the only one people hear. When a man begins to realise that what is happening to him is not right and he is feeling awful, he cannot recognise that it is domestic abuse because that happens to women; it is a women’s issue. We need to find a way to maintain the importance of recognising violence against women while raising awareness that there is violence against men as well. It is equally important: for each man there is, on average, the same amount of suffering.

**Mary Fee:** That has been very helpful, thank you.

**Ronnie Barnes:** May I just amplify that? Ten years ago, our charity carried out a UK-wide prevalence study of abuse of older people. In Scotland, among people living in their own home, more men than women were subject to abuse, which was contrary to the trend across the rest of the UK. That was 10 years ago, and it was a partial study, but I just wanted to amplify Alison’s point about how men are also likely to be victims

of domestic abuse, contrary to what the national profile would suggest.

**Alan McCloskey:** I echo those comments. Our organisation is gender-inclusive—I think that is the right phrase—throughout. Approximately 13 per cent of our referrals are from men. When we talk to men, there is a particular stigma about the issue and a reluctance to come forward, because it is not seen as the right thing for a man to do. Somehow, it is more difficult, and men struggle to come forward and admit that they are being harmed and hurt in a relationship, whether it is with a male or a female, and that it has gone on for a period of time. Awareness needs to be raised to encourage people. The bill provides an opportunity to encourage all victims of domestic abuse and violence to come forward and ask for help. Asking for help and support is the right thing to do.

We are a national organisation and we work with partners to encourage and support individuals to have the courage to come forward. Hopefully, through the bill, victims will have the confidence to say “enough is enough” and ask for help.

There were questions and discussions earlier about training, and there absolutely should be training for the authorities, whether it be the police or the prosecution service. They want to tackle the issue. We welcome the opportunity to work with our partners to encourage people to come forward, have the strength to come forward and let justice be done.

**Alison Waugh:** I have one more comment about the need for training. I was really quite shocked by something that the person who emailed me yesterday threw in. He said that he was

“informed, by someone who was present, that in the lawyers’ room in the Sheriffs Court before the case against my wife was heard, there were a number of ribald remarks about a man being a victim of female violence and casting doubts on my masculinity.”

If people come across that attitude, men will not be encouraged to come forward. If that attitude is prevalent in the legal profession, we have a big problem.

**Rona Mackay:** The bill will raise awareness for all victims of domestic abuse. It might encourage men to think, “Well, what’s happening to me isn’t right,” and give them a voice. It goes back to what Alan McCloskey and Kevin Kane were saying. Do you agree that the bill is a good thing to raise awareness generally?

**Alison Waugh:** Yes, it might be. When I first heard about the possibility of a law on coercive control, I thought that it might work in men’s favour. Men often suffer major serious assaults, but domestic abuse is often a low-level, constant

attack that they do not recognise as abuse. If such behaviour is publicised, I think and hope that more men will recognise it and more women and other men will recognise it as a behaviour that some people do not actually realise they are doing. I do not know whether that is possible, but it would certainly be a sharp reminder to people to be careful of their behaviour.

**Oliver Mundell:** My question has been answered.

**Ben Macpherson:** Ronnie Barnes spoke very purposefully about the broadening of the bill’s scope. You are trying to capture a definition of abuse, as well as of partner and ex-partner, so if you were to redraft the definition, what would you put in?

**Ronnie Barnes:** I suppose that we would go with the definition that we have in our charity:

“A single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person”.

That is very broad, but it is anything that strays into criminality in terms of abuse—violence, psychological abuse and financial abuse. It would not be hard to work up the things that we know go on daily. It is also about neglect, which is another feature of abuse that is probably a bit more insidious. It might happen in care homes, for example, through their standards. Again, it is about trying to find the threshold at which something that was a poor standard becomes a wilful criminal act. It is about trying to find the wilfulness as opposed to, if you like, the more benign but cumulative effect of poor standards of care.

It is a complicated area. I am not in any way suggesting that it is easy to find a form of words or draft a section in the bill that will answer what I am looking for but, if we do not do it in the bill, we will have to do it somewhere else. This is coming down the track at us. Until we address it and get people to take it seriously, it will still go on.

It is interesting to note that other countries have made the abuse of older people an aggravated offence. At our conference last year, a prosecutor from San Diego talked eloquently and passionately about having had that law in force for the past 20 years and the benefits that it had brought to his community.

**Ben Macpherson:** For clarity, that was more an expansion on the concept of abuse. I am grateful for that, but I am interested in the perpetrator. How would you seek to articulate that? Would the definition be expanded to include family members? Do you see the ambiguity that I am struggling with here?

**Ronnie Barnes:** There are unscrupulous people out there—not necessarily family members but people who get close to victims and are able to exploit them. We need to find a means by which we send a signal that that is unacceptable.

We have, if you like, a regulated workforce that looks after older people, but, because people are able to look for and buy in their own care, we also have an unregulated workforce that people can bring in, and there is no way of knowing how unscrupulous those people can be. They can target victims. Let us face it: people in their latter years become more vulnerable, and that is before we talk about dementia and people's capacity to understand what is happening to them.

As I say, this is not easy, but I still think that we can look elsewhere and see what other nations have done to address the problem. If we do not address it, the problem will not go away. We are gratified that the bill will happen. It is an opportunity for us at least to have our concerns for older people addressed, and I know that it will not be easy for you to do that.

**Ben Macpherson:** Alan McCloskey mentioned figures for the percentage of male victims of abuse in a survey that Victim Support did. Can you clarify the percentage for female victims of abuse?

**Alan McCloskey:** Of the people who come to our service, 87 per cent are female and 13 per cent are men.

**Fulton MacGregor:** In the earlier evidence session, there was a lot of talk about non-harassment orders that can be implemented by the court. What are your views on elders and men getting a non-harassment order for their abuser in those circumstances? Would there be any complications in those situations? A person who is abusing an older person might have a significant caring role that might not be able to be picked up elsewhere or through community services.

Some time ago, I was made aware of a situation in which a male had been a victim of domestic violence. The female got a non-harassment order—that is strange in itself, because they are not used a lot—and it led to extreme difficulties in the family. It led to the children needing other interventions, because their needs were not being met.

Have you thought about how the non-harassment order can impact on your specific client groups?

**Alison Waugh:** I do not have statistics to hand on how many of the men whom we work with have tried to get non-harassment orders. I am a trustee—the service manager, who should have been here, is ill—and I am not sure how many of our clients have tried. I know that it is something

that is not usually suggested to men. Very few would try, and few would get one.

If there is any legal obstacle to men being with their family, which can often happen in other circumstances—

**Fulton MacGregor:** At the moment, the procurator fiscal would—

**Alison Waugh:** I am finding it hard to hear you. I am really sorry.

**Fulton MacGregor:** The procurator fiscal would apply for the order, but there could be a change to the legislation so that there was more of a presumption that, if somebody had committed and been convicted of an offence, a non-harassment order would be put in place. I am thinking about the possible impact and whether a male having a non-harassment order would experience a different impact from the likely impact that we talked about more fully in the earlier evidence session.

12:15

**Alison Waugh:** Sorry, I am still not hearing. I will let Ronnie Barnes say something because I am not quite sure.

**Ronnie Barnes:** On the situation regarding older people, one of the successes of the past 10 years has been the adult support and protection legislation, which covers the more complicated issues to do with carers becoming perpetrators and familiar situations such as, “I do not want my son to leave the house, but I want the abuse to stop”. There are means by which that legislation can invoke short-term measures such as banning or removal orders that can, in fact, bring about some change.

We are not trying to criminalise everything or interfere in family life, as was said in the earlier session. One of the main criticisms of the bill will probably be about how much the state is interfering in family life and how much of what happens is actually just what happens in families. It is all about finding the line where you are straying into criminal behaviour. There are still means of addressing some of the more complicated family situations through adult support and protection legislation in Scotland. When they go beyond that is when we have to be clear about what is criminal behaviour and what is not. There are means by which we can do that through the bill.

**Alison Waugh:** Yes, I agree with that. Many men would not necessarily want their abusive partner to be taken away or not allowed to make contact. It should be decided on individual cases; it should not be automatic. The possibility should



be there for it to be relatively straightforward to put in place if it is needed.

**Kevin Kane:** Will the committee allow me to illustrate the chronology of the court journey of one of our service users? It will take a couple of minutes to talk it through, but it is in relation to a non-harassment order. It culminates in a non-harassment order, which, I believe, should have happened sooner. I am tying a number of things to the bill as I go. It will just take me two minutes to read.

**The Convener:** As long as there is no question of anyone being identified.

**Kevin Kane:** Absolutely not.

**The Convener:** Please be as general and as brief as you can.

**Kevin Kane:** For the purposes of anonymity, I have changed all the detail. There is just the essence of the case, and the timeline is not exact. It is worth noting that there was a psychological and coercive element in the case and that threats had been repeated.

We will call the individual “Maggie”. Her then partner pled not guilty to three charges of disorderly conduct, sending menacing statements and a common-law breach of the peace. He was granted bail, despite the procurator fiscal opposing bail. The case met the conditions in section 1, relating to a course of behaviour; in section 1(2), that a reasonable person would consider the behaviour likely to cause psychological harm; and in section 2(2)(a), that the abusive behaviour included threats and intimidation. We are not entirely sure what the sheriff would have done had he been able to use provisions such as those in the Domestic Abuse (Scotland) Bill, but it is clear that it would have been less discretionary.

The now ex-partner was making life difficult. He was released on bail, and the threats continued. At this point, the procurator advised the police to consider whether there would be evidence to support a charge involving a contravention of section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010, which, the committee will be well aware, refers to stalking. In the interim, the perpetrator was called again to the civil court, and, although the petition did call in court, no further order was made and the accused was released again. The accused was then arrested for sending sexually explicit texts, and, as outlined in section 4(2) of the bill, in his attempts to make contact with the child of the partner, he used that child to direct behaviour at the partner. That was not taken into account during the process.

Bear with me. This is important, and I will get to the relevant point.

Finally, the case called again, six months after the initial hearing, which was six months after the first threat—the first intimidating behaviour—occurred. The law failed our service user. At that point, the sheriff sentenced the person to a community payback order, a fine and a three-year non-harassment order.

My point, which I will summarise quickly, is that that could have been achieved three or four months earlier if our client had not had to go between the civil and criminal courts. The process meant that she was victimised over and over again and traumatised as a result. As a victims’ rights group, we want to support and signpost as best we can. A unifying law would have enabled us to do that.

Finally, with regard to recklessness, it is important to pick up on something you said about the responses of men. The concept of recklessness is actually in the bill. It means that the focus will be on the perpetrator whether the victim is a man or woman. Even if a man is being a bit stoic and taking a bit longer—

**The Convener:** Could we maybe cut through this? Is it your point really that the non-harassment order could have been issued at the very beginning?

**Kevin Kane:** Absolutely.

**The Convener:** The stalking was proved. The threatening communication by text was proved, but there was no automatic order.

**Kevin Kane:** Yes, and the overarching coercive and psychological element was not considered.

**The Convener:** Yes. That might have been an aggravating factor.

**Kevin Kane:** And the aggravating factor in relation to the child.

**The Convener:** Okay. Thank you.

**Ben Macpherson:** Just for clarity, you are supportive of the inclusion of recklessness.

**Kevin Kane:** Yes.

**The Convener:** Okay. Fulton, are you happy?

**Fulton MacGregor:** Yes.

**Liam McArthur:** I have a brief question about the wider scope of similar legislation south of the border. We have heard evidence that, to an extent, it is too early to tell what the impact of that legislation has been. We heard suggestions from the first panel this morning that cases brought under that legislation had been more limited, albeit, I think, that that was in the context of the thresholds for abuse. It would seem that the legislation in the rest of the UK broadens out to include some of the situations that Mr Barnes and

you, Ms Waugh, have been alluding to. Have you any impression of how that legislation is operating to date?

**Ronnie Barnes:** I do not. I hope that the research will not show that it somehow weakens the impact of the bill. That is something that might have been suggested in the earlier session. It might well be the case, but I cannot really see how including people who have significant responsibilities and roles with older people can be seen to weaken the bill. If they are included, it makes it clear that they are included.

**Liam McArthur:** I think, to be fair to Dr Scott, that she was making that point in relation to the threshold of harm rather than the breadth of those it covers.

**Ronnie Barnes:** In that case, it might suggest that widening the definition of who could be the abuser might not weaken the bill and, if that is the case, maybe that is evidence. If you can gather evidence to suggest that widening the bill's scope would help to bring in the people whom I am talking about, who need to be included, that might encourage you to widen the definition in the bill.

**Liam McArthur:** Does Victim Support Scotland have a view, or do you fall into the camp of it being a little early, given that the implementation was only at the very end of 2015?

**Alan McCloskey:** At the moment, it is too early to call that one.

**The Convener:** We have evidence from mothers and organisations that represent mothers and fathers about child contact being used by an ex-partner to abuse or undermine the other parent. Does Alison Waugh have any views on that and what might be done to address it?

**Alison Waugh:** Yes, and I was hoping to mention it. When fathers who have been abused leave the abusive home, as they usually do, and become non-resident fathers, an awful lot of abuse continues. In fact, it is overwhelmingly men who suffer from that, although I know that women also do.

Issues around contact and the difficulty of achieving contact in the first place can be costly. It can mean visits to the courts. A father has to prove that he is a good father. He might have been the main carer until the separation but even then, if the child stays with its mother, in some cases, unless there is an amicable agreement about contact, men often find themselves having to prove that they are a good father and even having to prove that they are safe for the child to be with, even though the child was in their sole company for lots of time up until the separation. That is a problem.

Contact can be turned off and on, apparently on a whim. Arrangements can be changed, and court orders can be breached. In most cases, men are totally helpless if that happens. If they show annoyance that, having turned up to take the children, for some reason they are not allowed them and get angry, they are at risk of the police coming because they have maybe shouted or sounded aggressive when they are actually just extremely upset. That can lead to all sorts of difficulties. It is a major issue, and people who support fathers in those situations feel strongly that it should be included as one of the behaviours that constitute coercive control.

That sort of behaviour abuses the child too, because it deprives a child of the benefit of a loving parent. Obviously, cases where one parent is really dangerous and can be shown to be so are different. I am talking about people who are not at all dangerous; they are in an acrimonious situation; they are not dangerous. That is a major problem, and it even extends to schools being told by one parent not to allow the other parent any information about the child when there is no legal reason why. It is constant controlling and making life difficult for the other person, and it can be very upsetting for the person who is affected and for the child. The child also needs to be considered. It is a form of child abuse.

Sometimes, child contact is denied because more money—more child support—is being asked for. The organisation that deals with child support was the Child Support Agency; it is now the Child Maintenance Service. Years ago, I was involved in a case in which the mother claimed that the father had resources that he did not have. It took 18 months for that to come to a tribunal, at which it was agreed that he did not owe any money. During all that time, he had the stress and the threat of sheriff officers coming round to extract money that he did not have. It was appalling abuse. That was an example of using another organisation to exert coercive control over a partner with whom you no longer have a good relationship, and that is very serious. For a while, some men committed suicide as a result of CSA action. I have not been involved in a case recently, so I do not know if it is quite as bad now, but it is certainly something we need to bear in mind.

The other thing is the false accusation of abuse for a purpose, especially in separation battles. It is an easy way to not have to see your former partner whom you do not really want to see again for good enough reasons. Again, there is no legal reason to separate the child from that parent. You do not want to see him, but your child is a different person and it is his or her parent.

Employers are often approached, and we have come across a few cases where someone is a

policeman or a teacher and an accusation of abuse or violence would seriously compromise their employment prospects. They would be likely to lose their job. In some cases, there were repeated inquiries to check out the truth of the accusations. The men were found to be faultless, but the stress and the waste of time for everybody were really difficult.

I would like to think that making use of other organisations or other people, such as brothers and fathers, to harass an ex should come under the umbrella of coercive control.

12:30

**The Convener:** Does Victim Support Scotland have any views on that?

**Alan McCloskey:** I will make a general point about the impact of domestic abuse and violence on a child. What they have to witness and experience cannot be overestimated.

For some children, unfortunately, that is the norm that they live with. As a society, we want to avoid a situation where a child witnessing such abuse believes that it is acceptable, potentially moving on to offending behaviour.

We give a lot of support to children who appear as vulnerable witnesses in the court setting in different categories: some of them are under eight years old, some under 12 years old and some under 18. Having supported such children, we know that it is incredibly difficult for them to recount and recap what they have witnessed. Further work needs to be done to understand what support and help can be put in place for children who are caught up in a violent family in which the perpetrator is causing harm, whether it be to the male or the female.

**The Convener:** That concludes our questioning. Thank you all very much. I assure Mr Barnes that he has well and truly raised an issue that, we are all aware, needs much more attention. At the very least, please be assured of that today. Thank you all for attending.

We now move into private session. The next committee meeting will be on Tuesday 20 June, when we will continue taking evidence on the Domestic Abuse (Scotland) Bill and consider our work programme.

12:32

*Meeting continued in private until 12:39.*



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

---

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

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://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](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba