

# **Equal Opportunities Committee**

**3rd Report, 2008 (Session 3)**

**the Offences (Aggravation by  
Prejudice) (Scotland) Bill**

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# The Scottish Parliament

## **Equal Opportunities Committee**

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## **ANNEXE A: EXTRACT FROM THE MINUTES**

**11th Meeting, 2008 (Session 3), Tuesday 9 September 2008**

**15th Meeting, 2008 (Session 3), Tuesday 4 November 2008**

**16th Meeting, 2008 (Session 3), Tuesday 18 November 2008**

**17th Meeting, 2008 (Session 3), Tuesday 2 December 2008**

## **ANNEXE B: ORAL EVIDENCE**

**15th Meeting, 2008 (Session 3), Tuesday 4 November 2008**

Niki Kandirikirira, Executive Director, Engender;

Sandy Brindley, National Co-ordinator, Rape Crisis Scotland;

Louise Johnson, National Worker - Legal Issues, Scottish Women's Aid.

**16th Meeting, 2008 (Session 3), Tuesday 18 November 2008**

Dr Gordon Macdonald, Parliamentary Officer, CARE for Scotland;

Euan Page, Parliamentary and Government Affairs Manager, Equality and Human Rights Commission (EHRC);

Alistair Stevenson, Public Policy Officer, the Evangelical Alliance Scotland;

Nick Waugh, Policy Officer, Help the Aged in Scotland;

Alan Cowan, LBGT Committee Member, UNISON Scotland

**Written evidence is published separately on the Committee's web-page at:**

<http://www.scottish.parliament.uk/s3/committees/equal/inquiries/Offences/writtensubmissions.htm>



# The Scottish Parliament

## Equal Opportunities Committee

### Remit and membership

#### **Remit:**

The remit of the Equal Opportunities Committee is to consider and report on matters relating to equal opportunities and upon the observance of equal opportunities within the Parliament.

*(Standing Orders of the Scottish Parliament, Rule 6.9)*

#### **Membership:**

Malcolm Chisholm  
Marlyn Glen  
Bill Kidd  
Margaret Mitchell (Convener)  
Hugh O'Donnell  
Elaine Smith (Deputy Convener)  
Sandra White  
Bill Wilson

#### **Committee Clerking Team:**

##### **Senior Assistant Clerk**

Terry Shevlin

##### **Assistant Clerk**

Joanne Clinton

##### **Support Manager**

Sam Currie







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- gender on 4 November 2008 with Scottish Women’s Aid, Rape Crisis Scotland and Engender; and
- age on 18 November 2008 with the Equality and Human Rights Commission (EHRC), Evangelical Alliance Scotland, Help the Aged in Scotland, CARE for Scotland, and UNISON Scotland.

6. The Committee would like to thank those who submitted written evidence and who participated in the oral evidence sessions.

### **Structure of report**

7. The report addresses the issues that have arisen in the course of the Committee’s Stage 1 consideration, examining in turn the arguments in favour and against including aggravations on gender and age within the scope of the Bill, and providing recommendations on each of these issues to the Justice Committee.

8. The report also provides some background information on the Working Group on Hate Crime report, which was published in September 2004.

### **Working Group on Hate Crime**

9. A Working Group on Hate Crime (“the Working Group”) was set up by the previous administration in June 2003 to consider the most appropriate measures needed to combat crime based on hatred towards particular social groups. The Working Group had the following remit:

“To look at the current criminal justice system and consider improvements, including legislation, which might be made to deal with crimes based on hatred towards social groups.”<sup>1</sup>

10. The *Working Group on Hate Crime Report*, published in September 2004, defined hate crime as “crime motivated by malice or ill-will towards a social group”<sup>2</sup>. The Working Group made 14 recommendations, including one recommendation for the statutory aggravation of offences based on the sexual orientation, transgender identity or disability of the victim:

“Recommendation 1) The Scottish Executive should introduce a statutory aggravation as soon as possible for crimes motivated by malice or ill-will towards an individual based on their sexual orientation, transgender identity or disability. The legislation should be framed in such a way as to allow this protection to be extended to other groups by statutory instrument over time if appropriate evidence emerges that such other groups are subject to a significant level of hate crime. The legislation should ensure the recording of hate-motivated incidents (by the police), and reports and decisions of proceedings (by Crown Office and Procurator Fiscal Service) and convictions (by Scottish Criminal Records Office).”<sup>3</sup>

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<sup>1</sup> Scottish Executive. (2004) *Working Group on Hate Crime Report*. Scottish Government. Available at: <http://www.scotland.gov.uk/Resource/Doc/26350/0025008.pdf> [Accessed 2 December 2008]

<sup>2</sup> Scottish Executive. (2004) *Working Group on Hate Crime Report*. Scottish Government.

<sup>3</sup> Scottish Executive. (2004) *Working Group on Hate Crime Report*. Scottish Government.

11. The Working Group also considered statutory aggravations in relation to gender and age, and concluded that these were “more complicated areas”<sup>4</sup> in which to legislate for statutory aggravations.

## GENDER

### Context

12. The following paragraphs provide background information on the Committee’s consideration of whether the Bill should contain an aggravation on gender.

#### *Statistics on gender crime in Scotland*

13. Domestic abuse statistics in Scotland show a clear gender divide: in 2006-07 incidents with a female victim and male perpetrator represented nearly 87% of all incidents of domestic abuse, where this information was recorded.<sup>5</sup>

14. In 2006-07, the overall homicide rate for males was 40 victims per million population, nearly six times the rate for females of seven victims per million population. In the past ten years, 62% of male victims aged 16-69 were killed by an acquaintance and 19% were killed by a stranger. Fifty three percent of the female victims of homicide aged between 16 and 69 were killed by their partner, 25% were killed by an acquaintance and 14% were killed by a stranger.<sup>6</sup>

#### *Working Group on Hate Crime conclusions*

15. In its report published in 2004, the Working Group did not reach agreement on whether a statutory aggravation on grounds of gender could be used effectively to “tackle these complex, inter-related and diverse issues ... in particular it was felt that there would be practical difficulties in gathering evidence in individual cases of malice and ill-will on gender grounds”<sup>7</sup>. It did, however, recommend that the Scottish Executive review the area of criminal law on violence against women and that it consider a statutory aggravation for domestic abuse. In October 2007, the Scottish Government announced that it was developing a National Violence Against Women Strategy and an action plan for broader work on violence against women.<sup>8</sup>

#### *Offences (Aggravation by Prejudice) (Scotland) Bill*

16. The Policy Memorandum on the Bill stated that gender was a broad issue in relation to crime:

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<sup>4</sup> Scottish Executive. (2004) *Working Group on Hate Crime Report*. Scottish Government.

<sup>5</sup> Scottish Government. (2007) *Domestic Abuse Recorded by the Police in Scotland, 2006-07*. Scottish Government. Available at: <http://www.scotland.gov.uk/Resource/Doc/204518/0054432.pdf> [Accessed 2 December 2008]

<sup>6</sup> Scottish Government. (2007) *Homicide in Scotland, 2006-07*. Scottish Government. Available at: <http://www.scotland.gov.uk/Resource/Doc/207004/0054998.pdf> [Accessed 2 December 2008]

<sup>7</sup> Scottish Executive. (2004) *Working Group on Hate Crime Report*. Scottish Government.

<sup>8</sup> Scottish Parliament, Parliamentary Question S3W-5991, asked on 23 October 2007, answered on 31 October 2007. Available at: <http://www.scottish.parliament.uk/Apps2/Business/PQA/Default.aspx>

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“The Working Group’s consultation revealed a lack of consensus over whether domestic violence should be considered a hate crime. As a result, the arguments in favour of a statutory aggravation aimed at tackling violence against women and gender based violence remain unconvincing.”<sup>9</sup>

17. In written evidence, Patrick Harvie MSP indicated that he would be “remaining neutral on the inclusion of other categories”<sup>10</sup>, as his intention was to implement a key recommendation of the Working Group on Hate Crime, which covered only sexual orientation, transgender identity and disability.

18. In a written response, the Cabinet Secretary for Justice outlined the Scottish Government’s support for the Bill and explained in relation to the issue of a gender aggravation that:

“In line with the conclusions of the Working Group, we do not feel that it is appropriate to attempt to deal with it within the context of this Bill, particularly given the lack of consensus amongst women’s organisations on the best approach”.<sup>11</sup>

19. The Crown Office and Procurator Fiscal Service (COPFS) provided a written explanation as to how cases are presently handled: “There is recognition of gender issues in our training and domestic violence is regarded as an aggravated form of assault which is flagged up to the court accordingly”.<sup>12</sup>

### **Evidence gathered by the Committee**

20. In the written evidence gathered by the Committee on whether a gender aggravation should be included in the Bill, the issue of violence against men did not arise. Therefore, the focus of the Committee’s oral evidence was on women.

#### *Including gender as an aggravation within the Bill: in favour*

21. Various respondents to the Committee’s call for evidence were in favour of including gender as an aggravation within the Bill, on the grounds that all six equality strands should be treated equally.

22. The Association of Chief Police Officers in Scotland claimed that “an all inclusive Bill covering all six strands should be considered, as malice or ill-will can be evident in all”<sup>13</sup> and Victim Support Scotland thought that the Bill should include protection for all social groups.<sup>14</sup> Care for Scotland stated that “it is imperative

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<sup>9</sup> Offences (Aggravation by Prejudice) (Scotland) Bill. Policy Memorandum, paragraph 17. Available at: <http://www.scottish.parliament.uk/s3/bills/09-AggPrej/index.htm>

<sup>10</sup> Patrick Harvie MSP, Written submission to the Equal Opportunities Committee, 29 October 2008

<sup>11</sup> Scottish Government. Letter from the Cabinet Secretary for Justice to the Convener of the Equal Opportunities Committee dated 22 September 2008

<sup>12</sup> Crown Office and Procurator Fiscal Service, Written submission to the Equal Opportunities Committee

<sup>13</sup> Association of Chief Police Officers in Scotland, Written submission to the Equal Opportunities Committee

<sup>14</sup> Victim Support Scotland, Written submission to the Equal Opportunities Committee

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that the Scottish Parliament introduces legislation which applies equally to all equality strands and does not create the perception of a hierarchy of rights”.<sup>15</sup>

23. The Evangelical Alliance Scotland was concerned that “selecting specific groups for greater protection potentially undermines another equality strand, creates inequality between the strands or promotes the development of a hierarchy of rights”.<sup>16</sup>

#### *Including gender as an aggravation within the Bill: against*

24. During the oral evidence session, women’s groups indicated that they had changed their collective position on a gender aggravation since the Working Group consultation in 2004. They were now opposed to including a gender aggravation in the Bill, on the basis that it was not the correct way to address the complexities of violence against women.

25. They highlighted potential difficulties in proving that a crime was committed against someone purely because of their gender, and for women to appear as witnesses to such crimes when, for example, they may not be aware that the behaviour that had been perpetrated against them was domestic abuse. There were also concerns that a gender aggravation could lead to a two-tier system, whereby some cases of violence against women were allegedly motivated by gender hatred and others were not.

26. Louise Johnson from Scottish Women’s Aid argued that the wording of the Bill might be inappropriate for a gender aggravation and that “including gender as an aggravation would imply that only some forms of violence against women, are because of their gender”, when in fact “all violence against women is due to the endemic misogyny in society”. She further reiterated Scottish Women’s Aid’s support for a domestic abuse aggravation to be contained in future legislation and suggested that the Committee may wish to examine the New Zealand Domestic Violence Act 1996 for details of how such an aggravation might be framed in legislation and how it might work in practice.<sup>17</sup>

27. According to Niki Kandirikirira from Engender, “a gender aggravation would imply that some forms of violence against women, including some crimes of sexual violence against women, are not misogynistic, therefore proof of the misogyny that is inherent in sexual violence against women would be reliant on other forms of evidence”.<sup>18</sup> She also highlighted that current statutory provisions were usually used in relation to crimes committed in public, whereas violence against women could occur in both public and private situations.

28. Sandy Brindley from Rape Crisis Scotland raised concerns that including a gender aggravation that was unworkable could give women false hope. She suggested that instead it would be worth considering establishing an offence of incitement to hatred against women in relation to, for example, pornography that

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<sup>15</sup> Care for Scotland, Written submission to the Equal Opportunities Committee

<sup>16</sup> Evangelical Alliance for Scotland, Written submission to the Equal Opportunities Committee

<sup>17</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Cols 680 and 686

<sup>18</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Col 682

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was linked to sexual violence.<sup>19</sup> However, the Policy Memorandum on the Bill states that “an offence of incitement to hatred could well risk penalising legitimate freedom of speech and expression. Furthermore, incitement to commit any crime is already an offence under Scots common law, making a new incitement to hatred offence somewhat unnecessary”.<sup>20</sup>

29. Niki Kandirikirira from Engender provided background information on other countries which had introduced gender aggravations. In Canada and the nineteen US states where a gender aggravation existed, few gender-based crimes had been reported and the offence had been largely reserved for cases in which perpetrators did not know their victims. She found “no evidence that legislation in any of those jurisdictions is making a difference”.<sup>21</sup>

30. Some members of the Committee questioned witnesses on whether, without a gender aggravation in the Bill, there would be no obligation to improve recording and monitoring of gender crimes. In response, Niki Kandirikirira from Engender argued that the gender duty itself offered the opportunity to demand good-quality gender disaggregated data on conviction rates and on reporting at all levels.<sup>22</sup> Louise Johnson from Scottish Women’s Aid suggested that the Committee could recommend to the Scottish Government that the Office of the Chief Statistician undertake work in that area.<sup>23</sup>

31. During oral evidence on 18 November 2008, Euan Page indicated that the Equality and Human Rights Commission (EHRC) would shortly be commissioning research on criminal justice and other responses to gender-based crime. The research will focus on the various manifestations of gender-based crime, including sexual violence and domestic abuse, and may also stray into the areas of human trafficking, prostitution and pornography as an incitement to violence.<sup>24</sup>

32. In written evidence, the EHRC said that “at this time, a gender aggravation is not the priority in developing more effective criminal justice responses to gender-based crime”. It argued that “the range of manifestations of violence against women is so wide and the structures of gender inequality so insidious, that a gender aggravation could be seen as addressing symptoms rather than underlying causes”. The EHRC also questioned whether applying a gender aggravation to rape and other crimes of sexual violence “would have the unintended consequence of confusing the issue, by implying that some crimes of sexual violence may not be aggravated by malice and ill-will towards women”. It further suggested that “a gender aggravation could imply that the misogyny inherent in crimes of sexual violence against women is in fact contingent and reliant on other evidence”.<sup>25</sup>

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<sup>19</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Col 681

<sup>20</sup> Policy Memorandum, paragraph 15

<sup>21</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Col 702

<sup>22</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Col 697

<sup>23</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Col 699

<sup>24</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Cols 724-725

<sup>25</sup> Equality and Human Rights Commission, Written submission to the Equal Opportunities Committee

33. In written evidence, the Scottish Trades Union Congress (STUC)<sup>26</sup> and Unison Scotland<sup>27</sup> also indicated that they were opposed to the inclusion of gender as an aggravation within the Bill, on the basis that it would distract from the main focus of the Bill or may not be the most effective method of tackling violence against women or gender inequalities.

### **Conclusions and recommendations**

34. The Committee, in considering whether a gender aggravation should be included within the Offences (Aggravation by Prejudice) (Scotland) Bill, has paid particular attention to the views of women's groups, who work closely with women affected by violence.

35. Whilst recognising that violence against women is a very serious issue that must be addressed, on balance, the Committee supports the views of women's groups that including a gender aggravation within this Bill would not be the most effective means of addressing the range of violence against women. The Committee was not convinced by evidence that a "hierarchy of rights" could be created if legislation does not apply equally to all six equality strands.

**36. The Committee therefore does not consider that the Bill should be amended to include a gender aggravation.**

**37. However, the Committee does welcome the positive suggestions made by witnesses for tackling the complex issue of violence against women and recommends to the Justice Committee that it consider the following issues within the context of its scrutiny of the forthcoming Criminal Justice and Licensing (Scotland) Bill:**

- **how a domestic abuse aggravation might be framed in legislation and how it could work in practice, by examining the New Zealand Domestic Violence Act 1996;**
- **the merits of introducing an incitement to hatred offence against women in relation to, for example, how pornography might be linked to sexual violence;**
- **whether to recommend to the Scottish Government that the chief statistician undertake work on gender crimes data; and**
- **using EHRC-commissioned research and any other relevant research on gender-based crime.**

AGE

### **Context**

38. The following paragraphs provide background information on the Committee's consideration of whether the Bill should contain an aggravation on age.

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<sup>26</sup> Scottish Trades Union Congress, Written submission to the Equal Opportunities Committee

<sup>27</sup> Unison Scotland, Written submission to the Equal Opportunities Committee

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### *Statistics on age crime in Scotland*

39. The 2006 Scottish Crime and Victimisation Survey showed that those aged 16-24 (both men and women) were most likely to become victims of personal crime. Twenty one per cent of men and 19% of women in this age group had been the victim of a personal crime. The risks for this age group were significantly higher than the risks for 25 to 44 year olds, where 9% of men and 6% of women had been victims of personal crime.

40. The survey also showed that 18% of 16 to 24 year old men had been the victim of a violent crime in 2005/06, compared with 6% of 25 to 44 year old men. Those aged 60 or over were the least likely to have been the victim of either personal or household crime.<sup>28</sup>

### *Working Group on Hate Crime conclusions*

41. The Working Group concluded that age was a very complex issue in relation to crime:

“There needs to be more consideration of the extent of crime motivated by malice and ill-will against people of particular ages because of their age, in consultation with organisations working in the age field, before extending hate crime legislation to cover age”.<sup>29</sup>

### *Offences (Aggravation by Prejudice) (Scotland) Bill*

42. The Policy Memorandum on the Bill referred to the Working Group’s conclusions in relation to age:

“While it might seem obvious that someone who is elderly, vulnerable and less physically able to defend themselves is likely to be more susceptible to crime, evidence suggests that young men between the ages of 16 and 24 are in fact most likely to be the victims of crime, in particular violent crime. Two of the three age organisations which responded to the Working Group’s consultation exercise were opposed to an age based aggravation”.<sup>30</sup>

43. As explained in paragraph 17 of this report, Patrick Harvie MSP stated in his written submission that he would be “remaining neutral on the inclusion of other categories”.<sup>31</sup>

44. The Cabinet Secretary for Justice’s written evidence reflected the findings of the Working Group and the conclusions in the Policy Memorandum:

“The Working Group on Hate Crime also concluded that age (like gender) is a much more complex issue in relation to crime, particularly since 16-24 year olds are most likely to be both the victims *and* perpetrators of violent crime. Furthermore, a number of the age organisations which responded to the

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<sup>28</sup> Scottish Government. (2006) *Scottish Crime and Victimisation Survey: Main Findings*. Scottish Government. Available at: <http://www.scotland.gov.uk/Resource/Doc/200037/0053443.pdf> [Accessed 3 December 2008]

<sup>29</sup> Scottish Executive. (2004) *Working Group on Hate Crime Report*. Scottish Government.

<sup>30</sup> Policy Memorandum, paragraph 16

<sup>31</sup> Patrick Harvie MSP, Written submission to the Equal Opportunities Committee

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Working Group's consultation were opposed to an age based aggravation. In light of this, we are not convinced that such an aggravation is necessary."<sup>32</sup>

45. The COPFS provided a written explanation as to how crimes against elderly people are presently handled: "In relation to the elderly, in prosecutions where it is considered that they have been deliberately targeted, this fact will be indicated to the court in the narration of facts to the court, which is of course, considered during the sentence".<sup>33</sup>

#### **Evidence gathered by the Committee**

##### *Including age as an aggravation within the Bill: in favour*

46. As with the gender aggravation, ACPOS, Victim Support Scotland and the Evangelical Alliance Scotland were in favour of including age as an aggravation within the Bill, on the grounds that all six equality strands should be treated equally.

47. In its written submission, the Evangelical Alliance Scotland (EAS) was concerned that "selecting specific groups for greater protection potentially undermines another equality strand, creates inequality between the strands or promotes the development of a hierarchy of rights".<sup>34</sup> However, during oral evidence, Alistair Stevenson from the EAS appeared less convinced: "we have the opportunity now to add the other two equalities strands to the bill, but I suppose it is a question of weighing up whether this is the best opportunity to do that".<sup>35</sup>

48. In written evidence, Care for Scotland (CfS) argued that "it is imperative that the Scottish Parliament introduces legislation which applies equally to all equality strands and does not create the perception of a hierarchy of rights".<sup>36</sup> In oral evidence, Dr Gordon Macdonald from CfS said that "I have come to the view that that concern [creating a hierarchy of rights] can probably be addressed adequately in implementation of the eventual legislation, rather than necessarily by applying the same legislation to all six equality strands". He also highlighted the effects of crime on elderly people: "elderly people might be the least likely to be the victims of crime, but the effect on them could be significant; a crime could lead to an older person dying when they would not have if they were of a different age".<sup>37</sup>

##### *Including age as an aggravation within the Bill: against*

49. Four organisations - including two groups representing older people - who responded to the call for written evidence, were opposed to the inclusion of age as an aggravation within the Bill. Some argued that it would detract from the main aims of the Bill; others felt that an age aggravation was inappropriate, as crimes

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<sup>32</sup> Scottish Government. Letter from Cabinet Secretary for Justice to the Convener of the Equal Opportunities Committee dated 22 September 2008

<sup>33</sup> Crown Office and Procurator Fiscal Service, Written submission to the Equal Opportunities Committee

<sup>34</sup> Evangelical Alliance for Scotland, Written submission to the Equal Opportunities Committee

<sup>35</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 716

<sup>36</sup> Care for Scotland, Written submission to the Equal Opportunities Committee

<sup>37</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 720



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against older people were more often motivated by their perceived vulnerability rather than malice or ill-will towards older people as a social group.

50. As with a gender aggravation, the STUC suggested that including age within the scope of the Bill might "... divert from the focus which is long overdue on the consequences of harassment and criminal offences against LGBT and disabled people in our society".<sup>38</sup> Unison Scotland argued that this would dilute and detract from the focus of the legislation and that groups covered by the Bill were at present more vulnerable. It suggested that "physical attacks against older people in Scotland are very rare but do generate an enormous amount of media publicity, precisely because they are so rare and therefore shocking. And this media spotlight has the effect of frightening older people unnecessarily."<sup>39</sup>

51. The EHRC argued in written evidence that "while there may be some value in looking at an age aggravation where there is evidence of persistent problems of, for example, verbal abuse in public places, it may be less useful for dealing with persistent abuse in a domestic or care setting, or fraudulent or high-pressure door-to-door selling".<sup>40</sup>

52. On the issue of vulnerability, Age Concern Scotland claimed that, "whilst it is clear that older people are often targeted for crime because of perceptions about their vulnerability, there is little or no evidence that suggests people are targeted for crime because of their age alone".<sup>41</sup> Similarly, Help the Aged in Scotland did not believe that an aggravation in respect of age should be included in the Bill:

"Although older people are often specifically targeted by perpetrators of crime, we believe ... such crimes are most often directed towards older people because of their perceived vulnerability". Crimes often targeted at older people, such as bogus calling, distraction theft and mugging, tend to be motivated by the perceived gullibility, vulnerability or weakness of older people, rather than a particular hatred of them as a social group".<sup>42</sup>

53. During the oral evidence session, Dr Gordon Macdonald from CfS argued that "if people are particularly vulnerable and are targeted for whatever reason because of their vulnerability, that [a vulnerability aggravation] should be an aggravation that the courts take into consideration".<sup>43</sup> Euan Page from the EHRC highlighted that the courts already have common-law provisions to deal with crimes when a perpetrator has targeted a victim because of a real or perceived vulnerability.<sup>44</sup>

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<sup>38</sup> Scottish Trades Union Congress, Written submission to the Equal Opportunities Committee

<sup>39</sup> Unison Scotland, Written submission to the Equal Opportunities Committee

<sup>40</sup> Equality and Human Rights Commission, Written submission to the Equal Opportunities Committee

<sup>41</sup> Age Concern Scotland, Written submission to the Equal Opportunities Committee

<sup>42</sup> Help the Aged in Scotland, Written submission to the Equal Opportunities Committee

<sup>43</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Cols 711-712

<sup>44</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Cols 712-713

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54. During oral evidence, Nick Waugh from Help the Aged in Scotland quoted paragraph 3.5 from the Working Group report, which highlighted the distinction to be made between vulnerability and malice or ill-will:

"it should be an essential element of a hate crime to prove that a crime has been motivated by malice and ill-will ... because of a presumed membership of a social group rather than because of their vulnerability. For example, if someone is attacked, but because of their disability is unable to run away, the crime occurred because the individual was vulnerable and this would not constitute a hate crime."<sup>45</sup>

55. Some organisations suggested alternative measures that could be more effective than an age aggravation at tackling crimes against older people. During oral evidence, Nick Waugh from Help the Aged in Scotland argued that including an aggravation related to age within the Bill would probably not address many of the crimes older people face, such as elder abuse, nor would it make a difference to how safe they feel. He was minded to pursue other measures instead, such as educating the elderly, "in that many old people probably do not realise that they should no longer be subjected to pressure selling".<sup>46</sup>

56. In written evidence, Age Concern Scotland agreed with the Working Group's suggestion that extending hate crime legislation to cover age required further consideration with organisations in the age field. However, it also suggested that better enforcement of current legislation would be of more benefit to older people than a statutory age aggravation:

"Of the many crimes that older people can be victims of it is the largely hidden crime of elder abuse that we believe needs to be tackled more effectively within the current framework."

57. The EHRC stated that "to take elder abuse, one option may be to look at what changes could be introduced to the law to better identify and punish appropriately individuals who abuse older people, people to whom they often have family or caring obligations".<sup>47</sup>

58. Another alternative suggested was the need for more intergenerational work. Euan Page from the EHRC highlighted "the appalling gulf in this country between young people and older people; we have two sets of people who just do not interact". He stated that the EHRC was considering how to facilitate intergenerational dialogue "so that people can get over some of the deeply ingrained misconceptions on both sides".<sup>48</sup>

59. While the majority of evidence received within the context of considering an age aggravation focused on older people, the Committee was also keen to hear from organisations representing children and young people on this issue. While the Scottish Commissioner for Children and Young People and the Scottish Youth

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<sup>45</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 718

<sup>46</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 715

<sup>47</sup> Equality and Human Rights Commission, Written submission to the Equal Opportunities Committee

<sup>48</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 722

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Parliament were unable to provide a response, Barnardo's Scotland stated in a written response that it was opposed to adding age as an aggravation within the Bill:

"We appreciate this is complex and not totally clear cut but, on balance, our view is that [an age aggravation] would be very difficult to specifically prove in line with the intended spirit of the Bill. Whilst children and young people are most definitely subjected to abuse or acts of violence; and may face or be involved in other forms of physical attack or punishment with other children/young people and at times with adults; and are more likely to be victims of personal crime compared to older people – this is not in of itself evidence that such acts or offences are motivated by prejudice because of the young person's age. Young People may be particularly vulnerable at certain times in their lives, but being vulnerable and someone abusing a position of trust is not in itself evidence of the said person's motivation".<sup>49</sup>

### **CONCLUSIONS AND RECOMMENDATIONS**

60. In considering whether to recommend that a statutory age aggravation be included in the Bill, the Committee paid close attention to the views of groups that work directly with older people. These groups were not in favour of the Bill being amended. The arguments in favour of an aggravation were based on the principle that all six equality strands should be treated equally in legislation. The Committee is not convinced of the strength of this argument.

**61. Whilst recognising that crimes against older or younger people can have a very serious impact, the Committee accepts the views of the majority of witnesses that such crimes may not be motivated by the victim's age. On this basis, the Committee does not consider that the Bill should be amended to include an age aggravation.**

62. The Committee does, however, welcome the suggestions made by the witnesses for tackling crimes against older people. In particular, the Committee recognises the importance of intergenerational work aimed at combating misconceptions amongst older and younger people and looks forward to taking evidence from the EHRC on its research into this issue.

### **PROVISION TO INTRODUCE A STATUTORY INSTRUMENT**

63. The Working Group, in Recommendation 1 of its report, stated that "the legislation should be framed in such a way as to allow protection to be extended to other groups by statutory instrument over time if appropriate evidence emerges that such groups are subject to a significant level of hate crime".<sup>50</sup> This recommendation has not been reflected in the Bill.

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<sup>49</sup> Barnardo's Scotland, Written submission to the Equal Opportunities Committee

<sup>50</sup> Scottish Executive. (2004) *Working Group on Hate Crime Report*. Scottish Government.

### ***Equal Opportunities Committee, 1st Report, 2008 (Session 3)***

64. When asked whether they had any views on including a provision in the Bill that would allow protection to be extended to other groups at a later date by statutory instrument, representatives from Engender, Scottish Women's Aid and Rape Crisis Scotland said that having such a provision would be useful to allow a discussion on the most workable options.<sup>51</sup>

65. Alan Cowan from UNISON Scotland was firmly in favour of including provision for a statutory instrument in the Bill, on the grounds that "solutions do not always keep pace with the legislative framework; this would take account of the realities, and would allow the bill to be passed".<sup>52</sup> Fife Men Project, in its written submission, agreed that there should be scope to introduce a statutory instrument at a later date.<sup>53</sup>

66. In written evidence, the Evangelical Alliance Scotland stated that "if the Scottish Parliament does proceed to restrict the bill to sexual orientation, transgender identity or disability we would agree with the Working Group's recommendation 1".<sup>54</sup> However, during oral evidence, Alistair Stevenson from the Evangelical Alliance Scotland indicated that "listening to the arguments against from around the table, my thoughts on the subject are mixed. The fundamental issue, however, is parliamentary oversight".<sup>55</sup>

67. In oral evidence, Dr Gordon Macdonald from CfS argued that "providing for a statutory instrument might be a pragmatic way forward if evidence emerged but, in principle it is not, as a change in the law should come before Parliament".<sup>56</sup> Alan Cowan from UNISON Scotland argued that the converse was also true: "waiting until we have enough evidence because enough crimes have taken place should not prevent us from legislating to protect people who are targeted as victims of crime".<sup>57</sup>

68. Euan Page confirmed that the EHRC did not have a position on the matter, although he personally shared Dr Macdonald's concerns about the removal of parliamentary oversight.<sup>58</sup> Nick Waugh from Help the Aged in Scotland stated that "we will probably sit on the fence on that one, although I am personally slightly minded towards the Parliament having ultimate oversight".<sup>59</sup>

**69. The Committee recommends that the Justice Committee considers amending the Bill to include a delegated power provision that would allow protection to be extended to other groups by statutory instrument if evidence emerged that such groups would benefit from the measures being proposed in the Bill. The Committee believes that there should be an element of parliamentary scrutiny and considers that the best way to achieve this would be to specify that any statutory instrument introduced**

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<sup>51</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 4 November 2008, Col 693

<sup>52</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 725

<sup>53</sup> Fife Men Project, Written submission to the Equal Opportunities Committee

<sup>54</sup> Evangelical Alliance Scotland, Written submission to the Equal Opportunities Committee

<sup>55</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 725

<sup>56</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 720

<sup>57</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 721

<sup>58</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 724

<sup>59</sup> Scottish Parliament Equal Opportunities Committee, *Official Report*, 18 November 2008, Col 725

**under this delegated power must be subject to affirmative procedure, which would allow committee examination and parliamentary approval.**

**Other issues**

70. The Committee also wishes to highlight to the Justice Committee the following practical implications of including additional aggravations in the Bill, which have been raised in written evidence.

71. COPFS explained that, on a practical level, the extension of the Bill to include aggravations in respect of gender and age could have significant implications for its information technology systems, as the current system is only capable of recording a certain number of aggravations against each charge.<sup>60</sup>

72. The Scottish Police Federation also raised concerns about the practical implications of the Bill: “Our experience has shown that the police time and resource demanded as a consequence of dealing with the inevitable measurement tools such legislation demands, to be far greater than estimates laid down in previous similar consultations”.<sup>61</sup>

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<sup>60</sup> Crown Office and Procurator Fiscal Service, Written submission to the Equal Opportunities Committee

<sup>61</sup> Scottish Police Federation, Written submission to the Equal Opportunities Committee

**EXTRACT FROM THE MINUTES EQUAL OPPORTUNITIES COMMITTEE**

**11th Meeting, 2008 (Session 3), Tuesday 9 September 2008**

**Decision on taking business in private:** The Committee agreed to take items 3, 4 and 5 in private.

**Offences (Aggravation by Prejudice) (Scotland) Bill:** The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

**15th Meeting, 2008 (Session 3), Tuesday 4 November 2008**

**Decision on taking business in private:** The Committee agreed to consider a draft report to the Justice Committee on the Offences (Aggravation by Prejudice) (Scotland) Bill in private at future meetings.

**Decision on taking business in private:** The Committee agreed to consider a work programme in private at its next meeting.

**Offences (Aggravation by Prejudice) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

Niki Kandirikirira, Executive Director, Engender;

Sandy Brindley, National Co-ordinator, Rape Crisis Scotland;

Louise Johnson, National Worker - Legal Issues, Scottish Women's Aid.

**16th Meeting, 2008 (Session 3), Tuesday 18 November 2008**

**Offences (Aggravation by Prejudice) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1, in a roundtable discussion, from—

Dr Gordon Macdonald, Parliamentary Officer, CARE for Scotland;

Euan Page, Parliamentary and Government Affairs Manager, Equality and Human Rights Commission (EHRC);

Alistair Stevenson, Public Policy Officer, the Evangelical Alliance Scotland;

Nick Waugh, Policy Officer, Help the Aged in Scotland;

Alan Cowan, LGBT Committee Member, UNISON Scotland.

**17th Meeting, 2008 (Session 3), Tuesday 2 December 2008**

**Offences (Aggravation by Prejudice) (Scotland) Bill:** The Committee agreed to defer its consideration of a draft report to the Justice Committee to its next meeting.

**18th Meeting, 2008 (Session 3), Tuesday 16 December 2008**

**Offences (Aggravation by Prejudice) (Scotland) Bill (in private):** The Committee considered a draft report and agreed various changes. The Committee decided to agree its final report by correspondence.

## Offences (Aggravation by Prejudice) (Scotland) Bill: Stage 1

10:06

**The Convener:** The next item is evidence on the Offences (Aggravation by Prejudice) (Scotland) Bill, for which the Equal Opportunities Committee has been appointed the secondary committee for stage 1 consideration. The Justice Committee, as the lead committee, is considering the general principles and main provisions of the bill.

We have agreed to focus our consideration on whether age and gender should be included as aggravations in the bill. Today's evidence session will focus specifically on gender. I am pleased to welcome Niki Kandirikirira—I hope that I have pronounced that properly—who is the executive director of Engender; Sandy Brindley, the national co-ordinator of Rape Crisis Scotland; and Louise Johnson, the national worker on legal issues at Scottish Women's Aid.

We have quite a lot to get through, so we will move straight to questions. I will start by asking you to outline the views of your various organisations on whether gender should be included as a statutory aggravation in the bill.

**Louise Johnson (Scottish Women's Aid):** I noticed in the papers that we were given that at some point we said that we were in favour of including gender as an aggravation. Things have moved on since 2004, and much more work has been done on violence against women—on policies, the gender duty and so on. For a number of reasons, we no longer think that it is appropriate to include gender as an aggravation in the bill. For example, including gender as an aggravation would imply that only some forms of violence against women are because of their gender. Unfortunately, all violence against women is due to the endemic misogyny in society. However, how could you prove that in court?

In the not-too-distant past, the issue was discussed by a number of women's organisations. We decided, for a variety of reasons, that it would not make sense to include gender in the bill. First, which crimes would the statutory aggravation be applied to? Domestic abuse? Rape and assault? What would be the intention of applying the statutory aggravation to those crimes? Would it be to get a longer sentence, a conviction or better disposal? Further, the wording of the bill might be inappropriate for a gender aggravation.

A gender amendment would have to be gender-neutral, and we are not sure how that would help in relation to violence against women. Hate crimes



of the sort that are dealt with in the bill normally occur in what is referred to as the public sphere, yet much violence against women, particularly domestic abuse, occurs in private. Would the inclusion of a gender aggravation produce some sort of hierarchy? Would gender crime be considered solely as the masked individual attacking someone in the street, which would not acknowledge that gender violence occurs in the home?

We are concerned that the inclusion in the bill of gender hatred as an aggravating factor could lead to the separating out of cases of violence against women into those that are allegedly motivated by gender hatred and those that might not be perceived as so motivated. In that situation, one rape could be defined as a hate crime while another might not. We do not want to separate out two tiers of offences in that way.

We also feel that it would be difficult for women to appear as witnesses to such crimes. First, how would the crime be prosecuted? Would the alleged offender be asked, "Did you commit this crime on the basis of your partner's gender?" Would the woman be asked, "Do you feel that the crime was based on your gender?" Those are quite abstract questions, and we do not want abstract questions within the law, as they might serve only to irritate the judiciary. The prosecution would find it hard to prosecute or even bring a charge—how would the charge be framed?—and the judiciary might feel that the concept that was being presented to them was so nebulous that they would not acknowledge the aggravation and might dismiss the original crime to which it was attached.

**The Convener:** Thank you. That was a helpful statement to start off with. Who would like to go next—Sandy Brindley or Niki Kandirikirira?

**Sandy Brindley (Rape Crisis Scotland):** I do not mind going next.

Rape Crisis Scotland's position is quite similar to that of Scottish Women's Aid. There are significant difficulties with the legal responses to sexual offences. I do not think that anyone could argue with that, given that the conviction rate for rape is only 2.9 per cent. However, we are not convinced that a gender aggravation would help in any way.

It would be difficult to apply a gender aggravation to sexual offences. We are finally about to recognise male rape as part of the crime of rape, and I do not see how attaching a gender aggravation to the crime would assist us. It would be helpful if a different approach were taken on gender from those that are taken on other equality strands, and we are keen to establish an offence of incitement to hatred against women, which is worth considering in relation to, for example, pornography that is linked to sexual violence. At

this stage, we do not think that including a gender aggravation in the bill would be helpful.

**Niki Kandirikirira (Engender):** Engender supports the views of Scottish Women's Aid and Rape Crisis Scotland on the issue. We had a meeting in April, at which a lot of violence-against-women organisations and Amnesty International got together to discuss it. We have moved on somewhat since 2004, and there has been an acknowledgement of the relationship between power inequality and violence. A gender aggravation would imply that some forms of violence against women, including some crimes of sexual violence against women, are not misogynistic, therefore proof of the misogyny that is inherent in sexual violence against women would be reliant on other forms of evidence. That would be problematic for us. We recognise that a lot of sexual violence is misogynistic, but the mechanisms would not serve the purpose and might even reinforce the idea that such violence is not misogynistic.

Also, the range of violence against women encompasses both public and private situations, which does not really fit with current patterns of the use of statutory aggravations. That, too, could be a problem. We are not saying that sexual violence is not a misogynistic crime; we are simply saying that a gender aggravation would not necessarily serve a purpose. It could also make women vulnerable as witnesses—I am repeating a point that Louise Johnson made—as even more evidence would be needed to prove misogyny. It could be difficult for women to answer the question, "Do you feel that the crime was gender aggravated?"

We recently held a meeting with the Equality and Human Rights Commission and a broad cross-section of women's organisations, at which we concluded that it would be more useful to consider using the gender duty in an overhaul of the criminal justice system, to ensure that the system is not misogynistic and does not contain gender biases that make it more difficult to obtain convictions and that prevent witnesses from feeling safe and free to give statements. We all support that suggestion.

I realised yesterday that all of that is different from what is stated in paragraph 26 at the end of the evidence paper that the committee has been given. I phoned about that last night. The paper was written four years ago and things have moved on. There has been a lot of discourse, discussion and progress in terms of relationships around gender violence and acknowledgement of the role of gender inequalities in it.

10:15

**The Convener:** The value of the evidence session is that you can explain how your thinking has evolved.

**Sandra White (Glasgow) (SNP):** I am still not convinced that we should not add the two extra aggravations of age and gender to the bill. At the moment, courts can take the motivations of an offender into account when sentencing, but that is not mandatory. You say that, if a gender aggravation were included in the bill, it would make things more difficult for women. Given the low rates of reporting and sentencing for crimes against women, would it make it even more difficult for women to report a crime against them if a gender aggravation were included in the bill? Would it provide more leeway to sheriffs and judges to give more lenient sentences to the perpetrators of crimes against women?

**Louise Johnson:** If the word “gender” were inserted into the bill as an aggravating factor, it would read:

“An offence is aggravated by prejudice relating to”

gender

“if—

(a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will relating to”

the gender of the victim

“or

(b) the offence is motivated (wholly or partly) by malice and ill-will towards persons”

of the female gender—although the wording would have to be gender neutral.

In a case of domestic abuse, for example, how could the criminal behaviour that was perpetrated be evidenced as being motivated by malice and ill-will relating to the woman’s gender? If someone asked the perpetrator about that in court, they would probably get a baffled look. If they asked the woman, what would she say? We must not forget that, in some situations, women are unaware of the fact that the behaviour that has been perpetrated against them is domestic abuse. What has happened to the woman is rooted in the misogyny of society as a whole, but she is not sure that it happened to her because of that.

**Sandra White:** Would it be difficult to prove that in court?

**Louise Johnson:** It would be difficult, because the concept is so nebulous. Something somewhere needs to be looked at, but not in this bill. As Sandy Brindley and Niki Kandirikirira have said, there are merits in considering introducing another piece of criminal justice legislation. I do

not think that the wording on gender-based violence sits with the wording in the bill. How would the Crown Office determine that an aggravation was to be attached because the crime was perpetrated due to the person’s gender? How would it get the evidence for that, and how would it cross-examine on it? It could end up confusing the court or the woman.

It would not be correct to include a gender aggravation in the bill, but a lot more work needs to be done on gender. In our previous written submission, we suggested that there should be a domestic abuse aggravation, although not in the current bill, as the wording would have to be different. We would welcome the opportunity to discuss the matter with MSPs, whether on this committee or the Justice Committee, and with the Scottish Government. A gender aggravation would not fit in the current bill, which has specific wording for a specific purpose.

**Bill Wilson (West of Scotland) (SNP):** I have a quick question, which I hope will not be too awkward. You have spoken to a range of groups. Do they all agree that gender should not be included in the bill as an aggravation? If some groups do not agree with you, would you tell us their reasons?

**Sandy Brindley:** I should say first that it is absolutely right to consider gender in relation to the bill. Not addressing gender when we have the opportunity to do so would be an obvious omission. However, from our discussions, it is hard to see how including gender would assist us in practice. When we met the Equality and Human Rights Commission, there was consensus about that.

**Bill Wilson:** So no voice markedly disagreed.

**Sandy Brindley:** Not that we are aware of.

**Louise Johnson:** The last time that the issue was discussed in full was in 2004, but, as I said, we had another meeting earlier this year to discuss the issue in terms of the bill and the practicalities. We agreed that the concept was fine but that it just would not work in practice. None of our sister organisations has said that it would work in practice. We would be interested to hear other views, but we are not aware of anyone feeling that the inclusion of gender is a burning issue.

**The Convener:** You have spoken about the problems with incorporating a gender amendment in the bill. However, you also said that you would be keen to consider offences of incitement to hatred that related to pornography or domestic abuse, for example. How would such offences fit into the legislative framework?

**Sandy Brindley:** I know that the Equal Opportunities Committee has considered the issue

of pornography before, and it certainly requires further consideration. Extreme pornography will be addressed in the proposed criminal justice bill, but that will not cover the whole issue or take a harm-based approach. We are keen for such an approach to be taken to incitement to hatred in relation to domestic abuse.

**Louise Johnson:** The forthcoming criminal justice bill might cover the issue. Careful debate is required. We want an aggravation that is workable and worded in such a way that perpetrators cannot exclude themselves from it. Prosecutors have to be able to work with the aggravation. We want to ensure that the aggravation produces an end result. What would happen if we achieved the inclusion of such an aggravation? Would sheriffs take it into account and give more punitive sentences?

There are concerns about current sentencing policy. There is community sentencing and a move towards removing custodial sentences of less than six months, so would the aggravation make a difference? We hope that it would. It could lead to more punitive sentences or more appropriate sentences for the circumstances.

Having an aggravation would be of more use than having a specific crime, because if you did not prove the aggravation, the original crime would still stand. However, if there were a crime of domestic abuse and you could not prove it, the prosecution would probably fail or the accused would be found not guilty. If you could not prove an aggravation, the crime to which it was attached could still go forward.

**The Convener:** Can you explain a little more about how the aggravation would work? How would it be proved?

**Louise Johnson:** In our submission, we quoted wording from New Zealand's Domestic Violence Act 1995. I can pass on a whole swathe of information to the committee. The 1995 act defines domestic abuse in terms of behaviour and the situations in which it occurs. For example, it refers to relationships. We suggest that, if an assault were perpetrated in a domestic abuse context, the aggravation would be attached to it. Not only would the perpetrator be convicted of the original offence, they would receive an additional punishment, more severe than normal, because the offence was aggravated by domestic abuse, as described in the legislation.

**The Convener:** Domestic abuse can be gender neutral.

**Louise Johnson:** Yes.

**The Convener:** Would the aggravation relate to the fact that the offence happened at home?

Burglary is regarded as a more serious offence than other thefts.

**Louise Johnson:** The legislation would have to be gender neutral. The New Zealand Domestic Violence Act 1995 says:

"In this Act, 'domestic violence', in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship."

It goes on to say that "violence" means physical abuse, sexual abuse, psychological or emotional abuse, threats and so on. It also refers to psychological abuse of a child. The act also says that

"A single act may amount to abuse",

and refers to a number of acts forming a pattern.

The act defines "domestic relationship" by stating:

"a person is in a domestic relationship with another person if the person—

(a) Is a partner of the other person; or

(b) Is a family member of the other person; or

(c) Ordinarily shares a household with the other person; or

(d) Has a close personal relationship with the other person."

The part about "a family member" obviously goes further than the context of domestic abuse that we deal with here. The New Zealand act goes beyond someone merely breaking in: it defines relationships.

We would not necessarily want the New Zealand definitions to be used just as they are; we would have to discuss the issue with the people drafting the bill and with the Crown. We would have to consider whether the wording might have unintended consequences for the Crown in other types of prosecutions, and we would have to consider whether the wording was workable. We would like to discuss and explore all those issues, but outwith the context of this bill.

The question of including gender as an aggravation has been around since 2004. We would like to explore it as part of the general armoury of civil and criminal legislation to protect women, children and young people who experience domestic abuse.

**The Convener:** How long has the New Zealand act been around?

**Louise Johnson:** It has been in force since 1996. I can e-mail the text to the committee for your perusal. It may be a starting point. A definition from the New Zealand criminal justice system might work in our system, as they are quite similar.

**The Convener:** We would be interested to see that act. Has the number of domestic abuse crimes reduced as a result?

**Louise Johnson:** I cannot tell you just now, but I could find out.

**The Convener:** That would be helpful.

We asked the Cabinet Secretary for Justice about the gender aggravation and he felt that it was not really appropriate to include it. One reason he gave was the lack of consensus among women's groups. Did that influence your thinking? Your views have evolved, and it is interesting when witnesses present us with evidence that is quite different from what we were expecting.

**Sandy Brindley:** I did not notice until yesterday that the cabinet secretary had said that.

**Louise Johnson:** It did not influence our thinking.

**Sandy Brindley:** When the working group on hate crime's initial report came out in 2004, a number of women's organisations were quite unhappy with its approach to gender and its views on the impact of gender. Many of the initial responses were reactions to the report. However, after reflecting on the practicalities, it is fair to say that we all agree that including the gender aggravation would not be the most helpful way forward.

**The Convener:** It sounded good at first, but when you considered how it would be implemented and how it would work in practice, you thought that unintended consequences might lead to difficulties.

**Niki Kandirikirira:** We have held two round-table meetings, one of which we called in April. In addition, the Equality and Human Rights Commission asked for our views, so we have had several opportunities to sit around and thrash out the issue. I think that there is consensus.

10:30

**Marlyn Glen (North East Scotland) (Lab):** It has been interesting to hear your views. I understood that there had been movement.

I want to sound a note of caution: are you giving up a chance to make a difference? Violence against women is now acknowledged. However, domestic abuse is just one small part—or one big part—of that; it does not cover the whole issue, because lots of violence against women does not happen in the home or between partners. I am concerned about getting pulled towards considering only domestic violence when, according to you, misogyny is endemic in society. That sounds like hate to me, so why are we not

taking advantage of the opportunity that the bill presents?

We have to be rigorous about this. If you give up this chance, will you be able to address the issue in other legislation that might be on its way? I have heard nothing to suggest that that is the case. Why do you not want to push for the inclusion of gender in this bill, to ensure that the issue is at least discussed? Are you saying that, as others have argued, the bill will not make much of a difference, whatever equality strand it covers? You seem to be saying that it will not make any practical difference or cut the level of violence against women. Will it cut the level of violence against anyone? Indeed, what is the bill's point? If part of its purpose is to flag up different kinds of hate crime, surely you will be missing a real opportunity if you do not include gender in its provisions.

By the way, I think that such a provision would fit better into section 2, which covers

"Prejudice relating to sexual orientation or transgender identity"

than it would into section 1. Indeed, some might argue that, if we consider the wider gender-neutral meaning of sexual orientation, the issue of gender is already covered in that section.

I am sorry; I did not mean to make such a lengthy comment. My question is simply this: are you actually giving up a real chance here or do you believe that something else is going to happen soon? As I say, I have seen no evidence of that.

**Louise Johnson:** I understand exactly what you are saying. However, we are worried about how such an offence would be proved.

**Marlyn Glen:** In that case, how would you prove an offence under any of the strands?

**Louise Johnson:** It would probably be easier to prove that hatred had been directed at someone as a result of their sexual orientation or transgender identity than to prove that a crime was committed against someone purely because of their gender.

We thought about this, and a good point was made about knife crime and gender. Young men from 16 to 25 are being attacked because they happen to be young men in the wrong place at the wrong time. However, are they being attacked purely because they are young men or because it is all to do with gang culture and they are simply in the wrong place at the wrong time? If a woman is attacked, how can you prove that the attack happened as a result of her gender? How would the fiscal take that forward?

I know that the Crown Office and Procurator Fiscal Service has made a very short submission

to the committee, but it would be really worth while asking it how such an offence might be worded, how it would be taken forward and how it would be proved. After all, if someone who had perpetrated violence against a woman was told, "You did this because of malice and ill-will relating to the gender of your victim," they might simply say, "No I didn't. It was just an opportunistic attack."

**Marlyn Glen:** But they could say that with regard to any of the strands that are covered in the bill. Someone who was accused of attacking a person because they were gay, for example, could always claim that it was just an opportunistic attack. No matter the victim, the argument will be the same: this crime will be difficult to prove. You are actually making a strong argument against the bill itself, because the perpetrator could always deny the cause of their violence.

**The Convener:** This has obviously been a useful exercise, as it has allowed you to analyse and assess the suggestion that gender be included in the bill and to come up with a number of problems with it. As Marlyn Glen has said, the same problems might well arise with the bill's other provisions. It is good that you have explained to the committee why you think that the move would not work, and I hope that your views will influence the Justice Committee's own consideration of the bill.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I thank the witnesses for their evidence. Given the consensus of your organisations and others on this issue, it would be foolish of us to go against your recommendations. I have certainly found your comments persuasive, although I do not think that they necessarily rule out the bill's application to the groups that it seeks to cover.

When this bill was introduced—and, indeed, when this issue was first raised back in 2004—people made a number of points, one of which was whether we were doing enough to tackle hate crime against women. You seem to have concluded that although that problem exists, it should not be dealt with in this bill. The important thing for me is not only that we pass the bill but that we simultaneously strengthen the law on violence against women, and it might well be that the forthcoming criminal justice bill will be the place to do that.

The working group on hate crime recommended that the Executive at the time review criminal law with regard to violence against women and consider introducing a statutory aggravation offence. It appears that the Cabinet Secretary for Justice has not taken up that recommendation, and I take it from what Louise Johnson has said that you want that to be followed up.

I am interested in your original lead proposal from 2004 about introducing a new statutory offence of domestic abuse. After all, we have to be clear about your favoured way forward, and it would be helpful if all the organisations could agree on that. Despite the strong arguments that you advanced in 2004 for creating a statutory domestic abuse offence, do you now support the aggravation route for tackling this kind of violence?

**Louise Johnson:** At the time, we considered the pros and cons of retaining the common-law approach and introducing a new statutory offence. The drawback of a statutory offence is that it is an all-or-nothing move; if the domestic abuse element of such an offence cannot be proved, the whole thing will fall. However, if we take the aggravation route, the original crime will stand even if the aggravation element is not proven. That might be the way forward, but we will need to look at what has happened with the New Zealand domestic abuse legislation; we will also have to discuss with the Crown Office how such an offence might be worded. That said, we do not believe that such an offence should come under this bill. It should be something quite separate.

**Malcolm Chisholm:** The Crown Office has said that

"when prosecuting offences at present, notice is taken of considerations associated with gender-based violence"

and that

"domestic violence is regarded as an aggravated form of assault which is flagged up to the court accordingly."

Is there any evidence that that approach works in practice? The comment is somewhat worrying, because if this kind of violence is already classed as a form of aggravation it does not seem to be having much of an effect.

**Louise Johnson:** But it is not a statutory or official form of aggravation. I would hope that in cases in which domestic abuse was an issue the Crown would flag up that the crime was perpetrated within that context. However, there is no obligation on the court to give more serious consideration to the issue. If on the other hand a statutory offence of aggravation has been proven, it must impact on the sentencing; at the moment, any such move is purely discretionary.

We have to rely on the Crown to flag up the domestic abuse element. We hope that that is happening in every such case; however, it might not be or, if it is, it might not be taken into account. We need a more formal approach in which aggravation is set down in black and white as something that must be put before the court and must be considered in sentencing.

**Malcolm Chisholm:** It has been suggested that we follow up incitement to hatred against women

and consider, as Niki Kandirikirira has mentioned, a more general overhaul of the justice system with regard to the gender duty.

Marlyn Glen stated the obvious point that there are many different forms of violence against women. Should the issue of rape, for example, be left to the current major reform of the rape laws or is there anything relevant to today's discussion that would strengthen those provisions?

**Sandy Brindley:** As you said, the Justice Committee is considering the Sexual Offences (Scotland) Bill, which looks at the legal framework, including the definition of rape. One of the things that is quite marked about the bill is that it does not look at evidence. We are concerned about how sexual history evidence, character and medical records are used in sexual offence trials. You might have seen last year's evaluation of the current legislation in this area, which found that the legislation has somehow made things much worse and that seven out of 10 women are now virtually guaranteed to be asked about their sexual history in court. Since the evaluation came out, there has been some debate about whether the problem is with the implementation of the legislation or with the legislation itself. That definitely needs to be considered further. My view is that there needs to be further legislation. However, we get the sense that that issue will not be included in the Sexual Offences (Scotland) Bill, so I would certainly support its being considered elsewhere.

**Hugh O'Donnell (Central Scotland) (LD):** It is interesting that Louise Johnson has enunciated the position that she has, because a similar discussion was had around the original legislation, in which religious bigotry was included. At one stage, there was a member's bill that looked at addressing religious bigotry. The route that you propose in relation to the aggravation is the one that gained the most support among the people who gave evidence on that member's bill, and it was enshrined in the legislation subsequently. It is reassuring that we seem to have got it right on that occasion. I hope that we will get it right this time.

Is there a danger that, by excluding the gender issue, we are somehow indicating that crimes against women are taken less seriously? Alternatively, do you still stick to the position that we should address that issue by a different route?

**Louise Johnson:** I do not think that the bill is a missed opportunity; it is a different opportunity. Given the wording of the bill, we have concerns about how it would work. What would be the result of it? Would it be used? Would it be used by the prosecution? What would sheriffs do with it? Would they think that it was something nebulous and get annoyed by it, which would impact on sentencing?

The whole issue of gender and violence against women should be looked at, as Sandy Brindley and Niki Kandirikirira have said. The issue of violence against women in relation to the criminal justice sphere and improvements in the criminal justice system as a whole should also be considered. Earlier, we discussed the irony of prosecuting a crime that includes gender as an aggravation, given that there are situations in the criminal justice system in which misogyny is prevalent. Until the position of women within the criminal justice system is ameliorated or resolved and the issue of violence against women is looked at, I really do not think that the bill will help us. Much more needs to be done on the position of women; sentencing; how domestic abuse, rape and sexual assault—crimes against women—are dealt with; and the outcomes of prosecutions.

I understand precisely what Marlyn Glen is saying. We would not want to lose a resolution that was within our grasp, but we cannot see how the bill would work without making the position worse. Something needs to be done, but I do not think that this bill is the answer. We have all discussed that. We do not know what—

**Marlyn Glen:** And you do not know when.

**Louise Johnson:** We do not know when, but there is hope. A criminal justice and licensing bill is coming up, but we do not know whether something could be included in that. We would like to get some sort of commitment that the issue will be looked at further to find a workable solution. Any solution that is found must be workable; it must be able to be applied; and it must be accepted.

10:45

**The Convener:** You referred to the criminal justice system almost as the favoured option. What about the Sexual Offences (Scotland) Bill? Would it sit within that?

**Louise Johnson:** Are you talking about a gender aggravation?

**The Convener:** Yes.

**Sandy Brindley:** I do not think that a domestic abuse aggravation would fit in the Sexual Offences (Scotland) Bill.

**Louise Johnson:** Did you mean something about violence against women in general?

**The Convener:** Yes.

**Louise Johnson:** I do not know. I think that that might detract from what is happening in the Sexual Offences (Scotland) Bill. We have come so far with that bill; it is the first attempt to put in legislation everything that is covered and we do

not want anything too controversial to torpedo it. Sandy Brindley might have a view on that.

**The Convener:** I was wondering in particular about incitement to hatred. I think that you mentioned pornography as an example of that. Would that not fit into the same category?

**Sandy Brindley:** That would be quite a significant amendment. I am not aware that we have discussed that in relation to the Parliament taking evidence on the issue of incitement to hatred. I am not sure that the Sexual Offences (Scotland) Bill would be the best place for that, but it would be really helpful to consider it.

We do not want our position on gender to undermine the bill as it stands or our support for an aggravation in relation to sexual orientation or transgender identity. A lot of really important work has been done to get us to this point.

**Louise Johnson:** I agree.

**The Convener:** By making the suggestion, discussing it and perhaps deciding at the end of the day that there is a more appropriate place for the gender issue, you are at least raising the issue and are almost setting things up for the next time that it is considered. It might be worth considering whether you can usefully make some comments. At the end of the day, you might decide to withdraw your suggestion or the committee might not look at it, but at least you will have started to get your foot in the door. That is just a suggestion.

**Marlyn Glen:** I have a question about how the bill might be amended. However, this evidence session is an opportunity for the three organisations present to call for a real commitment for action to be taken soon, whether in the Offences (Aggravation by Prejudice) (Scotland) Bill, the Sexual Offences (Scotland) Bill or the forthcoming criminal justice bill. You should be calling for a commitment to make something happen quickly. Putting other people first is commendable, but I do not think that this is the time for us to be defensive. You have to watch that this is not a missed opportunity.

Do you have any views on the idea of amending the bill to allow protection to be extended to other groups at a later date by statutory instrument?

**Niki Kandirikirira:** We do not have any objection to that.

**Louise Johnson:** We do not have any objection to it. That might be the way to bring in other groups.

**Marlyn Glen:** Do you think that it might be a good idea?

**Louise Johnson:** Yes. I do not think that we would lose anything by making that amendment. In due course, something different might be

introduced. Having a catch-all provision in the bill would be useful, because it would certainly allow us to discuss what would be the most workable option.

What you said is right, Marlyn. Thank you for making the point about our calling for a commitment to take action. We would like to discuss that further with the Scottish Government and various committees and MSPs, to see whether we can get a solution that is workable for women.

**Marlyn Glen:** The working group recommended that an amendment could be made in future by statutory instrument. Do you support that?

**Louise Johnson:** Yes.

**Bill Kidd (Glasgow) (SNP):** So far, the evidence has been informative and useful. The three witnesses have given evidence on the basis that things have changed over the past four years and that we should be aware that there is a new approach—which has come from the organisations that work particularly with women on a gender basis—to how we should respond to misogyny and aggravation in terms of gender.

However, the Scottish Trades Union Congress argues that including gender in the bill might divert us away from the long-overdue focus on the consequences of harassment and criminal offences against lesbian, gay, bisexual and transgender people and disabled people. The idea of including the issue by statutory instrument seems to make sense, but is it possible that including too many elements in the legislation might not achieve anything and might be to no one's benefit because there would not be enough focus on any strand to ensure that such forms of behaviour are treated seriously by the courts?

**Niki Kandirikirira:** That may be the STUC's argument, but that is not where we took our analysis from. Our analysis is that, because some forms of violence against women would not be an aggravation, it would not necessarily serve our purpose to include such an aggravation in the bill. The idea that including an offence of aggravation based on gender would dilute the focus on other things was not in our discussion. That point may have been made by the STUC, but it is not where we are coming from.

**Sandy Brindley:** I do not find that reasoning helpful. As Marlyn Glen said, hatred towards women should not be seen as less important than hatred towards other groups. The suggestion is perhaps symbolic of the fact that sexism may be a bit more invisible than other forms of discrimination. We came to our position not for that reason but very much on a practical basis. As Malcolm Chisholm outlined, there is a real issue with crimes of hatred against women. Work needs

to be undertaken on that, but the bill is not the route for pursuing that.

**Bill Kidd:** Without in any way wishing to undermine the importance of the issue, would we be wrong to have gender aggravation tacked on to the bill just for the sake of getting something done? Would it be better to have a properly worked-up bill that dealt specifically with gender aggravation?

**Louise Johnson:** The danger with any add-on is that people have to work with something that has not been thought through properly. If an offence cannot be prosecuted and the judiciary is uncomfortable with it or has a downright resistance towards it, that will simply aggravate the situation and make it worse. We should not go pell-mell into something just because a bill is before the Parliament and we should not think that no further opportunity will arise. We certainly hope that political policy to advance the work on violence against women will provide further opportunities to engage with the Scottish Government and with members of the Scottish Parliament.

I do not think that including such a provision in the bill just in case would work. It is important that we have information on how such offences are prosecuted currently—the Crown Office and Procurator Fiscal Service submission refers to that—but there is no point in having a provision that the Crown Office cannot work with. That would just give women false hope. As I said, how such a provision would be applied might result in unforeseen consequences. For example, instead of supporting and protecting women, the gender aggravation might end up being applied in all sorts of other cases, such as those involving young men between the ages of 16 and 25—although that might be no bad thing.

We need to consider how such a provision would work in terms of what we want to achieve in dealing with the underlying cause. It is difficult to prove hatred of women because people who have evidenced a hatred towards their partner have always been regarded as having a deviance or pathological or mental problem rather than a societal view. Trying to put that across to people who might not be fully engaged with the concept would be difficult. We do not want to undermine the position of women, so the wording of such a proposal would need a lot more consideration.

However, it is fair to say that we do not want the idea to be lost. Something needs to be done to take forward the idea of crimes based on gender hatred and misogyny, but that needs to be done somewhere else rather than in the bill.

**Marlyn Glen:** The timing for the bill allows us plenty of time to consider the issue and to

consider the idea of including it by statutory instrument. From the point of view of the organisations, the idea of multiple discriminations will be important. Does the panel want to comment on the fact that women with disabilities and women in the LGBT communities will be covered by the bill?

**Louise Johnson:** Absolutely. That is a helpful point.

**Niki Kandirikirira:** I am not sure whether linking together multiple discriminations would help, given that the bill deals with aggravations. Aggravations are usually very specific, so an offence would be aggravated by prejudice on the basis of, for example, gender or disability. Is the suggestion that there should be a multiple aggravation?

**Marlyn Glen:** No, I was not suggesting that. I was just saying that women will be covered by the bill. It is an interesting point that a lesbian with disabilities suffers multiple discrimination, which the bill will need to address.

**Niki Kandirikirira:** Certainly, the multiple discrimination aspects need to be considered.

One of the biggest issues in our discussions is that sexism is so entrenched across society that it could be difficult to include it as an aggravation. If a person punches someone in the face and—excuse the language—calls them a nigger, the response to that is very different from the situation in which someone punches someone in the face and calls them a bitch. It is difficult for that sort of language to be taken into account in the system because of the concern about the system's ability to respond to that.

In our discussions, we have considered whether we can use the gender duty to get a better analysis of the criminal justice system and how it might be part of the problem. We need to ensure that the gender duty is used to provide a thorough analysis of the criminal justice bill to analyse whether it is gender biased or misogynistic or sexist. For example, does that bill include gender biases that have not been picked up because people have not been looking for them? That is where we were coming from in our discussions. We need to get those things right so that, when people come to court, they receive justice and a fair assessment.

This issue is so insidious. Every day, the papers contain misogynistic messages. The issue is so visible and invisible at the same time that it is difficult to deal with. People react to racist comments, but many people do not react in the same way—although I do—to misogynistic comments. I am not sure that including a gender aggravation would help us with that. We need to be very systemic in ensuring that the gender duty, which is a powerful ministerial duty, is used to



ensure that the systems, policies and practices of our institutions do not carry sexism. That is probably a more important point for us.

**The Convener:** That brings us nicely to Sandra White's question.

**Sandra White:** This is aimed at Niki Kandirikirira—not at her personally, because she might give an answer that is different from the Engender quotations that I have here—and is about the recording of crime. If gender was included in the bill, there would be a statutory duty to record such crime. I find it unbelievable that, given all the evidence, we do not already record crime based on gender. I was also amazed by the Crown Office's comment that the computer system could not cope with that. I find that not just ridiculous but disturbing. However, in Engender's submission to the working group on hate crime—as I said, the submission might not have been written by Niki Kandirikirira, but it came from Engender—it was suggested that improvements in recording and monitoring the potential increase in sentence length would send a clear message to the courts and to the public about the unacceptability of violence against women.

The bill as drafted will not result in improvements in recording and monitoring of gender crimes. If the panel accepts that that is the case, could the Government in any other way send out a message about the unacceptability of violence against women, if the gender strand is not included in the Offences (Aggravation by Prejudice) (Scotland) Bill?

11:00

**Niki Kandirikirira:** The gender duty itself offers the opportunity to demand good-quality gender-disaggregated data across the board on conviction rates and on reporting at all levels. The gender duty can be a powerful instrument because many of the problems that we face are about institutional sexism in the criminal justice system and at societal level. The term "aggravation" is clumsy and will not really help us in trying to deal with the problems—it is not subtle enough, in some ways.

The inclusion of a gender duty would allow us to push for good-quality monitoring evidence. It would put the emphasis on the criminal justice system, which would have to prove that evidence was being gathered as opposed to its having to be proved that it was not. The criminal justice system would have to be able to collect gender-disaggregated data, otherwise it would not comply with the gender duty. We need to push for that because to address institutional "isms" we must use institutional processes.

**Sandra White:** Like Malcolm Chisholm, I am undecided whether the Offences (Aggravation by

Prejudice) (Scotland) Bill should include the strands of gender and age—we will deal with the latter at a later date. However, if the groups that work with women, and which have the expertise, say that including those strands in the bill would not be any good, I would obviously bow to their vast experience. However, if gender were not included in the bill, I would be worried about what road we could go down, apart from the gender-duty one, to make it mandatory for crimes to be recorded by gender. Can we put the gender strand in, for example, the Sexual Offences (Scotland) Bill or the Criminal Justice (Scotland) Act 2003?

**Louise Johnson:** It could be put in the Criminal Justice (Scotland) Act 2003. You need to look at current criminal statistics because there are all sorts of statistics on all sorts of things. I cannot remember off the top of my head how they are recorded, but they are split according to gender. For instance, police statistics on domestic abuse are split into the gender of perpetrator and gender of victim, to use the terminology. Some criminal statistics are split into gender. It depends what we are trying to achieve—for example, are we examining what crimes are perpetrated more often against women or what types of behaviour women more often face?

We also need consistency in sentencing for rape, sexual assault and domestic abuse and have the behaviour recognised for what it is. We are slightly concerned about sentencing policy in that regard, in that we would be disturbed if every case that could carry a six-month sentence went to community sentencing. That needs to be looked at carefully. The idea of perpetrator programmes also needs to be looked at carefully to ensure that, when they are used, they are used correctly and that not everybody is referred to such a programme willy-nilly. We need to consider the whole area of evidence taking, support and police response. We have had "Her Majesty's Inspectorate of Constabulary for Scotland Thematic Inspection: Domestic Abuse", and I spoke to the Association of Chief Police Officers in Scotland last week about how it will take forward some of that review's recommendations.

There is no single approach; there must be a cohesive approach. We have some of that in the expansion of the domestic abuse courts and the domestic abuse toolkit, but we need a cohesive approach in dealing with violence against women in order for it to be recognised that it exists, that it is inherent, that it is everywhere and that its tendrils spread much further than people appreciate. The criminal justice response must acknowledge that.

**Sandra White:** I asked about evidence gathering because I understand that the Scottish Government currently does not record crime

according to gender. Obviously, in instances of sexual assault or rape, it is easy to record the crime according to gender. However, if we cannot get the gender strand included in the Sexual Offences (Scotland) Bill, can we get it into one of the bills that Marlyn Glen mentioned? The panel agreed that we could consider adding the strands of age and gender to the Offences (Aggravation by Prejudice) (Scotland) Bill. If we had evidence that showed that crime against women—gender crime—was overwhelmingly prevalent, we would be able to propose including the gender strand at a later stage of the bill. That was why I asked my initial question. Surely if we had the evidence, it would be easier to include the gender strand.

**Sandy Brindley:** I will add to what Louise Johnson said. Sandra White is right to highlight data about violence against women as a crucial issue because the data are incredibly poor, particularly on rape and sexual assault. It is said that only 2.9 per cent of rapes that are reported to the police lead to convictions. We know that the data are not entirely reliable, but they are all we have. There seems to be no way of linking police statistics with court statistics. It is incredible that we cannot track in the way that we might expect.

The national group to address violence against women, which the Minister for Communities and Sport chairs, has a sub-group that has been working for some time on how we could improve the data on violence against women: a number of recommendations are coming from that. However, we need leadership from the Scottish Government in respect of improving the data on violence against women. We raised the importance of data in our written evidence to the Sexual Offences (Scotland) Bill.

Our current definition of rape is gendered, so there is no issue about victim and perpetrator not being defined in gender terms. However, there will be an issue if the new definition is agreed. We need to be able to gender disaggregate data. Given the problems that we have in Scotland in prosecuting rape, it is self-evident that we need data about what makes a difference and what does not in that regard. That is an important area to look at.

**Louise Johnson:** The Equal Opportunities Committee could recommend to the Scottish Government that the office of the chief statistician undertake work in that area. Such work would be helpful and would support what we are doing.

**The Convener:** I wonder sometimes whether we automatically always look to legislation to solve all problems. There is certainly an awareness-raising issue in this area. If we look at drink-driving, many years ago it was not considered to be the enormous crime that it is now considered to be. However, many awareness-raising television

advertises and so on highlighted the issue, and similar work has been done on domestic abuse. Can the panel comment on that? How could we bring violence against women a little bit more to the public's attention and accentuate the fact that certain things are not acceptable, as Niki Kandirikirira said?

**Louise Johnson:** I can comment on the Judicial and Courts (Scotland) Bill, which was recently enacted. There was much discussion during the bill's passage on the proposals for judicial training, as it was called. The Judicial Studies Committee does a lot of good work on training or awareness raising for the judiciary. However, as part of that, we would certainly like a planned session on domestic abuse, rape and sexual assault, and violence against women. When the Lord President reviews the training situation, we would like those issues to be taken on board in a more formalised training programme. As I said, we have the "Her Majesty's Inspectorate of Constabulary for Scotland Thematic Inspection: Domestic Abuse", and ACPOS is taking steps to rationalise training throughout Scotland, so we would work with ACPOS on that. It would be useful to report back to various committees and MSPs on that. The whole issue is about awareness raising. I do not know what my panel colleagues have to say about campaigns.

**The Convener:** Can I just stop you there? You have sort of gone to the other end of things. Given that prevention is better than having to deal with the crime itself, can we look more at doing something in the education system to address the issue?

**Niki Kandirikirira:** One of the issues around the Offences (Aggravation by Prejudice) (Scotland) Bill is that we cannot imagine any act of male violence against women that is not gender aggravated. In saying that, we would have to prove gender aggravation, which sort of undermines the idea that all violence against women is misogynistic and gender-aggravated crime. It is important to bring in some of the work that we have been doing around recognising that violence against women is about gender power relations as a cause and a consequence. The move to broadening out a domestic violence strategy to a much wider violence against women strategy would be a really useful way forward. Progress has been made on that, but we must look at broadening the strategy and acknowledge that violence against women is about gender power relations. We are not talking about opportunism or guys looking for a quick sex fix—it is misogyny in action. The problem is not limited to Scotland, but is global.

**The Convener:** Can you say that every single attack on a woman is aggravated by gender?

**Niki Kandirikirira:** I am trying to imagine one that is not.

**The Convener:** If someone had attacked Myra Hindley because of the crime that she committed, would that attack have been gender based?

**Niki Kandirikirira:** If someone wrote a thesis on the issue, they would probably deduce that it was, because Myra Hindley was vilified by the press in a particularly gendered way. I would argue that.

**The Convener:** That is interesting.

**Sandra White:** A number of members are looking at the issue of prostitution. As you say, violence against women is not limited to domestic violence. I and others hope that new legislation will define prostitution as violence against women, in line with the Swedish model. That would create a new ball game, as we have statistics on how many people are involved in prostitution. The problem is all-encompassing, but there are moves to classify prostitution as violence against women.

I agree with Louise Johnson that we should write to the office of the chief statistician to push for stats on violence against women. If we do not have them, judges and sheriffs have no way of knowing how huge the problem is. We could start with stats for domestic violence, prostitution and trafficking.

**Sandy Brindley:** It is important to make links between different forms of violence against women, such as prostitution, pornography and sexual violence. We must take a preventive approach. The phrase "a rape culture" is often used in relation to rape. It is difficult to prove that there is a causal link between the availability of pornography and the prevalence of rape, but pornography contributes to a culture in which women's bodies are objectified and are seen as being accessible in any terms. I have suggested that pornography should be considered as incitement to hatred against women. In my view, until we start to tackle pornography, we will get nowhere near the root causes of sexual violence; I encourage the committee to think about that. It is necessary to consider what is included in pornography—especially these days, with the internet. If the level of hatred that is expressed against women in pornography were expressed against any other group in society, it would not be tolerated. The violence becomes invisible because it is sexualised violence.

**Bill Wilson:** You mentioned the New Zealand domestic violence laws as an alternative way of solving some of the problems that we face. Can you provide us with other international examples of legislation that would be worth pursuing?

**Louise Johnson:** For this discussion, I have not looked at any laws apart from those to which

members have referred. However, I can undertake to look at parallel legislation in other jurisdictions. In respect of the USA, for example, that could be difficult because the legal system is quite different from ours. It is necessary for us to draw parallels between the system and legislation that we are examining and our own, because evidential and prosecution processes are sometimes different. There is gender aggravation legislation in the States, but the literature that we have examined suggests that it is not used much. I do not know why, but I can find more information and pass it to the committee. Nineteen states in the USA have gender aggravation legislation, but we do not hear much about it and do not know whether it is working.

**Bill Wilson:** It would be interesting for us to get an interstate comparison. If some states are using the legislation and others are not, that may provide some interesting insights.

**Louise Johnson:** Yes. We need to find out whether the legislation is not being used because it is unworkable, because people are not coming forward or because offences are not being prosecuted under it. Although we must take into account the differences between the systems and the limitations of some comparisons, it would be useful for us to examine the matter. At a meeting in April, we discussed looking into it, but time constraints and intervening circumstances prevented that. However, I will see what I can find for the committee.

11:15

**The Convener:** That would be very welcome.

**Niki Kandirikirira:** In the US, 19 out of 41 statutes cover victims who are chosen by reason of gender. To charge a person with a hate crime, prosecutors must have concrete and admissible evidence of a bias. The offence has been reserved largely for cases in which perpetrators did not know their victims. There have not been an overwhelming number of gender-based crimes reported, and the legislation is used mainly for racially and religiously motivated crime.

In Belgium, gender aggravation legislation was introduced in 2003, but some people think that enforcement agencies have failed to adopt effective procedures. In Canada, the legislation that defines gender as an aggravating factor has been used only in cases where attacks were perpetrated by strangers—it has not been used in cases of domestic abuse. In Spain, article 22 of the penal code makes provision for gender to be considered as an aggravating factor, but we have no information on how it is being used. We found no evidence that legislation in any of those jurisdictions is making a major difference.

**The Convener:** In conclusion, would panel members like to make any comments on the general principles or provisions of the bill, so that we can pass them on to the lead committee, which is the Justice Committee? Who would like to start?

**Niki Kandirikirira:** I will leave it to the lawyer.

**Louise Johnson:** We commend the bill and have no objection to its provisions. It is important for us to look at crime that is defined by sexual orientation and transgender identity, because crimes against LGBT people have taken a back seat. The bill brings that criminal behaviour to the fore and is a good move.

**The Convener:** So you have no problems with, or reservations about, the bill's provisions. Are you not concerned that we will run up against the same difficulties with sexual orientation, transgender identity and disability that you ran up against with gender? Are the definitions in the bill clear enough?

**Louise Johnson:** I have not given full consideration to issues other than gender, but no glaring difficulties jumped out at me—I did not think, "This'll be very hard to prove." If anything occurs to me, I will be happy to pass it on, but I have seen no major inconsistencies or problems in the bill.

**Sandy Brindley:** We support the bill. Further work is required in relation to hate crime against women; I am sure that the committee has considered that point. We have made two proposals today, on incitement to hatred and on domestic abuse aggravation, which Louise Johnson mentioned. Even if it is not recommended that gender be added to the bill, further work on the issue is required.

**Niki Kandirikirira:** We have discussed the issues of gender and disability and the distinction between what happens in private spaces and what happens in public spaces. What are the implications of abuse of disabled people by their carers? Will such offences be seen as being aggravated by the fact that the victim is from a disabled identity group, or is the main issue the relationship between the carer and the cared-for person? The same debate can be had about domestic violence. That is one issue to flag up, although I am sure that disability groups have already done so. It may have an impact on other legislation; it is also a concern in relation to gender.

**Sandra White:** I have a point of clarification, which shows my ignorance about the bill.

You mentioned care and disability. Will the bill cover public and private care homes? I raise the point because at a meeting that I attended with the Human Rights Commission and various lobbying

groups reference was made to violence or, rather—because they do not call it violence—to certain circumstances in care homes, which involve mainly elderly people. If the incident takes place in a public care home, there is a duty of care and the matter can be reported, but it cannot be reported if it takes place in a private establishment. Will the bill cover public and private care homes, in particular when disabled people are being cared for in an institution?

**The Convener:** We can raise the issue in our report.

**Sandra White:** I wanted clarification.

**Sandy Brindley:** If it is an offence, it is an offence, irrespective of whether it takes place in a public or private care home.

**Louise Johnson:** Unless there is any caveat or limit to the provision, it should be all-purpose. The Adult Support and Protection (Scotland) Act 2007 covers the kind of behaviour that Sandra White mentioned. It empowers local authorities to enter premises, which I think would include care homes, if they suspect that a vulnerable adult is at risk.

**Sandra White:** As far as I know, that provision covers only public premises, but not private premises.

**Louise Johnson:** Does it not? It covers houses.

**Sandra White:** I will need to check that, because the issue was raised with me.

**Louise Johnson:** The 2007 act allows social workers to go into someone's house if there is a person there who is, by virtue of age, a disability or a mental disability, experiencing some form of harm. I cannot remember the exact definition. I think that the act probably also covers care homes—that provision would probably cover disabled people. Unless the bill has any limitation, the provision would be all-encompassing.

**Sandra White:** I would like clarification of that, convener.

**The Convener:** Yes, because there can be private carers in a person's private home as opposed to a care home. We will flag up that interesting point.

I thank the witnesses for a worthwhile and surprising session, which is always good. We appreciate the work that you have done and the thought that you have given to your evidence, which has been helpful.

## **Offences (Aggravation by Prejudice) (Scotland) Bill: Stage 1**

**The Convener:** Item 2 is a round-table evidence-taking session on the Offences (Aggravation by Prejudice) (Scotland) Bill, for which we have been appointed as the secondary committee for stage 1 consideration. The Justice Committee, as lead committee, is considering the general principles and main provisions of the bill.

We have agreed to focus our consideration on whether age and gender should be included as aggravations. On 4 November, the focus of our evidence taking was gender. In today's session, we will focus primarily on age, although we will also touch briefly on gender to allow attendees to record their views on that, if they wish.

Before we move to questions, it would be good to introduce ourselves. I am Margaret Mitchell, the convener of the Equal Opportunities Committee.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I am the member of the Scottish Parliament for Edinburgh North and Leith.

**Dr Gordon Macdonald (Christian Action Research and Education for Scotland):** I am the parliamentary officer of CARE in Scotland.

**Marlyn Glen (North East Scotland) (Lab):** I am an MSP for North East Scotland.

**Euan Page (Equality and Human Rights Commission):** I am the parliamentary and government affairs manager for the EHRC.

**Sandra White (Glasgow) (SNP):** I am an MSP for Glasgow.

**Alistair Stevenson (Evangelical Alliance Scotland):** I am the public policy officer for the Evangelical Alliance Scotland.

**Nick Waugh (Help the Aged in Scotland):** I am the policy officer for Help the Aged in Scotland.

**Bill Wilson (West of Scotland) (SNP):** I am an MSP for the West of Scotland.

**Alan Cowan (Unison Scotland):** I am from Unison Scotland's lesbian, gay, bisexual and transgender committee.

**Bill Kidd (Glasgow) (SNP):** I am an MSP for Glasgow.

**The Convener:** Thank you. We want to ask the panellists about a number of areas. Having read the submissions, we are aware that there is diversity of opinions on the bill. Given that, I invite the panellists to justify their perspectives and to say whether they are in favour of an amendment to include in the bill age as an aggravation.

**Euan Page:** This is a complicated area, as the EHRC made clear in its written evidence. Rather than start by wading into the question whether age and gender should be covered, it might be useful to give members a sense of the principles on which we have based our approach to the bill.

The phrase “hate crime” is enormously useful shorthand for describing a particular type of crime. However, it can also be hugely misleading and can create a series of misconceptions. We need to be clear that we are not talking about instances of hatred that fit well with people’s ideas of racist and homophobic crime but less well with other types of targeted crime. If we ground the discussion in the definition that was used by the working group on hate crime in 2004, which talks of “malice” and prejudice “towards a social group”, we get a better understanding.

We are talking about targeted crime. Hate crime is useful shorthand, but it is shorthand for crime that is qualitatively different because of the underlying motivations. It does not downplay the anguish and pain that a victim of crime experiences, but recognises that when prejudice manifests itself as a criminal act, there is at play an added dimension to the dynamic, which is important in understanding the motivation of the perpetrator and the impact on the victim. It is not that a hate crime is more serious—sometimes it is crudely put that a crime matters more if one is black or gay. It is about recognising that—as well as all the compounded problems that a victim of crime faces, regardless of the nature of the crime—the victim’s perception of it as an attack on a fundamental part of who they are, and on a core aspect of their personality, adds even more to the overall impact of that crime.

The other important point to get across is that the principle of equality is not about treating everyone the same. I know that that is an area that other panellists will want to discuss, so I look forward to hearing what they have to say.

The commission’s approach to the question whether there should be statutory aggravations covering different types of targeted crime has been to acknowledge that statutory aggravations are not the only response to targeted crime or hate crime. We must not get caught up in a debate in which we say, “It’s all or nothing for statutory aggravations.”

We need to be clear that there are rough typologies that we can apply to where particular types of crime happen. Homophobic crime tends to happen in the public sphere, and the perpetrator and victim tend not to be well known to each other, although there can be bad-neighbour dynamics and so forth. That may not hold true for what is going on in an abusive relationship, where victim

and perpetrator are very well known to each other and the crime happens in the private sphere.

Without being dogmatic, I think that we need to ask what is different and what it means for effective application of a statutory aggravation. The commission’s approach throughout has been that we should be pragmatic. We should be clear both about where there is evidence that a statutory aggravation would make a difference—there is a compelling case that it would in relation to homophobic, transphobic and disability-related crime, although I know that there are concerns about disability—and about the circumstances in which a statutory aggravation may not be the most appropriate intervention. I am not saying that the debate should end there; rather, I think that is where it should begin. We must recognise where there are deficiencies in criminal justice and wider policy responses to targeted crime. We need to be alive to those issues and to map out what can be done to tackle gender-based crime, elder abuse and other types of targeted crime. We must not get into a polarised argument that states that there must be either statutory aggravations or nothing at all.

**The Convener:** Those are helpful comments. You have set the scene and have addressed one of the concerns that respondents have expressed—the notion that a hierarchy of crimes may emerge. You made it clear that that is not the intention and that the issue is the effectiveness of the legislation, if particular strands are included. Who is in favour of including in the bill aggravation for other strands?

**Dr Macdonald:** Over the past few weeks, as I have read other people’s evidence, my thoughts on the issue have evolved, which is not surprising. We remain concerned—not just in relation to the bill, but more generally—about creating the perception that there is a hierarchy of rights. Cases involving clashes of rights between different equality strands have already come before employment tribunals and courts; those must be worked through in the legal process. Nevertheless, over the past few weeks my view on the bill has changed.

The basic principle should remain that people are treated equally before the law. In a perfect world, no statutory aggravation would be needed, because the existing law would deal adequately with problems. However, if a problem affecting a specific group is identified, the taking of specific measures in relation to that group can be justified. The first question that we must consider is whether the problem is sufficient to justify specific measures. The second question that arises is whether the implementation of specific measures for crimes that are targeted at certain groups will have adverse consequences for other groups. We

remain concerned about creating a hierarchy of rights but, while reflecting on the issue, I have come to the view that that concern can probably be addressed adequately in implementation of the eventual legislation, rather than necessarily by applying the same legislation to all six equality strands.

The arguments that Euan Page put forward on age and gender, especially in relation to vulnerability issues, complicate the situation. I am not yet persuaded on the disability strand. It has not yet been shown—partly because the police and others do not collect the relevant statistics—that the problem of people being targeted because they are disabled, rather than because they are vulnerable, is sufficient to justify a change to the law in that area. However, I am open to arguments for including aggravation for disability in the bill.

**The Convener:** It is interesting that your thoughts have evolved after reading some of the evidence that has been given on the bill. One of our reasons for choosing the round-table format is that it provides an informal setting in which people can make comments and new ideas can emerge. I was interested to hear your comments on whether the scale of problems is sufficient to justify legislation and whether statutory aggravation is the most effective way of addressing them.

10:15

**Sandra White:** Euan Page mentioned elder abuse taking place behind closed doors. Should a statutory aggravation relating to age be included in the bill because it would be much more difficult to prove? That leads me on to an issue that has already been raised, which is the possibility of a perceived hierarchy among the various strands. If a statutory aggravation relating to age is not included in the bill, would that give the impression that the bill takes crimes against people of a certain age less seriously than it takes crimes against other equalities strands that are included? It is open to all the witnesses to answer that question.

**Dr Macdonald:** There may be a difference between perception and reality. The bill may give that perception to the general public, but in reality a court would have to ask: Has the crime been motivated by “malice and ill-will towards” the person because of their age, whether they are elderly or young, or did it take place because they were in the wrong place at the wrong time or because they are vulnerable? It might be more difficult to prove that motivation, so such a provision would not necessarily be effective. A gap between reality and perception might be the issue. However, there is a strong argument for saying that if people are particularly vulnerable and are targeted for whatever reason because of their

vulnerability, that should be an aggravation that the courts take into consideration.

**Sandra White:** So, it should not necessarily be in the bill, but it should be an aggravation.

**Dr Macdonald:** Yes—unless it is possible to legislate on vulnerability. I do not know whether Euan Page has views on that.

**Euan Page:** I do not want to hog the meeting, but can I come back on that, convener?

**The Convener:** Yes.

**Euan Page:** First, it is important, and it is incumbent on us, that we do not create the perception that there is a hierarchy of equalities. We must think through the way in which we approach this debate and the equalities debate more generally, and we must be clear that equality is not necessarily about treating everyone the same.

Misconception of what is meant by vulnerability is one problem that has dogged approaches to the concept of disability aggravation, and it has plagued the effective implementation of the Criminal Justice Act 2003 in England and Wales, which has provisions on the issue that are broadly similar to those in the bill. It has caused a lack of effective implementation of the disability aggravation down south.

The former director of public prosecutions in England, Sir Ken Macdonald, put it very well a few weeks ago. He pointed out that we must be able to distinguish between people who are in vulnerable situations and people who are inherently vulnerable. We must ensure that we do not proceed on a false prospectus that dismisses sections of society, particularly people with learning disabilities or mental health problems, as somehow being inherently vulnerable and inherently victims who are more open to attack and crime than the rest of society, and which treats that as something that we cannot change—as a reality with which we have to deal. As Sir Ken Macdonald said, if we do that, we run the danger of almost legitimising crime that targets such people.

I highlight people with learning disabilities and mental health problems because the evidence that we have of targeted crime is that those two impairment groups in particular, within the wider grouping of disabled people, experience such crime. They are often harassed in public and harassed when they leave pubs, or cannot leave their houses because of abuse, threats and so forth.

If we want to take vulnerability into account, the courts already have common-law provisions to deal with crimes when a perpetrator has targeted a victim because of a real or perceived

vulnerability. It is hard to imagine a sheriff not taking into account, through the common-law aggravation route, the fact that a frail old woman who had her handbag stolen had a visual impairment.

We are talking about targeted crime. Gordon Macdonald is right to say that we must proceed on the basis of clear evidence, but there is compelling evidence that the impairment groups of the learning disabled and people with mental health problems are much more likely to face abuse, harassment and threats of physical violence. There has been a spate of murders of young people who had learning disabilities. It is clear that those people were targeted because they had learning disabilities. Their impairment might have heightened their vulnerability but, as Sir Ken Macdonald said, we must be clear that they were not inherently vulnerable. They were in a vulnerable situation, and the perpetrators took advantage of that.

As with other types of targeted crime, including those on which there are already statutory provisions, perpetrators will target people if they think they can get away with it. People will commit a racist offence if they think the Asian shopkeeper will not bother contacting the police because it happens every Friday night. Such things become normalised. There is lots of evidence about LGBT people who live with the reality of being verbally abused or threatened with physical violence when they are on a night out.

The feeling of impunity among perpetrators is at play in existing hate crimes. We must be clear that the picture is complicated, not only because that feeling of impunity exists, but because we must distinguish between inherent vulnerability and vulnerability that arises because of situations in which people find themselves.

**The Convener:** Yes—in some cases such crimes are almost opportunist. I wonder whether this is a good opportunity for Bill Kidd to ask his question.

**Bill Kidd:** I am worried that the bill will be diluted if we introduce too many elements. However, it is important that we cover every aspect of people being targeted by criminals or perpetrators of violence for whatever reason.

The 2006 Scottish crime and victimisation survey suggested that people aged 60 or over are least likely to be victims of personal or household crime, although they are frequently targeted for bogus calling, theft and elder abuse. However, even if only relatively small numbers of older people are victims, should not aggravation related to the age of the victim be included in the bill so that the perpetrators face suitable sanctions for targeting elderly people?

**The Convener:** Nick, do you have views on that?

**Nick Waugh:** The problem is not that older people do not experience much crime or that the crimes that they experience are not serious: it is simply that inclusion in the bill of an aggravation related to age would probably not address many of the crimes that they do face. As Sandra White said, elder abuse is difficult to pick up on and to prove. There is a raft of issues around that. People who abuse older people for whom they care often do so because they are unable to cope with their responsibilities. That approach was taken with the Adult Support and Protection (Scotland) Act 2007, which emphasises trying to support carers before problems get so serious that people end up in hospital or in prison, although there are sanctions, should they be needed.

There are many other ways in which to address the problem of bogus callers. We trialled a system in Argyll under which there was a ban on cold calling: no one would come to your door unannounced. If someone did, you did not answer the door. That system was effective, and there were ways in which legitimate businesses could work around it so that it did not impact on them. It is probably more important to focus on addressing crimes through measures such as that than it is to include an aggravation relating to age in the bill.

**Bill Kidd:** On that basis, do you believe that—because many crimes against older people are opportunist, are perpetrated by someone within the family, or at least are perpetrated by someone who is known to the person—we would not gain much by including aggravation relating to age in the bill?

**Nick Waugh:** Yes. Even in a case where the perpetrator was someone in the family who was motivated by malice or ill-will, it would be difficult to prove it. There is a risk that, if aggravation related to age was included in the bill but the provisions were not used regularly, some older people might perceive that crimes were not being taken seriously. They might think, “The provisions are not being used, but they are being used for other groups.”

**Malcolm Chisholm:** If people here do not accept that there should be an aggravation relating to age, it would be useful for the committee if you could suggest alternatives, as happened at the previous meeting, when witnesses on gender did not support there being a gender aggravation in the bill, but made many suggestions about alternative provisions because they accept that there are problems. I imagine that Nick Waugh feels the same from Help the Aged’s point of view.



Nick referred to the Adult Support and Protection (Scotland) Act 2007. I know that it is early days, but it would be useful for the committee to know how you feel that is going and whether there is a way of strengthening, through the bill, the kind of approach that is embodied in the 2007 act. Would that be more attractive to Help the Aged than including an aggravation relating to age? Do you have other suggestions about how we could further improve protection of older people?

**Nick Waugh:** It is a bit too early to tell how the 2007 act is going, but we will watch it carefully. Further improving protection of older people could be done in various ways. For example, the recent tightening of trading standards to try to outlaw pressure selling could be effective. Education is also hugely important in that many old people probably do not realise that they should no longer be subjected to pressure selling. We should not only introduce alternative measures outside the aggravation relating to age, but ensure that people know about them. Generally, we are minded not to be in favour of an aggravation relating to age, but to pursue other measures instead.

**The Convener:** Awareness raising is at the heart of what you want.

**Nick Waugh:** Awareness raising is a huge aspect.

**The Convener:** Your view is that prevention is much more effective than trying to legislate.

**Nick Waugh:** We have done a lot of work on trying to increase older people's confidence when it comes to people calling unexpectedly at their doors. We want to make them aware that a legitimate caller will wait while they check their identification, look up their number in the phone book and so on. Many older people feel put upon and that they must open the door because a person seems official. Similarly, many old people fall for scams that look official because they are on official-looking paper—I have a family member who has been the victim of that kind of crime. A large part of why it happened was because he felt that people could not make such documents unless they were legitimate or for real. He did not realise that it is easy to do. With a scanner or a photocopy shop, any of us could probably put together something that looked official.

**The Convener:** Thank you for that. I am conscious that one respondent, Gordon Macdonald, who was in favour of including aggravation relating to age in the bill, has probably changed his mind a little bit. I wonder whether Alistair Stevenson's views have changed. Are you still in favour of the aggravation being included?

**Alistair Stevenson:** I have listened to what everyone has said and read through some of the written submissions, but the hierarchy of rights

issue remains the core of what we believe. For us, it comes down to the protection element. If the bill was enacted as it stands, would older people feel that they had greater protection? I am not sure that I have the answer to that—maybe Nick Waugh does. If the aggravation relating to age was added to the bill, we would hope that that would provide some protection for older people. However, that would have to be weighed against the arguments for not including the aggravation to assess what the most appropriate response would be.

For us, it is a question of public perception as well as one of protection. If the bill was enacted as it stands, would the public perception be that the further two equalities strands of age and gender would just be added to the act four years down the line? I think that the public perception would be that the legislation would just continue to move down the road on which it has been moving already. We have the opportunity now to add the other two equalities strands to the bill, but I suppose it is a question of weighing up whether this is the best opportunity to do that. I hope that that makes some sense.

**The Convener:** That is helpful. I think Marlyn Glen wants to tease that out a little bit more.

**Marlyn Glen:** Yes, because I appreciate Nick Waugh's argument entirely. My problem with making lots of suggestions about what should happen in legislation is that, in fact, this bill is the only legislation on the table—nothing else is coming up. The bill is what we have and, as I said at the previous meeting, if we do not take this opportunity, it will be gone. We do not know whether it will be four or eight years before we get a similar opportunity. That situation needs to be teased out.

Nick Waugh mentioned the need to consider the issue from the point of view of the protection that might be afforded to older people—or to younger people or to any of the other social groups—but we should also consider the situation from the other point of view. I would like to hear people's opinions on this. Part of the point of this kind of legislation is to raise awareness and to allow the number of crimes to be monitored. Perpetrators should know that knocking on doors in a sheltered housing complex is not just cold calling but definitely illegal. From the point of view of the perpetrator and of public perception, would it not be a good idea to include age? I am playing devil's advocate a bit.

10:30

**Nick Waugh:** It could be a good idea, but it would largely depend on how the provisions were implemented. If, despite a big fanfare about

including an age aggravation in the bill, the provision was never used in court, so no one was ever convicted of harassment with aggravation on the grounds of age, older people might feel that nothing had actually happened. Largely, it comes down to how the issue is presented to the public.

I take the point about the need to consider the issue from the perpetrator's point of view, but the problem is that people never think that they will get caught, even if they know that what they are doing is illegal. We hear a lot about problems with gangs of youths gathering around sheltered housing. Particularly in some parts of Scotland, where sheltered housing complexes no longer have a warden, older people have started to feel a little bit more vulnerable. However, I do not know that including age in the bill would make much difference to how safe older people feel.

**The Convener:** I think that Unison was also against including age in the bill. Does Alan Cowan want to respond to those points?

**Alan Cowan:** Unison feels that age and gender are very much a part of hate crime but that they should be taken forward, as the working group suggested, by means of a statutory instrument at the appropriate time. That should be written into the bill, but that is not the case as things stand.

A range of issues needs to be considered in addressing how relative values are perceived in society. Legislation such as the bill should allow that to start. We have a long road to travel before we can change how society views people's relationships and people who are targeted, but the lack of agreement on what steps should be taken next should not stop us taking this important opportunity. That is our position. Our national policy is to support both gender and age.

We also need to consider sentencing. It will still be up to judges to decide which offenders fall into the new categories and whether the evidence supports the case that a hate crime was involved. For example, the submission from the Association of Chief Police Officers in Scotland suggests that any case that is felt to involve a hate crime must be looked into, but whether that has an effect on sentencing will still be for judges to decide.

**Bill Wilson:** Nick Waugh referred to gangs of youths gathering outside sheltered housing, which is close to what many people might recognise as a hate crime.

**Nick Waugh:** From a legal point of view, that would depend on whether it could be proved that the youths were gathering around the sheltered housing complex because the residents were old. Being vulnerable people, they might not be able to chase the youths or harass them in return or take any action. However, quite often, the geography of sheltered housing just makes for a good place to

kick a football about. There might not be any malice or ill-will towards older people as a social group, so including age in the legislation might not be useful in stopping that happening. Perhaps other legislation could better stop that, through public order offences such as breach of the peace or harassment—although defining harassment and teasing out what is and what is not harassment is another kettle of fish.

**Sandra White:** The answers to a couple of questions that I wanted to ask have been teased out and expanded on by Euan Page and Gordon Macdonald. I would like to hear other people's ideas.

The big problem is that determining whether something involves hate or vulnerability can be a grey area. I would like the other witnesses to expand on the concept of vulnerability. Disabled groups have been mentioned, as has the fact that 16 to 24-year-olds are more likely to be victims of crime than are older people. As the convener of the cross-party group in the Scottish Parliament on older people, age and ageing, I know that many older people do not think of themselves as old. The word "old" is difficult to define. An older person might take offence at the fact that a hate crime was committed against them just because they were old, when they feel fitter than many other people. Vulnerability is a key issue.

Euan Page and Gordon Macdonald have given us some good answers. Do any of the other witnesses want to elaborate on what they said? We have considered disability and, as Euan Page said, it is difficult to prove whether disabled people are targeted because they are disabled or because they are vulnerable. That is where the difficulty lies when it comes to incorporating age-related aggravation in the bill.

**Nick Waugh:** The report that the working group on hate crime did a few years ago explicitly addressed that issue. In a long paragraph, it said that there was an important distinction to be made between vulnerability and malice or ill-will. It argued:

"it should be an essential element of a hate crime to prove that a crime has been motivated by malice and ill-will ... because of a presumed membership of a social group rather than because of their vulnerability. For example, if someone is attacked, but because of their disability is unable to run away, the crime occurred because the individual was vulnerable and this would not constitute a hate crime."

To an extent, we would probably work with the same definition.

**Euan Page:** Sandra White got to the heart of the matter with her observation about older people's self-perception. At a round-table meeting on disabled people that the EHRC held down south, it was said that giving older or disabled people a

choice between being hated and being vulnerable was Hobson's choice, because neither is an empowering option for a human being. We must ensure that we do not get into such a debate and that whatever policy responses we consider, whether criminal justice or otherwise, we acknowledge that we are dealing with individuals who have more facets to them than simply being victims of hatred or of bullying and exploitation.

That takes us on to the wider point that several people have picked up on, which is crucial. Someone asked what we can do if we miss the opportunity that the bill gives us. What will the bill mean for the guy who chaps on doors in sheltered housing schemes, and whether what he is doing is illegal? The offence of aggravation can be applied only to an existing offence, so unless someone is already committing a criminal offence, it cannot be used. We might have to revisit issues such as whether the guy who goes round sheltered housing schemes would be covered by the provisions only when he acted in a way that attracted the police's attention.

The vital wider point is about public perception and the extent to which we can use the bill to raise people's awareness of their rights and of the unacceptability of targeted crime. There are buttons that we can press, but they are perhaps subsidiary to the main point. If we want to make changes to the criminal law, the paramount consideration in our minds should be whether what we propose will signify better and more effective outcomes for victims of particular types of crime.

The wider imperative is about changing public attitudes. It is extremely important that we do that. I will use the parallel of the Sexual Offences (Scotland) Bill, which the Justice Committee is considering, which will reform the law on rape and sexual offences. As women's organisations have said, although that bill contains many welcome provisions and will change how the police, prosecutors and the judiciary view the investigation and prosecution of sexual crime, a change in the criminal law will not in itself change public attitudes, whereby misogyny, the denigration of women and the belief that a woman can sometimes be responsible for being raped are, unfortunately, still widely tolerated.

Debates about changing the criminal law can help to inform the wider debate and what we might want to do about public perception, but we need to be clear about what we want to do with the law to achieve better outcomes for people who experience targeted crime and about the wider—and much more difficult—question of what we do to change the mindset that somebody who is disabled is inherently vulnerable.

Sometimes, we might become caught up in the itch to legislate and end up in precisely the scenario that Nick Waugh described, in which our moral outrage at targeted crime leads us to think that we must take the opportunity to legislate. However, we might not produce effective statutes, and that could blind us to other avenues that are worth exploring.

**The Convener:** You are saying that legislation might send out a message but, if it is not effective and does not address attitudes, it might end up almost as tokenism, which you are trying to avoid.

**Euan Page:** I do not want to dismiss legislation to that extent. We must make it clear that saying that one criminal justice response—such as statutory aggravation—might not work in a particular scenario does not close down debate about other policy interventions that we might have to make, including criminal justice responses. However, we must be clear about what we want to do with the law and about the wider job of changing the public perception.

**Dr Macdonald:** I will make a few comments on what other people have said. The committee must remember that an aggravation relating to age would not apply just to old people. I recall that one of a group of young people who were causing much grief in the community and drinking large amounts of alcohol was chased by somebody who was subsequently arrested and charged with breach of the peace. If a conviction were sought in that scenario, it might be argued that that person had developed malice and ill-will towards young people, because of their behaviour.

I return to what was said at the start. The bill was introduced because of the disproportionate effect that crime has on some groups of people. Elderly people might be the least likely to be the victims of crime, but the effect on them can be quite significant—a crime can lead to people dying when they would not have died if their age was different. The committee might want to think about that factor also.

In addition, many older people are disabled, which means that there is a crossover between strands.

I do not know whether I am allowed to ask other witnesses questions, but I shall suggest a question that a member might ask. If the committee were minded to go down the proposed route and to suggest a provision in the bill to allow a statutory instrument to be made later, why would it not just suggest including the other two strands now, rather than leaving that up to a minister to decide later? Providing for a statutory instrument might be a pragmatic way forward but, in principle, it is not—

**The Convener:** Practical or effective.

**Dr Macdonald:** Such a move might be practical and effective, if evidence emerged, but the principle would not be right. As a principle, a change in the law should come before Parliament. Perhaps Malcolm Chisholm disagrees as an ex-minister.

**The Convener:** We would almost be waiting to see whether something turned up or evidence appeared. Does anyone else have a view on that?

**Alan Cowan:** The converse is also true: waiting until we have enough evidence because enough crimes have taken place should not prevent us from legislating to protect people who are targeted as victims of crime.

We need to consider carefully the opportunity that we have. We do not know what will happen in the future. If we do not use this opportunity and we hope for a change in the future that will deal with all the problems of targeted groups, we could wait a long time.

10:45

**Malcolm Chisholm:** The idea of using a statutory instrument is interesting, but I agree with Gordon Macdonald. If someone feels that the aggravations should not be included in the bill, they should not argue for a statutory instrument either. When the working group made its original recommendation, it had not reached a conclusion on the other aggravations—certainly not on the gender aggravation.

Will Alan Cowan clarify Unison's position? Is Unison's position that it supports the aggravations but it does not want them in the bill, or is it open-minded and it would like to hear further evidence before coming to a conclusion?

**Alan Cowan:** We want this bill to be passed as it is. As for the issues that other equalities groups have raised, there is no consensus within Unison. It is important that self-organised groups are able to produce solutions to the problems, but it is a fact that such solutions do not always keep pace with the legislative framework. We are therefore in favour of using a statutory instrument for provisions relating to the other aggravations. That will take account of the realities, and it will allow the bill to be passed. It is important that our disabled members and LGBT members have recourse in law. They must be able to see an acknowledgement of the effects that hate crimes have on them.

We also have to consider whether the Offences (Aggravation by Prejudice) (Scotland) Bill would comply with the Human Rights Act 1998 if, in future, other groups could not be added. I do not

have the expertise to say definitively whether the bill as it stands would comply with the act.

**Euan Page:** Neither do I.

**Alan Cowan:** But I still look to my colleague, who might be able to shed some light on that.

**The Convener:** I think that means you, Euan.

**Euan Page:** I do not know the answer, but my hunch is that not including the other groups would not lead to a problem with HRA compliance. However, I will put Alan's point to my legal colleagues. If anything comes out of that discussion, I will be happy to write back to the convener about it.

I want to widen the debate slightly. The remit of the Equality and Human Rights Commission covers equalities, but it also covers good relations and human rights. We have to ask what those wider considerations mean for the wider debate. Public authorities have responsibilities under the Human Rights Act 1998—they have to take into account the right to life, the right to a private family life and so forth. The EHRC might want to take into account other ideas in relation to the bill. The Scottish Commission for Human Rights might also be interested, as its remit extends to devolved human rights issues. Human rights issues arise, but the jury is out as to whether the bill as drafted would be struck down for not being HRA compliant. However, we have to remember, as Gordon Macdonald said, that the experience of crime and antisocial behaviour can have a hugely negative impact on people's lives.

The third area of the EHRC's work is good relations. While listening to other speakers, I was struck again by the fact that part of the problem is the appalling gulf in this country between young people and older people. We have two sets of people who just do not interact. Part of the commission's work is to consider how we can facilitate intergenerational dialogue, so that people can get over some of the deeply ingrained misconceptions on both sides. Younger people are dismissed by many older people as being criminals and vandals who are up to no good, and older people's concerns are routinely marginalised and dismissed by a society that is obsessed with youth. We should think about how we can debate that issue in Scotland. The debate might not be best conducted through the courts.

**The Convener:** The clerk has just passed me the policy memorandum, which states clearly:

"The Bill does not give rise to any issues under the European Convention on Human Rights (ECHR). There may be circumstances where Articles 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) are engaged but it is considered that any interference is justified as being necessary in a democratic society in the interests of, among other things, the

protection of the rights and freedoms of others and the prevention of disorder and crime.”

I suppose that is about competing rights and where malice and prejudice, or perhaps a direct causal link, can be proven. Marlyn Glen, do you want to come in here?

**Marlyn Glen:** Yes, I have two points. Do the witnesses want to suggest any other policy interventions? Also—an important point after our previous session—I want to give witnesses the opportunity to clarify that they are not arguing against the bill as it stands. Do you support the bill?

**The Convener:** The flavour of what we have heard so far is that there is a clear case to be made for including an aggravation relating to sexual orientation because that seems to be easier to prove. Is an aggravation relating to disability in the same sphere as one relating to elderly people and the vulnerable? Could there be a problem with the bill there?

**Alistair Stevenson:** Our written evidence sets out our concern that, because disability and age are so closely linked, in the sense that people become more disabled for whatever reason as they grow older, the fact that the bill includes disability means that the issue of age has to be addressed alongside it. Age and disability might be intrinsically linked in many areas.

To go back to some earlier points, I question the reasoning that the law should wait until sufficient crime has taken place and evidence gathered before we provide protection. We should not just wait until the evidence is there; we need to provide protection before the crime happens.

My third point is about our coming into line with the law in England and Wales, which covers four of the six equality strands. If we put the final two equality strands into the bill, what might the implications be for the interplay with the law in England and Wales? There would be some question marks about that.

**Bill Wilson:** Various witnesses are giving their views on statutory instruments, so it might be a good time to get the views of the other members of the panel.

**The Convener:** It would be good to hear from all the panellists whether they would be in favour of including a power to make statutory instruments after the bill is passed.

**Dr Macdonald:** I come back to what I said earlier. For the law to change, whether by way of a bill or a statutory instrument, a judgment has to be made by Parliament or a minister, depending on the mechanism, that there is a sufficient need for the measure to address a problem. At the moment, from all the written and oral evidence, it

would appear that people are not convinced that there is a need for specific measures in the bill in relation to gender and age. That does not mean that people do not recognise that there are problems that need to be addressed.

On that basis—this is not necessarily a position that CARE would take; it might just be my personal view—I think that it is unnecessary to include a power to make a statutory instrument. If it becomes evident over time that there is a problem with people hating old people just because they are old or middle-aged people just because they are middle-aged, Parliament might want to take that seriously enough to consider it on its own merits.

**The Convener:** I cannot remember whether it was you or Euan Page who said that an aggravation can be an aggravation only if there is an existing crime.

**Dr Macdonald:** Indeed.

**The Convener:** So should we be looking more closely at bogus calling on the elderly and setting down a marker that it should be regarded as an aggravated crime?

**Dr Macdonald:** Yes, or there should be some sort of licensing system. A person has to have a licence from the local authority if they want to collect money door to door. Other mechanisms could be used to address some of the issues that you are talking about.

Earlier, the issue of freedom of speech was touched on. Our concern about a clash of rights relates specifically to situations in which people from different equality perspectives end up in breach-of-the-peace-type situations and the breach of the peace is interpreted in a way that unduly restricts freedom of speech or religious liberty. We are concerned in particular about a policeman or a court perceiving that only one of two individuals acted out of malice and ill will when in fact both of them acted out of dislike of the other person or of their beliefs, behaviour or whatever.

**The Convener:** We are starting to tease out the issue and it is proving to be complicated. Have you come to a conclusion on the statutory instrument question, Euan?

**Euan Page:** The commission does not have a position on the matter, although I reiterate other panel members' concern about the removal of parliamentary oversight. We have identified some practical steps outwith the creation of an aggravation that might be useful in looking at age. Certainly, the commission is keen to work with our partners in the older people's sector to see what further policy work can be done.

Marlyn Glen asked about possible policy interventions. The commission is just about to

commission a piece of research on criminal justice and other policy responses to gender-based crime. We hope to have that under way very shortly. The aim is to encapsulate some of the complicated arguments over whether there should be a gender aggravation. We will also look more widely at various manifestations of gender-based crime with the aim of looking across the board at crimes of sexual violence and domestic abuse. We may also look at issues such as human trafficking, prostitution and pornography as an incitement to violence. There is a series of questions that we might want to consider around criminal justice responses to gender-based crime.

Also, as custodians of the statutory equality duties, we are very interested in getting outside perspectives on any further work on the application of the gender equality duty and public agencies' responses to gender-based crime.

We hope to have the research ready by spring next year, in time for the stage 1 debate. Hopefully, we will have some research that will help to inform the discussion.

**The Convener:** That will be very helpful in informing the discussion.

**Euan Page:** Lastly, given that I spent quite a bit of time talking about the vulnerability dimension to disability, I will not reiterate that other than to say that I will send our submission to the Justice Committee, which is considering the general principles of the bill. The submission probably makes the arguments on disability more succinctly.

**The Convener:** That is handy.

I return to the question of including a power to make a statutory instrument. I am looking for a yes/no answer from you, Alistair.

**Alistair Stevenson:** In our submission, I said yes. Now that I have listened to the arguments against from around the table, my thoughts on the subject are mixed. The fundamental issue, however, is parliamentary oversight.

**The Convener:** Thank you for that. What about you, Nick?

**Nick Waugh:** I have a similar story. We will probably sit on the fence on that one, although I am personally slightly minded towards the Parliament having ultimate oversight.

**The Convener:** Okay. I think that Alan Cowan has come out in favour—quite decidedly in favour.

**Alan Cowan:** Yes.

**The Convener:** Before we give panellists the opportunity to comment on the general question of gender, I have a final question. Panellists may know of an older or younger person who was the

victim of crime and who has said that the fact that they were older, or younger, was the motivation or reason for the attack. Is anyone aware of such an instance? Panellists are shaking their heads; no one has an instance to relate, which in itself is telling.

**Bill Wilson:** People might not regard themselves as being victims for that reason. Someone can be a victim because someone else has a strong bigotry against them on the ground of age and yet the victim does not realise that that was the reason for the crime. People do not necessarily describe themselves in that way.

**The Convener:** Therefore, that would be a difficulty for the legislation, as there would be no corroboration and it would be very much a matter of whether the individual felt that they were being targeted because of their age. There are potential difficulties.

11:00

**Bill Wilson:** I recall the matter being discussed with the witnesses last week, when there was concern that some women who are victims because of their gender do not recognise the crime that is committed against them as a gender-oriented crime. The fact that nobody on the panel knows a person of a certain age who believes that a crime was committed against them because of their age is not an indication that that does not happen.

**The Convener:** The question was not about the issue in general; it was specifically about whether they knew of anyone to whom that had happened.

**Alan Cowan:** The answer to your direct question whether we know of specific examples is no. However, it is an important area to monitor, and a statutory aggravation would allow cases to be recorded so that we could develop an evidence base.

**Dr Macdonald:** I would have thought that there would be evidence from England and Wales if age is already a statutory aggravation there. It would be worth looking to see what evidence exists there.

**The Convener:** That is a good suggestion.

**Sandra White:** There is evidence of older people who are in care homes or who have been admitted to hospital being victims of crime; the difficulty is in proving that they are victims specifically because they are old and in a care home or hospital. Are older people in care homes targeted because they are old and in a care home or because they are vulnerable? That is the big question.

**Malcolm Chisholm:** You may not all want to express a view on the gender issue, but it is interesting for us to consider the two issues together. At our previous session, there was consensus among the groups that were represented that a gender aggravation should not be included in the bill on the ground that it is not the correct vehicle by which to address the complex issues to do with violence against women. However, they were not saying that there is no hate crime committed against women because of their gender. That may be the difference between the situation that we were discussing then and the one that we have discussed today. Although they accepted that there is a problem, they were concerned that it might be difficult to prove that a crime was committed against someone purely because of their gender and difficult for women to appear as witnesses to such crimes.

Do you have any views on the gender issue or the point of view that was expressed at our previous meeting, which I have tried to summarise? What alternative measures do you think are needed to address the complex issues to do with violence against women? Would you support a gender aggravation, or can you suggest other action that should be taken?

**The Convener:** Euan Page has suggested that work is on-going in the Equality and Human Rights Commission, which will be completed in the spring. Do you have any view on the matter in the interim?

**Euan Page:** We were mindful to work closely with the women's sector in drawing up our position on this. The strong indication that we have had is that the case has not been made for a gender aggravation. That is the point that I made at the start of this evidence session. However, that is not for a second to say that we do not recognise gender-based violence as a problem. The problem is that the issue is multifaceted and more profound than other issues, and statutory aggravations do not appear to be perceived as the most appropriate response.

**The Convener:** Okay. No one else wants to comment on the gender issue.

At this point, it is always good to go round the table and give people the opportunity to sum up—very briefly—what they think has been useful in the session, what points they want to emphasise that have arisen in the session or any last points that have not been made but which they want to make.

**Malcolm Chisholm:** It has been a useful session because of the range of views that have been expressed. It is unusual for people to come to a committee and say that, having thought about

the issues and seen the evidence, they have slightly shifted their position. MSPs should be equally open minded. I was quite persuaded beforehand by the Age Concern and Help the Aged view that there is little evidence that people are targeted solely because of their age, and that continues to be my view. That is different from the gender situation and the situations that are described in the bill. Nevertheless, it has been useful even for people such as me, who already had a fairly strong view on the matter, to listen to the nuances of the debate. I will certainly reflect on the evidence before coming to a firm conclusion.

**Dr Macdonald:** The committee has to ask itself whether there is a sufficient problem. Parliament judged—and many agreed—that there was a sufficient problem to act on sectarianism, and many people would probably agree that there is a sufficient problem in relation to sexual orientation. On the other equality strands, however, the answer is maybe. In particular, it would be worth the committee considering what evidence has come from England and Wales in relation to disability.

The question is therefore whether the problem is of a sufficient scale to justify including an aggravation. That is a judgment that people have to make. Obviously, nobody approves of even just one case in which there is a problem, but the judgment has to be made. That applies to all the other equality strands, too.

**Marlyn Glen:** It has been an interesting session, particularly considering work that the committee might want to follow up. The timing of when we should consider the Adult Support and Protection (Scotland) Act 2007 is important as there is no point in doing the work too early. It is also very important that we follow up the research conducted by the EHRC, so we should have an evidence session with the commission in the spring, or whenever the research is finished.

**Euan Page:** First, to reply to Marlyn, I would be delighted to return for that discussion.

I have covered most of my points. We have recognised disability as a particularly contentious and complicated area, and I urge members to consider some of the evidence from down south. However, they should not consider a lack of successful implementation of an aggravation as evidence of there not being a problem. They should instead question the conceptual baggage brought to the table when considering disabled people's experiences of crime in general and targeted crime in particular. I hope that the EHRC's submission to the Justice Committee will help you with that.

In response to a point that Alistair Stevenson made about coverage of the equality strands, it is

worth pointing out on the record that the bill will, for the first time, introduce coverage of transphobic crime. That is different from the legislation in England and Wales. Other organisations, such as the Equality Network and Scottish Transgender Alliance, will have more expertise on that. There appears to be broad read-across in the rough typology of homophobic and transphobic crimes, so there could be a read-across in how an aggravation could be applied.

We have to be aware of a clash of rights between different strands, but we must return to the fact that, under the bill, someone has to commit an offence in the first place in order for an aggravation to be activated. Finally, I did not say this succinctly, but the EHRC whole-heartedly supports the bill as it stands.

**Sandra White:** The most interesting thing for me was the lack of clarity in determining whether a crime is a hate crime or is committed because the person is vulnerable. It is very grey area, as has been pointed out already with the disability issue.

I originally thought that it might be a good idea to include an aggravation relating to age but, having heard evidence not just this week but from other groups, I am not persuaded that it should be included. I would hate to give people false hope, which might happen. How would an aggravation be proved in a court of law? If that protection was included in the bill, people might have expectations. They should have the same protection as everybody else, so considering sheriffs' sentencing is perhaps more important than including an aggravation relating to age in the bill. For me, this evidence session has clarified that point.

**Alistair Stevenson:** I do not have much to add, except to reiterate that, if you are considering disability, age has to be considered, too, because they are so closely linked. It is difficult to distinguish between the two.

**Nick Waugh:** The main question for Help the Aged was whether a provision would offer greater protection or better outcomes for older victims of crime. On balance, we think that it probably would not. Our position has not really changed.

**Bill Wilson:** Like Malcolm Chisholm, I have been struck by both this and the previous week's evidence. There seems to be a lot of movement of opinions and changing of minds. I had not expected, after the evidence that we received a couple of months ago, that all three witness groups last week would say that an aggravation relating to gender should not be included. I get the impression that, with the possible exception of Alistair Stevenson, most witnesses today do not think that an aggravation relating to age should be

included in the bill. There seems to be a lot of flexibility of thought as the arguments develop.

**Alan Cowan:** For us, it is important to recognise the effect that hate crime has on victims and to ensure that people feel that that is acknowledged. That is what we want to take from the bill. The focus on people being in vulnerable situations is more appropriate than consideration of when people are inherently vulnerable but, in saying that, we support the bill.

**Bill Kidd:** I thank the witnesses as their evidence has been extremely interesting. However, it is obvious that evidence has still to be gathered on an aggravation relating to age, and a great deal more thought has to be put into how the current legal process would be affected if we introduced such an aggravation. I would like the bill to be passed as it stands; it can be expanded on at a later time.

**The Convener:** I thank all the panellists for what has been a worthwhile session. The round-table format has given people the opportunity to develop arguments and think through the propositions before us rather than just give the fixed view that they have already given in written evidence. I hope that the bill will be all the better for your detailed evidence.

The main decision will rest with the Justice Committee, which is the lead committee, but I thank the witnesses for their attendance and for all their contributions, which will make an incredible impact on the final passage of the bill.

We move into private session to discuss the committee's work programme.

11:12

*Meeting continued in private until 12.17.*



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