



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 20 June 2017

Session 5



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JUSTICE COMMITTEE
23rd Meeting 2017, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Mairi Evans (Angus North and Mearns) (SNP)
Mary Fee (West Scotland) (Lab)
*John Finnie (Highlands and Islands) (Green)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Oliver Mundell (Dumfriesshire) (Con)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Megan Farr (Children and Young People's Commissioner Scotland)
Dr Ruth Friskney (Barnardo's Scotland)
Dr Brandi Lee Lough Dennell (LGBT Youth Scotland)
Chloe Riddell (Children 1st)
Kathryn Sharp (Social Work Scotland)
Aaron Slater (Safeguarding Communities—Reducing Offending (Sacro))

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 20 June 2017

[The Convener opened the meeting at 10:01]

Domestic Abuse (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 23rd meeting in 2017. We have received apologies from Mary Fee. Agenda item 1 is our fifth evidence session on the Domestic Abuse (Scotland) Bill. I refer members to paper 1, which is a note by the clerks, and paper 2, which is a private paper.

I welcome our panel of witnesses. Dr Ruth Friskney is research and policy officer at Barnardo's Scotland, Chloe Riddell is policy manager at Children 1st, Megan Farr is policy officer with the Children and Young People's Commissioner Scotland, and Brandi Lee Lough Dennell is policy and research manager at LGBT Youth Scotland. I thank all the witnesses for providing written submissions, which are extremely helpful to the committee. I invite questions from members, starting with John Finnie.

John Finnie (Highlands and Islands) (Green): Thank you, convener. Good morning, panel, and thank you for your submissions. Could you please outline whether you feel that there is a gap in the existing legislation regarding domestic abuse and whether the bill will fill that gap?

Dr Brandi Lee Lough Dennell (LGBT Youth Scotland): Thank you very much for inviting us to be on the panel. The main gap in the existing legislation is about patterns of behaviour and coercion. At the moment, things like stalking and harassment can lead to a conviction and be reported, but we know that domestic abuse is really a pattern of control: it is controlling behaviour and it is coercive. Those are the things that reduce people's liberty and make them feel threatened or fearful, or make them limit their activities in order not to provoke—so to speak—further coercion. From our work with lesbian, gay, bisexual and transgender people, we know that that is a major gap in relation to what they are able to report. I will leave it at that.

Chloe Riddell (Children 1st): Children 1st echoes what Brandi Lee Lough Dennell said. We would like it to be clear that the evidence that Children 1st is providing today seeks to strengthen

the bill, and that we absolutely and unequivocally support the bill and recognise the need for it.

Nearly one in three of the children and young people, parents and carers whom we work with is, in some way, affected by domestic abuse. We think that there is a need for a strong legislative framework to address the gap in the current law, in particular with respect to what coercive control looks like, but also—as we have highlighted in previous evidence—around the experiences that children and young people have as victims. We accept that that has been included with respect to the aggravator, but we still think that there is a significant gap in the way that children and young people are recognised as victims in their own right.

Dr Ruth Friskney (Barnardo's Scotland): Barnardo's, too, echoes what has been said. One of the things that women and children tell us about their experiences of domestic abuse is that they experience it as a whole environment; it is a whole course of behaviour. The bill fills a gap by recognising that domestic abuse is a course of behaviour rather than individual incidents.

Megan Farr (Children and Young People's Commissioner Scotland): The commissioner's office did some research in 2013 and, more recently, did a participation project with children and young people who had experienced domestic abuse. That showed exactly the sorts of things that the other panellists have talked about, which is that domestic abuse is about patterns of behaviour. There is a cumulative effect; things might not, when they are looked at incident by incident, constitute abuse, but cumulatively they do. That is what the children and young people have told us in the work that we have done.

John Finnie: Thank you all for that.

The response from Children 1st says that it

“would have preferred a parallel criminal offence of domestic abuse against children to be included on the face of the Bill.”

You go on to say something that I found concerning:

“We remain concerned that failing to recognise children as victims of coercive and controlling behaviour within the proposed offence will make children less visible to services”.

Can you expand on that, please?

Chloe Riddell: As I mentioned initially, we welcome the aggravation that has been included, but we remain concerned that the full impact of domestic abuse is not reflected in the bill. We think that, if it were to be fully reflected, children would be more visible and there would be more of a culture change and a clearer understanding of exactly what the impact of domestic abuse is on a child.

The focus that we are looking for with a parallel offence is on the perpetrator's behaviour. We know from our services—we provide relational support and trauma recovery services to children and families—that domestic abuse has far-reaching and long-term psychological impacts, as well as physical impacts, on children. We know from research on adverse childhood experiences, of which domestic abuse is one, that there are significant impacts on the child, and that if they do not receive appropriate trauma recovery services at an early stage, the abuse can impact on their adult life.

In terms of the impact on a child, we know that there are people who are living in a permanent fight-or-flight mode. We know that the women in particular whom we work with—I know there are men who experience domestic abuse—live with intense levels of fear. One of our support workers specifically asked me how we can we expect somebody who is living permanently with that neurological response to think about making a nutritious meal for their child, about getting them to school and all the other issues. In one of our support groups we have six six-year-olds, and every one of them has called 999 at least once in their life. They are six years old.

We think that the bill as it stands does not recognise that significant impact and the perpetrator's behaviour—the way in which the perpetrator perpetrates domestic abuse—which is a significant gap. Such recognition would make the child more visible to services because it would be clear acknowledgement that the child is a victim. It would also allow some services that perhaps do not fully understand the impact of coercive control on a child to look at that behaviour in a different way.

As all the others have highlighted, Children 1st thinks that there is a clear need for access to trauma recovery services and family support services for all the families that we know are affected by domestic abuse. Does that answer your question?

John Finnie: Is it not sufficient that there is an aggravation if there is a child involved?

Chloe Riddell: For us, it is not a case of either/or; we would like both. We think that they provide a totally different perspective. The aggravator recognises that a child is in the household and the effect of the perpetrator's behaviour, but the parallel offence would recognise that the child is a victim in his or her own right.

The best way of putting it is to read out something that the Scottish Children's Reporter Administration said in its written submission:

"the offence against the adult victim can be established with evidence of abusive behaviour directed towards a child ... (section 2(2)(b)). It seems anomalous for this to the case, without recognising the child's experience of abusive behaviour as a separate offence."

The child can be recognised within the adult offence, but there is no provision at the moment for an offence against a child, which seems to us to be an anomaly. We agree with the SCRA on that.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): You say that it is about children accessing services, but section 9 of the Children and Young People (Scotland) Act 2014 says that a children's services plan is to be prepared so that

"children's services in the area concerned are provided in the way which—

(i) best safeguards, supports and promotes the wellbeing of children in the area concerned"

and

"(ii) ensures that any action to meet needs is taken at the earliest appropriate time".

You will be familiar with that. How does the introduction of an offence create better support for children, beyond what is in the 2014 act? I do not understand the link between such an offence—for which, I acknowledge, a case can be made—and children not getting access to services. It seems, at least prima facie, that there is adequate provision in legislation already.

Chloe Riddell: For us, it is not simply about access to services. That is an element of it, but there are other reasons, as you said, for including the offence in the bill. Specifically in terms of access to services, a clear recognition that a child is a victim often makes it easier for services to be available to them—for services to be visible.

We know the dynamics of domestic abuse and the way that it works. Often, people do not recognise themselves as victims, and, often, services do not recognise people as victims. If a child is specifically recognised as a victim, their visibility increases. It is not just a case of saying that the issue is addressed in the 2014 act. We are not asking for anything around services to be included in the bill. The point that Children 1st is making is that that visibility will facilitate a culture change and the recognition that coercive control is a pattern of behaviour and impacts not just on women or the person who has been abused but on children and young people. It is important that there is that access to the recovery services that we know children and young people require.

Stewart Stevenson: The 2014 act is not fully implemented—I accept that straight away. Are you saying that barriers exist and that children are not getting access to services because there is not an offence, and, if so—

Chloe Riddell: No.

Stewart Stevenson: If you are not saying that, why do we need an offence to give children access?

I recognise, convener, that the witness from the commissioner's office also wants to say something.

Chloe Riddell: The others can answer, too, but, for us, it is absolutely not about linking the need for an offence with the need for services. We are saying that, if there is an offence in the bill, it will, by the nature of the way that it works, mean that children are more visible to services. We are not saying that creating the offence will mean that more services are available; in fact, we have repeatedly said that our services have waiting lists. There are not enough services for children, but we want to make sure that the children who require help get it as quickly and as early as possible and that work on the effects of domestic abuse on children can be done by the family support services that are available. That does not mean that an offence is created and, therefore, there are more services; that does not follow. The point that we are trying to make is that, by making sure that there is better training and a clear sense of the child as a victim, children will be more visible to services.

Perhaps others might want to come in.

Megan Farr: On the main benefit of having a separate offence in relation to children, I want it to be really clear that the ask—it is a collective ask from a group of women's and children's organisations—is to have an offence that recognises the harm that is done to children when there is domestic abuse either of their parent or in the environment that they live in. It is not—I think that this has been misread a couple of times—an offence of coercive control of children; it is the harm that is done to the children when there is coercive control in the environment in which they live.

Increasing the visibility of children in such cases has a number of knock-on benefits. One of the important ones is the effect on the decisions that are made in the civil courts. We hear evidence from children and young people and their parents—mostly, but not only, mothers—who contact our office that, sometimes, there can be a conviction with regard to the mother but, because there is no conviction with regard to the child, contact continues to be ordered and the children feel very clearly that such contact is not safe and that they do not feel safe. Any rights regarding contact for the perpetrator—if they have been convicted, that is what they are—are contingent on that child being safe. The creation of a separate offence relating to children in the specific context

of domestic abuse is one way of making sure that children have the same protection under the bill that adults have.

10:15

The aggravator is also important, partly because it is complementary, partly because of the way that sentencing works, in that the aggravator will be reflected in sentencing—two concurrent convictions will not necessarily do that—and partly because it is a useful tool for prosecutors to have. It gives them options, depending on the situation and factors such as the age of the child. That is why we think that it is really important to strengthen the aggravator—we have collectively talked about that in our evidence—and to have a separate offence in relation to children.

Stewart Stevenson: Section 6 of the bill is about presumption of a relationship. I am hearing the suggestion that you might want to draw the provision more widely than simply where there is a presumption of an intimate relationship, which is, in essence, what the bill says, between the perpetrator of the abuse and a parent or someone who has parental responsibilities for the child. Are you trying to draw it more widely than that? If we do not do that, I wonder whether we are discriminating against some children by including some and not others. In other words, at this stage of the process, we appear to be opening up something quite wide. Is that how you see it?

Megan Farr: No, not at all. We are comfortable with, and agree strongly with, the definition of domestic abuse that is in the bill. The language that I used reflected the fact that families are more complex and, in fact, have always been complex. If our definition of children was too narrow, we could ignore, for example, a child who was in kinship care and was not biologically the child of either parent in that household but was still a member of the household and was affected by domestic abuse. If we were just to talk about "household", we would risk excluding a child who no longer lived at home but who lived with a grandparent because of the abuse. However, I think the bill deals with the issue quite well. It talks about "a child of B", but also talks about "any other person". Although I would like it to specifically say "any other child or person", particularly in the provisions on children, that keeps the focus on the immediate impact and reflects the fact that the family may not be mum, dad and two children who are biologically related to both mum and dad, and could include kinship care and informal fostering relationships.

The Convener: We have two other supplementary questions. I hope that they are short questions. That was supposed to be a short one, but it grew.

Stewart Stevenson: I know—sorry.

Fulton MacGregor (Coatbridge and Chryston) (SNP): As things stand, children who are present for or who witness a domestic abuse incident in a household are referred to the children's reporter. Do you know off hand whether such referrals are likely to happen? I could not see anything in the bill. Would such referrals alleviate some of your concerns? If somebody is charged with an offence under the bill, will there be an automatic referral to the reporter of any children in the household? Because the convener mentioned time, I ask for just one answer.

Dr Friskney: I will come at your question slightly sideways. With regard to a parallel offence, we are looking for a recognition that, when a person chooses to abuse their partner or ex-partner and there is a child, they are also committing an offence against the child. There are obvious impacts on the child's welfare, but we are also seeking to hold the perpetrator to account for how their behaviours harm the child.

One of the things that we know from what children and young people say about their experiences is that they do not feel that they are acknowledged as victims of an offence. The committee has heard previous evidence about one of the hopes for the bill being that, if it better reflects the experiences of domestic abuse of women and children by capturing coercive control, women and children might be more likely to feel confident in the system and more likely to seek help, and we might have more opportunities to intervene by providing them with support and tackling the perpetrator's behaviour.

I want to focus on the fact that one of the reasons for seeking a parallel offence is so that the perpetrator can be held to account. That is not the same thing as putting in place supports for a child. Does that answer your question?

Fulton MacGregor: Yes, that was a good answer, thanks.

Oliver Mundell (Dumfriesshire) (Con): The parallel offence that has been discussed would only be in relation to the offence of coercive control that is in the bill. If the witnesses are talking about the wrong that is done to children and young people by domestic abuse, surely they would want the bill to go much wider and take into account physical domestic abuse, which could cause just as much harm. If they want to create a catch-all offence for children, I wonder whether the bill is the right place to do that, or whether there should be parallel legislation that creates a wider offence that covers such issues.

Chloe Riddell: We are all quite clear that the bill is absolutely the best place for a parallel offence because it needs to be seen in the context

of the partner or ex-partner relationship. As Megan Farr said, we are not asking for an offence in the bill in the absence of that existing relationship. It is important that the whole context is seen. We know how domestic abuse and coercive control work, so we know that it is important that the perpetrator is held to account both for the abuse that may be occurring within the relationship and for the abuse that may be perpetrated on the child.

For us, the best place to put a parallel offence is in a domestic abuse bill, because we are talking about that very specific offence against a child within the context of the relationship. We are not talking about anything wider than that. I know that the child protection improvement programme will look at some of the other issues, including updating the offence under section 12 offence of the Children and Young Persons (Scotland) Act 1937. What we are talking about here is coercive control and physical abuse as domestic abuse in the context of the relationship that is set out in the bill.

Megan Farr: One of strengths of the way that the bill has been drafted is that it contrasts with the experience in England and Wales. It includes physical incidents as part of a course of behaviour, so it will include the incidents that Oliver Mundell was referring to.

Mairi Evans (Angus North and Mearns) (SNP): I want to tease out some of the evidence that has been given today, particularly by Children 1st. In your submission, you say that

"greater consideration"

needs to be given

"to how the offence would apply to partner violence between children and young people".

You also highlight how often your services

"work with young people who are coerced into performing sexual acts against their will",

and say that

"the normalisation of certain sexual behaviour amongst young people can create pressure to conform."

Will the bill address those issues? What should be added and what more work needs to be done in that respect?

Chloe Riddell: Thank you for the question. We have a particular concern about 16 and 17-year-olds. We know that there are abusive relationships among children. Given that there are no age restrictions in the bill, we have specifically asked for particular consideration to be given to the treatment of children and young people who are accused of domestic abuse under any new offence that is created.

It is about thinking a little about children who are going through the criminal justice system and

making sure that, without excusing any abusive behaviour, the criminal procedures are as they should be but contain some element of child protection—particularly for children who have been coerced into a particular type of behaviour—and that there is interaction with child protection procedures for children who are in abusive relationships.

We do not think that anything needs to be added to the bill, but there are, perhaps, training and guidance issues. We know, for example, that some of the younger people whom we work with have had numerous adverse childhood experiences, which can sometimes have an impact on their behaviour. We have been talking about the importance of relationships, sexual health and parenthood education and the need, through the equally safe delivery programme, to challenge gender stereotypes and highlight preventative programmes that look at gender equality. For us, there is a prevention issue as well as an issue around how children who are accused of abuse are given support not only to change their behaviour but in their experience of the justice system, because they are children and will not be convicted as adults.

Mairi Evans: You are saying that the issue is more about that work rather than anything in the bill. Does anyone else want to comment?

Megan Farr: A lot of work is going on at the moment. There is a particular gap around 16 and 17-year-olds in the children's hearings system, which, I understand, is being dealt with separately. That is probably the right place for that to be looked at, but we would very much hope, and would argue strongly, that anyone who is under 18 should be treated as a child and in an appropriate way.

Dr Friskney: In general, we would question whether there is enough recognition of coercive control in teenage relationships. Is that picked up and identified? When it is picked up, do young people have access to services that they can identify with as young people experiencing coercive control? We have a couple of services specifically for young women and for young men as perpetrators. It is about trying to find a service that they can identify with—a home where they can work through their experiences.

Chloe Riddell mentioned the importance of relationships, sexual health and parenthood education. One of the things that we would emphasise is the importance of that being accessible to young men as well as young women, with messages that are really accessible to young men about what it is like to be a parent and a father. We talk a lot about having standards for fathers as parents that are as high as the standards that we have for mothers as parents. An

issue that has come up in the work that is being done in Polmont with young offenders is that young men worry that they are not being a good enough father. They are asking for more information and they do not feel that they have enough input. That is a really important piece of the puzzle when it comes to challenging the gender stereotypes and structural inequalities in society that contribute to domestic abuse and coercive control in young people's relationships as well as in older people's relationships.

Dr Lough Dennell: I absolutely echo everything that my colleagues have said. One thing to highlight about RSHPE and any kind of preventative work is the need to absolutely ensure that it questions gender inequality and recognises domestic abuse as a form of gender-based violence. However, there also needs to be a recognition that the messages that men receive are not only about perpetrating domestic abuse and the messages that women receive are not only about potentially experiencing domestic abuse. We know that research shows that gay, bisexual and transgender men—particularly gay and bisexual men—are more likely to experience abuse in their first relationship than their peers but less likely to recognise it because they see the public story that those who experience domestic abuse are women. Gay, bi and trans men do not see themselves in that public story, so they face additional barriers even in recognising it, let alone knowing where to access support. RSHPE needs to be gender aware but also gender inclusive.

10:30

Mairi Evans: You have raised a couple of important points that colleagues will touch on later. A point was made about the support that is there to address coercive and controlling behaviour between young people. Is such behaviour recognised? Is there much recognition of and support for dealing with that, or does that have to be developed alongside the bill?

Dr Friskney: I would certainly question whether such behaviour is always recognised. I remember a young woman—a teenager—in a third relationship who had an expectation of abuse that had been established from her previous relationships. It is clear that that had not been picked up in the previous relationships before she got to that point. Are we identifying coercive control when it happens in teenage relationships, or is it our image that coercive control happens in older people's relationships?

Chloe Riddell: That goes back to the questions that were asked about services, the recognition of what is happening in relationships and the impact that the act could have. If there is a clear recognition across Scotland of what coercive

control looks like, children and young people who are affected will be more visible. If there is more understanding of what that looks like, the available services will be able to respond better to the children, because we will know who they are.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I will ask about your concerns about section 4(2)(b), which is about where

“a child sees or hears, or is present”.

Barnardo’s Scotland says that that

“sends a message that a child expressly requires to witness domestic abuse in order to be harmed by that abuse”

and that it is incident specific. Will you flesh out your concern a wee bit more?

Dr Friskney: It is worth saying that we think that the bill has progressed enormously. The fact that an aggravation is in it is a really positive step, but we do not think that it quite catches the different ways in which women and children experience abuse together. I am sure that colleagues will have other perspectives.

One concern is that, as the aggravator is drafted, it could penalise the efforts and the work that women put in to protect their children from abuse. When I was in training yesterday, one of the examples that came up was of a woman who was experiencing domestic abuse, including quite severe physical abuse—she was being strangled. What she reported thinking when she was being strangled was how important it was that she did not scream because, if she screamed, her child would become aware of the abuse, and what she most wanted to do was protect her child from that awareness.

Let us think about that in relation to how the aggravator is drafted. We know that women do a lot of that kind of work, so children who are affected might not be recognised. Not only would a child not be recognised, but that element of how the woman experienced the abuse would not be recognised. That is one concern; colleagues might like to add further concerns.

Chloe Riddell: I echo what Ruth Friskney said. We recognise the work that has gone in and how far we have come. Our recommendations are intended to strengthen the aggravator rather than to criticise it.

Further clarification is required of the provision that

“a child sees or hears, or is present”,

because, as Ruth Friskney said, a lot of work often goes into making sure that a child is not present.

We have questions—I think that Scottish Women’s Aid referred to this—about the fact that a child may be out of the country, out at a sleepover

or otherwise not in the house when incidents occur. A UNICEF report into the impact of domestic abuse on children found that

“Those who are not direct victims have some of the same behavioural and psychological problems as children who are themselves physically abused”

or emotionally abused. It is really important to recognise that, as it stands, some of this is down to interpretation about whether a child or baby is there. Another question is what financial control looks like if a child is not physically there.

There is some work to do. We have suggested language about whether the perpetrator is reckless as to whether a child sees or hears behaviour, but there is perhaps better language. We are definitely concerned about the issue.

Megan Farr: We would really like the aggravator to reflect as closely as possible the language that is used when talking about the harm that is done to the non-abusing parent. We feel that phrases such as

“sees or hears, or is present”

are too focused on an incident, whereas the bill has otherwise done a lot to move away from that.

We really welcome the aggravator. We think that it will be a vital tool for prosecutors and that it does a lot to recognise the harm that is done to children in the context of domestic abuse, but it seems to be a little too focused on a child’s being present during an incident. As others have said, there are lots of ways in which children can be affected while being unaware of the abuse because their mother is doing her very best to protect them.

Rona Mackay: I am also thinking about the general tension in the house. If a child lives with that every day, they are subliminally affected by it.

Megan Farr: Yes. There is a really good body of evidence that shows that such stresses in a household harm children psychologically and have long-term impacts. There is also behaviour such as controlling resources and controlling what a woman does socially, which a child might not know about. The child might be a tiny baby who does not know that they are missing out on things, because their mother is shielding them, but they are still being harmed. In our evidence, we used the example of financial control being exerted so that the mother does not have enough money to meet the child’s needs. The child might not know about that.

Another reason why it is important to cover that in the bill and not in the context of child protection is that the bill does an excellent job of keeping the focus on the perpetrator. When the focus goes away from the perpetrator, the risk is that we end up looking at whether the mother has done a good

enough job of shielding her child, if the child has still suffered harm, although she has done absolutely the best job that she could have done in a horrendous situation. That is why the aggravator needs to more closely reflect the language of the main offence.

Dr Friskney: I will expand on some of the examples. In domestic abuse situations, we often see that the actions and behaviours of the perpetrator towards the woman control her time, because she has to put an inordinate amount of energy into managing the relationship to keep things as safe as possible. The child experiences that as a lack, because the mother does not have as much energy as she might want to have to cuddle and play with her child. Because she has to do certain things for the abuser at particular times, she does not have the time for activities such as helping the child with homework. The question is whether that will be picked up by the aggravator as drafted; we are not sure that we can see a way in which it would be.

Rona Mackay: That is helpful.

The Convener: Would that situation be difficult to evidence?

Dr Friskney: Some of the ways that we end up talking about domestic abuse are interesting. We often end up talking about an environment of domestic abuse, and it is important that we always bring that back to the point that that environment has been created by the perpetrator carrying out specific behaviours and actions.

We are training a lot of our staff in the safe and together model, which addresses domestic abuse and approaches to child welfare. One thing that comes through in that model is the importance of evidencing the perpetrator's behaviours and identifying how they adversely impact on a child. To be honest, it is quite a mind shift to go from saying, "He's doing a course of coercive control," to saying, "He stops her leaving the house with both children at once so they never get to play together." When all the different things are looked at in detail together, they are really powerful. We are trying to do that much better and be much clearer about evidencing the behaviours—what he is doing—and how they impact on the child.

The Convener: It helps tremendously to give examples; otherwise, the concept is looked at as airy-fairy and difficult to pin down. When you give an example, it becomes crystal clear.

Chloe Riddell: The question about evidence is important. Some things are hard to prove. We have examples from our family support services of the abusing parent—the perpetrator—taking the child car seat to work. That seems innocuous, but it prevents the child and the mother from leaving the house.

We are clear that, although something might be difficult, that does not mean that we should not be ambitious and far-reaching and that there are not ways to do it. We highlighted in our submission the importance of child witnesses and the work that needs to be done to make sure that the court system does not retraumatise them. Children could be required to give evidence to corroborate things that have been said and we are mindful that, if they will be giving evidence more frequently or in general, wider reform is needed—for example, a Scottish version of the Scandinavian barnahus model for child victims could be piloted.

We are mindful of some of the things that have been going on, for example to prevent child witnesses from being cross-examined by the perpetrator, but steps need to be taken to make sure that we get the best possible evidence from witnesses in a way that gets the conviction but does not retraumatise the children. Recognising the role of child witnesses and the steps that need to be taken is important in the context of the bill.

The Convener: Would the car seat example be followed through in relation to mens rea and recklessness? The perpetrator could be asked whether they were aware of the implications and people could work backwards from that to get to the impact on the child, without having to interview the child. The mens rea behind a lot of the things that are done could be looked at.

Chloe Riddell: There are some ways in which that can happen, but we know that some children witness things overtly. We work with children who have witnessed sexual abuse, for example, who might need to be a witness in a case.

The important thing to mention is the impact on children of witnessing abuse, which goes back to what Megan Farr said about the perpetrator. The bill's whole aim is about keeping the focus on the perpetrator's behaviour. If a child witnesses something, that is a deliberate choice by the perpetrator, so how can we establish that under the bill? We do not think that the aggravator is enough to do that.

Megan Farr: One reason why we support the inclusion of a really strong aggravator—we are pleased to have the one that we have, but we have specific requests about improving it—as well as a specific offence is that the two complement each other, particularly in relation to evidencing, as an aggravator does not require corroboration. That gives prosecutors another tool, particularly when very young children and other children who might not be able to give evidence are involved, because the aggravator can still be used to recognise the harm. That is one reason why our ask all along has been to have both those tools available to prosecutors.

The Convener: That is helpful. Liam McArthur has a supplementary question, and then I will bring in Ben Macpherson, which I should have done earlier.

Liam McArthur (Orkney Islands) (LD): I thank the witnesses for their evidence. I have listened to what has been described and, as the convener said, it has been helpful to have specific illustrations of the behaviours and the interlinkage between them. However, in the context of expanding the definition—on which there is pretty much universal agreement—you will be aware that the committee has heard evidence from witnesses who have expressed concerns about the thresholds that are set.

Mention has been made of distress and the fact that harm or serious harm would not necessarily have to be proven, although the risk would have to be demonstrated. We all understand what we are talking about at the extreme end, but the difficulty may come when the abuse is more difficult to evidence, given that tensions and an unpleasant atmosphere in a household, perhaps over a prolonged period, do not necessarily constitute abuse by one individual of another, albeit that such a situation certainly needs to be addressed, not least in the interests of any child or children present in the household. What safeguards in the bill address the point that has been made about overcriminalising behaviour that is bad or poor but not necessarily criminal?

10:45

Megan Farr: The likelihood of that issue arising is quite small, given the existing difficulty in prosecuting people even for acts of physical violence. As Anne Marie Hicks said in her evidence a couple of weeks ago, there are quite strong safeguards in the bill with the three requirements—I am afraid that I have lost them in my notes.

The three conditions include a course of behaviour that was abusive and the reasonable person test, which is a concept that is well established and understood by the courts and is a major protection against overcriminalising behaviour that might not constitute abuse. The third condition concerns intending to cause harm or being reckless about that. From the evidence that Anne Marie Hicks gave the committee, I am reassured that the bill has those protections and that the behaviour that you described would be unlikely to pass those tests, so it would be unlikely to lead to prosecutions, let alone convictions.

Liam McArthur: Is that understood by those who might view the bill as opening up an opportunity to bring forward cases that otherwise would not be heard? Is there clarity of

understanding about the scope and extent of the bill and the thresholds that need to be overcome to bring a successful prosecution?

Megan Farr: The bill is still at stage 1; that process is going on. I hope that the conversations here over the few weeks when you are taking evidence and the rest of the bill's passage will do a lot to reassure such people and emphasise how vital having the bill in place will be to protect victims of domestic abuse.

I am aware that the Scottish Government has said that there will be additional guidance, awareness raising and training for professionals. That will also address a lot of the concerns. At this stage, there is concern and it is right for people to express it, but I hope that they will be reassured over the course of the bill's progress through Parliament.

Chloe Riddell: I echo what Megan Farr said about training. We have consistently highlighted, as have other organisations that have given evidence, that it will be essential to have training on what coercive control looks like, what survivor strategies are, what the dynamics of domestic abuse are and how the courts are used to perpetrate abuse, which is why we have highlighted the need for clear jury directions. As with all bills, it is not just a case of creating an act and leaving it like that; there will be a need for training, awareness raising and other things that I hope will be taken forward.

Dr Lough Dennell: LGBT Youth Scotland absolutely thinks that the threshold is set at the right place. It is unlikely that someone who wants to be vindictive because they are angry at a partner will pass the course of behaviour and reasonable person tests. I just put that out there.

On campaigning, awareness raising and training—I know that that is a practice and implementation question rather than a legislative issue—one thing that is crucial to consider as the bill, I hope, progresses is making sure that all training and guidance are fully inclusive of all protected characteristics. The witness last week from Shakti Women's Aid spoke about how, although the abuse is particularly gendered, there are additional experiences for black and minority ethnic women that might appear reasonable from the outside. That is also the case for LGBT people.

An example is threatening to out someone. It might not appear threatening to out someone if a perpetrator says, "I cannot wait. I am going to tell everyone about our relationship," but if the person who is experiencing the abuse is not out and that could threaten their social networks and stability, that could be seen as a threat.

Someone who has not been trained in the dynamics of homophobia, biphobia and transphobia may think that that is reasonable and quite positive. Another issue is continually using the wrong pronoun to address trans people or to undermine someone's gender identity or sexual orientation. Such things will need to be picked up in guidance and training.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Brandi Lee, you have touched on some of the points that I was going to raise, but I will give you an opportunity to expand on that, if you want to say more. As you suggested, the committee has received evidence, including from your organisation, indicating that particular types of controlling and coercive behaviour may affect certain victim groups and particularly, as we have heard today, individuals from the lesbian, gay, bisexual, trans and intersex community. Would the way in which the domestic abuse offence is set out in the bill capture those specific aspects of coercive and controlling behaviour? Do the police and other criminal justice professionals have sufficient understanding of the issues at hand? Is effort needed to make sure that that wider knowledge is expanded?

Dr Lough Dennell: We absolutely agree that the offence as written would be inclusive of LGBTI people. It includes coercive behaviour, and we know that that is an issue that LGBT people experience. There are particular barriers to implementation that are to do with public awareness. There are issues with reporting that relate to practice in the criminal justice system. I do not know whether you have seen the point in our submission that LGBT people can be reluctant to report domestic abuse. Domestic abuse cases are heard in open court so, if someone is not out or does not feel comfortable talking about their relationship or what has happened, that can entirely put them off reporting. We do not know how that will play out under the bill, but the way in which the domestic abuse offence is written means that it absolutely will cover LGBT people. The issue is how we reduce those barriers.

Police Scotland and the Crown Office have done a lot of work on that. They are constantly working to be reflective and constantly learning about how to make their services more accessible. We recently met with the advice, support, safety and information services together—ASSIST—project to discuss an approach to the Crown Office, and we have met the Government on the issue of reporting and barriers and how we can change practice so that LGBT people can more often report the domestic abuse that they experience.

Does that answer your question?

Ben Macpherson: Yes. I am reassured that you feel that the bill will cover that area. We are all mindful of the fact that the bill, if it is passed as the will of Parliament, will require wider awareness training across many dimensions.

That brings me on to another question. I would first like Brandi Lee to expand on this from the LGBTI community's perspective, but I am interested to hear from the whole panel. Children 1st's written evidence states:

"We hope this is the beginning of a wider cultural shift, which will be driven by widespread public awareness raising and broad ranging professional training about the dynamics and impact of domestic abuse."

I am interested to hear more from all the witnesses on what you consider the potential effect of the bill will be in raising greater awareness and its effect on social change as well as legislative development.

Dr Lough Dennell: My initial response is that it will more appropriately reflect what domestic abuse is by recognising the patterns of control in intimate relationships. That in itself, by recognising what takes place, will greatly increase understanding of what people can report and what they can get support for.

In previous evidence sessions, the committee has heard about people approaching Scottish Women's Aid and other domestic abuse support services not knowing whether they can get support with an issue because they do not know whether it is abuse. There was an LGBT domestic abuse helpline. Its previous posters showed someone at the bottom of the stairs, having fallen down, which continued to perpetuate the understanding that domestic abuse is about physical harm rather than a pattern of behaviours that may include physical abuse but that is actually very emotionally and psychologically manipulative.

My initial personal response is that the bill will raise awareness of what domestic abuse is—a pattern of controlling behaviour between intimate partners—rather than the stereotypes of physical abuse, and that will greatly increase people's understanding.

Ben Macpherson: Do you think that that will encourage more victims of domestic abuse in the LGBTI community to come forward and seek justice in the system?

Dr Lough Dennell: That is the hope. I will caveat that slightly by saying that, because of open courts, there are still barriers to reporting, but we will continue to push on that and try to change it, because that is practice related. However, having legislation that fully supports people's experiences and their ability to take something forward and report it is a very positive step.

Chloe Riddell: We agree. As we said in our evidence, the clear recognition in the bill that abuse can be both physical and non-physical, that it is part of a pattern of behaviour by the perpetrator and that it can be emotional and psychological is an important part of the culture change that we think is required.

For us, it is also about making sure that children's right to be safe from harm and their right to recovery are clearly recognised. As Brandi Lee Lough Dennell said, it is about making sure that people who are in such circumstances in relationships recognise that it is abuse and that help, support and services are out there. There is a clear statement in the United Nations Convention on the Rights of the Child that children have a right to recovery. Part of that must be recognising when abuse has taken place.

Some of the subtler types of abuse that we have mentioned, such as withholding money for nappies or the car seat example that I gave, as well as some of the more dramatic types of coercive control and behaviour can come together to form a pattern. The recognition in the bill and an awareness-raising campaign and training will help people to understand what coercive control looks like and will encourage friends and neighbours in the community to speak up in ways that they perhaps have not done before.

Dr Friskney: I echo that. We said at the beginning that we see in the bill a much more effective recognition of the lived experiences that women and children have of domestic abuse. It goes back to the question that we talked about earlier of why we are seeking to make the way that children experience domestic abuse with their mother much more visible. A lot of children are referred to our services for a reason that has nothing to do with domestic abuse. For example, children come in because of problems with attendance at school, and it is really important that we can take a step back and look at what is going on from a domestic abuse-informed perspective.

A particular example is where a child is so afraid of what the perpetrator does to the non-abusing parent when he is at school that he does not want to go to school. The child wants to stay at home and protect mum. If your approach to that child is to put burdens on mum and try to make her do more to get the child to school, that will not support the child's wellbeing. If we can take a step back, look at the situation and understand the domestic abuse that is going on and how that impacts on what is happening to the child, we have a much better chance of achieving change. Raising the visibility of children should impact on that kind of cultural change as well.

Megan Farr: Legislation is used as a way of raising awareness as well as a way of prosecuting

people. We have done that in a number of ways, and the bill will go a long way to raising awareness of domestic abuse among professionals across society.

The commissioner's office has recently been doing a piece of work with Scottish Women's Aid on children's experiences of the civil court system and particularly contact. I mentioned the invisibility of the harm that is done to children by domestic abuse and the effects that that can have. It is important that the bill will not just hold perpetrators to account—it is vital that we do so—but raise awareness of that harm across society and improve the protection of children. That is one reason why we need the stronger aggravator and why it is important to have a parallel offence relating to children.

11:00

The issue could also be covered by non-harassment orders, which are dealt with in the bill. At present, non-harassment orders do not mention children. When the aggravator is applied—or if there is a parallel offence, although the aggravator is an excellent opportunity—we would like the same duty to be put on the court to consider an NHO in relation to the child. That is because when children are not with the non-abusing parent, they can continue to be involved in the abuse by the perpetrator. As it stands, the provision regarding non-harassment orders does not give children the same protection as it gives adults. In some situations, it might give children less protection after the abusing parent—the perpetrator—has been convicted than they had when he was on bail. I would really like children to be given the same protection in relation to non-harassment orders as the partner will have under the bill.

The Convener: In the very first evidence that we took informally on the bill, we heard that ex-partners can use contact centres to abuse or undermine the other parent and, to follow on from Megan Farr's evidence, perhaps harm the child.

Megan Farr: We hear from professionals that the purpose of a contact centre is sometimes not well understood, even in the court system. In terms of the way that we now understand domestic abuse and the way that it is understood in the bill, contact centres cannot necessarily prevent the behaviours that involve children in abuse, such as talking about and undermining the parenting of the other parent or using the child to spy on the non-abusing parent. Those behaviours are difficult to address through a contact centre, particularly since the contact is not supervised in a lot of cases, so the perpetrator could be alone with the child.

There is a use for contact centres where there is a serious risk. However, the organisations that run them have said to us that they are intended as a short-term solution and not as a long-term answer to an abusive partner. There are real issues about the centres potentially being used as that.

Children and their parents have rights around contact, but those rights are in the context of a safe environment. Children's right to be safe and whether there is a safe environment must be the first consideration when contact is considered. Considering the ways in which children are involved in domestic abuse that are addressed in the bill, I am not sure that the centres can always provide that. In any case, they are only ever intended as a short-term solution.

The Convener: Do the other panel members want to comment on the non-harassment order provisions generally? I think that the issue is mentioned in written evidence.

Chloe Riddell: As we said in our submission, Children 1st would like to see

"a mandatory duty on the court to consider whether to impose a non-harassment order that includes a child in all cases where the statutory aggravation in relation to a child is applied."

As Megan Farr said, there are complex issues around contact. There are also issues around whether the civil courts would uphold the non-harassment orders. The committee has heard evidence on whether non-harassment orders are effective. That issue needs to be addressed, but it should not prevent us from putting something in the bill to ensure that children are given the same protections as adults by way of harassment orders.

With regard to the on-going question about contact, it is important not to shy away from the fact that perpetrators may continue to pursue a pattern of abuse through contact, and the consideration of a non-harassment order is one of the tools through which that abuse might be prevented. For us, post-trial protections are absolutely critical for victim safety. As I mentioned when I was talking about child witnesses, a lot of the systems actually revictimise. I was shocked to read one of the written submissions from a victim who said that she would rather be abused again than go through that court system. We should think about the impact that some of those court processes have on children. It is traumatising.

We do not want women or people who have been abused to be prevented from talking about that abuse because they are concerned about the court system. For us, extending the protection of non-harassment orders to the child in all cases where the aggravation is applied is an essential

part of protection for children who have been victims of abuse.

Dr Friskney: We see it as entirely appropriate, particularly where the aggravation in relation to a child is evidenced, that the non-harassment order should protect the child as well as the mother. We all know that we cannot equate the perpetrator no longer being there with safety. We know that perpetrators are capable of abusing women and children even when they are in prison, for example, so it is really important that non-harassment orders are put in place that cover women and children, so that the perpetrator does not find a way round them and go through the children to carry on with the abuse.

The Convener: I think that Stewart Stevenson has something to say.

Stewart Stevenson: Yes, fairly briefly.

Section 5 deals with the defence on the grounds of reasonableness. I say straight away that that strikes the right balance. I presume, however, that the drafting of the behaviour-was-reasonable element avoids giving a list of the behaviours that we think might be reasonable because, of course, the circumstances will vary. I really just want to see nodding heads to say that you are content with that section, and I am getting them. Thank you.

The Convener: That concludes our questions. I thank the witnesses for what was a very valuable evidence session. It certainly gave us some perspectives that we have not covered so far, so thank you all very much for attending.

We will now suspend briefly to allow for a change of witnesses.

11:07

Meeting suspended.

11:12

On resuming—

The Convener: I welcome our second panel of witnesses: Aaron Slater, the Edinburgh services manager at Safeguarding Communities—Reducing Offending (Sacro), and Kathryn Sharp, a member of the criminal justice standing committee at Social Work Scotland. Kathryn is attending in place of Jane Martin, who was originally on our agenda. You are both very welcome. Thank you for your written submissions.

We will move straight to questions. I will start by asking Sacro about the fearless project and what that has unearthed.

Aaron Slater (Safeguarding Communities—Reducing Offending (Sacro)): Fearless is a

domestic abuse support service for hard-to-reach victims of domestic abuse—specifically men and LGBTI+ and black and minority ethnic communities. It is a partnership between Sacro, LGBT Youth Scotland, Shakti Women's Aid and the Men's Advice Line. We operate across eight regions in Scotland, providing one-to-one domestic abuse support.

The Convener: And the findings?

Aaron Slater: We have been operational for coming on two years now, and we are finding, through the people who are accessing the service, that there are barriers for hard-to-reach victims of domestic abuse. The majority of the victims are male—that is probably the biggest group in that demographic of our service. About 25 per cent identify as LGBTI+ and about 10 or 15 per cent come from black and minority ethnic communities.

Specifically, we have found that there are different barriers for the different groups that we work with. The committee received representation last week from Abused Men in Scotland, when Alison Waugh talked about specific barriers for men arising from ideas about masculinity. Men do not necessarily relate to domestic abuse or see it as something that impacts on or affects men. The same goes for LGBTI communities. The public narrative around domestic abuse that we have had over the past 40 years, which has been driven by women's services, is that it is something that men do to women. That has very much been the public narrative, and an unintended consequence of that has been that some other groups do not identify readily with domestic abuse. Because of that public narrative, people in LGBTI relationships do not see themselves in what is portrayed in the media or in other services, so they are less likely to recognise domestic abuse when it happens and less likely to access support. There are a lot of challenges in engaging people around that.

11:15

The Convener: Committee members may have more questions on that subject later. Kathryn, do you have any comments on that?

Kathryn Sharp (Social Work Scotland): Social Work Scotland is supportive of the work that has been done around domestic abuse, which Aaron Slater has mentioned, and recognises the gendered analysis that we have had of it. Equally, we recognise that many people throughout Scotland are experiencing domestic abuse and that each of those experiences will be unique to the individual. There will be unique barriers to those individuals reporting. As we move forward, it is important that we take an inclusive approach while recognising that domestic abuse is a gender-based issue. We are supportive of any projects—

my authority works with the fearless project, which has been helped us to think about the issue at a local level as well.

Fulton MacGregor: We heard evidence from the Scottish Police Federation that the approach to tackling domestic abuse is based solely on punishment. Do you recognise that analysis?

Aaron Slater: The response to domestic abuse being focused on punishment at the moment is probably largely due to the lack of rehabilitation programmes across the country. Even where they are provided, that provision is a bit patchy. It is a bit of a postcode lottery where rehabilitation is available. With any type of crime but with domestic abuse especially, the rehabilitation aspect is really important given the number of repeat offences. Any shift from punishment towards rehabilitation would be a welcome measure, especially in helping perpetrators of domestic abuse to understand and address their patterns of behaviour and to make positive changes.

Fulton MacGregor: What could we do to enhance the interventions that are in place? Before I became an MSP, my background was in the criminal justice and social work sector, so I am fully aware of some of the stuff that has been done. What could be done to make the interventions more effective, first, to stop reoffending and, secondly, to prevent offending in the first place? Importantly, how can we get the public to trust in the services and have faith that they are working to those aims?

Kathryn Sharp: On how we move forward and the rehabilitation of offenders, I read the submission from the Scottish Police Federation, and, from a social work perspective, I do not necessarily agree with its focus on punishment. We are focused on rehabilitation and have a clear belief that we should work with the perpetrators of domestic abuse to identify opportunities for change and support those opportunities. We have had a lot of focus on perpetrator programmes, and we recognise that there are differences in the delivery and availability of those programmes across the country. Perhaps it would be helpful for us to think beyond rehabilitation in perpetrator programmes and focus on a broader, whole-systems approach to perpetrators.

The bill is extremely helpful in focusing on the behaviour of perpetrators and encouraging that focus across the whole system. The witnesses at the previous session spoke about the safe and together approach, which is being implemented by a number of local authorities. It encourages practitioners across the system to have a clear focus on the behaviour of perpetrators, to see domestic abuse as a parenting choice, to recognise the impact of coercive control and to be

clear about the behaviour and its impact on all those who are affected.

That brings a focus on early intervention with perpetrators across the system, not just in social work with children and families or in criminal justice but across all the services that we work with, including our named persons and lead professionals in the getting it right for every child approach. There is much potential for us to think beyond what we are currently doing, build on the foundations of our perpetrator programmes and expand our thinking on and attitudes to identifying and working with perpetrators at a much earlier stage. The bill is very supportive of that approach.

Fulton MacGregor: Do you think that it is about identifying and working with perpetrators at an earlier stage, or is that perhaps only part of it? Is it, as we heard in the previous evidence session, about trying to change cultural attitudes and—for example, in schools—being more open and talking about domestic abuse?

It is generally agreed that domestic abuse is about control and power and is mainly—though not exclusively—perpetrated by males on females. Do you think that it is possible to address it at an even earlier stage than that of trying to identify a possible perpetrator?

Kathryn Sharp: I agree. A whole-systems approach from the earliest intervention is appropriate for general public awareness raising. The bill offers opportunities to raise the profile of domestic abuse as a pattern of coercion and control rather than as single incidents of physical violence. Although that narrative in Scotland has been changing for a number of years, public attitude surveys support the fact that the majority of the public still believe that domestic abuse is predominantly physical violence or see that as being more serious than other forms of abuse.

There should be a commitment from social work as well as other local partners to the earliest intervention through relationship education in schools, focusing on respect and equality, working with young people to support them, identifying those who are at risk of harm at the earliest possible stage and intervening appropriately and supporting young people in the context of our GIRFEC agenda.

Aaron Slater: In addition, there should be more voluntary programmes for people who either are perpetrators or are identified as being at risk of being perpetrators of abuse. At the moment, the Caledonian system is a court-mandated programme. The City of Edinburgh Council area is one of the few areas where there is a voluntary programme for people who are abusive. There should be more programmes through which people can access that support at an earlier stage

instead of waiting to go through the criminal justice system and having a court mandate that they attend a group programme.

The Convener: Following the first evidence session, when we suspended for a minute or two, a lady from India who had been listening in the public gallery suggested that there be early intervention in schools on anger management. Would that make sense?

Kathryn Sharp: It is broadly recognised by agencies in social work and agencies that work with women, children and young people, as well as by our criminal justice partners, that anger management is not necessarily an appropriate response to domestic abuse. In the vast majority of cases of domestic abuse, the abuse is not caused by anger and an inability to control anger. In fact, many perpetrators display an excellent ability to control anger when that best suits their needs and agenda. We understand that domestic abuse is a function of gender inequality and other structural inequalities such as poverty. Our focus needs to be on raising awareness of that reality and challenging those issues.

With young people, the focus would be on respect, equality and how to manage conflict within relationships. We acknowledge that relationships will include conflict, but the issue is how people can manage it healthily, with respect and without resorting to managing it in abusive ways, whether that is physical violence or psychological and emotional abuse.

The Convener: I think that the lady was thinking about children managing their behaviour generally.

Kathryn Sharp: Absolutely.

The Convener: Aaron, do you have any comments on that?

Aaron Slater: It is a difficult one. Work early on will be more effective, which is in line with the equally safe strategy when it comes to early interventions. As Kathryn Sharp said, some perpetrators of abuse are very controlled and can control their anger when it suits them. Maybe there is a distinction to be made between that and more situational violence whereby someone has an outburst of anger and responds in a way that might not be underpinned by a pattern of coercion and controlling behaviour. Any interventions need to make that distinction.

The Convener: That is helpful. Liam McArthur has a supplementary question.

Liam McArthur: We have not talked an awful lot about rehabilitation. I am curious about the success rate of rehabilitation programmes, recognising that there will be a continuum of people from the more moderate end of behaviour patterns through to those who are very challenging

and for whom there is, perhaps, less prospect of success. What is the experience of the success of rehabilitation programmes generally in this country?

Kathryn Sharp: That is a hugely contested area. Unfortunately, I do not have a straightforward answer for you. The Caledonian programme, which is delivered across 13 local authorities, was evaluated and the report was published at the end of last year. The report showed that there had been some positive impact on the participants of the programme, whether they were the perpetrators of domestic abuse—men who had all been convicted and mandated to attend the programme as part of their community sentence—the staff who participated or the partners or ex-partners of the men who were mandated to attend the programme. They rated the programme highly. The women reported feeling safer, and the men were assessed by their criminal justice social workers and found to pose a lower risk to women and children by the end of the programme. However, the evaluation made it extremely clear that it could not conclusively demonstrate an impact of the programme, and some of the psychometric testing and analysis that was done as part of the report offered a more mixed picture of women's views about perpetrators' changing behaviour.

The multi-site studies that were conducted across the UK by project Mirabal in 2015 were all based around Respect-accredited programmes. There were some encouraging results in that most men stopped using violence and reduced most other forms of abuse. In addition, most partners said that they felt safer and were safer, and it was recognised that the programmes made a unique contribution to helping perpetrators to take steps towards change and to forming part of a local co-ordinated community response to domestic abuse. However, it was acknowledged that, overall, there was a continuum of change among the men; some may have made little change to their behaviour and some may have made significant changes.

Liam McArthur: What you are describing suggests that the focus of the programmes has generally been on instances of physical violence as opposed to the coercive and controlling behaviour that we are talking about in the context of the bill. Is that a fair assessment, or has it been cast more broadly?

Kathryn Sharp: The Respect-accredited programmes are designed to take in the entirety of the behaviour, although the conviction for which the perpetrator has been mandated to the programme is more likely to be related to a physical, one-off incident. As we have heard, that is where our legislation is currently focused, so the likelihood is that a conviction will relate to that type

of incident-based domestic abuse. I know from working with my colleagues in criminal justice social work locally and throughout Scotland that they are extremely skilled in supporting men to look at their coercive and controlling behaviour. The Respect-accredited programmes encourage that response.

Liam McArthur: Do you see the bill and the way in which it is cast increasing the likelihood of referrals to such programmes, or is that less likely because the focus is on identifying the actions of perpetrators and putting in place safeguards largely for women but also for children in a household who are suffering as result? What is your impression of the way in which the bill is cast? Should we consider adding anything to the bill's provisions to increase the opportunity for rehabilitation when that is appropriate?

Kathryn Sharp: In the financial memorandum, there are some estimates of the likely increase in reporting, prosecutions and convictions and the likely increase in community sentences. When a community sentence is imposed, there is a process of assessment and not all perpetrators will be suitable to join a mandated programme. There needs to be some acknowledgement of the offence, the need for change and a motivation to make that change, and that will not be possible for all perpetrators.

We expect that, in the natural course of things, as the bill is implemented, we will see more reporting, and we hope that that will eventually result in more convictions and more men being mandated to attend the programmes. We welcome the bill for widening men's access to the opportunity for change and for the impact that it will have on victims and children. There is a lot in the bill that aligns with the approach that is being taken in the programmes, including a focus on the behaviour, the impact on the victim and the accountability for the behaviour and its impact. The way in which the bill is framed supports the work that criminal justice social workers are already doing in programmes and in their one-to-one work with perpetrators.

Liam McArthur: That is helpful. Thanks.

11:30

Rona Mackay: The intention of the bill is to require the court to consider more often whether to impose a non-harassment order. We heard that some children's organisations—in fact, all of them—think that that should be applied specifically to children as well. Kathryn Sharp, do you want to comment particularly on what you think the implications of that might be for the resources and workload of the social work system? The Glasgow Bar Association has expressed concern that it

might create extra pressure on other personnel if prosecutors are not expected to provide the background information.

Kathryn Sharp: Social Work Scotland's submission makes the point that the bill is silent on the sources of information that the court might take into account, although we were encouraged to see in Anne Marie Hicks's evidence a few weeks ago that she expects that burden to fall on the Crown Office in the first instance.

Also, having reviewed the protocol that is in place currently between the Crown Office and Police Scotland, we are assured that that is already well embedded in guidance and in practice. Although Social Work Scotland is absolutely supportive of providing information in addition to that which is available through the police and the Crown Office, we recognise that it is probably appropriate in most cases that the current practice is followed and that those agencies are the primary source of information, with criminal justice social workers able to provide information through reports when requested by the court. We do not see what is proposed as having a hugely significant impact if practice continues as it is, given how it is framed in the bill at the moment.

Rona Mackay: What is your view on non-harassment orders being extended to children as well as the victims?

Kathryn Sharp: Social Work Scotland is supportive of the view of women's and children's agencies that, if the aggravation recognises the child as a victim of harm, a logical follow-on is that the non-harassment order should be extended to cover children.

We recognise the practice issues that have been raised, particularly where there are conflicting orders in place. There may be a non-harassment order in place for the adult victim of the abuse—generally the mother—and there may be contact orders in place, and there is conflict between those. That can cause huge issues for the women and their children but also for the management of that between criminal justice social work and children and family services.

What is proposed will strengthen the protection of children, and the principle that children should be equally protected is absolutely important. I am very much in agreement with that.

Aaron Slater: As Kathryn Sharp said, we support the consideration of non-harassment orders at sentence and their extension to children. Covering old ground, we see the issues and complications that can arise when the non-abusive parent gets protection but the children do not. Sacro is supportive of the provisions on that.

Fulton MacGregor: I asked the previous panel about the proposed aggravation in relation to a child. Do both of you think that the proposed aggravation is sufficient or, like colleagues in the previous panel, do you think that it should be wider? I also asked the previous panel what role the children's hearings system can have in relation to these offences. Do you think that it will be similar to the role that it can have in the current legislation?

Kathryn Sharp: Social Work Scotland absolutely welcomes the aggravation provision in the bill as an important step to further recognise the experiences of children and young people and the impact that domestic abuse has on them and the serious harm that it can cause them but, like other witnesses, we agree that the provision may not be perfect. We would certainly welcome some clarity about what the bill means about children being "present". Does that mean present in the room or in the household? What does it mean in terms of an unborn child, given all the research that shows the very significant risk that women face during pregnancy and the immediate period after that?

Fulton MacGregor: What do you think it should be?

Kathryn Sharp: We would like it to be as inclusive as possible for all the reasons—I will not go through them again—that were in the evidence this morning. We absolutely recognise that a child does not need to be present in a room in order for them to be significantly impacted by domestic abuse. Just living in a household where there is an on-going pattern of control and abuse can have significant impacts. Witnesses referred this morning to the tension in such a home and the many ways in which children are impacted daily by that experience. We would support a broad and inclusive aggravator, which recognises all the situations in which children find themselves in relation to domestic abuse.

Aaron Slater: It is the overall impact that abuse has not just on children who are present but on children who are members of the family. When children are in the next room and do not witness abuse, it will still have an impact on them. We are supportive of the aggravator but, as the bill was initially drafted, that aggravator was not there. I do not know whether separate, parallel legislation might be required to fully embody the experiences of children and offer further protection. As a first step, broadening the aggravator by acknowledging children in the family would be a positive step.

The Convener: That was covered extensively with the previous panel, so it is good to have your view as well.

Ben Macpherson: I want to pick up on a few points in Sacro's written evidence—thank you for that, Aaron. Like LGBT Youth Scotland, you pick up on the LGBTI community specifically and the various fears, concerns and barriers that face that community when it comes to domestic abuse. You speak about the need for a concerted publicity campaign should the bill become the will of Parliament. Could you expand on the importance of that as you see it?

Aaron Slater: We are very supportive of the bill overall. It is a positive step forward. My main concern is that, for the bill to be effective, implementation is key, and for it to be properly implemented and to protect everyone whom it has the potential to protect, there needs to be a concerted publicity campaign to broaden the public understanding of what domestic abuse is beyond physical violence and men's violence towards women, so that people are aware that it is a pattern of coercive and controlling behaviour that affects people regardless of their sexual orientation or gender identity and which transcends different identities.

As I said at the beginning, the biggest barrier for LGBTI people might be recognising domestic abuse when it is happening. They do not relate to the public narrative. They do not see themselves as being victims of domestic abuse. When someone does not recognise it, they cannot reach out for support and they cannot report it. If they do recognise that what they are experiencing is domestic abuse, they may have anxieties about reporting it to the police and going through a very public court system. I know that Brandi Lee Lough Dennell from LGBT Youth Scotland touched on the fact that, if someone is not out to their friends or family, that will be a massive barrier. They will not report that domestic abuse and they will not be able to get the support that they need.

Publicity around the new offence is very important in order to help people recognise where it is happening. That is not just for public confidence. Linked into publicity is the training aspect for prosecutors, the police and the judiciary when interpreting this legislation. What do psychological harm and the relevant effects look like for people who identify as LGBT? How is coercion used in these relationships? What are the intricacies in these relationships, and how does that manifest? I think that there is a lot of work to be done on the back of this to make it successful.

Ben Macpherson: Thank you for touching on the issue of sharing information and the need for a risk management approach around that. In Sacro's written evidence, there is also a reference to

"The introduction of a standard bail condition prohibiting the accused from personally obtaining precognitions or

statements from a complainer in relation to the new offence is an appropriate safeguarding measure."

Could you elaborate on that?

Aaron Slater: If the accused were able to obtain precognitions or to conduct their own defence, that would further revictimise the victim. It could traumatise them. It is an opportunity for the abuser to exert further control. When they are doing their own defence or obtaining precognitions, they will be very skilled and manipulative and know what buttons to press and how to get under the victim's skin. I think that for the criminal justice system to allow that to happen would be a grave mistake, because I think that the justice system would then be complicit in the abuse of that victim, in a manner of speaking. We would support any move to restrict that from happening.

John Finnie: Morning, panel. I have a question for Kathryn Sharp about the last two sentences of the Social Work Scotland written evidence. It says:

"The intended impact of this Bill when implemented"—

obviously that should be "if implemented"—

"is to hold more perpetrators to account and secure the safety and secure future of victims and families."

Hopefully, many people listening into this meeting will understand the rationale for discussions about rehabilitation, but there is certainly a view that nothing should be done to facilitate perpetrators once again having access to opportunities to inflict their damage on families. Would you agree?

Kathryn Sharp: Absolutely. Along with other agencies, Social Work Scotland is committed to the idea that the bill and the system that sits around it should be focused on the protection of not just current victims but any potential future victims. All that we do in our local partnerships and community planning is focused on that public protection element, as well as prevention in terms of the elements that we spoke of earlier. I absolutely agree with that.

John Finnie: Thank you. I will quote the very last sentence of the submission:

"It will be important to align in a consistent manner the operational impact of the present legislation with the multi-agency work being undertaken to deliver ... 'Equally Safe'".

I am trying to think of the practical implications were the bill to be passed. A lot of our discussion has been around the presumption that it will be the police that initiate everything. The reality is that, of course, children and families social work teams have regular engagement and will be aware of some of this conduct already. Do you envisage that, were the bill to pass, those social workers would be the catalyst for advising the police of this conduct on recognition that it is criminal?

Kathryn Sharp: As I think Lesley Boal suggested in her evidence, our practitioners in the police and social work—whether that is in children and families services or in criminal justice social work—deal on a day-to-day basis with the reality of the behaviour that is reflected in the bill. They already deal with coercive and controlling behaviour as a pattern of abuse. Not all of that behaviour is criminalised currently but, nonetheless, they are working with families and are taking forward appropriate interventions.

Ultimately, behaviour may not be criminal, but it may have an impact on a child or young person that brings it into the concern for wellbeing and GIRFEC, our child protection responsibilities. As you say, we are working with those families and recognising that. We seek to continue—certainly in my local authority, where we are implementing the safe and together model—to partner with the non-abusing parent in order to support them to recognise the perpetrator’s pattern of behaviour and the impact that it has on them and their children. We support them to recognise the many things that women do on a day-to-day basis to protect their children, and to think about how we best work together to protect their children and help them to move on and recover from that experience. We work with victims and their families and intervene in a supportive way. Of course, there will be times when children and family social work will have to take measures to protect children, where that is merited, and using their existing statutory powers to do that.

John Finnie: Of course, something that would, were the bill to be passed, constitute a crime would not necessarily come to light as a result of a joint investigation with police officers. It is perhaps more likely that it would come out from the regular day-to-day engagement with social workers. What would the tipping point be for reporting that to the police? Do you envisage that staff will require additional training, because it is clearly a significant burden on them?

Kathryn Sharp: It is very difficult to say. Each case would be individual, and the circumstances would need to be assessed against the existing legislation and responsibilities for child protection. We have very well-embedded multi-agency systems for doing that, so it would not necessarily be a decision for social work. We are moving much more towards making shared decisions as multi-agency groups in line with the GIRFEC practice model. There is no doubt that there will be training implications for all agencies, as a number of witnesses have said to you, and that will, of course, include social work practitioners.

11:45

There will be a need for some training, but I would reiterate that this is something that our social work colleagues work with day and daily. The reality of domestic abuse is that it impacts on many hundreds and thousands of women and children across Scotland. Many of them are already in contact with our social work services, and our practitioners have built up skills around that. We are looking to build on the strength that is there, but we acknowledge that there is always room for further training, awareness and improvement in practice.

John Finnie: Thank you. Finally, you talk about “multi-agency work being undertaken to deliver the outcomes of ‘Equally Safe’.”

Were the bill to be passed, would it be entirely consistent with equally safe? Could you give a short comment on what equally safe is, just for the purposes of the record?

Kathryn Sharp: Equally safe is Scotland’s national approach to tackling violence against women and girls. I cannot remember when it was originally published—I think that it was in 2014—but it was recently revised to take better account of the impact of various forms of violence against women, children and young people. At the moment, the delivery plan that sits alongside that was consulted on last year, so I think that it is still in draft and will be published at some point this year. It contains a wide range of actions and a very clear shift towards a preventative focus, but there are priorities in it that very much relate to holding perpetrators accountable for their behaviour and ensuring that women, children and young people are protected by justice responses as well. It is very much in line with the provisions of the bill as they are drafted.

Mairi Evans: I have a question that relates to the other proposed reforms to criminal procedure, evidence and sentencing, some of which we have touched on today. Do you have any other issues that you would like to highlight in relation to those reforms, or are you broadly in agreement with some of the other proposed procedures?

Kathryn Sharp: Social Work Scotland is supportive of the changes, particularly those that prevent the possibility of perpetrators further using the justice system to victimise their partner or ex-partner. As Aaron Slater said, those are important loopholes to close, and we have recognised that in other contexts of violence against women, particularly around sexual offences legislation. It is absolutely appropriate that that be extended to victims of domestic abuse.

Aaron Slater: As I said before, the reforms to the procedures are welcome. They close the

loopholes, give better protection to victims and prevent retraumatisation. I have nothing to add.

The Convener: That concludes our line of questioning. Thank you both very much for attending and giving evidence to the committee today.

11:47

Meeting suspended.

11:49

On resuming—

Justice Sub-Committee on Policing (Report Back)

The Convener: Item 2 is feedback from the Justice Sub-Committee on Policing on its meeting of 15 June 2017. Following the verbal report, there will be an opportunity for brief comments or questions.

I refer members to paper 3, which is a note by the clerk. As Mary Fee is not present today, I will provide the following feedback. The Justice Sub-Committee on Policing met on 15 June, when it took evidence on the deployment of police body-worn video cameras. The sub-committee heard that the evaluations of the use of body-worn video cameras by other police forces and in the north-east division of Police Scotland had highlighted a number of benefits and some potential drawbacks.

Police Scotland is now looking at the possibility of a national roll-out of body-worn video cameras across the police service. Before that is done, improvements will need to be made to Police Scotland's information and communications technology infrastructure and potentially to the ICT of those in the wider criminal justice system. Initial and maintenance costs will need to be quantified.

The sub-committee will next meet on 22 June, when it will hear from Her Majesty's chief inspector of constabulary in Scotland, Derek Penman, on his report on openness and transparency at the Scottish Police Authority. Do members have any questions?

Liam McArthur: This is not a question, convener, but an additional comment. I thought that it was a very useful session. The findings coming out of the pilot in the north-east were encouraging across a range of different indicators, but we also heard from Police Scotland a recognition that, until it has an information technology infrastructure that will support going down this route, and until it has a better handle on the likely up-front capital costs and on-going revenue costs, it is taking a sensibly cautious approach to a national roll-out. That is something that we will return to. Nevertheless, some of the findings on the impact on officers' safety and early pleas in cases in a range of different areas were very encouraging.

The Convener: I certainly found it useful to see the cameras in order to have an idea of what we were talking about and to hear the evidence of how they had been deployed and the reports back on that. It was therefore a very worthwhile session.

If there are no questions or comments, that concludes our 23rd meeting of 2017. Our next meeting will be on Tuesday 27 June, when we will take evidence from the Cabinet Secretary for Justice on the Domestic Abuse (Scotland) Bill.

Meeting closed at 11:51.

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