OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 21 March 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 21 March 2019

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EQUALITIES AND HUMAN RIGHTS COMMITTEE
8th Meeting 2019, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Oliver Mundell (Dumfriesshire) (Con)
*Gail Ross (Caithness, Sutherland and Ross) (SNP)
*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Finnie (Highlands and Islands) (Green)
Neil Hunter (Scottish Children's Reporter Administration)
Andy Jeffries (Social Work Scotland)
Professor Robert Larzelere (Oklahoma State University)
Gordon Lindhurst (Lothian) (Con)
John McKenzie (Police Scotland)
Mhairi McMillan (Law Society of Scotland)
Jean Miller (Educational Institute of Scotland)
Dr Lucy Reynolds (Royal College of Paediatrics and Child Health)
Matthew Sweeney (Convention of Scottish Local Authorities)
Jillian van Turnhout

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (Committee Room 2)
The Robert Burns Room (Committee Room 1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 21 March 2019

[The Convener opened the meeting at 09:00]

Children (Equal Protection from Assault) (Scotland) Bill: Stage 1

The Convener (Ruth Maguire): Welcome to the committee's eighth meeting in 2019. I ask everyone to ensure that mobile devices are switched to silent. I welcome Gordon Lindhurst MSP and John Finnie MSP, who have joined us this morning.

Agenda item 1 is our fourth evidence session on the Children (Equal Protection from Assault) (Scotland) Bill. I welcome our first panel: Dr Lucy Reynolds, consultant paediatrician, Royal College of Paediatrics and Child Health; Jillian van Turnhout, a former Irish senator; Matthew Sweeney, policy officer, children and young people, Convention of Scottish Local Authorities; and Andy Jeffries, senior manager, children and families, City of Edinburgh Council, who is representing Social Work Scotland.

I will open by asking whether you support the bill's aims to bring an end to the physical punishment of children.

Dr Lucy Reynolds (Royal College of Paediatrics and Child Health): Absolutely, yes.

Jillian van Turnhout: Absolutely. I believe in children growing up in a world that is free from violence. That is why I brought the change about in Ireland.

Andy Jeffries (Social Work Scotland): Absolutely. Experience in other countries that have implemented this approach is a reduction in violence to children. The bill is entirely consistent with the children's rights approach of this Parliament.

Matthew Sweeney (Convention of Scottish Local Authorities): Absolutely. COSLA members are committed to the principles behind the bill. It fits within our wider work as co-signatories to the national performance framework's national outcomes that young people

"grow up loved, safe and respected"

and realise their

"full potential",

and it aligns with the principles behind getting it right for every child.

The Convener: Thank you. Why do you think that public opinion is so mixed on this topic?

Dr Reynolds: When I discuss this with other people, some of them say, "It never did me any harm," or, "This is what my parents did and therefore it is what I should do." Why would a parent keep abreast of all the evidence that continually comes in? The Royal College of Paediatrics and Child Health did not come out with our position statement on corporal punishment until 2009—10 years ago—and we have not made a big effort on an information campaign to advise parents. That is partly because we were rather stymied by the fact that the law gives an opposite view to what we would put across as the public health message. How can we tell parents and caregivers that there is no good, reasonable, justifiable reason to hit a child and there are plenty of good, justifiable, reasonable reasons not to—and get that public health message across effectively—when we have a law that says that it is justifiable?

Jillian van Turnhout: That question was also asked in Ireland. The issue brings to the fore how I feel that I was raised. My mother was in the Parliament when I brought through the change in law, because I was raised being told, "You're not too old for the wooden spoon." My changing the law was not a judgment in any way on how my parents raised me. Luckily, I was not hit—just to put that on the record—but I was always threatened with it.

The issue is about how parenting takes place today. As legislators, we need to ensure that we bring that to the fore. On the question about always looking to public opinion, when we changed the law in Ireland, we realised that law was catching up with how parents are parenting their children today.

Andy Jeffries: There are a couple of related fears: one is about disproportionate interference in family life and the other is about misusing resources. In other words, some people are worried that parents and children will be brought into a child protection system and brought into prosecutions, when that does not need to happen.

In my operational job in Edinburgh, every week, I quality assure every child protection concern that comes through the multiagency process with senior colleagues in Police Scotland and the national health service. We always look to satisfy ourselves that we are dealing with the right things and have taken a proportionate response.

We already have quite a low threshold for dealing with assault against children as a child protection concern. It is correct to have that, but

we try to take a GIRFEC approach with those families, so we are not bringing them to child protection case conferences or prosecuting parents in situations in which a relationship is struggling, there is a lack of capacity or there is a set of stresses within the family that has led to someone losing control. We need to get alongside those families and do the right thing with them rather than overintervening with them. People will not have social workers at their door who do not need to be there, because we are too busy for that.

Mary Fee (West Scotland) (Lab): I have a specific question for Jillian van Turnhout. You spoke about what happened in Ireland and the fact that you were instrumental in bringing about that change. You said that the change involved the law catching up with public opinion. Could you give us a bit more background about how you came to that decision, what the public view was, the level of dissenting voices against the legislative change and what happened afterwards?

Jillian van Turnhout: In Ireland, we had a solid evidence base in relation to how we had failed vulnerable children. With regard to the seeds of the change in the law, I would look at the Kilkenny incest inquiry in 1996. The state has commissioned 19 reports on how we failed children. The report of the Ryan commission in 2009 was quite fundamental, because it examined institutional abuse between 1936 and 2000. We had a difficult past to face up to—that was the backdrop. In totality, those reports lifted a veil. We could see what had happened to children and what had happened in families. It was a terrain that was closely guarded.

As a start, we had a referendum in November 2012 to uphold children's rights in the constitution, because the constitution contained an imbalance, in that there was a higher threshold for intervention in situations involving children with married parents than there was for situations involving children whose parents were not married. We had to ensure that we put into our constitution a clear articulation that all children are equal before the law. The referendum result was challenged in our Supreme Court—I am trying to give you a brief synopsis, so bear with me. The challenge took two years to go through the courts, but it was not upheld. In May 2015, it was ruled that our children's rights would be upheld in our constitution. The resistance built up more in relation to the referendum, and the repeal of the law in relation to the common-law defence of reasonable chastisement was an outcome of the referendum and all the history that we had to redress. Irish people wanted to ensure that we did not have laws that in any way permitted us to be violent towards children.

The Convener: We have been joined by Jean Miller, a headteacher who is here to represent the Educational Institute of Scotland. I will give her an opportunity to answer the first couple of questions that we asked of the other witnesses.

Do you support the aims of the bill, which involve stopping the physical punishment of children?

Jean Miller (Educational Institute of Scotland): I fully support the aims of the bill.

The Convener: Do you have any reflections on why public opinion is so mixed on the matter?

Jean Miller: Sometimes, change takes time. We are often brought up thinking that certain things are right and appropriate, and, as we have seen in our schools over many years, bringing about substantial cultural change can take time. However, with many things in life, the more that evidence is presented to people, the more that people get on board. Part of my role as a headteacher in a secondary school is about working with parents and carers to ensure that they fully understand what we see as being positive interactions with young people. Building positive relationships is at the heart of everything that we do in schools. If we do not just pass legislation but work with people to convince them of its merits, that will go a long way towards changing many of the cultural norms that exist.

Mary Fee: Jillian van Turnhout, is there anything else that you would like to expand on?

Jillian van Turnhout: I believe that Lucy Reynolds wants to jump in, if it is okay with the convener.

Dr Reynolds: You have probably all read "Equally Protected? A review of the evidence on the physical punishment of children". You may remember that it contained a big population study that was done in Sweden, France, Austria, Germany and Spain, in which a population of adults was asked whether they considered that hitting a child on the face was a violent act. In Sweden, where for many years the law had been that one should not hit children, and where that was well known by the public, 85 per cent of respondents considered hitting a child on the face to be a violent act. In Austria, Germany and Spain, which were in the process of conducting public health information campaigns and/or had legislated—they were part of the way through the process of change—50 to 60 per cent of adults felt that way. In France, where there had been no public health campaign, no move towards legislating and no discussion, only 30 per cent of adults thought that hitting a child on the face was a violent act. Although attitudes have changed without legislation or public information

campaigns, both are effective in changing them further.

Mary Fee: I want to come back to Jillian van Turnhout. I am interested in public perception before you introduced the legislation. You said that you were catching up with public opinion. Was there resistance to the legislation as it progressed through the Irish Parliament?

Jillian van Turnhout: There was some resistance, but no organised groups or civil society organisations spoke against it. Individuals spoke against the change in legislation. We did not have the same process of pre-legislative scrutiny that you are conducting here. In fact, the day that I walked into the chamber, I did not know whether I had a single colleague with me on the change of law. However, I went in knowing that even if I was the only person to say that it is not okay to hit a child, children in Ireland would know that somebody believed that it is not okay for them to be hit. Obviously, I wanted to change the law. Much to my surprise, by not calling for a vote on the bill that I introduced at any stage, every single member of the Irish Parliament chose to support it.

For me, it was a powerful collective moment. As many of my colleagues said, it was powerful that we made the change in law on the eve of 2016, because it marked 100 years since our proclamation of the Republic, in which we said that we would cherish all the children equally. That resonated for us in Ireland. Even our Prime Minister, Taoiseach Enda Kenny, chose to speak in the chamber in favour of the change in law, so we had cross-party support.

I am not saying that it was easy. To be very clear, I was pulled aside by my colleagues, some civil society organisations and members of the public—whether they totally agreed or did not agree—who said, "The time is not right. We need to do X, Y and Z in order to be ready for the change in law, so let's not do it yet. Now is not the time."

It was fascinating to me—it really was a light-bulb moment—that the second that we changed our law, the same colleagues looked me in the eye and said, without any irony, "Why didn't we do this years ago? It makes so much sense." I can still picture them standing there saying that. As we have seen, when as legislators we are willing to step forward to change such laws—whether on smoking in public places or seat belts—and ensure that our laws protect all our citizens, the effect is amazing. The public respond positively.

Mary Fee: Did the public respond positively?

Jillian van Turnhout: Absolutely. If you talk to the public now, they believe that the change in law happened a long time ago. In advance of coming to the committee this week, I contacted different civil society organisations and state agencies, and they are all still positive about the clarity that was brought by the change in law.

It has helped social workers with their relationships with parents. Social workers tell me that previously when they met parents and the moral discussion started about whether a parent can or cannot hit their child, they had to say, "Well, I don't think it's a good idea," but they could not be authoritative about that, whereas now they can say, "You're not allowed to hit your children, so let's talk about what you can do. Let's talk about positive parenting." The change in the law changed the dynamic of the relationship.

Mary Fee: That is helpful.

09:15

Alex Cole-Hamilton (Edinburgh Western) (LD): I thank the panel members for coming today. Following Mary Fee's questions, I have a couple of questions for Jillian van Turnhout and a couple more that I hope that all the panel members will answer.

Jillian, we have heard a lot of evidence about the potential negative outcomes of removing physical punishment from the home, one of which is to do with the protection element, whereby parents think that they should retain the right to physically chastise their children for their own good, for example if a child is about to pull a pan of boiling water over their head or run out into traffic. Have you seen a massive increase in injuries by boiling water or people running into traffic since you banned smacking?

Jillian van Turnhout: No, we have not. Equally, we have not seen a dramatic increase in prosecution of parents. Let me absolutely clear on that.

The running-out-into-traffic argument was used in Ireland. Someone on the radio helpfully gave the example of her grandmother, who has Alzheimer's. She said that she would not think to hit her grandmother if she ran out into traffic, so why would we choose to hit someone of similar cognitive ability but who was smaller? As I debated the law in Ireland, I started to think about what I would think if I had just landed in Ireland and was trying to understand the law. Our law was saying, basically, "You can hit someone as long as they are smaller than you and more vulnerable than you."

We are the rational adults; we are supposed to act rationally, and we have to think about the lessons that we are teaching to children. When people give examples of hitting children, they portray it as happening in a very calm moment, when someone chooses to discipline their child in

that way. It does not happen in a calm moment; it happens when we are being irrational. We have this invisible line in our heads, and we say, "I know the difference between a smack and a whack." We do not know the difference.

If Lucy Reynolds or Andy Jeffries says something in a meeting that annoys me, I do not immediately think, "I'll give them a bit of a whack, because I don't agree with them." That is not acceptable. It is not on. Why is it acceptable when it is a child? What are we telling the child? We are saying, "This is how you solve a problem. Don't discuss it. Don't learn to calm down. Don't learn to de-escalate." I have thumped the ground myself when I have been annoyed, because I have had to learn those lessons in life. It is about helping children acquire the critical life skills of how we problem solve and deal with issues.

We know that when a child is hit, they immediately forget everything that happened beforehand, because the person whom they love and cherish has hit them. There is no connection to what the child did.

Alex Cole-Hamilton: This afternoon, we will hear from an American academic who is very much opposed to the bill, Professor Larzelere. He points to a correlation in Sweden between negative social outcomes and the removal of the parent's right to chastise. Indeed, he points to a rather extreme statistic of a 73-fold increase in the number of juvenile rapes in Sweden since 1979, when the ban came in. He said in his submission:

"Although increased willingness to report rapes may have accounted for part of these increases, some of this 73-fold increase is likely because a small, but increasing number of boys never learn to accept 'No' from their mothers".

Have you seen anything like that in Ireland? Is there any correlation between the removal of physical punishment and an increase in juvenile violence?

Jillian van Turnhout: No. There is absolutely no evidence of that. As part of my work, I have worked with the Council of the Baltic Sea States, which includes Sweden and has done considerable work on violence against children. I have heard those—I will say—spurious arguments being put forward, and there is no evidence for them. I have met people in Sweden, including police, social workers and practitioners on the ground, and there is no evidence for those arguments.

Alex Cole-Hamilton: Do the other panel members want to comment on the questions I asked Jillian van Turnhout?

Dr Reynolds: As well as being a paediatrician in Glasgow and representing the 1,000 paediatricians who are members of the Royal College of Paediatrics and Child Health in Scotland, I am a member of the International Society for Social Pediatrics and Child Health, which started off in Sweden but is now an international organisation. We have a big email discussion group and whenever I have posted things in relation to equal protection for children, no paediatrician in any of the countries that have fully protected their children under the law has ever expressed any regrets.

Staffan Janson, a paediatrician from Sweden, has spoken at the Scottish Parliament, I think. A few years ago, we had a meeting of the International Society for Social Pediatrics and Child Health in St Andrews and it was listening to Staffan that started me thinking that, as a paediatrician, I had a duty to do more and needed to look into the evidence. I hear from paediatricians in New Zealand, Sweden, Iceland, Spain, Germany and Austria, and all of them have absolutely no regret about changing the law. They are looking to us to be next. When I post messages, there is a paediatrician in Japan who asks what we are doing. The countries that have not yet changed, including down south, Wales and so on, are all looking to us in Scotland to protect children equally in the hope that they can follow on.

Andy Jeffries: I want to make a point about the difference between hitting and restraint, which relates to Alex Cole-Hamilton's first question. The first example that he gave was of a child pulling over a pan of boiling water. You do not keep children safe by hitting them; you manage the environment in a way that keeps them safe. Therefore, you do not leave that pan of boiling water but are with it, in front of the child, and it is at a height that the child cannot reach—that kind of thing. You do not stop a child running into traffic by slapping them, but put yourself between the child and the traffic or put an arm out. That is an important distinction. Restraint is sometimes necessary for the safety of the child or somebody else—if children are punching each other you would put yourself between them—but that is not the same as hitting a child, which is the bit that we are saying is inconsistent with children's rights.

Dr Reynolds: I was picking up on the latter point. However, on that earlier point, as a developmental paediatrician I should say something about the way that children learn. From birth, children learn by mimicry. YouTube is brilliant. If you look on it, you can see little clips of newborn babies. They cannot focus very well, so you have to do exaggerated facial expressions, but if you get the attention of a newborn at the right distance and start doing exaggerated facial expressions such as sticking out your tongue, they will do it. It is magic! Well, it is not magic; it is science, but they do it.

Also, you should do a search on YouTube for Bandura's Bobo doll experiment. Alfred Bandura was a child psychologist. The experiment involves two groups of children and a room full of a variety of toys. Before they go into the room, one set of children is shown some film of an adult picking up a toy mallet and whacking nine bells out of a kind of clown doll. The children who have not seen the video do not whack the clown when they go into the room, but look at all the different toys and play with them. However, the ones who have seen the video are much more likely to go in, pick up a mallet and whack the doll. What you can see on YouTube is actually very distressing; lovely little girls hit that thing because they have seen it done.

Children learn by mimicry, and if you hit children you are teaching them to expect either to dominate or to be dominated through physical violence. I do not want our children to be taught that. Also, since my specialty is developmental paediatrics and disability, I point out that when people realised that adults with learning disabilities were being hit at Winterbourne View, there was universal public outcry. If the people with learning difficulties had been 15, would it have been okay to hit them? Would it have been okay if they were 12, nine, five or three? At what age do you think I can tell that a child has a learning disability, autism or whatever problem it might be? It is not usually when they are three, yet when we look at cohort studies such as "Growing up in Scotland" and the millennium cohort study, we see that the peak age for hitting is three.

Is it a tap, a thump, a hit, a whack or a smack? Also, what is the developmental potential of the person you are hitting? Hitting is an inappropriate way of trying to manage a child's behaviour, and it does not work to improve it. It can lead to longstanding difficulties with aggressive and antisocial behaviours or to problems with self-esteem and depression. There are no good arguments for doing it. It is like saying, "My child shouldn't wear a seat belt." There is every reason to protect them.

Mary Fee: I am grateful for the information that you have given us, Dr Reynolds, because my next question is about whether the impact of hitting a child is long term or short term. What is the difference in their behaviour? You have spoken about that to some degree. Do you want to add anything about the long-term physical and mental impacts of hitting a child? The rest of the panel may want to comment as well.

Dr Reynolds: It is important to realise that the studies, such as the systematic review, were not about hitting at the level at which it causes obvious injury but about day-to-day hitting—what you might describe as smacking.

I know that you have heard from academics already, so I am a bit hesitant about going into research evidence. However, the "Growing up in Scotland" study asked the parents or main caregivers of two-year-olds—it excluded two-year-olds who already had any kind of behavioural difficulties—whether they sometimes smacked or hit their children. The study followed that cohort, and, when they reached the age of four, it compared the two sets of four-year-olds. The strengths and difficulties questionnaire found that, at the age of four, the ones who had sometimes been smacked were more than twice as likely to have some sort of behavioural difficulties.

In studies that look at children who already have behavioural problems, the interventions are more likely to be successful in reducing aggressive behaviours when there is a lower level of physical punishment at the baseline and the interventions reduce that level of physical punishment.

It would be expensive to follow people to the age of 25, 30, 40 or whatever, so I will move to anecdotes. I do not remember individual instances of being smacked—they were very rare—but I remember feeling a deep sense of injustice when it happened. That is all I remember. Speaking to friends who were—

The Convener: Dr Reynolds—

Dr Reynolds: Sorry, am I going off topic?

The Convener: No, no—not at all. I might just bring in some of the other panel members to give some reflections as well.

Dr Reynolds: Okay. I will go back to practice. Parents say things to me such as, "My mother said that, if a child bites, you should bite him back, so he knows what it feels like." That shows a deep misunderstanding of what a child would learn from that, but that is the kind of thing that I hear every day.

The Convener: Do any other panel members have reflections to add?

Jean Miller: I work in an environment in which we are, rightly, not allowed to hit children. However, when I was at secondary school, there was the belt—there was corporal punishment. There was a level of fear in schools at that time, which led to quite a lot of disengagement on the part of some young people. We now know much more about the best ways for children and young people to learn. Good relationships, kindness, caring and so on are at the heart of good learning. You will not have that if you in any way promote an education system in which you allow violence.

There was a question about restraint and violence. I was in a home economics classroom yesterday, with 20 teenagers making cakes. There were cookers on and knives lying around, and so

on, but we teach them how to be in a safe environment. We talk to those children and young people who find it difficult to self-regulate about the implications of any kind of poor behaviour in that environment and the importance of health and safety.

It goes back to the mantra that if we build good relationships and teach children and young people what is right and wrong and how to behave, we move away from an environment that has anything at all to do with violence.

The Convener: We have only until about five past 10, so we will move on.

Dr Reynolds: Sorry.

The Convener: Do not apologise—it is an important and interesting topic.

09:30

Annie Wells (Glasgow) (Con): As we have heard, there is a lot of public interest in the bill, and many individuals have raised concerns about it. Do you think that the bill will criminalise parents and lead to an increase in the number of prosecutions? If so, are you aware of any evidence of that?

Andy Jeffries: As I said, my experience of dealing with child protection in Edinburgh is that, where harm has occurred, we try to get alongside families rather than criminalise them and overproceduralise things. In my experience, it is very rare for a case in which a parent has assaulted a child to proceed to prosecution unless there is evidence of real intent to harm or something that we are very worried about. With most parents who hit children, there has been a loss of control, a poor relationship and stress, and I am clear that we need to help them with those things rather than criminalise them.

Jillian van Turnhout: I can speak about the Irish experience. The reason why I chose the legislation that I chose was that there were no sanctions in it. To me, parents have the toughest job in the world, but they also have the most rewarding job in the world. As a society, we need to help parents. Going back to the previous question, we know from research that hitting children either has no effect or has a negative effect. I felt that, as a legislator, I had a responsibility to support parents in their important role and to ensure that our laws reflect what works.

In relation to criminalising, in advance of the meeting, I once again contacted our Child and Family Agency, which is our body for social workers and engagement with parents and families. For reasons to do with our historical past, the agency is relatively new—it started on 1 January 2014. It has seen a slight increase in the criminalising of parents, but it believes that that is not to do with the change in the law and is more about the fact that there is a new agency that is dedicated to supporting children and families.

The Office of the Director of Public Prosecutions does not keep statistics of that nature, but it has checked and has found no evidence of any increase in the number of prosecutions. Equally, An Garda Síochána, which is our police service, has no evidence of any increase in the criminalising of parents. When I contacted those bodies, each of them used the word “clarity”—they said that the law had brought clarity and helped them in their work.

Dr Reynolds: I will try to be brief.

For paediatricians, the bill will not change the threshold at which child protection procedures are implemented. It is very much a public health measure. Sometimes, changing the law is the most effective way of effecting public health change. I always use the analogy of the smoking ban. As someone who goes to lots of gigs where you are listening to music in the middle of a crowd, my experience is that, before the ban, it was horrible to always go home with smoky hair and clothes. Now that the ban is in place, people sometimes light up in the middle of a crowd but I do not dial 999 or try to get out of the crowd to call a policeman; I just say, “Sorry, but could you stop doing that?” I know that the force of public opinion among those around me will be with me and that the person will stop. Since the ban came in, I have never had a problem with asking someone to stop smoking.

Annie Wells: There is also concern that the bill will interfere in private family life. Is that concern justified?

Dr Reynolds: Is saying that people should put a seat belt on their child when they put them in the car interfering with family life? In the past, people might have been able to smack their servant or their wife. Why is it okay to interfere in family life to protect women and adults but not to protect children?

Andy Jeffries: I agree. Children and adults need equal protection. We do not intervene disproportionately. We try to make the best use of resources by doing what is needed and no more than that, at the earliest possible stage.

No agency is in the business of wanting to interfere. As I said, we are too busy doing things where there is a need for us to intervene. I am not worried about that. This is a simple case of children having equal rights. That is not an interference in family life; it is about ensuring that everyone has the same protection.

Jean Miller: In education, we promote UNICEF's rights-respecting schools initiative—I am wearing my UNICEF badge with pride today. We also promote UNICEF's position on the right of children and young people to have their voices heard. You cannot say that that stops at the school gate; it has to go beyond that. Children should feel safe in all environments.

Jillian van Turnhout: It is not about interfering in family life; it is about ensuring that children can live in a world that is free from violence. That includes their own home, which should be the safest place. Any exposure to violence, whether it is domestic violence or hitting a child, tells children that some level of violence is acceptable.

As a corollary to the previous question—I want to ensure that I answer your question with integrity—since the law changed, there has been one prosecution. In that case, a member of the public reported witnessing a child being quite severely hit in a car park, and it turned out that the child was being significantly abused. That member of the public cited the change in law as having given them the courage to say that what they saw was not okay.

The issue is not about us, as a society, ensuring that things are right. If I see a parent having a difficult moment with their child in a supermarket because of where the sweets are displayed, I do not immediately jump in to criticise the parent; I think of ways in which I can calm the situation. I will usually be heard muttering, "It's disgraceful, the way they put the sweets out there at a child's eye level."

The change in the law in Ireland was about us, as a society, taking responsibility and supporting parents in their role. We know that hitting does not work, so let us talk about what actually works and support parents in the important role that they play.

Annie Wells: Would it be different if there were sanctions?

Jillian van Turnhout: There are tried and tested laws of assault and child abuse. The change in the law was to do with the fact that it is quite archaic that, in relation to a child, a threshold must be passed before those laws can apply. It clearly involves removing the defence that came from our shared common law; it is not about putting in place any other burdens, because those already exist.

Gail Ross (Caithness, Sutherland and Ross) (SNP): We have heard a concern that if there was an increase in the number of prosecutions, there would be an increase in pressure on public services. Jillian van Turnhout said that there has been no such increase in Ireland—she mentioned that there has been only one prosecution. For the record, do you think that there will be any increase in the burden on public services should the bill be passed?

Matthew Sweeney: COSLA's view is that there is probably a bit more work to be done to understand what the impact on local government will be. Currently, the financial memorandum suggests that everything can be dealt with within the current costs, but I think there is more to be done through the Scottish Government and local government working together to bottom out what the costs will be. I do not think that the costs will be prohibitively high, but we need a deeper understanding of what they will look like.

Gail Ross: I am going to ask about the financial memorandum. John Finnie, the bill's proposer, calculates that the cost of the policy will be around £300,000. However, the Scottish Government has countered that with the figure of £20,000. That is quite a big disparity. What further scrutiny needs to be done to satisfy local authorities that we are providing the funds that we will need to see the policy through?

Matthew Sweeney: There needs to be more thought about what the additional costs are likely to be. Obviously, there might be some additional costs in relation to children and family social work. Andy Jeffries can talk about what that might look like in practice. Some things that might need to be considered further are what promotion would look like and whether we would want that to be done at a local level. Local authorities have effective ins with communities and, if we want to promote the change in the law at a local level, additional resources for councils might help with that. There also needs to be some thought about what type of support we would like to provide for families, such as support with alternative parenting strategies, and about how we can support local authorities to enable them to do that.

The Convener: I will press you a little bit on that. We heard from Andy Jeffries there that there will not be a substantial change, because social workers will still be working alongside families. The bill intends to provide clarity. What additional costs do you think there will be to children and family services in local authorities?

Matthew Sweeney: What I said is based on the international evidence, which has broadly shown that there has been a slight increase in reporting but not in the number of prosecutions.

Dr Reynolds: Paediatricians feel that it is important to make an initial investment in a public information campaign. The timing is very good in that there has been recent investment in health visiting services, so people will be there to support families who are asking about the legislation and

about appropriate methods of supporting a child and managing their behaviours.

You will know that the Royal College of Psychiatrists in Scotland was entirely supportive of the bill at the consultation stage because, when children have significant emotional or behavioural difficulties, psychiatrists are the people who see those children in the longer term. So, in the longer term, we would expect some savings.

Andy Jeffries: I made a point about much of this being core business, but I should point out the distinction between my two roles. On the one hand, I am representing Social Work Scotland, but I have also talked about my work in City of Edinburgh Council, and I will not be popular with anybody in either place if I do not make that distinction.

Social Work Scotland's position is similar to COSLA's position in that we are saying that a more detailed financial impact assessment is in order. It is not necessarily just about more social workers knocking on doors. Getting this right needs a number of things to be in place, including a communications campaign and parenting support. There might need to be consideration of communities that are harder to reach, and the message will be more difficult to get across in some parts of the community than in others. We might also want to engage with community groups and faith groups. That kind of work needs to be done to help the proposed legislation to be effective right across the country. It is not just me saying, "I need another social worker for these six extra cases." The work will be broader than that, which is why we are saying that the financial impact needs to be assessed in a wee bit more detail.

That is just a note of caution, given diminishing resources across the board.

The Convener: I presume that you are already working with those communities, so it is not brand new work.

Andy Jeffries: No.

Jillian van Turnhout: When the law changed in Ireland, our agencies saw that social workers were seeking more information and guidance from within the agency. As I have said, we have a different process in Ireland, and our allocated budget was zero, so we did not have any awareness raising or campaigning in relation to the change in the law. I would love there to be a massive campaign to ensure that we get the message to all children and parents, but, as a legislator, I feel that not having that campaign should not prevent our changing the law.

Gail Ross: If you did not have a public awareness-raising campaign in Ireland, how did you convey to people that the law had changed?

Jillian van Turnhout: We conveyed it through the organisations that engage and interact with children—public health nurses, paediatricians, social workers, people who engage with children every day in early learning centres, schools, the media and so on.

It was fascinating to see how quickly the cultural change happened. People automatically made assumptions. In fact, only this morning, when I was discussing with a member of the public that I was coming here, they said, "But that law changed two years ago in Scotland." It is interesting that, when you start having these debates, the public automatically starts to think that things have changed.

Gail Ross: Looking back, is there anything that you would have done differently?

Jillian van Turnhout: Would I have done anything differently? I suppose that, if I had realised that so many countries in the world had not changed their laws, I might have felt a bit more anxious about changing the law. To be honest, I would not have done anything differently, because, even if I was going to be the only member of Parliament who advocated a change in the law, I wanted children to know that I stood for them and that I believed that they could be in a home that was free from violence.

I would still do exactly the same. It was really heartening that so many of my colleagues across the parties realised that the time was right for us to change the law.

09:45

Gail Ross: I want to pick up on something that Matthew Sweeney said in response to a question from the convener. He stated that there had been an increase in reporting, but not in prosecutions. Was that evidence from Ireland or elsewhere?

Matthew Sweeney: When the COSLA children and young people team was considering the matter, we heard research that was presented by Scottish Directors of Public Health and Social Work Scotland. I think that that was from international evidence from across Europe and the world. That is where that came from.

Gail Ross: Okay. I just wanted to get that on the record.

We have received representations that have said that we should possibly be doing a public awareness-raising and education campaign to try to not teach but advise parents about alternative positive parenting techniques instead of using

smacking, which is sometimes used as a last resort. Would an awareness-raising and education campaign be enough on its own? Why do we need the legislation to back that up?

Dr Reynolds: How can there be an awareness-raising campaign that says the opposite of what the law says? The law is an absolute barrier to our doing what we know we have to do.

Jillian van Turnhout: It would send a muddled message. Social workers and public health nurses have said to me that, before the change in the law in Ireland, they would say that hitting was not really good and that it should not be done; they would talk about all the research and evidence, and about what should be done instead. That is what was discussed, as opposed to them being really clear and saying that people are not allowed to hit children, in the same way that I am not allowed to hit Lucy Reynolds, and being clear about what people can do now.

Andy Jeffries: I agree. Absolute clarity in legislation is helpful, and the bill heads things in the right direction. There is an intersection with other proposals on wilful ill treatment and neglect, such as the revision of section 12 of the Children and Young Persons (Scotland) Act 1937. There are grey areas in the legislation that are not helpful when we are trying to get it right with parents and change behaviour. Clarity would help that.

Jean Miller: We support that, as well. Sometimes we can have quite difficult conversations with parents and carers, particularly when young people are having difficulties self-regulating their behaviour. In those discussions, often someone will comment, "I know you can't do that here, but that's what we do." Some parents can find it difficult to see that the relationship that they are developing is not helping the situation when children go to school and move on in their lives. Clarity would help us quite significantly in those discussions.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, panel. Most of the issues that I was going to ask about have been covered, but I have three specific questions for you. It has been a fantastic session this morning.

Andy Jeffries helpfully mentioned the child protection processes, which other members, panellists and I have brought up in previous evidence sessions. He covered the main points that I wanted to raise. If the bill were to be passed, how would the current child protection processes change? That is a hypothetical situation.

Andy Jeffries: They would not change at all. It would be the same business. The national guidance says that a multiagency approach should be taken if there is a child protection concern. That means that social work, the police and the NHS would come together for a conversation in which they would try to establish an agreed multiagency assessment of risk and the immediate arrangements for the safety of the child before getting a plan for moving forward. The approach would be the same with any such concerns. There is a principle of minimal intervention.

Members might know that the national guidance is being revised this year. My view is that the multiagency process could be made even clearer in national guidance. That will be looked at anyway. Essentially, it is about a conversation that the child is at the heart of and in which people think about the child's immediate safety and how they will help together. The approach would be exactly the same before and after the passing of the bill.

Fulton MacGregor: For the record, and for people who may be watching our meeting and feeling worried, is it the case that you do not envisage a dramatic increase in the number of children being put through child protection procedures or placed on the child protection register as a result of the legislation?

Andy Jeffries: It is very hard to give a definitive answer to that. Child protection concerns vary a lot. As I said, I sign off all the child protection concerns in Edinburgh at a weekly multiagency meeting. The highest number of cases that we have looked at in this calendar year is 66, and the lowest is 22. The number varies a lot over time, and we just respond to the things that need to be responded to.

To echo a point that I made earlier, if we get the GIRFEC approach right, fewer children will come through the child protection route. In Edinburgh, we have fewer children on the child protection register than ever before, and the lowest number of looked-after children in 10 years. Something about getting GIRFEC right with those families is working. The main factor in child protection is that three agencies are agreed and satisfied that a particular child is safe, and that we are doing the right things together.

Dr Reynolds: From the evidence, one might expect a reduction in some child protection cases, because, as Jillian van Turnhout said, if hitting a child is part of somebody's repertoire of ordinary discipline, at a time of stress they might hit harder than they really intended to and injure a child to the extent that child protection measures might kick in. However, if hitting a child is just not part of somebody's repertoire, it is not the first thing that they think of doing, even when they are stressed. Some of the papers in that systematic review of research suggested that there would be a reduction in cases of hitting hard, because people would not be hitting at all.

Fulton MacGregor: Child protection is one side of the issue that people worry about. The worries on the other side concern criminalisation, which has been well covered by the panel. Is Dr Reynolds, Andy Jeffries or anybody else on the panel aware of the defence of reasonable chastisement being used?

Andy Jeffries: I do not tend to deal with cases by the time that they are out of the child protection process, so I am no expert on outcomes in court and what happens there. That takes place after the child protection process has done its job.

Fulton MacGregor: What happens in Ireland? Did you come across that defence as you took the law through the legislative process?

Jillian van Turnhout: I talked to people about what happened in private in camera court hearings. We rarely saw the defence being used, but it had been used in a number of cases. Nobody has noticed any increases or significant trends. As Andy Jeffries has clearly said, there are always parameters in relation to child protection but we have not seen any differential.

Dr Reynolds: As paediatricians, we would not see the relevance of whether there are cases in which people have successfully used the defence of reasonable chastisement in the past. The issue is the public health message that is given by having a law that says it is okay. It is not about whether or not the defence has been used before; it is about the need to get rid of it, in order to get rid of the societal message that says that it is justifiable and reasonable for parents or care givers to hit children.

Fulton MacGregor: Is it fair to say that it is about the clarity of the message—

Dr Reynolds: Yes. Clarity, clarity, clarity—I was supposed to say the word "clarity". Jillian van Turnhout has said it already. Clarity is the big message.

Jillian van Turnhout: It is the word that we hear back from everybody—without me putting it into their mouths. When I contacted the different agencies and organisations, the word "clarity" just kept coming up.

Fulton MacGregor: I have one more question. I support the bill, but last week when the committee was in Skye, we heard an argument that I had not encountered before: that, if the law is passed, it might impact on more vulnerable and disadvantaged communities, where perhaps services—police officers or social workers—are already involved. I do not think that that would be the case, but I want to put that suggestion to the panel, particularly Andy Jeffries again—I am not picking on you—but also the other panel members. Is there any relevance in that argument?

Andy Jeffries: Yes. I think that there will be sections of the community that it will be harder to communicate this message to than others. You are talking about different value bases and beliefs, so there might be disproportionate impacts on various communities or faith groups. As I said earlier, those are the areas in which we need to work to educate people, engage them and get them on board.

Nobody wants to punish people who already have an adverse life experience because of poverty, domestic abuse or whatever else they have to live with. None of us would want to have those things present in our lives. I keep coming back to the point that we need to get alongside those people and help them not to hit their children. It is as simple as that. We must help them to do other things that do not involve hitting children.

Jillian van Turnhout: I do not know the situation in Scotland, but in Ireland there is a disproportionate belief that child abuse is more likely to happen in a poor family than in one in which the parents have respectable professions. We as a society and as legislators have to continually challenge that belief. That is important.

When we changed the law, we saw that there was a challenge around how to explain it to some of our minority groups. However, when I engaged with the respected individuals and leaders in those minority groups, they welcomed the challenge of talking with their groups and members in order to share with them issues around positive parenting and how to raise children in Ireland. For me, the issue is one of clarity.

Dr Reynolds: If there is a difference across the socioeconomic spectrum in the prevalence of children being hit, that is all the more reason why the more deprived communities should get the benefit. I have worked for the past 17 years as a consultant in north Glasgow. I also cover part of East Dunbartonshire, so I occasionally see someone who is a bit more affluent. Earlier, I mentioned a young mum who said that their mother had said, "If a child bites you, bite him back so he knows what it feels like." She was from a deprived background. Once I explained the issue to her, she understood that that was ridiculous, and she said that she would tell her mother.

Last week, two educated parents—I am picturing them and asking myself where exactly they lived and how affluent they were—were speaking to me about their child's behavioural issues and the possibility that he might be on the autism spectrum, and the dad said, "He doesn't

even seem to understand when I give him a smack." Clearly, he did not think that a paediatrician would have any issue with that. Of course, I did not jump down his throat and tell him that he was a terrible person, but his partner immediately said, "Oh, don't mention the smacking," which was funny. Their confusion was evident, but I hear that kind of thing from families in various circumstances.

The Convener: Alex Cole-Hamilton and Gordon Lindhurst have questions. I note that we are drawing into our last eight minutes.

Alex Cole-Hamilton: Thank you for letting me come back in. I have a question for Jillian van Turnhout.

We have heard a lot about clarity. As Andy Jeffries said, there is a perception among many parents that smacking is already illegal in this country. That confusion exists. Since the law was changed in Ireland, has clarity been established?

Jillian van Turnhout: I believe that it has. I do not have any evidence for that, because we have not done any polling. Before I came here today, I tried to see whether I had any statistical evidence to present to you, but there was none in that regard. However, I conducted wide consultations. Also, I am a member of the Irish Girl Guides, and I am a safeguarding trainer. One of the things that we do in training sessions is to talk about certain scenarios that involve a scale of one to 10 in relation to abuse and the hitting of children. Since the law changed, all the people at those training sessions, right across Ireland—the mothers, certainly—know about the change before I or any of the other trainers who I am in charge of as a volunteer say anything about it.

Alex Cole-Hamilton: Professor Larzelere, the American academic from whom we will hear later today, suggests that, unless parents have recourse to mild back-up smacking, as he describes it, they might become increasingly frustrated, until they are likely to explode with severe verbal or physical violence. Is there any empirical evidence of that happening in Ireland or in other countries where this change in law has already taken place? Is that a concern of any other witnesses here today?

Jillian van Turnhout: I find it difficult to understand the rationale for that argument. In advance of changing the law in Ireland, I read a considerable amount of research. We did not have the benefit of the Anja Heilmann research on equal protection, as it was not available at the time, but we had research by Elizabeth Gershoff and Andrew Grogan-Kaylor, which looked at 75 studies involving 161,000 children, covering more than 50 years of research. That study clearly found that there is no evidence that spanking is associated with any improved child behaviour. In fact, any level of hitting of a child is more likely to be associated with troubling outcomes.

10:00

Dr Reynolds: With systematic reviews, the key word is "systematic". They involve people doing searches on key words and finding good-quality studies that give evidence on what they are studying. The point that Mr Cole-Hamilton mentions has not been quoted in any of the systematic reviews. It sounds as if it has been made by somebody who has a preconceived position and is cherry picking and clutching at straws to find something that might support what they are saying.

Jean Miller: I represent an organisation that represents adults the length and breadth of Scotland who work with children and young people every day, sometimes in difficult and distressing situations. There has never been anyone who would say that the answer is to use violence towards any of those children and young people. In fact, our clear message is to promote good health and wellbeing among our children and young people and to teach them about the ways in which they can improve that and their social and emotional development. That is how we will ensure that children and young people in Scotland go on to become parents and carers who do not consider using violence towards any young person.

Gordon Lindhurst (Lothian) (Con): I have a question for Jillian van Turnhout. I read your helpful and interesting submission, which refers to the change in the law in Ireland and to the Non-Fatal Offences Against the Person Act 1997, which is your codified criminal law. Of course, we do not have a codified criminal law in Scotland. There are certain defences in that act. For example, in section 2, which defines assault, subsection (3) relates to the defendant not knowing or believing that what they do—the "force or impact", as your law defines assault—is

"unacceptable to the other person."

In our procedure, individual MSPs can introduce amendments at stage 2. Should Scottish parents and families have the same protections in law as Irish parents and families have? We do not have those protections in our common law, but you have them in your codified criminal system.

Jillian van Turnhout: To be absolutely clear, we do not have a codified law. We do not use that system—we have a common-law tradition, too. Like your common law, ours has evolved over the years and we have made changes in legislation.

We chose to amend the Non-Fatal Offences Against the Person Act 1997 because that is where the offence of physical assault is set out, and the Government felt that that was the best place for the provision. I was privileged to have the authority of our Attorney General to help to make the amendment. I originally submitted my own humble amendment, but I later had the authority of the Government and the Attorney General. We changed the law through our Children First Act 2015. That amendment repealed the common-law defence of reasonable chastisement. The measure was put in the best piece of legislation—the 1997 act—but it was done through our Children First Act 2015, which is a safeguarding child protection act. It is about having safeguarding statements in youth halls and elsewhere around the country. The change was made through the 2015 act, and that piece of legislation has no sanctions in it, which is why I chose it.

For me as a children's rights advocate, I often find that, when we change the law in Ireland, it takes some time for the Government to commence the new legislation. However, in this case, unusually—this pays testament to the public opinion on the issue and also relates to the resources question—the Government commenced the legislation within four weeks. The law was changed expeditiously to repeal the defence under the common-law tradition that we have in Ireland.

Gordon Lindhurst: That is a helpful clarification. As you say, you do not have a codified criminal law, but assault is defined in a statute or act of Parliament. You have a mix of a codified system and a common-law system, which is perhaps similar to the situation in England, where many offences are defined in statute and some are in common law. The committee is dealing with the proposed repeal of a defence to a common-law-defined form of assault, so it is not quite the same as your system.

If I understand you correctly, your key point is that there is no criminal law sanction.

Jillian van Turnhout: The laws in relation to assault and child abuse apply. The change that I brought forward was to repeal a defence under common law and, from my reading, your bill is the same. I am not in any way saying that I understand the Scottish system, but we both have a common-law tradition. Along with more than 70 countries, we have the same root. Scotland has the same root in its common law in relation to reasonable chastisement as we had in Ireland. In our legislation, we repealed that defence in the common law. All countries change the common law over time. Through legislation, we can amend, change and update our laws and thinking, which is what we did in Ireland.

The Convener: I thank the panel members for their evidence, which has been helpful. I suspend the meeting for a few minutes to allow the witnesses to change over.

10:06

Meeting suspended.

10:13

On resuming—

The Convener: Welcome back, everyone. We welcome panel 2. John McKenzie is chief superintendent and head of safer communities at Police Scotland, Mhairi McMillan is from the criminal law committee of the Law Society of Scotland, and Neil Hunter is the principal reporter at the Scottish Children's Reporter Administration. I start by asking whether you support the aim of the bill to end physical punishment of children, and to give your reflections on why public opinion on the matter is so mixed.

Neil Hunter (Scottish Children's Reporter Administration): The Scottish Children's Reporter Administration very much supports the aims of the bill for a number of reasons. The committee has heard one already this morning, which is that the bill clarifies what is currently a very ambiguous aspect of law in relation to the defence of reasonable chastisement. A lot of the discussion this morning has focused on the need for absolute clarity for parents and society about what is and is not acceptable in relation to children.

The second reason why we support the bill's intent is that it identifies children as independent holders of rights, which is very important. Those rights are not mediated through adults or their parents; they are equal to but slightly different from those of adults. The bill also helps to bring Scotland into line with a number of articles of the United Nations Convention on the Rights of the Child, as we have heard, and it promotes positive approaches to parenting and helps us to negate the impact of less-appropriate aspects of parenting behaviour.

I have been thinking about the issue of public opinion. In many ways, it depends on what question the public is asked. If the question is framed around potential criminalisation such as we have heard about during the passage of the bill to date, it will get one response, but if it is framed in a more positive way, around children's rights, protecting them from harms and promoting their long-term wellbeing, it will get a very different response.

John McKenzie (Police Scotland): The aim of the bill, as outlined on the policy memorandum, is split into two bits. The first is about promoting and

safeguarding the health and wellbeing of children and young people and ensuring that they are afforded the same rights to protection from assault as adults. That is in line with Police Scotland's values, and we support that component.

The committee will be aware that Police Scotland usually remains neutral in relation to legislation. On the provision in the bill to remove the defence that is linked to justifiable assault, I will say that it is ultimately for legislators to make a policy decision based on what they believe, which will be based on evidence. I will tell you what I think the evidence is, based on my and Police Scotland's judgment.

It is clear that the multi-agency response that has been much talked about in the evidence sessions is not different from the police and social work perspectives. The evidence seems to support the view that the wellbeing of children is served by the bill. Lessons can be learned from other places that hold what is, in principle, a common-law system—for example, New Zealand and the Republic of Ireland. Those include use of explanatory notes for parents about restraint, which was spoken about earlier, and use of communication, such as in the Republic of Ireland. Police Scotland supports that second component—we support the principle that is highlighted and I believe that there is a body of evidence to support the rationale behind it. However, removal of the defence of reasonable chastisement is ultimately a policy decision for legislators.

In terms of public awareness, I said to Neil Hunter before the meeting that in my notes I have the findings of the public survey that show that 75 per cent of respondents support the bill and 25 per cent do not. I cannot find the note at the moment, but I believe that those numbers are correct. I anticipate that public support will be enhanced as we move forward. That has been demonstrated in Sweden and the Republic of Ireland.

I am not convinced that opinion is so polarised among the public in Scotland. My judgment and my sense are that it is not. That relates to the proud history that Scotland has, including around the Kilbrandon report in the 1960s, our approach to criminalisation of children and the getting it right for every child policy.

Mhairi McMillan (Law Society of Scotland): As the convener said, I am representing the Law Society's criminal law committee. It is not—as with John McKenzie's position—our role to comment on social policy.

However, clarity in the law is really important to the Law Society. I work as a defence agent, so I know that the law is not clear or easily understood by people. We sometimes talk, incorrectly, as though it is already an offence to assault a child, if that is what you are talking about, but there are defences in law. I know that the committee has heard lots of evidence about that, and that needs to be the starting point. We need to explain the nuances of the defences and what they mean, because that is not well understood by the public or by clients. Clarification of the law is always helpful.

Oliver Mundell (Dumfriesshire) (Con): I am very interested in the point that Mhairi McMillan has just made. I am concerned about the method that has been chosen to take the defence out of the law through the bill. Lots of people talk about the bill being "anti-smacking", which is clearly not what it is about. One of the witnesses in the previous session said that we do not know the difference between a smack and a whack, and that there is no invisible line. In your practical experience, do the courts make a distinction, in legal terms, between a smack and a whack that is intended to cause physical harm?

Mhairi McMillan: If we take children and the bill out of the equation, we can see that how assault cases are dealt with in the courts system is relatively clear. The courts are well used to dealing with such cases. For a prosecution, there needs to be evidence of the intention to harm, which is looked at in various ways. There is still a small grey area, but, ultimately, a prosecutorial decision will be made on whether it is in the public interest to prosecute. In some cases, after various factors are weighed up, it might be deemed that prosecution is not in the public interest. What happens with a case is dependent on the facts and circumstances of that case. I do not know whether that helps to answer the question.

Oliver Mundell: It does. How would I, as a legislator, know what the threshold will be and where it will sit, if the bill is passed? In that context, if the bill's aim is to end physical punishment of children, would it be better to pass a statute that makes that point clear? Would that give more clarity than will be provided just by removing the defence?

Mhairi McMillan: I take your point, but our common law has served us quite well in that area. There is a good understanding of what assault is and what it means. If I deal with an ordinary assault case, I am clear about how I will explain that to the client, what the issues are and what their concerns might be. The process for dealing with assault cases is straightforward and clear from a prosecutorial point of view, and for the sheriffs, judges and justices of the peace who need to make the decisions. Our common law serves us well in that regard, so I do not see an issue with the bill not achieving your aims because of its drafting.

Oliver Mundell: You think that parents would have sufficient foreseeability and could moderate their behaviour, even though there will be no case law because of the previous use of the reasonable chastisement defence. I am certainly not aware of any case law that sets a threshold, because the defence has been in place. When that defence is used, we do not get into the question of intention to harm and whether there was evil or wicked intent. Is that foreseeable enough?

Mhairi McMillan: It is foreseeable enough, in the sense that there is lots of case law on assault. Obviously, the case law would evolve if cases involving children were brought in after the defence was removed. There is merit in common law being the source of our law evolving, because we can progress and change things as time goes on. Ultimately, if the change in the law were to be enacted, the advice to clients would be that it is against the law to assault their child. How that would be interpreted thereafter would be down to the courts, but the advice would be clear.

Oliver Mundell: If you are confident that common law can adequately define assault, why is it so ambiguous when it comes to this particular defence?

Mhairi McMillan: Why is it so ambiguous?

Oliver Mundell: Yes. Do you think that the law is ambiguous with this defence?

Mhairi McMillan: Do you mean in terms of using reasonable chastisement as a defence?

Oliver Mundell: Yes.

Mhairi McMillan: Yes, I think that the law is ambiguous in that respect. That is why the Criminal Justice (Scotland) Act 2003 in part—

Oliver Mundell: So why is the common law ambiguous for a defence but not ambiguous for the offence? What is the difference?

Mhairi McMillan: I suppose that it depends on what you mean by "ambiguity". "Reasonable chastisement" is broad in its meaning. Up to a point, people were clear what it meant, and the courts were clear. Its meaning was tested, and it was found that the level that we allowed was not acceptable in terms of international practice. Therefore, we moved to tighten up the definition and give further clarification. It is not that the common law was unclear; the issue was that our legal position was not the one that we wanted it to be. Does that answer your question?

Oliver Mundell: That perfectly draws out the point that I was hoping would be made.

Michael Sheridan from the Scottish Law Agents Society wrote an article in the past week or so. He said:

> "like ... recently repealed legislation, the proposed legislation might not take ... into account practical difficulties likely to arise upon implementation."

Do you know what legislation he is referring to? What does he mean by that statement?

Mhairi McMillan: I cannot see any practical difficulties with implementation. I am sorry that I am unable to answer that.

Oliver Mundell: That is fine. Thank you very much.

Alex Cole-Hamilton: Dr Lucy Reynolds, who was on the earlier panel, gave us a very powerful account of a social experiment involving children learning by mimicry. I do not know whether you heard her talk about the experiment in which children were shown a film in which an adult in a room of toys was using a mallet to hit a clown. When the children were let into the room, they mimicked the adult's behaviour. However, the control group, who had not seen the video, did not hit the toys with a mallet.

I am really interested to hear the response to that, particularly of the police, although perhaps this is for the wider panel. Over the years, I have heard arguments in this debate from various people. John Carnochan, who is formerly of the violence reduction unit, has cited the connection between violence in the home and violence on the streets. Perhaps John McKenzie could lead off on whether Police Scotland accepts that children learn via mimicry, and that sanction and legitimisation of use of violence in the home through physical punishment has a causal relationship with violence on our streets.

John McKenzie: I will be quite straightforward: I suppose that you will have heard the same evidence as I have heard, and there are greater people than I to make that judgment.

The policy memorandum outlines the evidence that exists to demonstrate that link. I am going with the body of evidence that was highlighted by the previous panel that suggests that there appears to be a link between violence in the home and violence in wider society. It is not Police Scotland or I who have made that judgment, and I do not have evidence today to demonstrate it. The evidence for that, which the committee has already heard, has been highlighted in the policy memorandum and by other witnesses. Given that, I return to my original point about whether the bill supports the aim of promoting and safeguarding the health and wellbeing of children and, by extension, promoting the health and wellbeing of the wider community. The evidence seems to suggest that it does.

Alex Cole-Hamilton: What is your view, or that of Police Scotland, on the position of Marsha Scott of Scottish Women's Aid, who has always

advocated that we cannot begin to eradicate domestic violence in the home while the state allows any physical punishment in our homes?

John McKenzie: The United Kingdom appears to be a bit of an outlier in accepting that corporal punishment in the home is justifiable. It seems to be the case that the evidence shows the benefits of educating parents on alternative methods of parenting.

The evidence that Mhairi McMillan presented in relation to the domestic abuse component clearly has linkages to violence in the home. It is not limited just to violence against children, women or other members of the home. Going back to the question of what evidence base there is to demonstrate that violence has an impact on children's wellbeing, there seems to be an evidence base to suggest that that is the position.

10:30

Alex Cole-Hamilton: I invite other panel members to respond to either of my questions.

Neil Hunter: From the evidence sessions that the committee has already had, it is clear that the evidence overwhelmingly suggests that the existence of a spectrum of violence in children's lives—particularly in the household—has a very adverse impact on their wellbeing and outcomes. That spectrum can range from very severe forms of violence to physical punishment. It is clear from both evidence and practice that where we have examples of alternative approaches to parenting children and to the use of physical punishment, there is a clear absence of those adverse experiences.

I have listened to the various evidence sessions over the past few weeks: the empirical evidence is stark and overwhelming, and makes up by far the majority of evidence. It is clear from our day-to-day practice in the children's hearings system that children who live in circumstances where violence and aggression are predominant can present with very significant challenges and difficulties in their lives. Violence is one aspect of how those difficulties—which are significant—manifest themselves in children. If I were to ask any children's reporter in the land to tell me about the impact on children of living in circumstances in which there is violence and physical punishment, they could tell me in detail about the experience of that of the children with whom they are involved.

Mhairi McMillan: I cannot speak at length to any of the research. However, with regard to practical day-to-day working, I do a lot of criminal work and a lot of children's referral work—to the children's hearings system—and there is a sizeable crossover on that, which I think shows something. However, I cannot speak to any detailed research into the issues.

Alex Cole-Hamilton: I have a final question. This afternoon, we will speak with Professor Larzelere, who is an American academic and very much an opponent of the proposed legislation. He cites the example of Sweden and suggests that there is a causal relationship between Sweden's ban on smacking, which took place in 1979, and a 7,000 per cent increase in the number of juvenile rapes between 1979 and 2010. Are the witnesses concerned that we would experience the same increase in violence, delinquency and rape among children and young people if we go down the same route?

John McKenzie: Prior to coming before the committee, I undertook a bit of research to determine whether there was any indication of such an increase. The first that I heard of that piece of academic research was when I was sitting at the back listening to the earlier session. The phrases "suggests a causal relationship" and "a 7,000 per cent increase" are meaningless to me unless I understand the base figures.

Based on the research that I undertook—including interaction with colleagues from the Republic of Ireland and research from New Zealand and wider authorities—I do not see any evidence base supporting such a suggestion.

I will go back and read the piece of research and listen to the later evidence session with interest. However, I have nothing to bring to the table to suggest that the proposed legislation would impact negatively; actually, other research programmes suggest that it would impact positively.

On the wider point about increased reporting, why is that seen as a disadvantage or a poor thing? There is a body of evidence to suggest the opposite. Increased reporting might be a good thing to support parents and children. However, I will listen to the upcoming evidence session with interest.

Mhairi McMillan: I am not a researcher, but I read what Professor Larzelere said and it did not make sense to me.

Fulton MacGregor: Earlier, I asked Andy Jeffries about how, practically, the proposed change in the law, if it is agreed to, would affect the child protection process, which involves social work and the police. I would like to put the same question to John McKenzie. If a referral comes in and there is a joint social work and police investigation, how would the proposed change in the law affect interaction between the police and social work?

John McKenzie: It was nice to see Andrew Jeffries, whom I have not seen for a number of years. He mentioned a weekly interagency referral discussion meeting that he attends in Edinburgh, which I used to attend along with him every week.

Andrew Jeffries highlighted to the committee that the proposed change in the law would make no difference to the processes that are adopted, and I reiterate that. If a situation is believed to be a child protection matter, there will be a multiagency response, which means that there will be, at least, a three-way conversation, although there might be other parties involved, depending on the circumstances. That will be followed by an assessment of risk, and a multiagency approach will be taken to the safeguarding of the child or children. The removal of the defence of justifiable assault would have no impact at all on the process and procedures that are adopted by social work, health and the police, which are outlined in the 2014 child protection guidelines.

Fulton MacGregor: Do you think that that also applies to the police's decision on whether to charge someone, once that process has run a reasonable course? That ties into my more substantive question about whether you have seen the defence of justifiable assault being used.

John McKenzie: I have seen the defence being used. Two pieces of case law are highlighted in the papers, whereby the defence was used in 1988 and 1989, and I am aware of the defence being used during my career. I have spent the best part of my policing career in public protection.

That said, I go back to the point that it is a defence that can be used in a trial, but it is for the court to determine whether there was a justifiable reason for the assault. However, that would not impact on the approach that we would adopt.

The terms "smacked" and "whacked", which have been used in the media, are not that helpful. The term "assault" is more accurate. If there is evidence to support the allegation that a child has been assaulted, that will be reported, we will determine whether there is evidence to support a charge and it will be for the procurator fiscal to decide whether there is evidence in law to support a case. Ultimately, a report might be produced on the wider wellbeing of the child.

Fulton MacGregor: So the existence of the defence of justifiable assault does not, and will not, impact on the police's decision about whether to charge a suspect.

John McKenzie: What I am saying is that it should not impact on that decision. The removal of the defence of justifiable assault should not impact on the processes that are adopted, unless wider guidance documents, clarification notes or Crown guidance are produced. As I read the bill, it should not have any impact on the processes that are adopted.

Fulton MacGregor: From the point of view of a children's reporter, if the bill is passed, what will the practical, day-to-day implications be for the running of the hearings system?

Neil Hunter: As of today, the police and local authorities have a duty to consider referral to the children's reporter when they consider that a child requires protection, guidance, treatment or control and that compulsory supervision might be required for that child. That would not change. We do not require an offence to have been committed for those concerns to result in a referral to the children's reporter. In fact, the GIRFEC approach, which has been extremely effective in ensuring that many children have access to voluntary support in their families and their communities, has enhanced our ability to focus on those children who need control, supervision, guidance or treatment and in relation to whom there are grounds for compulsory measures. The bill would not change the focus, which, in all those decisions, is on the best interests and the welfare of the child. That is the sole determining factor as far as referral to the child's hearings system is concerned.

When children's reporters receive referrals, our job is to ascertain whether the referral ground is relevant to the child's circumstances, whether the evidence is sufficient to establish that ground of referral, should we require to do that, and whether it is in the child's best interests for a children's hearing to be arranged to consider compulsory measures. Again, that will not change; the focus will be on each individual child, their circumstances, the background to the referral and their welfare. Ostensibly, the process around child protection, GIRFEC and referral to the reporter will remain the same.

Fulton MacGregor: Is there any merit in the argument that we heard when the committee was in Skye last week that, if the bill is passed, it might inadvertently disadvantage families from certain backgrounds who might already be involved with agencies such as social work, the police and the children's hearings system?

Neil Hunter: I go back to Andy Jeffries's earlier point. In terms of our public promotion of the proposed measures in the bill and of positive parenting, we will need to work harder in some areas and communities than we do in others. However, I do not see any particular community or group being disadvantaged by the bill. The main beneficiaries of the proposals will be children. If we need to work harder to get the message across to adults and those who have parenting or caring responsibilities in particular areas of society, that is exactly what we need to do.

The Convener: Mary Fee has a question on specific equality groups.

Mary Fee: My question follows on quite nicely from the line of questioning that Fulton MacGregor has opened up.

I will start with Neil Hunter but John McKenzie might want to come in. Do you have any evidence, or are you aware of any evidence, that suggests that specific groups of children and young people are more likely to be subjected to physical chastisement, such as those who have physical or mental limitations or who come from a care-experienced background?

Neil Hunter: The main evidence that I am aware of is around the vulnerability of children who have a disability, who might be more vulnerable to the experience of physical assault and abuse. About two years ago, the SCRA did some research into awareness of broader child protection procedures and expectations among black and minority ethnic communities, which showed a lower level of awareness of child protection arrangements, procedures and protections than in other groups. We have continued to work at the national and local levels to think about how we can promote understanding and awareness of child protection concerns in those communities.

I am not aware of any other areas, populations or equality groups that would be disproportionately affected by the proposals. As I say, the main beneficiaries of the proposals will be children. Further work might need to be done in some communities or with some equality groups where there might be more of a challenge for us, but the challenge is there to be met.

Mary Fee: That is helpful.

John McKenzie: I probably do not have a great deal more to add to what Neil Hunter said. I have not seen the equality impact assessment that has been undertaken in relation to the bill. Work needs to be undertaken in relation to a wider equality impact assessment.

It is clear from evidence around the world that raising awareness is an important component when such legislation is introduced and, again, it falls on the policy makers and the legislators to ensure that communication is clear. There is evidence to suggest that there are lessons to be learned about the communication process from the Republic of Ireland. There is also a clear element of setting parameters around the difference between restraint and assault, which goes back to earlier questions. There is learning from New Zealand's experience of that.

Beyond what Neil Hunter said, I have nothing to add about the wider impact from the equality perspective.

10:45

Annie Wells: I will ask the same question that I asked the earlier panel of witnesses. Is there any evidence that the bill will criminalise parents and lead to an increase in prosecutions?

John McKenzie: Again, I tried to do a bit of research myself, which included looking at the evidence from the committee's previous sessions, and there is no indication that such legislation results in an increased number of prosecutions. There is a suggestion that it results in an increased level of reporting, which is different. In New Zealand, there was an increase of 36 reports over a two-year period. I am not sure how indicative or useful that figure is—it is probably not that useful, but it gives an indication of the experience in New Zealand.

Will the bill criminalise parents? I go back to my original point. The bill aims to remove the statutory defence of justifiable assault, and I cannot see how that, in itself, would criminalise parents. We have an opportunity to communicate more widely with parents and to highlight the values of Scotland and organisations here as well as our hopes for the children of Scotland. I do not believe that there is any evidence of parents having been criminalised in other countries that have gone down this legislative route.

Mhairi McMillan: The ethos of the bill is about changing public attitudes, not increasing the number of prosecutions. I reiterate that it could increase the number of reports to the police, but that is a likely effect of any public awareness campaign around an issue. I return to my earlier point that it is down to prosecutorial discretion as to how prosecutions proceed.

Neil Hunter: I cannot see any evidence that suggests that there would be an increase in the level of criminal prosecution of parents. In the long term, we should see the benefit of the bill and its proposals in the recalibration of our approach to supporting and rearing children in Scotland.

I do not see any real evidence that state intervention in family life will increase as a result of the bill. I say that because our focus is on the best interests of the child. Discretion and judgment are built into each part of the child protection and welfare system, and that takes us away from having binary choices or hard lines when it comes to deciding whether to prosecute. Our interest is in children's welfare and protection, and we make the best decisions that we can with that as our guide. I have heard no concerns from people in my organisation that the bill would lead to an

increased level of prosecution of parents or state interference in family life.

Annie Wells: Neil Hunter has answered this question, but perhaps the other witnesses would like to add something. Some people are concerned that the bill would interfere in private family life. Is that concern justified?

Neil Hunter: I want to add that one of the important roles performed by the children's reporter is to ensure that there is no inappropriate state interference in family life, and that any interference in family life is proportionate, justified and based on evidence.

John McKenzie: I reiterate the points that Neil Hunter has highlighted and I would go back to some of the points made by Andy Jeffries about interference in family life. I do not believe that there is any evidence to demonstrate that that would happen.

Mhairi McMillan: The right to family life set out in article 8 of the European convention on human rights is not an absolute right. There are limitations on that right, and what the bill aims to do is achievable in that context.

Annie Wells: Thank you.

Gail Ross: We have heard from various witnesses who have said that the evidence from other countries is that there is not an increase in prosecutions but there may well be an increase in reporting. Do you expect any increased burden on public services as a result of an increase in reporting?

John McKenzie: It is my understanding and my professional judgment that there will be an increase in reporting. To be fair, the extent of that increased reporting is hard to determine, based on the evidence that has been presented from New Zealand and the Republic of Ireland. I use those two countries as examples because their systems are founded in common law. I have also looked at other countries such as Sweden.

It is unclear how much of an increase there will be in reporting. It appears that in New Zealand there has not been a significant impact. The financial memorandum assesses the possible financial impact. It is hard to determine what the financial impact would be from a public service perspective. I suggest that some analysis is required of the real impact in other jurisdictions such as the Republic of Ireland.

According to the evidence that has been presented, there will be a minimal impact, but I think that there are some gaps in that evidence, so it would be worth looking at further evidence to understand what the impact has been elsewhere.

Gail Ross: It has been suggested that there is a high probability that, if the bill is passed, it will save money further down the line and that this should be looked at as preventative spend. Would you agree with that?

John McKenzie: I tend to agree with that. I am not convinced that an increase in reporting should be seen as a disadvantage; it should be seen as an opportunity to support parents and to understand any risks within the family environment. Hence, it may be seen as a preventative approach that will reduce spending in the future. There is a rationale behind that argument. It has always been difficult to understand what savings have been made from prevention, because you have to understand the baseline figure. In this case, we do not have an understanding of the baseline figure. That has been the challenge in the Republic of Ireland as well, I understand. The bill could prevent cost in the future, but further analysis is needed to clearly understand the position.

Neil Hunter: If there is an increase in reporting, it is likely to be fairly small and short lived. It is likely to be a good thing if it leads to families in need of support and help being identified earlier.

We have already heard this morning about how our public services currently line up around the principles of GIRFEC to work alongside families. If there is a short-term increase in reports, there could be some positive benefits in terms of early, elective interventions with families rather than waiting for circumstances to become acute, when agencies such as mine might have to step in and consider more formal interventions.

In the long term, this is about recalibrating how we bring up our children in Scotland, so I do not see any long-term financial consequences or long-term strain on the public purse; I see opportunities for earlier effective intervention with families, working alongside them.

Mhairi McMillan: I do not have anything to add to that.

John McKenzie: I have one additional point, which is in support of an earlier comment. I understand that, in Sweden, there was 83 per cent acceptance that corporal punishment in the home was not justifiable, and that the introduction of legislation has resulted in a position where 97 per cent of the population believe that corporal punishment in the home is not justifiable. Therefore, from the evidence, I anticipate that, just by introducing legislation and having a clear public message, we will achieve understanding in the wider public and social acceptance that corporal punishment in the home is not acceptable. As Neil Hunter said, there might then not be an impact on services in the long run.

Gail Ross: Cultural change is one of the aims that we have talked about in previous evidence sessions and today. We heard from a previous panel that the aim is to stop adults lifting their hands to children, full stop, whether it is assault or, as we have heard it described by another panel, a light tap on the hand as part of "loving chastisement" or punishment.

You have talked about setting the parameters between restraint and assault. How will we set the parameters in relation to what is viewed in some communities as a loving tap on the hand? If you are called out to such incidents, how will you determine what is in the public interest?

John McKenzie: It is the role of the legislators to ensure that there is clear public messaging on what is and is not acceptable. The determination of what is a tap on the hand and what is assault would be done through the sort of evidence gathering that I have mentioned. We would have a discussion about how to approach the issue and, if a child protection concern was highlighted, we would make a determination of the evidence base and whether there was sufficiency of evidence to justify the use of the term "assault". That will not change.

To be clear, in all my years in the public protection arena, I have never heard anybody reporting to or engaging with the police about somebody getting a tap on the hand. Examples such as a tap on the hand by a parent are probably not useful when we are talking about assault on children.

Gail Ross: We have also heard people questioning the need for legislation, given that we are going to do an awareness-raising and education campaign, work is already happening on positive parenting and alternatives to smacking, and attitudes are already moving in society. Is there a need for legislation? Why do we not just do the awareness-raising and public education campaign on its own?

Neil Hunter: Social attitudes have changed, but they have changed slowly. The continued presence of a defence of justifiable assault on children is holding us back in achieving absolute clarity in our expectation on the conduct of parents towards children. Public awareness campaigns can help, but if this ambiguous aspect of law continues to be present in Scottish society, it will always hamper the pace of change.

It goes back to the point that rebasing and recalibrating what we expect in terms of the wellbeing, health and development of Scotland's children will accelerate the positive progress that we have made. I have spent much of my career in social work and health care and I have seen some good developments in programmes in communities across Scotland including the triple P—the positive parenting programme—and mellow parenting, with delivery by services such as health visitors and others. There is a sense that a lot of the apparatus to support families is currently in place. A change in the law and a reset of the tone will help us further in delivering support to the families who need it most.

11:00

John McKenzie: I reiterate Neil Hunter's opening comment: I believe that social attitudes have changed and are changing. I was taken by the evidence presented earlier about the juxtaposed position of saying one thing in law and another in guidance or public messaging. Based on what I have heard, I am not convinced that that is a helpful position. It should be one thing or the other.

Mhairi McMillan: I support that view. An awareness campaign that says, "This is what we want you to do, but the law says another thing," will not work. The law gives people clear messages as to what we are looking for in their parenting. If the intention is to make social change, the law needs to support that so that you can communicate it to people effectively. The situation is confusing in the reality that families are looking at. I sat with a client while she watched a police interview of her ex-partner talking about what he had done. Her view was that he had admitted to an assault—which he had, but there was a clear defence of reasonable chastisement. For her, it was clear that he had broken the law and admitted to that, but actually he had not. Her view was that smacking in any shape or form was already illegal, but it is not. We need both the law and the awareness campaign to be the same, if that is what you want to have.

Gordon Lindhurst: I have a question for John McKenzie. Earlier, we heard from an Irish senator who is involved in the legislation in Ireland. She said that there are no "sanctions" in the legislation as it was introduced there. The Scottish Parliament information centre paper that was commissioned by the committee sets out that in Sweden, likewise, there are no sanctions. We do not have in our system what there is in New Zealand, for example: a statute of limitations that would relate to this sort of potential offence. Different systems have very different approaches. Sweden, of course, has a statute of limitations.

Should we not make it clear in the bill and spell out in black and white the rights that parents, children and families have, as has been done in Sweden, Ireland and New Zealand? Those are not spelled out in our law and the bill does not seek to do that. Part of the concern is that, as you will know, we have a high prison population in this

country; we tend to approach criminal law very differently from other countries. We may be seeking to move the approach in a different way, by raising the age of criminal responsibility, but should we make the rights clear in the bill, so that we have the same approach to rights for parents and children in Scotland as other countries have?

John McKenzie: I listened with interest to the earlier session and I confess that, to answer your question in any structured manner, I would have to check what the position is in the Republic of Ireland and Sweden. However, as I said in my opening comments, it is for the legislator to make the decision about what is in the bill, based on the body of evidence. I do not have anything constructive to add in response to your question because I would want to research the point that you made. However, I reiterate that it is a decision for the legislator to make.

Gordon Lindhurst: May the other two panellists comment, convener, if they wish?

The Convener: Of course.

Mhairi McMillan: Different legal systems do things in different ways, but if they reach the same aim and have the same objective I do not think that it matters. We have a good system of common law in this country and there is no reason to move away from that.

Neil Hunter: I may have misunderstood your question, but anything that sets out clarity for parents in terms of their rights and responsibilities would be helpful. However, we do not necessarily need to enshrine that in law. We need to be very clear in promoting understanding of parental responsibilities and rights and what we expect of parents in their conduct towards children, particularly in relation to ever-changing societal expectations. The bill creates new, positive societal expectations in relation to parental conduct.

John Finnie (Highlands and Islands) (Green): I have a point of clarification in relation to an aspect of what Mr Lindhurst said. Of course it is important to have clarity, and the clarity about transitional arrangements is covered in paragraphs 118 to 120 of the policy memorandum.

The Convener: That brings us to the end of this session. I thank the panel for their evidence. The committee has already agreed to consider the evidence in private and after that, but not before 1 pm, we will reconvene to take evidence from Professor Robert Larzelere via video conference.

11:06

Meeting continued in private.

11:28

Meeting suspended.

13:05

Meeting continued in public.

The Convener: Good afternoon and welcome back, everyone. We have received apologies for this section of the meeting from Annie Wells MSP and Oliver Mundell MSP. This is the eighth meeting in 2019 of the Equalities and Human Rights Committee. I remind everyone to switch off their mobile phones and put them away.

I welcome Professor Robert Larzelere from the human development and family science department at Oklahoma State University. You are very welcome, professor. I invite you to make an opening statement of up to three minutes, please.

Professor Robert Larzelere (Oklahoma State University): Thank you very much for letting me appear before your committee to talk about this important bill. I share your primary concern, which is the welfare of the children of Scotland. The welfare of children is the reason that I have devoted my career to parenting research. Children need the best research. The best research should not be about putting people on the moon, but about helping children to achieve their full potential.

I have asked a couple of primary questions to which you need to know the answer. First, when we tell parents not to smack their children, what should we tell them to use instead? Secondly, it is clear that smacking is correlated with antisocial aggression and other adverse outcomes. Is that correlation because smacking causes more problems, or is it because children who are more oppositional force parents to use more of all discipline tactics?

I have been recognised as one of the leading experts on smacking and its alternatives since at least 1996, when I was one of seven invited speakers at the only scientific consensus conference on the outcomes of corporal punishment, which was co-sponsored by the American Academy of Pediatrics. What was said was published in the academy's journal in 1996.

In 1998, there was a court case in Canada on the banning of smacking. In response, Canada's court system considered the evidence from both sides, including the social sciences and legal aspects, more thoroughly than any country has ever done before or since. The court system came out with a middle-of-the-road position that was

very similar to the current law in Scotland, but the use of reasonable smacking was restricted to those aged between two and 12. Consequently, the rates of child abuse in Canada decreased by 40 per cent since the change, whereas such rates increased sixfold during the next 15 years in Sweden, which had the most rigorously enforced smacking ban in the world. Therefore, I recommend that you look to Canada, rather than to Sweden, as the example to follow.

The Convener: Thank you, professor. I ask committee members to introduce themselves before they ask their questions in case the professor has difficulty seeing the nameplates.

Alex Cole-Hamilton: Good afternoon, Professor Larzelere. I am a Liberal Democrat MSP and deputy convener of the committee.

Would you define yourself as an academic?

Professor Larzelere: Yes, I have been a researcher.

Alex Cole-Hamilton: Do you agree that the academic standard worldwide, in any discipline, is to present a hypothesis and then test it by using empirical research or evidence that either proves or disproves that hypothesis?

Professor Larzelere: That is correct. That should be done as objectively as possible.

Alex Cole-Hamilton: Great. I ask that question because, in your submission to the committee, you present a hypothesis that is probably the most striking argument against a smacking ban that I have ever read. Using the evidence from Sweden, you reference the fact that, between 1979, when the ban was introduced, and 2010, there was a 7,000 per cent increase in the number of juvenile rapes or rapes of young people in Sweden. In your submission, you say:

> "Although increased willingness to report rapes may have accounted for part of these increases, some of this 73-fold increase is likely because a small, but increasing number of boys never learn to accept "No" from their mothers."

It strikes me that the word "likely" is not very scientific. This is arguably the strongest argument that we have heard against the bill. What empirical evidence do you have for the causality between the smacking ban and the increase in rapes in Sweden?

Professor Larzelere: The same interpretation problem applies to global warming. Global warming is up—the temperature of planet earth is up by about seven per cent. As you correctly said, this is an increase of 7,000 per cent. With regard to global warming, the causal question is whether human activities are causing that increase. There are debates about that—it is not quite as clear.

The increase is in the number of alleged rapes. They are not substantiated; I do not have records of that number. However, there is an increase in the number of allegations of rape of children under the age of 15.

The Convener: You said that the rapes are alleged and that there is no record of them. Are you saying that the evidence that you have presented is not based on recorded crime or recorded accusations of crime? Can you be clear about that, please?

Professor Larzelere: They are allegations that were recorded in Sweden's criminal records. They are therefore incidents that were serious enough to have an allegation. In 1981, there were 24 allegations of rapes of minors—children who are under the age of 15—and there were 73 times as many in 2010. Some people say that that is because things are getting reported more. However, allegations of attempted rapes increased less than threefold during that same time. They did not increase nearly as much as allegations of completed rapes against children who are under the age of 15.

Alex Cole-Hamilton: It strikes me that, if what you say is true, and if there is empirical evidence to back it up, it would be the strongest argument that the pro-smacking lobby would have to say, on the global stage, that the bill is the wrong course of action and that we should continue to allow parents to discipline their children.

Since those statistics were published, you have had nine years to evidence the corollary between the number of reported rapes in 2010 and the smacking ban. We are not talking about millions of people here. Global warming is obviously a global issue, and I do not suppose that anyone around the table would disagree about mankind's responsibility for global warming. However, we are not here to talk about that. We are talking about a much bigger issue, for which it is harder to get an empirical evidence base.

On this issue, if this is the strongest argument in the arsenal of the pro-smacking lobby, why has there not been research that involved speaking to the families of those people who were convicted or accused of rape to ask them about their parenting techniques? Why has that research not been undertaken?

Professor Larzelere: I do not know the answer to that question, which is an important question. It is difficult to do research on parenting, because you are more limited in your ability to do the kind of randomised studies that would provide conclusive evidence. There is a little bit of that, but most of the research is correlational, which cannot be as definite with regard to what is causing what. That is the problem that I have been trying at least

to improve upon in my 30-plus years of research on parental discipline of various kinds.

Alex Cole-Hamilton: So we cannot draw a direct causal link between the smacking ban and the increase in the number of rapes in Sweden?

Professor Larzelere: If I were a parent in Scotland and had a baby girl next year, I would want to be convinced that, when she was growing up, she would not face a 10-times greater risk of being raped before she was 15 years of age. I would want an answer to that question, to be convinced that that would not happen in Scotland.

Alex Cole-Hamilton: I have two soon-to-be adolescent boys. My wife and I have never hit them. Should we be anxious about their increased propensity to rape people?

13:15

Professor Larzelere: No. You and I are from better backgrounds. We have all the advantages, as do our children. We need to make sure that the conclusions that we come to do not simply result in us imposing our parenting perspectives on all those who do not have the advantages that we have.

My research shows that, if children are well behaved or their form of non-compliance is more to do with negotiation, any kind of negative consequence, including time out as well as smacking, is adverse—in other words, it does not help them. Well-managed children do not need smacking, but parents of more defiant kids who push the limits need something to back up the milder discipline tactics that we all prefer when those milder tactics do not work for those children.

The Convener: Your studies are cited by many people who are pro the physical punishment of children. You have given a couple of quite emotive examples of why you think that children should be physically punished. What is your response to the argument that, as lawmakers, we need to follow evidence, not emotional arguments, when we make legislation?

Professor Larzelere: I absolutely agree with that, and it is particularly important in the areas of family law that we are talking about. In the United States, there is a group called the Association of Family and Conciliation Courts, which has realised that there is a big problem, particularly in family law, which it calls scholar-advocacy bias, whereby if research is used primarily to support just one side and does not try to be fair to all the evidence, that will be detrimental to the formation and the application of family law. It is important to avoid scholar-advocacy bias and to try to be as objective as possible in considering all the evidence across all perspectives.

The Convener: Before you began your work, were you neutral on the subject? Was it the evidence that persuaded you to adopt your current position, or did you have an opinion before you started your work?

Professor Larzelere: I had an opinion before I started it. I thought that, as the vast majority of parents had smacked their children for many generations, and the pendulum was swinging, there were, at least, correlations between smacking and various things.

To start with, my general hypothesis was that it was possible that smacking would be beneficial only if it was used in appropriate ways in appropriate conditions; obviously, smacking can be misused and overused, which makes its use detrimental. My main goal was to distinguish—all scientists need to make such distinctions—between the most effective form of any discipline tactic and when and in what way its use would be ineffective and counterproductive.

The Convener: I want to be clear about what you are saying. Before you began your research, were you pro the physical punishment of children? A yes or a no will suffice.

Professor Larzelere: No. I was pro-research. Let me read the conclusion of my first study on smacking, which was published in 1986.

The Convener: I am sorry, but I will stop you there. Our time is limited, so I will invite questions from the rest of the committee. We have a copy of your study.

Fulton MacGregor: Good afternoon, professor. I really appreciate your taking the time to speak to us, although I must admit that some of the views that you expressed earlier made me quite uncomfortable.

Alex Cole-Hamilton cited your view that the increase in the number of offences by juveniles in Sweden was partly related to young boys, in particular, not being told no by their mothers. Do you correlate being told no directly with physical punishment and violence?

Professor Larzelere: I am sorry—could you repeat the question? It is about boys not taking no for an answer from their mother and then not taking no for an answer from other people as well.

Fulton MacGregor: Sorry, professor—it is probably my accent. Do you correlate not being told no by a mother, father or another caregiver with physical violence?

Professor Larzelere: I am not sure whether this will answer your question, but when I hear comments from people whom I know are opposed to smacking but are good researchers, I take those into account.

I worked for people who were later asked by Norway to train all its therapists to help parents to manage their children's difficult behaviour. They said that they were surprised to find so many parents with problem children coming to them who just could not say no to their children about anything. Those parents understood the smacking ban to mean that they could not do anything that would have any negative consequences. Therefore, they thought that they could not say no to their children about the most reasonable things.

That information comes from a top researcher in the field who is good enough to be recruited by the country of Norway to train parents how to discipline their children without the use of smacking. They, personally, have been against smacking all their lives, but they noted that a problem in Norway was that too many parents felt that they could not do anything that would have any negative consequences whatsoever. I hope that that answers your question.

Fulton MacGregor: In effect, I am asking whether you believe that the only effective way to say no to a young child is through physical punishment. That is what that quote from your submission seems to indicate.

Professor Larzelere: No, that is absolutely wrong. Like it is for you and everyone else, the goal is for parents to use the mildest disciplinary tactic and the mildest reasonable interaction to resolve conflicts with their children. The first plan is to use reasoning, to negotiate and to plan a mutually acceptable compromise to discipline children when there are problems. That should be the goal of all parents. However, when that does not work, that needs to be backed up by negative consequences, especially with the most oppositional defiant young children.

My research shows that reasoning works for pre-schoolers only if mothers back it up 10 per cent of the time with some kind of negative consequences, preferably time out and privilege removal. If that works, that is as far as that has to go. The children learn and pay more attention to the reasoning. However, the best research shows that, for children who will not co-operate with time outs, smacking can be effective in enforcing that co-operation. In that way, time out can be relied on to back up what a parent is trying to reason with the child about.

That whole sequence is important. Psychologists use it when they are asked by parents to help them to manage their out-of-control child who qualifies for a diagnosis called oppositional defiant disorder or conduct disorder. They train them to use time out, and, according to randomised studies, the best back-up for time out is smacking and a brief room isolation—those are the two most effective enforcement methods for time out that have been documented.

Mary Fee: You said earlier that you base your views and opinions on research. A significant amount of research shows that children who are disciplined by the use of physical force suffer negative outcomes, whether that is antisocial behaviour, mental health problems or, sometimes, problems with substance abuse. Have you looked at that research? If so, have you discounted it as having no credibility?

Professor Larzelere: My first study looked at correlations. It concluded:

"Most of the results of this study support the view that moderate physical punishment provides a training ground for violence, a training ground that differs from child abuse only by degree".

That disproves that I am biased in one direction or another.

I will read that again:

"Most of the results of this study support the view that moderate physical punishment provides a training ground for violence, a training ground that differs from child abuse only by degree".

That was based on cross-sectional and concurrent correlations. We cannot tell what leads to what. Does the aggression cause the child to be smacked more, or does the smacking increase the aggression?

Since then, in contrast to others, I have replicated the strongest evidence against ordinary smacking—

The Convener: We are having a little difficulty hearing you. Is there a piece of paper over the microphone at your end? Will you make sure that your microphone is clear?

Professor Larzelere: Should I repeat anything?

The Convener: No. It was just a bit crackly.

Professor Larzelere: Since then, I have repeated the strongest causal evidence against ordinary smacking. In contrast to others, I also used that same data to see how the alternatives that parents could use instead look in those designs. The results are the same for Ritalin and non-physical punishment. I replicated the strongest causal evidence against ordinary smacking, but non-physical consequences look just as harmful. So, if parents get professional help and have their child see a psychotherapist or put on Ritalin, that looks just as harmful as smacking in the research analyses that provide the strongest causal evidence against ordinary smacking.

Mary Fee: I am sorry to interrupt you. I will clarify what I was trying to get at. A significant amount of research has been done by respected academics into the effects that smacking a child

can have. I accept that you have done a huge amount of research yourself, but did you look at other pieces of research by respected academics around the world and discount it? Did you take any of it into account?

Professor Larzelere: I have done my very best to take it all into account. For example, in 2005, I did the only review of the literature that has focused on not just smacking but the alternatives that parents could use instead. To do that, I considered all the studies from Dr Gershoff's first meta-analysis, as well as all the studies from my earlier reviews of literature, so that I could consider fairly all of hers that qualified for my 2005 meta-analysis. My literature review found that the best way to use smacking was the way that psychologists used to train parents to use it—

The Convener: I am sorry—I realise that it is a little bit awkward, because we cannot see you. It would be easier if you were in the building with us. I will bring Alex Cole-Hamilton back in.

Alex Cole-Hamilton: My question follows on nicely from Mary Fee's question and your detailed answer on the efficacy of so-called back-up smacking as a tool in the parenting arsenal, so that when normal parenting techniques fail and defiance is continuous, back-up smacking can deliver what is required.

We recognise that some children have learning disabilities that mean that they do not have the same developmental growth as children without those disabilities. Those children might never see the correlation between their behaviour and the physical punishment, and will continue to act defiantly. Would you support a partial ban on smacking for children with a diagnosed learning difficulty?

Professor Larzelere: That is an important question. I have not done specific research on the discipline of children with such disabilities, but I guess that I would want to be very careful about having a ban for them, because such bans have prevented the use of some of the most effective treatment programmes in the past. I am thinking about children who abuse themselves by, for example, hitting their head against a wall until they are bleeding. In at least some of those cases, at least some people feel that some use of punishment is effective. I would be very careful—

Alex Cole-Hamilton: I am sorry to intervene, but it sounds as if you are conflating physical punishment with restraint. Certainly in this country, no social care practitioner would use physical punishment as a tool to stop somebody harming themselves; they would try to restrain the person. Am I right that you are conflating those two things?

13:30

Professor Larzelere: It is correct that restraint would be a first option but, if the person goes back to abusing themselves as soon as they cannot be restrained, that is not working. In some very good research that I have seen, the researcher has claimed that smacking could be used, at least in some cases. I do not know exactly how it was used, as I am not an expert on the issue and I did not do the research myself, but smacking was part of the most effective treatment for children who had the habit of abusing themselves.

Alex Cole-Hamilton: Obviously, with some medical conditions and learning difficulties, whether they come from acquired brain injuries or congenital defects, children will grow into adults yet their mental age will remain the same. Why should not we liberalise the laws on physical punishment to allow us to use the techniques that you describe when adults with learning difficulties are harming themselves or being defiant or outwardly violent?

Professor Larzelere: Is the point of your question whether those techniques should be considered assault?

Alex Cole-Hamilton: Some people in society will grow from children to adulthood but their mental age will never advance beyond three or four because of their condition. If we accept your argument that physical punishment is a necessary tool of control for them, is there a point at which they flip into adulthood and we can no longer hit them, or should we be hitting adults with learning difficulties?

Professor Larzelere: Absolutely not. As I said, I do not specialise in research on the discipline of people with disabilities. Other research has shown that smacking is adverse only if it is continued past age nine or 11. The benefit of back-up smacking is that it causes children to co-operate with other discipline tactics such as time out, so that smacking does not have to be used in future. I do not think—

Alex Cole-Hamilton: You are citing research that says that physical punishment stops being effective after kids are nine, 10 or 11, but that presupposes normal mental function. I am talking about people who are three-year-olds in adult bodies. Surely, that research does not apply to them.

Professor Larzelere: I know that research with such children and adults shows that clear consequences are important and that there is a need for positive consequences, rewarding them and having things such as time out. I worked in an organisation that had what is called a token economy, in which there were specific consequences and privileges were given or taken

away to teach the use of more appropriate behaviour. That approach is effective with children with developmental disabilities. That did not include smacking, though.

Gail Ross: The bill aims to give children equal protection to that which is already given to adults under the law. If the bill is passed, we hope that it will also effect cultural change. We have taken a lot of evidence from experts in their field who say that the bill would provide clarity that does not exist at the moment. You advocate the use of smacking as a back-up form of punishment, but you have also mentioned misuse and overuse. There is a chance that smacking will be used as the main form of punishment, although that is not your stated aim. How do we know that the approach that you advocate is being adhered to in the privacy of the home?

Professor Larzelere: We do not, but it is better to help parents to know how to use all their discipline tactics as effectively as possible rather than have blanket proscriptions of discipline tactics that have been used by most parents for many generations.

I have forgotten the other part of your question. What have I not answered?

Gail Ross: People say that they are looking for clarity. If smacking is allowed as a form of back-up punishment, I do not think they would say that that gives any clarity.

Professor Larzelere: It is clear enough that psychologists used to train parents of out-of-control children to use smacking to back up time out, so that those defiant children would co-operate with time out. It was very clear to them. They prescribed and modelled two swats of an open hand to the rear end when children would not co-operate with the time-out chair. That was to be used only in that situation, when those defiant children would not co-operate with time out. The psychologists showed that, when that happened consistently, the children learned to co-operate with time out, so the parent did not need to use smacking any more. To me, that is a very clear prescription. I think that we need to discriminate between more and less effective ways to use all discipline tactics.

Gail Ross: If psychologists advocate that as a way to control unruly children, what does smacking in that form look like? Will you describe it? Is it on the back of the hand or the back of the legs? Is it one smack or two, or more? What is the recommended amount of smacking?

Professor Larzelere: When psychologists trained parents to do that, the best teacher I know used two hard slaps of an open hand to the rear end, only when children would not co-operate with time out. They wanted milder disciplinary tactics such as time out to be effective so that parents never had to use smacking.

Of course, people do not use the smacking back-up any more, and they do not often use the only alternative that has been shown to be as effective, which is brief room isolation. However, a study that I received from a Harvard professor this week says that treatments are now only half as effective as they were when the smacking back-up was used for time out. Dr John Weisz and his colleagues at Harvard University published that this week.

The Convener: Which professional psychological association advocates two hard open-handed strikes on the rear end of a child?

Professor Larzelere: Well, this is the problem of scholar-advocacy bias. Advocates want professional organisations to side with them, and—

The Convener: Sorry, professor, but I will pause you there. In your evidence to the committee, you said that psychologists working with families to teach that method advocated two hard—these were your words—open-handed strikes on the rear end of a child. Which professional association are those psychologists members of?

Professor Larzelere: There are no professional organisations that recommend that today, and for that reason—

The Convener: Okay—thank you.

Professor Larzelere: For that reason—

The Convener: That is fine. Thank you.

Professor Larzelere: —treatment is half as effective as it was back when smacking was used.

The Convener: Thank you. I hear your answer.

Professor Larzelere: I refer to that Harvard study that came out this week.

The Convener: We have some additional questions from the member who is proposing the bill, John Finnie.

John Finnie: Good afternoon, professor, and thank you for joining us. It has been a very interesting evidence session. With regard to the extensive research that you have done and the conclusions that you have reached, can you advise the committee when the optimum time is to commence striking a child hard with the open hand on the rear end? What is the age frame for that?

Professor Larzelere: The research that shows that smacking is an effective enforcement for time out was based on children between the ages of two and six, so that is where I can speak most

confidently. I am not sure how far to extend it beyond that. I think that two to 12, which is the limit that Canada came up with, is a reasonable one, although in this country most mothers are smacking their children by 18 months. Given the lack of research, I would support the majority of mothers rather than banning that, until we have more evidence on how far to go beyond the ages of two to six. It should certainly not be done for any child under the age of 12 months. It is clear that that should be banned. Smacking of any kind should not be used for a child under the age of 12 months.

John Finnie: So, for a child aged 12 months to 18 months, two hard smacks with the open hand on the rear end is certainly appropriate.

Professor Larzelere: One paediatrician talked about a child who had a habit of biting electrical cords that were plugged into sockets, and apparently the parents could not get her to stop doing that. The paediatrician said, "Shouldn't that child be smacked to prevent her from harming herself by biting an electrical wire that's plugged into a socket?" That is one reason why I do not want smacking to be completely criminalised, but I think that it should be discouraged for children up to the age of two years, or 24 months.

John Finnie: For the avoidance of doubt, I note that we would seek to discourage anyone from biting electrical cables at any age.

Will you clarify whether, in your research, you have seen any benefits in the use of an implement in disciplining an 18 month to two-year-old?

Professor Larzelere: In my summary of all the research I could find that examined not just smacking but alternatives, physical punishment led to worse outcomes only if it was used too severely or as the primary means of discipline, and "severely" refers to the use of implements. There is no evidence to support the use of implements to smack a child. I know that there are some parents who see some advantage to that so, personally, I would be more comfortable with saying that parents can use an implement as long as it is not capable of inflicting more harm than the open hand, such as a rolled-up newspaper, for example.

John Finnie: Okay. Thank you for providing that clarity, professor.

The Convener: That brings us to the end of our evidence session. Thank you, professor. I recognise that there are challenges with doing this type of question-and-answer session down the line. I appreciate your time and the evidence that you have given.

At our next meeting, which will be on 28 March, we will take further evidence on the bill.

Meeting closed at 13:42.

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