OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 14 January 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 14 January 2020

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JUSTICE COMMITTEE
2nd Meeting 2020, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Isobel Bilsland (Relationships Scotland Borders)
June Loudoun (Grandparents Apart UK)
Ian Maxwell (Shared Parenting Scotland)
Stuart Valentine (Relationships Scotland)
Dr Sue Whitcombe

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 14 January 2020

[The Convener opened the meeting at 10:00]

Children (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning, and welcome to the Justice Committee's second meeting in 2020. We have no apologies, but Liam McArthur might be late.

We begin with consideration of the Children (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and papers 2 and 3, which are private papers.

We will have two evidence sessions this morning. I welcome our first panel of witnesses. June Loudoun is from Grandparents Apart UK; Ian Maxwell is national manager at Shared Parenting Scotland; and Dr Sue Whitcombe is a chartered psychologist. I thank the witnesses for their written submissions. Such submissions are always valuable to the committee in advance of hearing from witnesses in person.

We will move straight to questions.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Good morning to the panel. I will start with a couple of questions about children's participation in decisions that are made about them. Shared Parenting Scotland's written submission states:

> "Children are likely to feel they are under pressure. Sometimes parents and other family members may attempt to influence the child during the time views are being obtained"

in the decision-making process. I think that that is also highlighted in Dr Whitcombe's submission. Will you say a wee bit more about why that challenge exists and say what you think might be done to overcome it?

Ian Maxwell (Shared Parenting Scotland): Children who are in the middle of a parental conflict have divided loyalties. Usually, they have loyalty to both parents and, when they are stuck between conflicted parents, they find things difficult. Sometimes they will say different things to each parent because they will want to say what they think the parent wants to hear. That is why it is very important that children's views are taken in a way that is separate from their parents' influence and they are allowed a bit of time.

If somebody strange is taking evidence from a child, the child needs to build up confidence and know that that person is really on their side. For instance, the Avenue service in Aberdeen, which deals with mediation and child contact, says that it wants to see the child three times because the first time, the child will tell a person what they think the person wants to hear, and possibly what they have been told to tell them, the second time, they will relax a bit, and the third time, the person might get closer to the child's real feelings.

Children will often say something very negative about the parent whom they are not seeing, but that needs to be taken carefully. Dr Kirk Weir did some work a number of years ago. He was instructed to speak to children who had completely rejected one parent—that was both mothers and fathers—in a large number of court cases in England once it had been established that domestic abuse was not involved. He found that, in many of the cases that he dealt with—not all of them—in a few minutes or maybe over the course of a meeting or two, the child who had previously completely rejected a parent would unwind and be happy to meet the parent, and enjoyed that meeting.

Children's views are incredibly important, but they have to be taken very carefully in that situation.

Dr Sue Whitcombe: Everybody—adults as well as children—is influenced by the people around them in forming their views and opinions. That is not just in relation to parental separation. We are well versed now in the issues of child sexual exploitation and grooming and religious radicalisation, all of which involve to a certain degree the influence of people—adults and peer groups around children and young people.

I think that what Ian Maxwell is saying is right. I have often heard a child express views in the presence of one parent that are different from the views that they express in the presence of another parent. A child might vehemently say that they hate a parent and never want to see them again, yet, within 10 or 15 minutes of being in that parent's company, they are very much enjoying themselves, they are playing with that parent and they are comfortable with them.

We need to understand what is going on with the child—not just what the child is saying but where their views come from. We need to notice when those views differ from what their body language might be and come to an understanding of why they are saying what they are saying, in light of their entire experience with their parents.

Often, you will see children who have not necessarily been overtly coached by a parent to say that they do not like the other parent but who have picked up on that parent's feelings. From a young age, children are attuned to their parents' feelings, so a child can learn from an extremely

young age that it might not be acceptable to talk about one parent, because the other parent gets upset or angry when they do. They tune into their parents' body language at handover. If a parent is anxious or is giving messages to the child in a way that is not overt, the child will pick up on that, and their behaviour and their expressed views will change.

In England and Wales, the Children and Family Court Advisory and Support Service—Cafcass in England, and Cafcass Cymru in Wales—looks at the ascertainable wishes and feelings of a child, not just their expressed wishes. We need to understand that all children and adults sometimes say things that they do not mean, and there are reasons behind that. If a child is expressing quite strongly that they do not wish to see a parent, my first question is, why? That is an unusual behaviour. It is normally a sign of psychological distress, and we need to understand why the child is saying that.

June Loudoun (Grandparents Apart UK): I agree with the points that have been made. I have personal experience in my family of the situation that Sue Whitcombe has described.

Jenny Gilruth: The National Society for the Prevention of Cruelty to Children Scotland has said that it thinks that very young children can offer a view, provided that the appropriate infrastructure is in place for them to do so. How might the process for taking evidence from very young children differ from the process for other children?

Dr Whitcombe: When we are working with very young children, we do not ask direct questions. We do a lot of play work—using games and other creative means—to try to understand the child's world view and experiences. We do a lot of observation of the child. We are looking not only at what a child says verbally and what they produce in creative work but at their body language when they are with a particular carer or person.

As you have heard from Chloe Riddell, Joanna Barrett and Dr Whitecross at previous evidence sessions, there is a need for skilled professionals with a different skill set from that of solicitors who are child welfare reporters. A different professional framework is involved, too. As professionals who regularly work with children, we are trained in child development issues and have an understanding of the associated processes. Our professional framework involves clinical supervision. If we are unsure about something or want to check something out, or we have an implicit bias that we are not aware of, that is thrashed out through professional supervision. That does not necessarily happen with child welfare reporters who are solicitor trained.

Ian Maxwell: In Scotland, we already have joint investigative interviews that are conducted between the police and social work in cases that involve allegations of child sexual abuse or other serious offences. Although that is perhaps not quite the format for some of the discussions with children, there are lessons that can be taken from that for how you frame questions and how you avoid leading a child into particular areas. There is already a lot of experience in that field. The people who are doing the work with children, particularly in the more difficult and sensitive cases, need to have that training. That is why one of the key recommendations of the bar reporters working group in Scotland a few years ago was that there should be training for the people who are doing this work. That was scuppered by the judiciary, who were not keen on having it imposed on the system.

We welcome the fact that the bill mentions training and supervision of child welfare reporters, but we do not agree that they are necessarily the best people to do that work. We feel that it could be done by professionals who have a wider skill set or lawyers who are trained and have sufficient experience. It is a difficult job and it requires a lot of understanding. As you say, very young children need to give their views, but getting those views is not an easy job.

June Loudoun: The adversarial nature of the legal system sometimes creates greater animosity between couples who have separated. The parent who is the main carer for the children can inflict their opinions and their fears and anger, even when they are talking to other people and the children are in the room. As has been said, children pick up on that and form their opinions based on it. If the legal system were not so adversarial and better negotiation techniques were used to find out what was happening rather than there being a competition, that would go a long way to minimising the issues. It would not prevent issues in every case, but it would certainly minimise them.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I want to go back to Jenny Gilruth's first question and draw your attention to a letter that the committee has seen from a large number of academics, children's organisations and women's organisations. The writers of the letter were concerned that parental alienation would be included in the bill. They suggested that that would have

"the potential to divert the focus from children's welfare as the paramount consideration in contested child contact cases and to disregard children's views and associated participation rights."

The letter also noted research in England that showed that the existence of

"parents who were implacably hostile"—

that is, where there was parental alienation—

"was a factor in very few contact cases."

What is your view on the point that the approach that you have set out in your written submissions could cast doubt on domestic abuse allegations?

Ian Maxwell: Just to give the committee some context about the letter that was submitted yesterday, the medical and scientific committee of the World Health Organization, which produces the "International Classification of Diseases" took that into account alongside a lot of other submissions that were pro and against the inclusion of parental alienation. The WHO has concluded that parental alienation is a type of relationship problem between children and caregivers or parents and that it is primarily relevant in forensic settings. It is not a disease or disorder and is therefore located in chapter 24 of the ICD, which is on "Factors influencing health status or contact with health services". I can give the committee the full details of the conclusion.

It is a controversial point, but the working group on bar reporters, which I referred to and of which I was a member, as was Scottish Women's Aid, agreed that parental alienation should be among the topics that are on the training list for anyone who works with children in the area. I refute the suggestion that that would divert from allegations of domestic abuse. Both are serious issues and both need to be taken seriously when we are dealing with children in such situations.

Parental alienation is a very severe form of influence, and there are now diagnostic characteristics. We tell people who come to us that they should not assume that there is parental alienation just because their child was a bit unhappy the last time they saw them. We tell people that they should not diagnose it themselves but should talk to the experts.

Sue Whitcombe can tell you a lot more about that.

Dr Whitcombe: As a practitioner who works in the field, I am concerned that there is a lack of awareness and understanding of what might be alienating behaviours on the part of an adult who does not want a child to see another parent. We are well versed in domestic abuse and domestic violence; there has been a massive increase in our knowledge and understanding of them and the provisions that are put in place to cope with domestic violence. The definition of parental alienation is the unwarranted rejection of a parent—of a good enough parent, where there is an absence of abuse and an absence of harm to that child from that parent.

10:15

We are looking at situations where there is a good enough parent, there is a history of that parent having a good enough loving relationship with their child, and there is no evidence of abuse or harm to the child from that parent. In a case where a child is rejecting such a parent, we need to understand why, in the absence of domestic abuse or harm.

In reality, cases can be very complex. Cafcass and Women's Aid prepared a report in which they looked at a number of cases—I think that it was 66 cases—relating to allegations of domestic abuse in the family court. They found that about 62 per cent of those cases in the family court involved allegations of domestic violence and abuse. I know that previous committee witnesses have talked about maybe 50 per cent of cases including allegations of domestic abuse when they come to the family court.

We do not know how many verifiable cases of domestic abuse or violence there are. We have to accept that, in the final state of affairs, not all those allegations will have been well founded. Some people lie, some people manipulate the system and some people are manipulative. That applies to people who come into court and claim domestic violence when that might not be the case. Some people do that intentionally, but some people do it because of their psychological functioning. They may have a perception that they have been in an abusive relationship that does not accord with objective reality.

To give an example—this has been playing on my mind—I flew up here yesterday in the wake of storm Brendan. It was a slightly bumpy flight and my anxiety was slightly higher than it would normally be. If you checked on the anxiety of everybody on that plane, they would all have rated it differently. We all experienced the same flight but our perception of what that did to us was different. Sometimes that can happen in our relationships with other people, too. Some people are naturally cautious in relationships and feel that, in every interaction that they have, other people are being belligerent or are picking on them, which can eventually lead to them making allegations of domestic abuse or violence.

Many of the cases that come before the courts are therefore quite complex. In the majority of those cases covered in the report that was produced by Cafcass and Women's Aid, more than one factor was involved, including allegations of domestic violence, substance misuse or parental mental ill health. Increasingly, more

complex cases are coming before the courts. To say that a case does or does not involve domestic violence or parental alienation is not helpful. We need to understand a child's world view from the situation that they are in, with all the many complicated factors that are going on around them. In order to do that, we need to understand that some parents might be manipulative, some might be overprotective towards their children and some might be domestically abusive. We need to have a full picture of what is going on for each child.

Ian Maxwell: It has been assessed that 50 per cent of family court cases in Scotland involve allegations of domestic abuse. However, no matter how we might work out how many of those allegations are substantial, that still leaves a large number of worthy parents who go to court in order to see their children. The bill is about those parents as much as it is about those who are trying to deal with the impact of domestic abuse. It is very important that the bill acknowledges that.

Rona Mackay: Excuse me, Mr Maxwell. May I stop you there? I was under the impression that the bill is about children and not parents.

Ian Maxwell: It is very important for a child to see a worthwhile parent. The bill will become the Children (Scotland) Act. A child who is prevented from seeing a worthy parent is just as important as a child who is protected. Lady Hale, who has just retired as head of the Supreme Court, made that comment in one of her judgments. It is just as important for a child to know that they have not been abused, if they have not been abused, as it is for a child to know that they have been abused. I am sorry—I have not got the quotation quite right, but the point that Lady Hale made is in my submission. If the bill was concerned only with the processes for protecting children from domestic abuse, it would be a different bill. The bill is not concerned only with that.

The judges and sheriffs in the courts have to do a very complicated job in trying to unravel all the factors. One judge recently said that it is, now that there is no longer capital punishment, one of the most difficult jobs that the judiciary has to do because judges have to make very important decisions about the long-term position of children in relation to their parents.

June Loudoun: I find it very difficult to understand why so much argument focuses mainly on female victims of domestic abuse, because there are many male victims of domestic abuse, who seem to have been forgotten. My fear in relation to children is that there is, on television in particular, a lot of promotion and highlighting of domestic abuse in order to raise awareness, but in which the victim is always female. Children see those adverts in their homes and understand that such situations are difficult, but it is in their heads that the mother is being abused. For a child whose father is being abused by their mother, there is nothing on the television to say that that is unusual or unacceptable behaviour. What do those children do? Where to they go for support? I noticed from Scottish Women's Aid's submission that it has in place support to help children of abused mothers, but there is nothing for children of abused fathers.

Rona Mackay: Can I disagree with you, please? Children's organisations are there for children. It does not matter whether the child is abused by their father or their mother: abuse is wrong at all levels.

June Loudoun: Absolutely.

Rona Mackay: Children's organisations do not discriminate on that basis.

June Loudoun: Scottish Women's Aid has a particular support system for children. No abused males support group has been consulted on the bill, but they are fathers of children, too. Children are affected by such behaviour, but there is not such a good support system for them, and there is not so much promotion of the fact that such abuse happens. The courts and the police find it difficult to deal with the issue. An awful lot of assumptions are made about females being the victim when abuse happens in day-to-day life.

The older people here will remember Erin Pizzi, who set up the original women's refuge. In November, she wrote an article—I have a copy of it with me that I can show to the committee—in which she said that 62 of the first 100 women who came to her refuge were more violent than the men from whom they were escaping. It is not as simple as thinking only about domestic abuse; there are a range of situations within family separations, including family fall-outs and the death of a parent. The bill seems to focus on women's aid and abuse, instead of encompassing the whole lot, and how children are affected by such situations.

Rona Mackay: I am quite speechless, to be perfectly honest with you. You say that domestic abuse is just part of it, but surely that is paramount. If a child is being abused, that is what matters.

June Loudoun: That is absolutely right.

Rona Mackay: I have not heard your response on whether your approach would cast doubt on domestic abuse cases—

June Loudoun: I do not think that it would cast doubt at all.

Rona Mackay: Your evidence is disputed by many women's organisations and academics who deal with such issues every single day.

June Loudoun: Cast your mind back to the 1960s and 1970s when domestic abuse was not so out in the open, and there was not so much support for women. That is where we are now with men. Men are still frightened to speak out, there is shame associated with the fact that they have been abused by a woman, and there is a lack of support systems. It is not a one-size-fits-all situation. We need to get it right for every child, whether or not they have been in a situation of abuse.

The Convener: If I understand you correctly, you are trying to get over, first, that we should not overlook that there are many cases in which domestic abuse is not a factor and, secondly, that although the majority of the perpetrators of domestic abuse are male, not all are.

June Loudoun: Yes. Not all cases go to court, and alienation happens in such situations.

John Finnie (Highlands and Islands) (Green): I thank the panel members for their contributions, As ever, they are very helpful. Clearly, this is an emotive subject, with strong views on both sides. The committee took evidence on the Domestic Abuse (Scotland) Bill from a range of people, including victims, regardless of their gender. We have also looked at the issue of elder abuse. I assure you that the committee takes all aspects of abuse seriously.

I have a question for Dr Whitcombe. There have been a lot of references to academic research. In your written submission, you state:

"It is evident in court paperwork, that there is often a preference for the subjective narrative of one parent. In particular, assumptions are regularly made that the parent who currently"

cares for the

"child is the better parent, and likely to be more 'truthful'."

Can you direct the committee to the academic research that supports that statement?

Dr Whitcombe: I cannot do that off the top of my head, but I will send you the information, if I can find it. That is obviously about my professional practice and what we see in professional practice. Sometimes, people who are working with families have an implicit bias and give more time to the parent who is seen to care for the child at a particular time, and more weight is sometimes given to their views than to those of the parent who is not seeing the child at the time.

John Finnie: Do you acknowledge that, for a great number of women—invariably and statistically, it is more likely to be women—that is not their experience of the civil courts?

Dr Whitcombe: Obviously, I can speak only about the cases on which I work; I acknowledge that the tens of such cases on which I am called to work are at one extreme of the scale.

Ian Maxwell: I will send a reference to the committee on a bit of research that I know of that deals with how social work services relate to the parent who is caring for the children and to the parent who is not. It definitely shows that social work services are less interested in taking up or supporting that second parent, especially male parents. There is a reasonable amount of evidence of that.

Fulton MacGregor (Coatbridge and Chryston) (SNP): By way of a declaration of interests, I welcome Ian Maxwell, who is in the secretariat to the cross-party group on shared parenting, which I chair.

The crux of the matter in relation to the bill is domestic abuse and potential alienation. I think that everybody round the table and anybody watching the proceedings would agree that both those things are wrong, and that we want to stop them from happening.

The committee recently considered the Domestic Abuse (Scotland) Bill, which was passed. We have talked a lot about 50 per cent of cases not involving domestic violence. I find it difficult to understand how we could prove that to be the case, because there could be undisclosed domestic violence—in particular, emotional abuse, when there is no physical abuse—so I am slightly uncomfortable with that. However, I am aware that alienation is a major issue, too. How do we make that right and address that dilemma? How do we get to the bottom of that?

I think that agencies, services and politicians—I certainly fit in the category—probably implement the precautionary principle. I would prefer that until we find a suitable solution we avoid children being exposed in domestic violence cases. I am sure that most people would agree with that. Do you agree that the precautionary principle is being implemented? How can we bridge the gap?

10:30

Dr Whitcombe: We need to be aware that, by working according to the precautionary principle, we will be leaving children with parents who are harming and abusing them. In some cases the level of abuse and harm that is experienced by children who are alienated is very significant.

There are ways of differentiating between domestic abuse and parental alienation. Cafcass in England has brought in a child impact

assessment framework and is examining alienating behaviours in parents.

We also look at the symptomatic behaviours in children. Of the children whom we are working with to try to understand their experiences, the vast majority are very ambivalent about their relationships with their parents. A child who has been physically or sexually abused by a parent still wants to see that parent. They might feel a little bit frightened, or they might be quite cautious or anxious, but they still want a relationship with that parent. We need to protect those children and still allow them to have a safe relationship, if that is appropriate.

It is very different with the child who is alienated, whose thinking is very black and white. They are very strident and might say that they hate their parent and never want to see them again. That can be in direct contrast with a child's experience of the parent: there is much evidence of such children having had a loving normal relationship with that parent. When children are challenged with that evidence, they come up with very frivolous reasons for not wanting to see the parent. They will not say that the parent has hurt them, but will say things like, "They force me to eat broccoli", "They made me go to the park", or "They bribe me with chocolate." Children give such reasons for not wanting to see the parent, and can appear to be very anxious about seeing them.

There is idealisation of one parent and devaluation of the other. In our assessments, children give a range of responses: they like their mother because of this and their father because of that; this is what they do not like about their mum and that is what they do not like about their dad. All children normally have good and bad feelings about their parents.

The feelings of the alienated child are, on the other hand, very black and white. One parent is the source of all their positive feelings, and they can say nothing negative about that parent. The other parent is the source of all their negative feelings, and they can say nothing positive about that parent, even when they are probed. Please bear it in mind that we are talking about children's situations in which there is an absence of abuse. That is a very unusual response. That is how we start to look at what might be going on in that child's world.

Regarding alienating behaviours on the part of a parent, it is never right to tell a child that the other parent does not love them. It is never right to tell a child to stop calling their other parent Mum or Dad. It is never right to suggest that a parent is a danger where there is no evidence to suggest that there is any danger at all. It is never appropriate to prevent or discourage a child from talking about their parent. In such families, the child is not allowed to talk about their other parent because the parent whom they live with becomes angry or distressed. It is not right to stop a child having a photograph of their other parent if they want one, but that happens in such families. It is never right to reward a child for not having contact with the other parent. Those are some of the alienating behaviours that we look for.

Fulton MacGregor: That was a very detailed and interesting response that seems to be based on research. How can that information be dispersed to the agencies that deal with those situations? I was a children and families social worker for eight years, but I had no specific training on what you have described, so clearly there is a gap. Most agencies and politicians would be keen to stay on the side of caution when it comes to domestic abuse, because we know the well-researched and well-documented negative effects of domestic abuse on children.

Dr Whitcombe: We do not know what we do not know. If we are faced with a situation, and we have no knowledge of what alienation is, of alienating behaviour or of the symptoms in a child, we will try to fit the child's response into the framework that we have, which might be a framework on abuse and violence. We will not understand.

We are, with alienation, where we were with domestic abuse and violence 20 or 30 years ago, in that there is a great lack of understanding and knowledge. I was invited last year by Children in Scotland to deliver training on parental alienation. There was significant lobbying by Scottish Women's Aid to prevent me from delivering that training. I find that quite worrying.

John Finnie: I will go back to the bill. Do the witnesses think that there should be a list of the different ways in which children's views can be given to the court, and should the child be given a say in the method that is used in their case?

Ian Maxwell: Cafcass in England has done a lot of work on that. There are lots of ways in which children could give views; for example, children might be more familiar these days with social media and online things than they are with pencil and paper. It is important that it is open to children to give their evidence. The Scottish Courts and Tribunal Service's submission, and possibly one of the other submissions, states some of the practical problems that might exist. Unfortunately, our Scottish courts are not nearly as computer savvy as they could be, but they are getting there. Things are changing.

There is a range of ways to give evidence. When the Scottish Civil Justice Council's family law committee, which I was on, determined how best to revise the old form F9—a horrible thing

with capital letters and unfriendly language—we worked with children's organisations to find out what would work best. It took us nearly three years to redesign that form. I hope that we can move a bit faster than that, because children cannot wait. Children want to be able to give evidence in different ways.

The emphases in the bill on involving children and on feeding back to children are important. Members will note, however, that those emphases have produced quite a reaction from the legal profession, in particular from the judiciary. I am afraid that the judiciary are almost frightened of having to do that. Partly, they are saying that they do not want the extra work and that they are already overburdened—although I have other answers for that. However, they also do not like the idea of having to feed back information to children. I strongly support that part of the bill, because it is part of the compliance that we are aiming for under the United Nations Convention on the Rights of the Child.

John Finnie: Do other panel members have views on whether there should be an exhaustive list? Would you like to cite any innovative ways in which children could—

Dr Whitcombe: A list would be unhelpful. Professionals who work with children all the time know how to elicit their views. One of the issues might be that we are trying to encourage people who do not understand children very well—perhaps a specific group, such as welfare reporters or sheriffs—to hear their views in a way that is very much adult oriented. Social workers, psychologists, children's mental health professionals and teachers know how to take children's views. To restrict that using an artificial list would be unhelpful.

I could not believe the old F9 form when I first saw it. I do not think that I have seen the new F9. I was astounded that we were trying to take children's views in that manner. I thought that it was very unhelpful.

June Loudoun: A list is only helpful if you do not know what you are looking for. People who have been trained properly in how to work with, to speak to and to communicate with children of various ages do not need a list in order to find out how children feel and what they want.

Knowing what to look for should also be included in education and training for families, as well as professionals.

Liam Kerr (North East Scotland) (Con): Good morning. I want to ask about confidentiality. In 2018, the Scottish Government consulted on a provision that said that if a litigant asked for confidential information it should be provided, but only if doing so was in the best interests of the child and if the views of the child had been considered. That provision is not in the bill, and representations have been made to the committee that that is a significant omission and that such a provision should be included. However, we have also heard the opposing view: that it could be prejudicial and could breach parents' human rights. I throw the question out to the panel: what is your view on whether there should be such a provision in the bill?

Ian Maxwell: I am familiar with the case that is often referred to with regard to that matter. Obviously, I cannot say anything about the detail of the case, but, as I pointed out to a member of the panel that was before the committee last week, there was a lot of concern that the children's view in that case was given to a domestic abuse service and then revealed through the court. Subsequent to that happening, there was a proof in which the sheriff concluded that the children had not been abused and, furthermore, sent a letter to the children effectively saying that to them.

This is an area in which the checks and balances—the rights of both parents and children—need to be dealt with. If we have an allegation of abuse, we have to be clear that it is an allegation. If we get it wrong and tell children that they have been abused when they have not been, we are doing just as much damage as we would do if we did not react to their reports of abuse. The bill as it is at the moment is probably okay, because it allows for that extra stage of checking.

Liam Kerr: Dr Whitcombe wants to come in, but first I want to press you on that. When you say that the bill is currently okay, you are comfortable that no such provision is incorporated in the bill.

Ian Maxwell: Yes.

Dr Whitcombe: Confidentiality is always close to my work. On disclosing to the court information that has been given in a therapeutic setting, when we contract with all the people we work with—children and adults—we are clear that there is a limit to confidentiality in relation to the information that they give us and that, if we have concerns that a child might be at risk of harm, or if we are required to disclose the information by the court, we will have to disclose that information. That needs to be made explicit to adults and children at the beginning of any therapeutic process, so that they are clear that there are situations in which confidentiality may need to be broken.

To return to your point about the issue being one of the rights of the child against the rights of the parents, I see the matter very differently: I see it as a safeguarding issue for children. Sometimes, children are taken to a service by one parent for therapeutic input—that seems to be what

happened in the case that Ian Maxwell referred to—and the service only takes information from one parent. It has a one-sided view of the issue that might be going on for the children. The work that then begins with the children is framed around the narrative that one parent has presented, and those children may well be being harmed by the therapy that they receive. That then becomes a safeguarding issue.

In my work as an expert witness, I will sometimes ask for notes of therapeutic sessions when I think that that is appropriate because I feel that inappropriate therapy may be happening with an adult or a child, or that the information may point to other safeguarding issues. In England and Wales, that information is often disclosed to me but not to the litigants. I will include in my report the bits of the information that I feel are relevant, but the litigants are not provided with all the information.

Liam Kerr: Thank you. I want to press the same question that I asked Mr Maxwell: is it right that the provision that was consulted on is not in the bill, or would you prefer to see it there?

Dr Whitcombe: I do not think that we can ever guarantee confidentiality.

Liam Kerr: Should such a provision be in the bill or not?

Dr Whitcombe: I am not a lawyer—I am a psychologist.

10:45

Liam Kerr: Does June Loudoun want to answer that question?

June Loudoun: I do not have enough experience in relation to confidentiality to comment, other than to say that confidentiality should be broken if doing so is in the interests of the child. Whether that provision should be in the bill is a technical question.

Liam Kerr: Thank you.

The Convener: John Finnie has a supplementary.

John Finnie: Mr Maxwell, I have a question about your organisation's response to question 10 in the committee's call for views, regarding parental rights. I hope that I am picking this up right. Your response says that parental responsibilities and rights should be awarded indiscriminately. In particular, it says that, in cases of rape or incest, an application could be made to the court to have the parental rights of the rapist or abuser withdrawn, if that is deemed to be to the benefit of the child.

Can you clarify that? Such views would be abhorrent to many people and would be seen as an attack on fundamental human rights, not least when we are taking a child's rights-based approach to legislation.

Ian Maxwell: I think that I am taking a child's rights-based approach, too. As you saw in the information that was provided by the civil servants, about 2,000 fathers per year are not included on their child's birth certificate. Among that group will be some who are not worthy, and we need to find processes that will quickly and accurately prevent that parent from having any further involvement with the child, but—

John Finnie: I am sorry to interrupt, but "worthy" is a rather peculiar term. Who would make that assessment, and what would it be based on?

Ian Maxwell: It might be a social work assessment, a children's hearing assessment or a court assessment—it depends on which process a case goes through.

Plenty of other countries give parental rights based on genetic linkages rather than on marriage. In Scotland, we give every married parent parental rights automatically, but more than half our children are born to unmarried parents, and—

John Finnie: Please focus your reply on the issue of rape and incest, which you refer to in your response to question 10.

Ian Maxwell: I quite agree that a child who is conceived through rape or incest should not have a parent imposed on them. However, I wonder how many of the 2,000 cases that I referred to are the result of rape or incest. How do we protect those parents whose name is not on the birth certificate but whose children should still have knowledge of and involvement with them?

It is a balancing act. Different countries have done different things. The law in England, which is similar to the law in Scotland, was changed to make the registration of both parents on birth certificates compulsory. That change to the law was passed, but it has not been implemented. However, as I said, in other countries, both genetic parents are given parental responsibilities and rights automatically.

You will note that Dr Barnes Macfarlane's report, which the committee commissioned, raises the issue as one of UNCRC compliance. It is about the right of a child to know about their origins and their parents. It was queried when the 2006 act—

John Finnie: I am sorry to interrupt again. I am asking about parental rights, not children's rights. I understand that people might want to know who

their biological father is, but granting parental rights to perpetrators of rape—

Ian Maxwell: No—please understand: I am not trying to grant parental rights to rapists. That is very clear—I am fully in agreement with you on that. I am concerned about those non-raping, perfectly worthy parents who have to go through extraordinarily complex and sometimes expensive court procedures in order to have any impact on their child. That child loses the potential to have the involvement of a perfectly good parent.

There is obviously a gender aspect to this, because every mother is automatically given parental responsibilities and rights, but an unmarried father will be given parental responsibilities and rights only if their name is on the birth certificate. We come across a lot of fathers who are finding it very difficult to progress their contact and involvement with their children because of that. Yes, there needs to be protection in cases of rape and incest; there also needs to be protection for the children of the fathers who are losing out at the moment.

Fulton MacGregor: Will the panel give its thoughts on some of the terms that are used in the legislation and whether they have implications for practice? I am thinking about the terms "residence order" and "contact order", in particular. I am aware that other countries, including England and Wales, use other terms. Do the terms matter, and, if they do, in what respect? How do they impact on practice?

Ian Maxwell: Yes, they matter. We come across many cases in which a parent who gets a residence order considers, quite wrongly, that that gives them complete control over the child. There is also a lot of confusion on the part of health and education services, which tend to take the same wrong view.

The terms "contact order" and "residence order" were removed from the legislation in England in 2014, as the briefing from the Scottish Parliament information centre says. In 2019, Canada made the change, which will be implemented in the middle of this year.

Our feeling is that names and nomenclature are important. It is far better to have a term for a court order that does not imply that someone has rights or control that they do not have.

Fulton MacGregor: May I explore that point a wee bit? I hear where you are coming from; as I have said, I have worked in the field, so I absolutely understand what you said about the weight that is given to the term "residence order". Will you explain why that is necessarily a negative thing?

Ian Maxwell: It is a negative thing if a parent wrongly assumes that they have complete control over the choice of the child's school and over the child's health, and therefore excludes the other parent from those aspects of the child's life—or if a parent assumes, "I can move where I want, and I can do what I want with this child."

We are very disappointed that the bill does not address the issue. It could be done fairly simply. We are keen to propose an amendment, with a simple approach that I do not think has many downsides and which could have a positive impact, because what we call things is important.

Fulton MacGregor: Does anyone else have a view?

Dr Whitcombe: I think that the term "contact", in particular, is quite abhorrent when we are trying to define the relationship that a child has with a parent. Would any member of the committee define their relationship with their child simply as "contact"? It is much more than that.

Children have a right to an on-going relationship with both parents, and these days children are not in situations in which mothers are typically the primary carers and take care of them all the time. I live on a housing estate, and 40 per cent of the children I see being taken to school are taken by a male carer. The world today is very different from how it used to be.

It is a complex situation for a child when their parents separate. The idea that a child lives with one parent but just spends time with another parent or is just babysat by them is quite an abhorrent concept. Wherever possible, and wherever it is safe, children need an on-going and substantial relationship with both parents. A child lives with both parents; they have bedrooms at both parents' homes. It is not about "contact".

Fulton MacGregor: I quite agree with the principle of your argument, and I will ask you a similar question to one that I asked Ian Maxwell. What suggestions do you have for changing that? In England in Wales, it is called a "child arrangement order", but I suppose that we could ask ourselves the same question about that, because we would not call our contact with our kids an arrangement. I do not particularly like the word "contact". Can you suggest an alternative?

Dr Whitcombe: I tend to refer to "parenting time" or "a quantum of parenting time". There is no easy solution, but a hierarchy can be inferred from the use of the terms "residency" and "contact" that is unrealistic and not valid in today's society.

Fulton MacGregor: I would agree with that.

June Loudoun: The word "parenting" should be used somewhere, whatever the term.

Dr Whitcombe said that the child lives with both parents, but that is only practicable when the parents live in the same geographical area. If one parent lives outwith the school catchment area, or even in a different region from the other parent, a completely shared parenting experience is difficult, time-wise. However, that is not to say that parents should not have contact through all the ways that new technology allows them to keep the relationship going and to spend a good bit of time with their children.

Again, it is an age thing, because younger children can spend all day with their parents, but teenagers do not want to do that. "Contact" is not a good word, because it implies that you are only visiting, whereas "parenting time" is equally valuable for both younger children and teenagers. They had parenting time with each parent when their parents lived together. To differentiate between the parents because they have separated is not good for the child.

Ian Maxwell: Canada is going for "parenting order". Our suggestion, which was intended to reflect the fact that we already have specific orders, is that it should be called a "general order". That would make it more a legal term; there would be specific issue orders for particular things to supplement that.

Rona Mackay: Dr Whitcombe, I may have misunderstood your evidence, but you seem to suggest that while one parent is being investigated, contact should continue. Is that not a deeply dangerous suggestion?

Dr Whitcombe: We have to understand that sometimes allegations are unfounded. We have heard about that today, and we know that from criminal, civil and family cases. Your colleague asked whether we should err on the side of caution. I am not saying that there should be unfettered contact and relationships in such situations, but we recognise that it is important for children to have a relationship with their parents—even parents who have been abusive. In terms of public law cases, in England and Wales there is a statutory responsibility, even when a parent has been found to be an abusive parent, to maintain that relationship if at all possible, because we recognise the importance of a child making sense of their experience of the relationship.

Rona Mackay: I could not disagree with you more.

The Convener: Sections 1 and 12 describe statutory factors that are intended to guide the court when it makes decisions about the welfare of children in cases. At present, two main factors are considered: the prospect of parental co-operation and the need to protect the child from abuse or the risk of abuse.

Section 12 will add two further statutory factors to those, both of which relate to court orders. One is the effect that a court order might have on

"the involvement of the child's parents in bringing the child up",

and the other is the effect of a court order on

"the child's important relationships with other people."

Can you comment on those provisions?

Ian Maxwell: The Children (Scotland) Act 1995 was a very clean and better-composed piece of legislation. It had no lists; it simply had three key principles. Certain things were added in 2006, and some concern was raised when the committee did its post-legislative scrutiny of the Family Law (Scotland) Act 2006.

11:00

Dr Barnes Macfarlane has also raised the issue of checklists. The United Nations Convention on the Rights of the Child and, particularly, general comment 14 contain quite a lot about that. Dr Barnes Macfarlane noted:

"if there is to be a checklist, getting it right is crucial."

Currently, we have a partial checklist. The UNCRC suggests things that could be included in the checklist, and it makes the very important point that the checklist has to be expressed in terms of what is in the best interests of the child.

We would argue, for instance, that a rebuttable presumption of shared care should be added to the checklist, as has been done in quite a lot of countries—not in the interests of the parents, but as a guide or a starting point for the judiciary. If we asked the judges in Belgium, which changed the law in 2006, about including a rebuttable presumption of shared care, they would say that that is useful, because it gives them a starting point. It does not force them to award shared care: they award that in only maybe around half the cases that come before the courts. Currently, the starting point in Scottish courts tends to be a tiny amount of care, which builds up, meaning that the court sometimes needs the case to come back again and again to enhance the amount of care. If Scottish sheriffs were given a starting point of shared care, they would be completely free from the evidence that the parties have presented to make a contact award that is either nothing or whatever is most appropriate.

We think that we currently have a very messy piece of legislation that has a partial checklist. If the Scottish Government is going to implement the UNCRC, it needs to take account of what it says about checklists, and we need to get it right.

Dr Whitcombe: I do not have the bill in front of me, and I do not think that I made a submission on

that point. In England and Wales, there is a welfare checklist, which Cafcass and Cafcass Cymru use in considering what might be in the best interests of the child. The welfare of the child is paramount. We need to ensure that the child is safe and that the relationships that the child has with anybody are safe. A proper assessment of the welfare of the child is needed.

There is too much emphasis on private law proceedings when there are safeguarding issues that would be better dealt with in public law proceedings. We should not make decisions in private proceedings on what is harmful for a child. If there is a risk to a child, that risk should be properly evaluated and explored by the statutory agencies that are supposed to make assessments of those risks, which are normally local authorities. Too often, we rely on parents to protect their children when the safeguarding authorities should be protecting them. They should step up and say that there is a risk and what should happen, and that parenting time with a parent is not safe. Too often, we rely on private proceedings when there should be public proceedings.

The Convener: Ms Loudon, I think that Grandparents Apart UK's submission refers to a right for grandparents rather than a presumption. Is that correct?

June Loudoun: No—it refers to a right for the child, and definitely not for the grandparents, because it is the child who is the important person in the bill and in life. The child is a future adult, so we need to get it right for them.

My concern is not necessarily to do with the extreme cases that go to court, which involve domestic abuse and so on; I am concerned with less extreme cases involving parents who separate. In those cases, often—but not always—the dad's contact is reduced, which means that the paternal grandparents' contact is reduced, too. Those grandparents might have been picking the child up from school or dropping them off at school every day, or they might have had them at the weekends. However, all of a sudden, because the parents have separated, the children do not have contact with their grandparents. It is true that those grandparents are hurt by that, but how must the child feel when, for no reason, they are taken away from people they love, have spent time with and trust? Why should the child be traumatised in that way? It is traumatic for them. A week is a long time for a child—particularly a young child—not to see an adult they love and care about.

The idea of engaging in months of court processes is not practical and is not in the interests of anyone, least of all the child. There needs to be some kind of protection that enables those children to maintain relationships with family members they have previously had relationships with. I am talking about cases in which there has not been domestic abuse or violence—that is a separate issue entirely, and there are protections in place to address that. I am interested in maintaining the love and support that those children receive from family members.

The Convener: In shared parenting—I understand that that involves the parenting point of view—there is a presumption, but your submission is phrased in terms of the right of the child. Would it be more proportionate to have a presumption that there would be contact but for that to be properly explored? As you have explained, there can sometimes be good reasons why there should not be contact.

June Loudoun: Can you explain what the difference would be to the child between a presumption and a right?

The Convener: I can see the difference between a right and a presumption in legal terms. In my view—I could be wrong—a presumption allows for more of an investigation to take place and for the circumstances of the individual case to be considered, rather than a one-size-fits-all approach being taken.

June Loudoun: One of the reasons for the requirement for a right, as we see it, concerns the involvement of social work with families. During 20 years of dealing with families with contact problems, we have seen huge problems arise when social work becomes involved in families, especially with regard to grandparents. Whether the social worker supports the relationship between the child and the grandparents depends on the area and the individual social worker, and on whether a grandparent raises a concern. All too often, when a grandparent raises a concern it involves the fact that they are being excluded from meetings and are not being told that meetings are happening. There is no proper investigation of what is being said or of what a social worker puts in a report. If something is in a report and is presented to a hearing or a court, there is no opportunity to question that or have it changed if it is wrong. We see the approach as a protection from practices that are not as good as they should be.

The Convener: Would another way to look at it be to look at what happens in court and to see whether that right is not being given—

June Loudoun: That is part of the problem, as well.

The Convener: That might be better than legislating to deal with bad practice in one part of the country.

June Loudoun: Absolutely.

The Convener: Okay. That is an interesting contribution.

Shona Robison (Dundee City East) (SNP): We have touched on the issue of child welfare reporters and curators ad litem. You might be aware that sections 8 and 13 propose to regulate child welfare reporters and curators ad litem. Do you think that better training for child welfare reporters will be sufficient to address current issues?

Dr Whitcombe said that she believes a wider skill mix would be beneficial, and I could see other panel members nodding. Do you believe that child welfare reporters having the appropriate professional background should be the focus of the reforms? Do you think that the changes that have been made in England and Wales have delivered what they were intended to deliver? Some stakeholders have suggested that the courts south of the border do not sufficiently prioritise safety concerns in their decision making.

Dr Whitcombe: The role that is played by a child welfare reporter in Scotland is typically played by Cafcass practitioners in England and Cafcass Cymru practitioners in Wales, who are all qualified social workers. In my opinion, that is a better skill set for taking children's views and performing that role. The majority of my work is in England and Wales, but I have done some work in Scotland, and the child welfare reports that I have seen here have caused me significant concern. The majority of those reports have been made by solicitor child welfare reporters.

I am concerned about child welfare reporters not understanding issues of coercive control, domestic violence, alienating behaviours, the influence of a parent and how to take the views of a child. I am also concerned about a failure to identify possible safeguarding issues and to refer them on soon enough. I am concerned, too, about recommendations on appropriate action not being made. I find it difficult to understand why somebody who in their core practice does not deal with family relationships and the welfare and development of children should be making recommendations on what should happen. Maybe that is because the majority of my work is in England and Wales, where social workers perform that role.

In a significant number of cases that I have seen in Scotland, recommendations by child welfare reporters have meant that the case has become entrenched and has stayed in the court system for a long time. Inappropriate recommendations lead to an exacerbation of the difficulties for the child and poorer outcomes for them. I have asked whether I could make some suitably redacted bar reports available to the committee so that members can see what my concerns are.

Shona Robison: Can I just clarify that you would prefer the child welfare reporter to have the right professional background to training being made available for those who perform the role despite not having the appropriate professional background?

Dr Whitcombe: As a base level, yes.

Shona Robison: What about the concerns that I mentioned about what is happening south of the border?

Dr Whitcombe: Safety concerns will sometimes be raised about the decisions that are made by social workers in their role as family court advisers. What is important is that there is a regulatory process whereby such complaints and concerns can be dealt with. I think that there are similar concerns in Scotland, where solicitors do the work of the child welfare reporter.

Shona Robison: So, the issue is less about professional background and more about decision making.

Dr Whitcombe: That is right. It is also about ensuring that we have sufficient processes in place to deal with that.

Ian Maxwell: I have a comment to make about the English process. In English family court cases, there is a fact-finding process right at the start, which is an early test for things such as domestic abuse. That is not present in the Scottish court system. Shared Parenting Scotland and Scottish Women's Aid were interested in such a change being made, but that relates more to court procedures.

I, too, have had the chance to see quite a large number of child welfare reports. I have seen some very good ones and some very bad ones. We do not want to throw the baby out with the bath water. We have some good child welfare reporters operating in Scotland, but we have no effective oversight of them. Nobody looks at a sample of a child welfare reporter's reports—that should happen particularly when they are starting out but also when they are established—with a view to working out whether what they are doing is good. There is very little control over how much they report.

11:15

The changes that we made as a result of the working group on bar reporters have been good, because they mean that the court specifies in far more detail what it wants from the reporter. However, I feel that there is a need to look wider. We should preserve what works well in Scotland and try to build from that towards a better process in which we introduce the skills of child psychologists, parenting therapists and social

workers alongside the evidence-finding abilities of lawyers. We have changed in Scotland. Almost all the work used to be done by social workers; now, it is almost all done by lawyers. I do not think that either is good.

We want training and proper oversight. I do not care whether that is done by the Scottish Government or the judiciary, as long as it is done properly.

What is missing from the bill is the potential to recognise that there are other key posts. You have heard mention in various submissions of child rights officers—of which we have a few in Scotland—and of parenting co-ordinators. Both those categories of professionals could play a very useful role, and they could take some of the load off the court. At the moment, when cases go back again and again for child welfare hearings in the Scottish courts, a vast amount of court time is taken up with micromanaging disputes between parents. A parenting co-ordinator or a child rights officer could work with the parents when the problems happen, not six to eight weeks after the problems, when the case finally comes to court. They could try to solve some of those problems, which would save us a lot of court time.

The statistics that we have on the Scottish courts are very poor at the moment, but I reckon that we have about 3,000 cases a year in the family courts, about 10,000 child welfare hearings, 500 case-management hearings and about 1,000 child welfare reports. I do not think all that should be happening in the court: some of it should be happening with professionals outside court. There is a significant cost saving to be achieved, which is not recognised in the papers accompanying the bill.

I hope that the bill leads to effective training and supervision of child welfare reporters but also opens up the potential for Scotland to experiment with far more use both of child rights officers and of parenting co-ordinators, which are the missing link here. You may need to put the powers for that in the primary legislation even if you are going to work out the detail at a secondary or an administrative stage. You need the powers to be in the legislation so that you can have those people working under the remit of the court. The key decisions are made by sheriffs and judges, but the implementation can be passed down the line.

I am not sure whether I have answered all your questions.

Shona Robison: Yes, I think so.

June Loudoun: There is a huge need for better training and understanding. We need to look at the people who are writing reports or who are dealing with children within the legal system as a whole. A lot of people who are in those roles are trying to glean information and find out what is happening because they do not have the experience or the knowledge to do the job. I do not mind whether it is legal people or social workers who do it, but those people need to know what they are looking for so that they can get the correct information.

The Convener: Fulton MacGregor has a supplementary question. I ask him to be brief, as we are already well over our time.

Fulton MacGregor: In relation to June Loudon's point, I do not fully recognise the description of social work in that regard, because grandparents are often life-savers in situations of high stress for families. However, she makes a good point overall. As I know from having two kids, the right to contact with grandparents is very important for young people, yet it is sometimes lost as a by-product of another matter.

If the child is involved in the children's hearings system, there will be assessment, more work will be done and the grandparents might be invited to the children's hearings, so there will be more safeguards. I think that you are talking about cases in which kids are not in those systems. Should part of the child welfare reporter's job be to look at the extended family and at where important relationships for the child lie?

June Loudoun: There should definitely be an evaluation of the whole situation. The biggest volume of our calls comes from grandparents who are not involved in the legal position other than through their child having separated from their partner. A child has a right to claim on a grandparent's estate when they die, should the child's parent have predeceased the grandparent, but the child does not have a right of contact when the grandparent is living. Is money more important than time? Is a grandparent's estate of more value to their grandchild than their time during their life? There needs to be some equality in that regard. Is it good for a child to have contact with a grandparent, or not? That decision needs to be made. If it is in the best interests of the child in one way, it will be in their best interests in the other way.

Rona Mackay: I ask for brief answers to my question, because we are really short of time. Child contact centres are covered by section 9 of the bill. As a matter of principle, should courts order contact in contact centres where the nature of cases suggests that supervision is necessary and that contact might not be particularly safe for the child? Would it be reasonable for courts to do that?

June Loudoun: Contact centres can be good if contact has been broken for quite a while due to the slowness of the court process. There are sometimes accusations that a child does not want

to see the parent or does not get on with them. In a contact centre, there is an independent person to monitor the contact. Such contact can be positive for the child if it takes place in the right setting, with the right regulation of the contact centre.

Ian Maxwell: We hear a lot about contact centres. We hear some very positive things, but we also hear some complaints. We can think about it from the child's point of view. If we tell a child that they cannot see a parent, given that half of the child's genetic make-up comes from that parent, we are telling them that half of them is a problem. We need safeguards and protection for children, and we want to ensure that they are not exposed to harm. However, to cut a child off completely is a difficult decision, and it must be made on absolutely clear grounds.

As June Loudoun said, contact centres are sometimes a good way of protecting a child and allowing them to see a parent in situations where it would otherwise not be at all safe for the child. I have read some of the evidence that has been submitted to the committee about problems with contact centres. I see only one side to the issue but, from our point of view, contact centres are a really important resource. We should develop them, build them up and make them better.

Dr Whitcombe: In my experience, child contact centres are used for several reasons in both public and private law cases where space is needed to allow contact to take place between children and parents, grandparents or siblings. In some cases that involve private law proceedings, there has been disruption to the contact—the time that a child spends with a parent—but there is no evidence of abuse, and the contact centre is used to build up the relationship with the parent again in a safe space.

Sometimes, the court orders supervised contact. It may be that there are concerns about a parent, or that concerns have not yet been evaluated and there is supervised contact in order to maintain the relationship while the evaluation is going on. I know that you disagreed earlier, but there are situations where allegations are unfounded, and it is important to maintain a relationship with the child in a safe manner. Child contact centres offer a safe environment in which contact can happen.

Liam Kerr: I have a question about the enforcement of court orders. When a court order is breached, section 16 of the bill would impose a new duty on the court to investigate why that has occurred. In evidence to the committee, some people suggested that that would add little, but others have told us that an investigation does not happen as standard so the provision is absolutely required. What are your views? If such a duty is introduced, should the child's views always be sought?

Ian Maxwell: We have proposed a range of ways in which court orders could be enforced. The suggestion in the bill that the circumstances be examined is a good one, but the sheriffs need a lot more than that. I was interested to read that the Sheriffs Association would

"welcome a statutory scheme for simpler regulation of contempt cases"

with

"a fast track minute and answers"

to establish why things have happened. The Sheriffs Association suggests that that would mean that we could find out the position right away, rather than sending off the child welfare reporter and taking weeks, if not months, to determine that. It also suggests

"a framework for a social work report",

if necessary, to find out the circumstances of the contempt and why the court order has not been carried out, and it proposes sentencing powers including

"a community payback order",

"a requirement to attend parenting classes"

and, most important,

"deferral of sentence".

I have been involved in cases in which the mere fact that contempt has been established has been enough to restart the contact, because the parent has realised that the court order is serious and that the child should see the other parent. Sheriffs often use that approach, and they are—quite rightly—reluctant to imprison parents. I agree with the comment that Marsha Scott made last week about contact in relation to a parent who has been imprisoned. Community service orders and parenting classes are positive measures that might improve the situation.

Dr Whitcombe: Breaches of court orders should always be investigated and the child's view should be taken into consideration.

In the evidence that has been provided by Professor Sutherland and Dr Whitecross, mention is made of particularly intractable cases that keep going back to court for no reason other than that one parent keeps refusing to abide by the court order. They commented that there is no solution to such problems and that the court can only do so much. My concern is that there is a failure to identify the harm that that behaviour has on the child. If a parent continually causes disruption and, for no reason, prevents the child from having a relationship with a good-enough loving parent, that is harmful to the child and it can be considered to

be abusive. That needs to be taken into consideration.

June Loudoun: There definitely needs to be investigation when contact does not happen. It may be that there has been abuse that has not been raised before, but that would need to be confirmed. There could be a multitude of reasons why the contact has not happened. It could be vindictiveness, it could be anger that has not been dealt with or it could just be to get at the other parent. Parents might not realise the harm that that does to the child, and in some cases it needs to be explained that the person is getting at not the husband or the wife, but the child. Investigation is important.

The Convener: Our last question is from James Kelly.

James Kelly (Glasgow) (Lab): Section 21 of the bill says that, if there is court delay, the court should have regard to the welfare of the child and take action to ensure that the case is speeded up. Does any member of the panel feel that that provision does not go far enough and that it should be strengthened somewhat?

Ian Maxwell: I agree that it needs to be strengthened. We have had Supreme Court decisions and pronouncements from judges in appeal cases in the inner house about reducing delay. For example, Lord Glennie has said that decisions on contact should take place within weeks or at most months. However, I have been in court in front of sheriffs to whom I have quoted those decisions and they have disregarded them, ordered a report that would take around two months to produce and not put in any provision for contact in the meantime. I am afraid that urgency is important in hearing cases.

In our submission, we quote the work of Judge Rudolph in Cochem in Germany. He instituted a scheme in his local court whereby, if an issue was raised, each side could submit only a paper of one page and there had to be a hearing within a week, or at most two weeks, to consider the issue in court. Any further hearing that was necessary had to be held within another two weeks. That model worked there, and it progressed a lot of cases in a way that benefited children, rather than the parties having to wait for months for a decision on a fundamental aspect of their lives.

In cases in Scotland, there is a problem with delay, simply because that is the way in which the courts work. If a court is dealing with a fraud case or something of that nature, it might not matter that it is taking a long time. However, in a family case, it is important that the court sits early on to consider whether it is safe for the child to see the parent and whether an arrangement should be made to that effect. That should be done quickly, and not after a delay.

I was involved with a group on the family law committee of the Scottish Civil Justice Council that looked at case management, and I know that changes are being considered in that area. However, my feeling is that we need a much more fundamental emphasis on speed in family court cases now, because it is important for the children concerned.

Dr Whitcombe: Delay is extremely damaging for children. In the life of a young child, a week is an extremely long time and a month seems much longer. In England and Wales, guidelines were introduced to the effect that cases in private law proceedings should be heard and dealt with within 18 weeks and those in public law proceedings within 26 weeks, although I am not saying that those guidelines are always adhered to. I am conscious that cases that I am brought into have usually been in the courts for a year or two, or even three or four. Sometimes, the parties have been back and forward to court over a period of 10 years, which is an extremely damaging process for the children.

The Convener: Do panel members have any further points to make?

June Loudoun: For the same reason that Dr Whitcombe mentioned, I believe that the court process needs to be speeded up. A week is a long time for a child, never mind a month or six months. We need cases to be looked at in depth and properly investigated, and then we need decisions to be made that are in the best interests of children.

The Convener: That concludes our questioning. Our session has gone on for much longer than was anticipated, but it was important that we heard all your views fully and that you had the opportunity to express them. They have been very helpful. During your evidence, you suggested that you could provide the committee with further information, and we very much look forward to receiving that. In the meantime, I thank you all very much for attending.

I will suspend the meeting for a change of witnesses and a five-minute comfort break.

11:34

Meeting suspended.

11:39

On resuming—

The Convener: I welcome the witnesses for our second panel this morning: Stuart Valentine, chief executive of Relationships Scotland, and Isobel

Bilsland, manager of Relationships Scotland Borders. I thank the witnesses for their written submissions, which are very helpful. I also take the opportunity to thank them for hosting the committee when we had our away day in September.

We will move straight to questions from members.

Jenny Gilruth: Good morning to the panel. You will be aware that section 1 would remove the 12-plus presumption for taking evidence or views from a child. You noted in your written evidence:

"Our concern with removing the age presumption was that children's views would be less likely to be taken."

Does Relationships Scotland now support the removal of the 12-plus presumption?

Stuart Valentine (Relationships Scotland): We are very supportive of children having the opportunity to give their views. We know from the children who come to our centres that they are very keen to be heard. However, it is helpful for them to know that they are not going to be the decision makers in the matter. The responsibility for the final outcome will rest with others, but children have the opportunity to be heard and listened to as part of the process—that is vital. We hope that the bill that is passed will include details of the different ways in which that could be done. About half our network's mediators are trained to consult children through the mediation process, and there may also be many other ways in which it could be done in the future—it would be helpful if the bill would specify them. In our Borders area, where my colleague Isobel Bilsland works, and in Aberdeen, we have developed more work on that, which it would be helpful to hear from her about.

Isobel Bilsland (Relationships Scotland Borders): We hear children's views in a variety of ways, not just when their parents are in mediation. Most referrals are court ordered, and we are asked to try to ascertain what children feel about their family situation and what they want to happen in future. We tend to see children over time; it is a process, not just a one-off meeting, because children—especially younger children—have to feel comfortable about who they are speaking with. We do a variety of activities with young children to try to ascertain their views, which might start with games, such as card games.

The court asks us to pass on the views in lots of ways. We might support children to write letters or to speak with the sheriff or a solicitor, or the court might ask us to try to ascertain their views and write a report for the court. We do that work in all manner of ways, which is important

Stuart Valentine: If the work is with children who are younger than the age of 12, any method that is used to take their views will of course be age appropriate to ensure that it is done in a reasonable way. The family justice modernisation strategy indicated that the Scottish Government was considering a system of child support workers; we would support that approach if they were specially trained to take the views of children.

Jenny Gilruth: In your written evidence, you mentioned the importance of child consultant mediators and child support workers. Are those roles distinct and separate? Could a child consultant mediator ever become a child support worker? The context for the question is the Scottish Government's desire that there should not be duplication and that a child should see just one individual and not lots of different individuals. How might it work in that context?

Stuart Valentine: Our mediators could contribute to that. As I said, about half our mediators are trained in consulting children and our network would certainly be open to being more involved in that work.

Jenny Gilruth: However, their role is quite distinct from that of a child support worker, for example.

Stuart Valentine: Yes, that is so.

Jenny Gilruth: With the previous panel, we considered the issue of taking evidence from very young children—Isobel Bilsland alluded to that in her earlier answer to my question. Are there any other views on how that evidence can be best gathered from very young children in particular?

Isobel Bilsland: How evidence is gathered has to be determined on a case-by-case basis. For example, we are working now with a boy who is a teenager but who has a very young outlook on life. We cannot say that a child of 10 will be able to do X or Y, so we would not support a prescriptive list. As I said, we always ask the child how they feel most comfortable in reporting their views, and we tend to go along with that. As I said, it can start off with games. Sometimes, if they get distressed when we get into the nitty-gritty with children about how things have been for them and what difficulties they face, we pull back to a more generic game with them, rather than a game to find out their views.

11:45

John Finnie: Good morning, panel, and thanks for your written evidence, from which we know that you have voluntary and paid staff in the contact centres. What is a typical mixture? How do the roles differ between the two categories of volunteers and paid staff?

Stuart Valentine: According to our most recent figures, we have 152 paid staff and 128 volunteers in our child contact centres. The direction of travel is towards more paid staff; proportionately, we had more volunteers in the past. There are many roles in our child contact centres. For example, there are people who are involved in the intake process, who make the initial assessments and gather all the case information. There are volunteers, there are child contact centre managers and there are overall service managers, such as Isobel Bilsland. There is a range of roles in the centres and there are different levels of experience and training depending on the roles.

John Finnie: I will ask about training. If you were present for the first evidence session this morning, you will have heard many references to domestic abuse. An important element of the domestic abuse legislation that was passed is controlling and coercive behaviour. Are your staff aware of that and do they have training on it?

Isobel Bilsland: On a rolling programme, we send our workers—staff and volunteers—to the local authority domestic abuse training. We also do that training in house. We update the training as we go. Everyone who works for us welcomes the training.

John Finnie: I am sure that they do. Having received that training, are your staff aware of anyone in the centres seeking to use controlling and coercive behaviour in the process of contact?

Isobel Bilsland: The short answer is yes, they are. In the case of supported and supervised contact, we keep the parents separate in our contact centres. The parents should never meet there. Staff are aware that somebody might try to pull the strings or control what is going on, but that does not happen in the contact centres, because parents are kept apart. We have separate arrival and departure times, and the parents often use separate entrances. If not, one parent is kept somewhere else while the other is coming in. They should never catch sight of each other. We get situations in which one parent will say, “Can you pass this on?” A contact centre is not an appropriate setting to pass bits and pieces on, unless it is something such as one parent asking us to let the other know that the child has had a cold that week and therefore might need something. That would be the only sort of message that we would pass on in a contact centre.

We have become aware of examples such as someone trying to put something in a child’s bag before the child is taken back to the resident parent. We caught that before it went through, because we do not know what is in it. It could be an abusive letter. We try to be careful.

Stuart Valentine: Perhaps we will come on to this, but there is a linked issue in that, in addition to the decision of the courts when contact is ordered, we make our own risk assessment. The courts of course make an assessment, but our centres make their own independent risk assessment of whether cases are safe to progress. Many of the issues that Mr Finnie raises will, we hope, be picked up in the risk assessment. It is worth saying that there are cases in which the court orders contact but our centres judge that it is not right and proper to go ahead with that. That is not routine, but there are cases in which we say that, in our view, we cannot safely facilitate contact, so we will not go ahead with it.

John Finnie: What is the prevalence of cases involving domestic abuse or other serious welfare considerations as a proportion of your workload?

Stuart Valentine: In general, in around half the cases, that may be mentioned as an element. Clearly, it is vital for the courts to make a judgment on that, and for our centres to do so. Scotland continues to have a serious and significant problem of violence and coercive control, predominantly but not exclusively by men against women. That issue is vital to the running of our child contact centres. It is in no one’s interest for unsafe contact to happen and we do not want it to happen in our child contact centres. The safety of everyone involved is our first and main priority.

John Finnie: How does the source of your referrals affect the characteristics of the families involved and the work that takes place?

Stuart Valentine: Across the country, about 2,500 children come to our contact centres each year and we facilitate more than 32,000 separate contact sessions. About 80 per cent of our referrals come from the Scottish courts and solicitors, but we also have referrals from social work as well as self-referrals. The vast majority of referrals come from the courts and the legal profession.

John Finnie: I am sure that each case is individual but, in general, does the source substantially affect the range of work that you are required to undertake?

Isobel Bilsland: We have very few self-referrals that involve significant concerns such as mental health issues or a history of substance abuse or domestic abuse. Most of those types of referrals come from the courts. Do you agree with that, Stuart?

Stuart Valentine: Yes.

Isobel Bilsland: We get some referrals from social work that involve things such as mental health issues or substance misuse.

Stuart Valentine: A key theme over the years—certainly in the past five to 10 years—has been the increasing complexity of the issues that people present with, such as drug and alcohol misuse and mental health issues such as self-harm and suicidal ideation. A range of issues now come into our services for us to deal with, and there has been a big increase in that. Those other issues that families are experiencing can present an additional challenge to us in arranging and facilitating contact and making sure that good and positive contact takes place.

The Convener: Liam McArthur has a supplementary question.

Liam McArthur (Orkney Islands) (LD): I should declare an interest, as my wife is a mediator with Relationships Scotland Orkney.

To follow up on John Finnie's line of questioning, I note that you said that, on rare occasions, you consider that engagement through the contact centre would not be appropriate or safe. What tends to happen in those cases? If contact is not possible under supervised conditions in a contact centre, it is difficult to imagine that there would be any way of facilitating that contact safely. Does the court simply accept the view from Relationships Scotland that contact in those cases simply cannot be facilitated safely?

Isobel Bilsland: That mostly happens when the court sends people to us for supported contact but then, having done a risk assessment or seen other pieces of the jigsaw puzzle through the MARAC—multi-agency risk assessment conference—system or whatever, we feel that that would not be safe. In that situation, we go back to the court and say that, at least in the interim until other things are sorted out by the courts, we are willing only to do supervised contact. That is rare, but the courts have accepted it.

Liam McArthur: That is helpful.

Fulton MacGregor: I want to follow up on Liam McArthur's question and on Stuart Valentine's point that the court and Relationships Scotland make decisions on contact. Can you give an example of how that might work in practice when a court order comes in and you begin to assess the family dynamics and circumstances?

Isobel Bilsland: Normally, when we get a court referral, we get some information from the court. Usually, both solicitors phone us up. If not, we will phone the solicitors and try to get a bit more information. Sometimes, it does not sound as if we are dealing with the same family, because we get two different stories, but it gives us something to start with. Sometimes, we are already aware of the family because they are working with us through other routes, or through the MARAC system.

We then do initial assessment interviews with people to take their views and tell them how the system works. At that point, both parties usually give us lots of information. We do a simple trawl to see whether there are any domestic abuse issues, health issues or child protection issues. If anything is flagged up by anybody—the parents, solicitors or the court, for example—a senior person from the service will do a much more in-depth risk assessment. In our case, that will probably be our family support worker. They will go into things in much more detail and perhaps phone agencies such as Children 1st, the social work department or the child protection unit. That person will ensure that we have ticked as many boxes as possible.

It is not always possible to get everything down in black and white because, if the court is not told that there is a problem, not everything will be flagged up. We do as much as we can.

Fulton MacGregor: How prescriptive do court orders tend to be? If you are confronted with a situation in which a court order says X, Y and Z and, from your expertise, you see immediate warning signs but you do not have time to get back to the court because it is the weekend or whatever, does that mean a referral to the statutory agencies or do you deal with it yourself?

Isobel Bilsland: The order that we get from the court—the interlocutor—is usually pretty slow in coming through, but the sheriff's clerk or the solicitors will get in touch with us that day or the day after, so we will have lots of warning. However, there are times when they say that they need three supervised contacts done and they need the report by whenever, and we just say that we cannot do it, so they continue the case or sist it and move it forward. It is more important to the court that all the boxes are ticked and everything is done. There is no point in just going back to the court with one contact if that will not be good enough.

Does that answer your question?

Fulton MacGregor: Yes.

Stuart Valentine: There are sometimes gaps in the information that our contact centres get from the court. They often do not get the full picture and are faced with the task of making sure that they get as much information as possible. There is certainly a weakness in the process in that the courts do not give a full picture of all the circumstances that it would be best for us to be aware of before we go ahead with contact. That is a gap in the process and it could be improved.

Isobel Bilsland: That happens more in some areas than in others. Some court areas seem to be happier than others to give information. There is a problem with that in some parts of Scotland.

Fulton MacGregor: I would like to think that there is a degree of flexibility, given that you are dealing with families who are in difficult circumstances, so you need to be flexible to react to that.

You talked earlier about the staff set-up in the contact centres and you mentioned paid staff and volunteer staff. Is a different status of staff required for different types of contact or certain situations, or does everybody operate in the same fashion?

12:00

Stuart Valentine: People are appropriately trained for the task that is being undertaken. For example, people have additional specialist training to undertake supervised contact, which involves more intensive oversight of what is happening. There is training on the contact itself, writing reports for the court and the range of issues that are dealt with. Some activities that we do are more intense and require more training than others.

Fulton MacGregor: Is it more likely to be the paid staff who do that?

Stuart Valentine: Yes. Only paid staff provide supervised contact.

Isobel Bilsland: There is always a paid member of staff who takes responsibility on the day for the contact centres.

Stuart Valentine: One gap that our network sees is that specialist risk assessments should be available to the courts in making decisions on contact, so that they can make a determination on issues such as domestic abuse or coercive control. At the moment, the courts do not have access to that specialist knowledge, so we would be keen for those to be made available. A very small number of specialist risk assessments have been done in Scotland, and a number of people are trained in that. That is another gap in the process. As I said, we do not want unsafe referrals to be made to our contact centres from the courts. Specialist risk assessments could greatly assist the court in making its decisions about when it is safe or not safe for contact to progress.

John Finnie: Reference was made earlier to MARAC, which is the multi-agency risk assessment system. Would that suggestion meet the terms of that system? Where does your suggestion fit in the scheme of things?

Isobel Bilsland: Relationships Scotland's services do not work within the MARAC process in every part of Scotland. The type of agencies that are included in the MARAC process depends on the local authority in the area.

John Finnie: I presume that a local authority that does not include you in its multi-agency risk assessment process would not make a referral to you through its social work department that was not supported by a risk assessment, if someone was the subject of a MARAC assessment.

Stuart Valentine: I am not sure of the best answer to that. Referrals to our contact centres come directly from the courts and they might or might not include that link to the MARAC system in certain parts of the country.

John Finnie: But you said that you also got referrals from social work services.

Isobel Bilsland: Yes. We get some in that way, but those are rarely for supervised contact and are really only for supported contact. In my experience, the referrals for supervised contact that come through that route are either for looked-after children, who are maybe with foster carers, or for a child with Asperger's or something like that. It happens when there is a special need to use the contact centre.

John Finnie: The reason why I ask is to understand whether there are shortcomings in the bill that the committee needs to pick up on. Everyone wants to give a high profile to safety. If there is something that you feel that we should pick up on, perhaps you could write after the meeting to give examples.

Stuart Valentine: Absolutely. We will provide more information on our thoughts around specialist risk assessments that could be available to the courts.

The Convener: That would be helpful.

Rona Mackay: In light of your responses so far, can you clarify who is actually responsible for the children? In your written submission, you say that one of the principles of contact at your centres is that parents and not staff are responsible, and that the contact centre's staff have a general duty of care in respect of its premises and users. Will you clear up that matter? We have heard that you take a lot of responsibility for safety measures, but perhaps you could elaborate on that.

Stuart Valentine: I will cover the general points, and Isobel Bilsland can fill in some of the detail.

It partly depends on how the contact process is done. We have a range of types of contact in our centres. For example, with handover, which is basically when one parent brings the child to the centre and the child goes through staff members to the other parent, with the first parent perhaps leaving the centre for a number of hours, the responsibility for the child clearly remains with the other parent. Supported contact is dealt with similarly.

There is much greater oversight with supervised contact. The work involves observing and taking great care at all times during the contact, which clearly involves a lot of responsibility. There is oversight at all times when families and children are in our centre, but the facility is for children to spend time with their parents, and if that contact has been deemed safe and goes ahead in the knowledge that the process is safe, the parent is also responsible for their child during the contact. That is in the confines of our centres, where staff are present.

Rona Mackay: Are you confident that, should an incident become of concern during contact, your staff can intervene and that there is a process that will keep the child safe? Do such incidents happen often?

Isobel Bilsland: Such incidents happen. They can happen at a very low level, in which case a member of staff might say, "We want you to come out of the corner, because we can't see what's happening," or, "Do you really think that it's appropriate to speak with your child like that?" or, "You can't take photos like that because it's intrusive."

However, clients in contact centres have also behaved in a totally inappropriate way such as threatening staff, and staff have had to intervene, call the police and actually take the child away from the parent. In such cases, staff have to take responsibility for the child until the other parent can be brought back to collect the child.

Staff have also had to intervene when we have had sad incidents in which a mother who has mental health issues comes to see her child and is not handling the child appropriately or is force-feeding it or something such as that.

Rona Mackay: Very roughly, has that happened a few times or does it happen 20 per cent of the time?

Isobel Bilsland: The number of such incidents is growing all the time. Ten years ago, it happened once every six months. I can only speak for my contact centres, but I would say that such incidents now happen once a month.

The Convener: My final question is the same as one that I posed to the previous panel. If contact has to be supervised, that suggests that there is a safety risk, so should the courts be ordering contact at all?

Stuart Valentine: That goes back to the central dilemma, which is about whether parents are and should be able to continue to have a relationship with their children. From research, we know that between a quarter and a third of children lose contact with their non-resident parent after separation and divorce. In the vast majority of those cases, there is no good reason for that but, clearly, in cases in which there is domestic abuse, coercive control or such issues, a judgment has to be made.

As I mentioned, we are calling for special risk assessments, but we are also trying to ensure that courts and others make the best decisions possible. However, it requires the wisdom of Solomon to decide whether contact should go ahead. You have heard a range of views from organisations about where the balance should lie. It is enormously difficult for the courts and others to make those decisions. It is for all of us—all the organisations that work with those families—to try to make the best judgment that we can to achieve the best outcome for children. It is a massive loss in a child's life not to have a relationship with one of their parents but, in a significant number of cases, that may be the best outcome. However, it is an enormously difficult decision. That is clearly the challenge before us.

Isobel Bilsland: It is important to say that supervised contact happens for a variety of reasons and not just because the court feels that unsupervised contact could be unsafe.

Rona Mackay: What would those reasons be?

Isobel Bilsland: There are a lot of reasons. Quite often, it is because a child has not seen a parent for a long time. About three weeks ago, a child came into the contact centre who had not seen his parent for two and a half years because he had refused point-blank to do so. Even outside the door of the contact centre, he was saying that he did not want to see his parent and that he would not go in. All of a sudden, he said, "I'll go in, but I'll tell him I don't want to see him." As soon as he went through the door, he ran straight to his parent. The contact lasted for two hours and it was very positive. Viewing it from where we were, we had no concerns.

Another issue is when a parent has changed significantly, perhaps because they have been in the army. We have had cases in which a parent has been badly disfigured in Afghanistan and it has not been possible to reintroduce them to the child in a family setting because the parents are separated. We have worked with the child and tried to say, "This is still daddy, but he isn't able to hold you any more."

Rona Mackay: You talked about the child not wanting to go into the room. Did that not concern you? Did you feel obliged to take the child into contact—

Isobel Bilsland: No. We would never force a child into contact—

Rona Mackay: But he was saying that he did not want to go in.

Isobel Bilsland: He arrived outside and his mother said, "Why don't you just go in for five minutes and see?" Nobody was saying that there was, at that point, any reason why the child should not see their father.

Rona Mackay: Does that not go back to the core purpose of listening to children's views? Surely, if they say that, you have to believe them.

Isobel Bilsland: I agree. This was the first time that we had met this child. He had not been in our service and we had not been speaking to him. The mother was very encouraging. She was saying, "I think you should go in and see your dad—just go in for five minutes." We would have been saying, "If you want to come in, this is what will happen. This is where your dad will be sitting. This is where you'll see him. We'll be with you all the time. Your mum will be waiting in another room, and if you want to see your mum at any time, we'll take you right through."

If a child wants to, they can give us safe words or a safe action, so that we would know to take them out of the room. In that instance, the mum seemed to be sure that the child wanted to see the parent, but I reassure the committee that we would never ever try to force a child. We have read things that say that a child was dragged away screaming. We do not recognise that—it is not something that we do.

James Kelly: I want to touch on funding. One of the challenges that you face is that the Big Lottery funding of £750,000 a year will be withdrawn in March 2020. How do you envisage that you will overcome that challenge?

Stuart Valentine: That is a very good question. The Big Lottery Fund has provided excellent support to our child contact centres over the past five years, and we have been very grateful for that support. The Big Lottery has less funds than it used to have and has advised us that, from the end of March, it will no longer be able to fund us. Very few funders in Scotland can provide that level of support; it is only really the Big Lottery and the Scottish Government that can do that.

12:15

We have been in discussions with Scottish Government ministers for a number of years in which we have highlighted the issue that will come up at the end of March. We were very pleased to get the news just before Christmas that interim funding of £200,000 will be provided for three months—from 1 April until the end of June—to support our child contact centres during that period. That will also give us time to continue to speak to ministers and officials about the longer-term sustainable funding of child contact centres that needs to be in place.

It is perhaps stating the obvious, but we need funding to run our child contact centres across Scotland. As I said, we have 32,000 individual contact sessions a year that need to be supported through the provision of staff, premises and other support. In the light of the loss of the Big Lottery funding, the provision by the Scottish Government of the majority of that support is the main route that we are looking to for the future, and those conversations are on-going.

James Kelly: Have you been able to investigate any other sources of funding, separate from the Scottish Government?

Stuart Valentine: Absolutely. A funding jigsaw is in place across the country. We already receive funding from the Scottish Legal Aid Board and charitable trusts, and from donations and charges that can be made. We get our funding from a range of different sources; we recently provided the Scottish Government with very detailed information on that. There are, and will continue to be, a range of funding sources for our contact centres.

However, we would not be able to make up the loss of £750,000 in Big Lottery funding through, for example, a range of applications to other charitable trusts across Scotland—it would simply not be feasible to bring in that level of funding. We have made the Scottish Government aware of that, we continue to do so in our discussions with it, and we hope to find a way forward that will ensure that we have sustainable funding for our services.

Shona Robison: I will touch on referrals to contact centres from sources other than the courts. Earlier, Isobel Bilsland mentioned that there can sometimes be referrals from social work and that referrals involving issues to do with substance misuse or mental health will not necessarily come through the court system. The bill requires court referrals to be to a regulated centre; however, with referrals from other sources, that would not be the case. In its submission, Relationships Scotland states that it thinks that it would be "impractical" for Relationships Scotland contact centres to operate in that way. It would be useful to hear a bit more about why you think that.

Stuart Valentine: We would not support a two-tier system of child contact centres. We operate and support 42 child contact centres across the country, which operate in an integrated way with other services. We try to have as great a geographical spread across the country as possible, which is key so that families do not have to travel too far to access contact. It would not be practical to work to two different standards.

Over the past 30 years, in order to aim for the best practice everywhere that we operate, we

have worked to develop very strong standards, policies and practice across the country. We want to continue to do that, so it would not be practical to have two types of child contact centres across the country, with one network that met good, high standards of regulation and another that did not. All centres should try to attain the best standards possible.

The Convener: Relationships Scotland's submission refers to a "gold standard" for accommodation for contact centres. Could you elaborate on that?

Stuart Valentine: Our contact centres operate in different places. We operate centres from our own offices. In addition, in Hamilton, for example, we run a child contact centre from the Burnbank family centre, which is an already-established family centre whose premises we use for part of the week.

Across the country, we use church halls and community centres. In the Highlands and Islands, we use ad hoc centres now and again when contact is required. We use a range of premises. We are keen to avoid a situation in which regulation prevents us from using some of the centres that we currently use from time to time.

We hope that a sensible, flexible approach will be taken. Of course, all the centres that we use should be safe and fit for purpose, but, for example, we would not expect every centre that we use to have to have wheelchair access. We do not think that that would be necessary. What we could guarantee is that, in any cases in which families come to us with those needs, we would find a tailored solution. That approach would not be detrimental to anyone, but it would mean that not every centre had to have, for example, full wheelchair access.

Isobel Bilsland: I agree. I think that problems are more likely to arise in more rural and island situations. We would not want regulation to stop access to children who are living on a remote island somewhere. Stuart Valentine covered everything that I would say in that regard.

The Convener: The considerations—multiple entries, disabled access, modern play facilities, waiting spaces and so on—are almost like a wish list, but the reality is that, sometimes, a facility might fall short of that standard but will still do the job. Ensuring that all the facilities can meet those considerations would have huge resource implications, which would have to be addressed in the financial memorandum. Is that more or less your point?

Stuart Valentine: Yes. If the standards were set at a significantly higher level than the level of our current facilities across the country, that would require investment. The other issue is that, as I mentioned, we do not own all the premises; we might be renting space in those premises at the weekend, and it would not be in our gift to start knocking down walls and making various changes.

Liam Kerr: You might have heard me ask earlier about the enforcement of court orders, which is covered in section 16. You and others have suggested a range of interventions—mediation, family therapy and so on—that would help to resolve the issues that families experience in relation to breaches of court orders. Do you have a view on whether those interventions should appear in the bill? How can courts and service providers such as yourselves ensure that those interventions are used only in suitable cases? We have had some representations that they might not be appropriate in situations in which there is domestic abuse, for example.

Isobel Bilsland: We are fully aware that mediation, for example, is not always in the best interests of the parties involved, in a strict sense. Sometimes, we get court referrals involving cases in which there has been domestic abuse, and we have to take a different approach.

The first thing to say is that we always begin by seeing people individually. If they are not comfortable with mediation, we write to the court to say that we do not feel that that is appropriate. Secondly, more and more mediation is being done using an approach that we call shuttle mediation, which involves the two people not being in the same room. There is a debate that goes on all the time within Relationships Scotland about whether shuttle mediation provides outcomes that are as positive as those that are provided by face-to-face mediation, but it is one of the things that we can do. It is more expensive, because you need two mediators for shuttle mediation.

I do not know whether I have explained this fully but, basically, with shuttle mediation, the parties do not meet. They are in the same building, but they arrive and leave at different times, so they never meet. There are two mediators, and one mediator goes between the parties. That is a possibility.

Stuart Valentine: That is part of it. Also, the investment from the Big Lottery helped us to employ and develop a range of family support workers across the country. They have been very successful in helping families in situations in which the contact is safe and can go ahead. Those workers help families move towards contact in cases in which there might be issues arising from the fallout from a couple's break-up. As you will know, when people break up, although there might not be domestic abuse issues, there might be a range of other issues that lead to former partners having very strong feelings against each another. Our family support workers have proven to be very

successful in working with families in those situations to help to break down some of the concerns about contact, and they have facilitated good and positive contact in a range of cases in which contact would not otherwise have taken place.

As others have said, we would never support punitive measures against resident parents. We try to understand why there has not been contact and to work through those issues with the families.

The Convener: For the avoidance of doubt, is there an understanding that mediation would not be appropriate in cases in which there is domestic abuse?

Stuart Valentine: In many cases, there is a judgment to be made. Again, there is a range of debate about that. Some would say that it should automatically be the case that no one should be allowed to go through mediation in such a situation, but there might be some cases in which the person who has been subjected to domestic abuse might wish to go through, and can be supported through, mediation. However, in the majority of cases, mediation would not be deemed appropriate where there is domestic abuse.

John Finnie: There are strong views on that subject, as you know. On that specific point, what would you use to establish that no coercive control was being exerted on the person who agreed to undertake mediation in those circumstances? That is the very nature of such behaviour.

Stuart Valentine: That is a key part of the training that we provide to our family mediators. All our family mediators go through extensive training, of which dealing with cases in which there has been domestic abuse is a key part. We asked Scottish Women's Aid to look at the training that we provide to our family mediators to say whether it appropriately covers the issue of domestic abuse and it confirmed to us that, in its view, the training does so. For the families we work with, such issues are central.

There is a range of mechanisms that we can use in cases in which people wish to go ahead with mediation—for example, Isobel Bilsland mentioned shuttle mediation, where the people do not even meet each other. We understand that it is a sensitive and difficult area and, in the majority of cases, mediation would not be viewed as appropriate where there has been domestic abuse.

The Convener: That concludes our questioning. Thank you very much for what has been a helpful session. We look forward to receiving the additional information that you have indicated that you will provide.

Decision on Taking Business in Private

12:27

The Convener: Before we move into private session, do members agree to take agenda item 4, which is on our approach to the Defamation and Malicious Publication (Scotland) Bill, and item 5, which is on our work programme, in private?

Members *indicated agreement.*

The Convener: That concludes the public part of today's meeting. Our next meeting will be on Tuesday 21 January, when we will continue our evidence taking on the Children (Scotland) Bill.

12:28

Meeting continued in private until 13:01.

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

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