JUSTICE 1 COMMITTEE

Wednesday 18 May 2005

Session 2

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JUSTICE 1 COMMITTEE
15th Meeting 2005, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Helen Eadie (Dunfermline East) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
*Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Kenneth Norrie (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Heather Coady (Scottish Women's Aid)
Frank Collins (Stepfamily Scotland)
Dr Martin Crapper (Families Need Fathers)
Jimmy Deuchars (Grandparents Apart Self-Help Group)
Jean McKenzie (Scottish Women's Aid)
Maggie Mellon (Children 1st)
Jennifer Turpie (Children in Scotland)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 1

Scottish Parliament

Justice 1 Committee

Wednesday 18 May 2005

[THE CONVENER *opened the meeting at 10:04*]

Family Law (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning and welcome to the Justice 1 Committee. I apologise for the delay in starting our meeting.

We have received no apologies. I welcome Professor Norrie, the committee's adviser on the Family Law (Scotland) Bill, and Mike Pringle, who is here to observe today's proceedings. As we will hear shortly, Mike will be joining the committee, if the Parliament endorses that proposal, which I am sure that it will. We thank Jamie Stone for his contribution to the committee's work.

Item 1 is further evidence taking on the Family Law (Scotland) Bill at stage 1. I welcome the members of our first panel. As Jennifer Turpie is the director of research and policy for Children in Scotland and Maggie Mellon is the director of children and family services for Children 1st, the committee has an opportunity to focus on the interests of children in the bill. We have between 50 minutes and an hour to discuss your evidence and question you about it. Thank you for your written submissions, which have been very helpful.

Mr Bruce McFee (West of Scotland) (SNP): The bill deals almost exclusively with adult relationships, but they obviously impinge on children. Are there any pressing issues for children that the bill should have addressed but has not? Let us leave out adoption, which is under review. Is the bill deficient in any areas as regards children?

Maggie Mellon (Children 1st): There is one such area—the protection of children from violence and assault. As you say, the bill deals almost exclusively with relationships between parents, rights of contact, the protection of women from assault and various issues around interdicts. It is the view of Children 1st that, under the law, children and adults should have equal protection from physical assault. In other words, the defence of reasonable chastisement should be abolished.

Jennifer Turpie (Children in Scotland): Children in Scotland would support that position. The committee will be aware that when the Criminal Justice (Scotland) Bill was being considered, attempts were made to address the issue, but the response from the Executive at that time was that it would have a campaign on positive parenting. That campaign consisted of a leaflet, which I understand is no longer in print. I raise that now because although I am aware that there is an issue around positive parenting and helping parents with that, there will be a tremendous need for information to accompany the changes that will come along with the Family Law (Scotland) Bill. We need to ensure that that information is given because the Executive's track record suggests that that has not always happened.

Mr McFee: That was interesting and perhaps a little controversial.

Are the bill's provisions likely to advance or to inhibit the welfare of children, or will they make little difference?

Jennifer Turpie: The bill acknowledges that decisions that affect families, couples and relationships also affect children. There are specific areas around contact and relationships with people who are not the child's parents that require a bit more consideration—I am sure that they will be drawn out in this morning's discussion—but on the whole I agree that the bill recognises the role that children play.

Maggie Mellon: Most of the proposals in the bill are welcome and are long overdue. In general, we welcome the proposed reform of family law.

Mr McFee: Thank you for that. No doubt we will return to some of those issues.

Margaret Mitchell (Central Scotland) (Con): I want to explore some of the issues around divorce. Children in Scotland has expressed a very clear view on the relevant separation periods. For the record, will you explain your approach to the bill's proposed reduction in the separation periods and whether you think that, in general, that is a good thing for children?

Jennifer Turpie: As we state in our written evidence, we think that a reduction in the required periods of time for separation when there is consent would be a good thing for children. There is strong evidence that children who live in family situations in which there is continuing conflict suffer a long-term impact of that conflict on their well-being. However, one has to balance that. We are not promoting splitting up as a good thing for families. We believe that children also benefit from being in a family unit; however, when there is conflict that cannot be resolved through other means, such as mediation—which the accompanying documents to the bill provide for—that is not a good place for children to be.

Maggie Mellon: Our position is the same. It is not that we are in favour of making separation easier, but when two adult parents have decided

on separation, we would be concerned about protecting the best interests of the child within that situation. As Jennifer Turpie said earlier, it is often not the law that counts; it is what goes on around it and the services that are available to families to provide advice and counselling—particularly advice that helps the parents and the wider family to see the interests of the child.

I hope that we will be able to talk about family conferencing as a way of addressing some of the difficulties, as Children 1st has found that putting the focus on the child sometimes makes adults drop some of their worst conflicts and the things that are most damaging. Most parents love their children and want the best for them, and by helping parents to focus on the interests of the child during separation or in any conflict situation, we can get the best out of families. That approach relies on the supporting services and advice being there when people need them, so that people do not just have recourse to the law and adversarial means of sorting out family difficulties.

Margaret Mitchell: Are there any issues around the training of people who are involved in family conferencing?

Maggie Mellon: As we state in our written evidence, family conferencing takes place when the wider family and any significant people in a child's life are contacted and brought together, either virtually or in a conference meeting, to consider the best interests of the child in a situation in which serious decisions are being made about the child's life and future. For instance, the rights and needs of children to have contact with their wider family can be looked at in that context. Equally, when there is conflict about which parent would have care of the child and about contact, the focus is on the child and the family has to plan together for the best interests of that child. As it stands, the law sees divorce and separation very much as a fight between two adults in a court, and the child is collateral to be fought over.

Margaret Mitchell: I was thinking more of training the people who would instigate such a meeting to be aware of tensions.

Maggie Mellon: Absolutely. There has to be proper training, as the co-ordinator of a conference or a provider of that service must be completely independent and focused only on helping the family to make a plan for the child. Training is necessary, and we hope to establish standards of training. That is absolutely essential. We cannot just invite people to come together without any preparation.

Margaret Mitchell: I wonder whether you can comment on existing divorce procedure. Do you think that the procedure for divorce, as opposed to the grounds for divorce, leads to conflict? If so, is there an argument for abandoning the roles of pursuer and defender in favour of a minute of mutual agreement when there is no conflict or when two people simply want to separate?

10:15

Jennifer Turpie: There certainly could be such an approach, from the perspective of that being likely to be better for children. Mediation and other approaches that try to achieve resolution and agreement before a point is reached at which there is the conflict that you describe must be better for children and, indeed, for adults. I agree that removing the adversarial approach from family law would be the most preferred option.

Maggie Mellon: I agree.

Margaret Mitchell: Should divorce be possible purely on the basis of an agreement, or should there be a mixed system?

Jennifer Turpie: The question is interesting. Although agreement is the preferred option, I am not sure that it is always possible. I am realistic in recognising that there can be considerable conflict that could not be resolved by an agreement. The committee will hear later from witnesses from Scottish Women's Aid, and in particular situations in families, such as when domestic violence has occurred, the approach that you suggest might not work. The approach must be flexible.

Maggie Mellon: We agree. The right to have recourse to the law through the courts is essential for people who cannot resolve their difficulties in any other way.

Mrs Mary Mulligan (Linlithgow) (Lab): I understand what the witnesses said about accepting that the periods of separation that are grounds for divorce should be reduced, because of the need to reduce the amount of time that children spend in a conflict situation. However, are the proposed timescales of one or two years long enough to allow approaches such as family conferencing and mediation, which you mentioned, to take their course and lead to resolution?

Maggie Mellon: I think that Jennifer Turpie and I would both stress the importance of ensuring that the services, support and advice that people need when they have relationship difficulties are available. I do not think that couples decide to get a divorce as soon as they are not getting on; usually the relationship has been in difficulties for a number of years before people decide to divorce. However, whatever the situation, it is important that people have the support and advice that they need and that they can receive counselling. There are waiting lists for counselling.

We run the parentline service, which deals with relationship difficulties to the extent that they affect children, but only 38 per cent of calls get through at the first attempt. Other helplines and counselling resources have similar problems. Unless we invest in the front line, couples who might have received advice that enabled them to come to an agreement about their relationship and the best interests of their children, even if their positions seemed irreconcilable, might unnecessarily end up in conflict and in court.

Mrs Mulligan: If the services were available, would the proposed separation periods allow sufficient time for mediation or family conferencing to take place? I assume that if the services are not available there will be difficulty.

Jennifer Turpie: One would hope that services such as family mediation and conferencing are preventive. The families that use such services are not necessarily at the point at which the parents have decided to get a divorce; the support can come at an earlier stage, when families acknowledge that there is a problem, to find out whether the problem can be resolved so that divorce does not become necessary. Beyond that point, however, delay is in no one's best interests.

The Convener: Is there evidence that problems are being caused for children by the five-year period of separation that is currently required if there is no consent for the divorce?

Maggie Mellon: That question might be best answered by the family relationship services, who know more about the parents' point of view.

The Convener: I wanted to put that to you because one of the reasons for getting rid of the five-year period is the impact that it has on children. The issue in the bill in relation to children is very much to do with how time limits affect them.

Maggie Mellon: As we have said, it is not good for there to be long delays during which children sit in unresolved conflict situations. The sooner that children have a settled lifestyle, an explanation and settled relationships, the better.

The Convener: That is a general point, which is not specifically related to the time limits for divorce.

Jennifer Turpie: At page 3 of our submission, we refer to two reports from the Joseph Rowntree Foundation: "Together and Apart" and "Divorce and Separation". Those reports, which focus on the impact that persistent conflict has on children, might be of interest to the committee.

The Convener: I am drawing a distinction: the point that you make, which is also made in the Rowntree research, is separate from the question whether time limits in themselves add to conflict, if you see what I am driving at. We can come back to that issue.

Stewart Stevenson (Banff and Buchan) (SNP): I have a wee technical point that the witnesses may not be able to answer sensibly. In relation to whether there should be a pursuer-defender approach or joint petitioning, section 13 of the bill abolishes the discounting of an application for divorce when collusion has taken place. Does that indicate that the Executive is trying to introduce a system of joint petitioning? That is a technical point on which the witnesses might reasonably make no comment if they do not feel inclined to.

Maggie Mellon: The provision looks very sensible, but I cannot say anything beyond that.

Stewart Stevenson: That is fine.

Mrs Mulligan: I notice from the written submissions that both organisations have supported the automatic conferral of parental responsibilities and rights on unmarried fathers. Could the witnesses say a little about what practical impact that would have on children's lives?

Maggie Mellon: It is clear to us that when both parents are willing to play a proper role in their child's life, the father's role should be recognised. Nearly half of all children born in Scotland today are born to cohabiting, rather than married, couples. When their baby is born, many fathers believe that, as they are living in a stable relationship and have registered the birth, they have rights in law, but in fact that is not the case. That sends a bad message to fathers when we particularly want men to be involved. Many children are being brought up without contact with their father. It is important that fathers' rights are extended. Most men embrace the responsibilities and rights of fatherhood and believe that they are taking them on at the time of the birth, but they find out later that they do not have those responsibilities and rights. That is not good.

Jennifer Turpie: We fully support what Maggie Mellon has said. First and foremost, children have a right to know who their mother and father are, and the provision recognises that. I add that comment in support of what Maggie Mellon has said.

Mrs Mulligan: Maggie Mellon said earlier that there will be a need to publicise the effects of the bill. The misunderstanding about what fathers currently understand to be their responsibilities and rights is a point that has come across clearly to us. We will come back to that.

Let me raise two issues to do with PRRs: they will not be retrospective; and there is an issue of conflict when a man has not been able to register

the child's birth but is able to prove biologically that he is the father. What are your views on those two issues?

Jennifer Turpie: On retrospectivity, the situation is unfortunate. I appreciate the challenge that would be posed if PRRs were made retrospective. On the other hand, the fact that they will not be means that there could be families where fathers have parental responsibilities and rights for some, but not all, of their children. That is an unfortunate situation.

On the other point, we acknowledge that issue of conflict. There are different situations in which couples have children, but one has to start from the perspective of what is in the best interests of the child. I go back to what I said earlier about a child's right to know who their mother and father are first; then, if there is conflict, it is about how that conflict is managed in regard to the child's relationship with their parents.

Maggie Mellon: I can see the difficulties that granting rights retrospectively would cause, but when the bill is passed, there could be a huge publicity campaign on the change in the law for fathers and the easy ways in which fathers can get the mother's consent for acquiring parental rights. That is the case now, but many fathers do not know about it. In the same way as we are encouraged to register to vote, there could be a concerted attempt to say to fathers or couples, "If you have not got those rights, this is what to do. Here is the form. Here is the number." That would make it easier for people when the mother consents.

The issue of fathers establishing paternity is much more difficult, because paternal or parental rights can only be acquired with the consent of both parties. The mother of the child has to agree both that the man is the father and to their registering the birth. It would be difficult to enforce a relationship when we do not know the circumstances of conception or what happened during the pregnancy. We would have to say that the woman's right to assert whether she wants to declare a man as the father would have to be safeguarded.

Mrs Mulligan: Convener, do you want me to move on to post-separation parenting?

The Convener: There may be some more questions on unmarried fathers. I have one for Maggie Mellon. You said that you think that, on balance, it should be a woman's right to declare whether she wishes to allow the father to register the birth, but throughout your submission you are clear about the importance of both parents. Is not that a slight contradiction?

Maggie Mellon: Such circumstances would arise only infrequently, in the difficult cases. It would be preferable if such cases were dealt with on their merits rather than there being an automatic presumption that a father can demand tests and intrusions into a woman's body while she is carrying the child. One wonders what role anyone who would want to enforce that is imagining that they will play in relation to that future family and the child.

The Convener: What would your view be if it was possible for a father who cannot take advantage of the provisions because PRRs are not retrospective effectively to start over again by going jointly to register the birth or the fact that he is the father at that point, with the mother's consent?

Maggie Mellon: As I understand it, that can happen at present. A man can acquire parental responsibilities and rights with the consent of the mother. There is a process that would still be available to fathers because the bill does not propose to take it away. That is what I was suggesting should be widely advertised at the point of the automatic granting of rights to fathers on jointly registering the birth: other fathers—and couples—should be made aware at the same time that fathers can acquire parental rights with the mother's consent. That is the current situation.

The Convener: If they have not registered the birth already.

Maggie Mellon: No—if they have registered the birth. Are you asking about cases in which they have not registered the birth? I would think that, on registering the birth with consent, in cases in which there has not been a joint registration but in which the father's relationship is not disputed, there should be a facility for men to acquire those rights. Under the Children (Scotland) Act 1995, they can acquire parental rights.

10:30

Stewart Stevenson: I just want to test you with a hard case involving the question whether the mother should always have a veto. I will give an extreme example for the purposes of illustrating the issue. Let us imagine that the mother of a child is a woman who is a drug addict and who has had three other children taken away from her because, for a variety of reasons, she has proven not to be a fit and proper mother. Let us also imagine that the father is not a drug addict, is stable and has all the attributes that you would want in a father. From the point of view of the child, should that mother be able to deny the father the right to be registered as the father?

Jennifer Turpie: No. However, my understanding of the bill is that such situations would not arise because the father would have the opportunity to register as the child's father.

As I said earlier, we are talking about the child's right to know who their parents are. The way in which that conflict and the associated issues are dealt with would flow from that.

Stewart Stevenson: I was asking the question because the discussion appeared to be suggesting otherwise; I was not looking directly at the bill.

Maggie Mellon: Currently, cases such as the one in your example, in which the mother is refusing to let the father register as the father, can be dealt with in the courts. The father or anyone who has contact with the child can apply for residence, which confers parental rights. That route is open to any member of the family or any other person with a strong interest in the child's life. I imagine that the courts would be interested in the well-being of any child in that situation and that the best way to resolve such a conflict would be through child care law.

Stewart Stevenson: So, as I expected you to say, you are content that fathers, and others, should be able to acquire rights in certain circumstances. That is important because, with the best will in the world, not all mothers are good mothers.

Maggie Mellon: Absolutely. Fathers and others should have the ability to acquire those rights if they are the person who is best suited to having them.

Stewart Stevenson: That is fine. I had got the impression that we might have been saying something different, although I was confident that you would say what you have said.

Marlyn Glen (North East Scotland) (Lab): Looking at families from the point of view of the child, would you agree that it is important for the child to have a really good relationship with a primary care giver? I use that term deliberately because, although that person would usually be the mother, they need not necessarily be the mother.

Jennifer Turpie: From my knowledge and understanding of children, I would say that you are correct to think that it is important that, in a child's early years, they have an opportunity to have a solid relationship with a care giver, who could be the mother, the father, a foster parent or any adult. However, we have to recognise that, as children grow, they need to know who they are and where they came from, and that where they came from is their mother and their father. We need to allow them to have relationships with those two people. That is the situation that the part of the bill that we are discussing is trying to rectify. This area has been missing from Scottish child care law.

Marlyn Glen: However, you are saying that you would distinguish between the situation that exists in early years and that which exists in relation to older children.

Jennifer Turpie: I do not know that I would make that distinction in an absolute sense. I know that the literature is clear that children need a primary care giver in those early years. However, it does not say who that primary care giver has to be.

Mrs Mulligan: It is clear from your comments this morning that you recognise the importance of the mother's role and the father's role in post-separation parenting. Do you think that there should be a legal presumption in favour of each parent having equal time with the child?

Maggie Mellon: We always start with the child's best interests. That does not necessarily mean that the child will assert their views, because it is difficult for children to do that. I would not say that a 50:50 split is necessarily in the child's best interests. Many of these things require the judgment of Solomon. We must question parents if they are fighting over equal amounts of time with a child rather than focusing on the promotion of the child's welfare and making an agreement on the best way for the child to be settled and brought up.

Jennifer Turpie: I support what Maggie Mellon says and reiterate her comments on children's views. I emphasise that in situations of contact and separation it is fundamental that we hear what the children think. We are not necessarily asking them to make the decision; research tells us that in most cases they do not want to do that. However, they want to be consulted about where they spend their weekends or where they go every other weekend so that they are part of the decision-making process.

Mrs Mulligan: Obviously, there are practical implications in discussing matters such as equal time. Should we consider the influence that parents have rather than the time that they spend? If the children are resident with one parent, is it important for the other parent to feel that they are wholly involved in important decisions about the child's upbringing?

Maggie Mellon: Yes. It is probably far more rewarding and enriching for the child to have parents who, despite disagreeing and not being able to live together, join together to look after them and their best interests and are focused on things such as their starting school, how they feel about that, how they are going to manage it, exam time and all the other things that happen in a child's life. If the child has two parents, it is important for them to know that, even if they spend 90 per cent of their time with one parent, the other parent is involved, takes part in decisions and

cares about them. That probably gives the child a better relationship than they would have if they spent 50 per cent of their time with each parent but neither parent was focused on what was happening with them.

Jennifer Turpie: It is terribly difficult to legislate on such things, as I am sure we all agree, but legislation and policy can recognise the role that support services such as family mediation or family group conferencing can play by lifting parents out of the conflict that is their relationship and helping them to be part of making decisions that are good for the children.

Mrs Mulligan: Conflict can arise when a decision has been taken about how the child's time will be managed and how their life will be supported but things do not go to plan. There has been a lot of talk about contact orders not being adhered to and parents not getting to see their children when they thought that they would. Such things have happened in the past and they are obviously not to the benefit of the child. Do you have any ideas on how we could resolve such problems?

Maggie Mellon: They can be resolved by the provision of advice and assistance to parents who are at the early stages of such situations. Without help and support, it is easy to get caught up in conflict and to be angry. We are talking about what is an emotional time for people, when it is easy for them to get into conflict. It is important for people to be able to access support and advice and to have time out. Some people can get that support within their families and friendships and some people need more professional help, but that support should be the bedrock. An immediate recourse to law tends to gather momentum and lead to the conflict becoming much worse.

It is important for somebody to make the parents listen to the child's views. Parents and the wider family often get so caught up in their fights with one another that they do not hear the voice of the child. When they do hear it, however, it is incredibly powerful in making them stop. In some ways, that is the beauty of a family group conference. When adults who have fought are brought together to focus on a child's best interests, many other conflicts are put to one side. The adults can and do reach agreement.

Mrs Mulligan: In your experience of family conferencing, do children have an opportunity to contribute to the discussion? Often, children want to please everybody and not to hurt anybody. How do you allow them to say how they feel and let parents recognise their responsibilities?

Maggie Mellon: As you say, the situation can be difficult. The aim of a conference is not to encourage a child to choose or to say what they want. We have developed a system of volunteer advocates who, if a child needs and desires it, will meet the child before the conference and help them to identify their feelings. Sometimes, children do not know—they are conflicted. They love both parties, do not want to choose and feel sorry for one or the other party. An advocate can help them to identify those feelings in many ways, such as through poetry or pictures, or can help them to decide what they will say in the meeting or before the meeting to different parties. An advocate will help a child to voice their feelings or will speak for them, if necessary. That works well. We do not make children choose, because that is an adult's job.

The Convener: Access to children is a matter of acute interest to the committee. As Jennifer Turpie said, it might not be possible to legislate for it, but we would find it useful to test further your view on what more can be done. The Children (Scotland) Act 1995 presumes that a child should be consulted from the age of 12, but says that a younger child may be consulted when age and maturity are taken into consideration. From what age should a child be asked for their view on separation?

Jennifer Turpie: Specifying an age is a complicated matter, although I appreciate why the age of 12 is referred to. As Maggie Mellon explained, there are many ways of obtaining a child's view. It is not just a matter of asking a child what they think; it also involves watching children, being with them, seeing them with their parents or care givers and understanding and interpreting those relationships. I say that because we can start to hear the views of children from a young age, if we open our minds to how we interpret and obtain their views. The bill should not specify an age; the danger of doing so is that people will assume that children who are over 12 absolutely will have a view.

The Convener: What is your approach at family conferences? Do professionals assess a child's maturity? Surely you use criteria.

Maggie Mellon: We say that the feelings of children from an early age are important and should be taken into account. That does not mean an absolutist rights approach of saying that a child must be able to assert their right. The aim is to find out how children feel, to allow them to express how they feel and to have adults accept their feelings.

The Convener: Is making such an assessment one of the first tasks that you carry out at a family conference?

Maggie Mellon: We do not say that an assessment is needed of when a child has a view, because a child as a person has feelings and

views. Children cannot make adult decisions about their lives, which is why childhood needs to be protected. However, they should always be heard.

The Convener: I accept all that. You are the professionals, so I ask for your professional view. You have said that, if a family approaches you and children are involved, you would probably want to know the children's views at an earlier age than the presumption. What is your starting point?

10:45

Maggie Mellon: Are you asking about the age at which a child who expresses an unequivocal view should be taken seriously?

The Convener: Would you just look at a family, for instance?

Maggie Mellon: That depends on the child. I think that 12 is a reasonable age. It is reasonable to say that any child over 12 who expresses a strong view must have their opinion taken very seriously. However, some 13-year-olds may not have that ability and some nine-year-olds may be absolutely clear, so we have to look at how the child functions.

The Convener: In cases where there are babies, that obviously cannot happen, but, in other cases, will one of your professionals talk to the child in a family conference?

Maggie Mellon: Yes. The family conference meeting is just the end of a process. We would get to know the child and their experiences and views of life earlier in the process, so that all that information is available at the meeting. We are not talking about just getting people together to sit in a room. That is very far from a family group conference; it is probably a recipe for disaster just to gather everybody together. The process is long and does not necessarily end in an actual meeting, because people may decide on a sensible plan outwith that and may not need to be drawn together.

The Convener: So are you involving children younger than 12 at the moment?

Maggie Mellon: Yes.

The Convener: Do you have views about the enforceability of contact orders? As you can probably imagine, the committee has had many letters from individuals about their experiences of family law. I can think of one example in which one of the parties to the separation had an order in place for a year, after which, unknown to the father, the mother moved to England. I have concerns about such cases. In that instance, there was nothing that the court could do about it, because it had granted the order for only a year. I am not sure that that was in the best interests of the child. I am interested in the enforceability of contact orders. Do you think that more could be done by the courts? Would you like to see more done?

Maggie Mellon: That is a difficult question. The last thing that we want is to involve children in a situation in which they are being physically dragged or forced to go—that is the worst kind of situation to end up with. Regardless of whether a contact order is in the child's best interests overall and whether the other party is a good person for them to have contact with, it is difficult to enforce contact. I do not think that family relations are amenable to orders that make people do certain things on pain of imprisonment, for instance. I think that the need for such orders would become much less if people understood what was in a child's best interests and appreciated the need for both parents and the wider family to be involved in children's lives.

I do not think that we have done much to provide proper education and advice to people about that. In the whole positive parenting agenda, we seem to be much more focused on legislation than on the things that prevent people from having to go to court. I certainly do not think that it is in anybody's interests, particularly not a child's, to get to a point at which enforcement orders are made under the criminal law or with criminal penalties.

Jennifer Turpie: I agree with Maggie Mellon. We need some mechanism to try to unravel and unpack why the contact is not happening so that we do not need to get to the stage of enforcement. We need to have a step before the end. I am not sure whether that is possible through mechanisms such as mediation, but it is an idea.

Margaret Mitchell: Some views have been advanced about looking at the language that is involved in post-separation parenting in an attempt to ease possible conflict. Instead of talking about equal parenting time, which you suggest is not terribly helpful, could the term "shared parenting" reflect the fact that quality is the important aspect? We talk about contact and residence, but could we instead use the general term "parenting time", which is a little more neutral and perhaps less harsh? Perhaps people could apply for parenting time or even family time. For example, grandparents could have the right to make such applications.

Jennifer Turpie: I read some of the discussions about language that were in the submissions to the committee. The issue is interesting because language has implications. Children in Scotland would have no objection to changes in terminology, but it would be interesting to hear what children and young people think about the matter, because children from separated families talk about going on a visit or spending the

weekend with dad and do not necessarily use the terminology that you mentioned—perhaps that is the language of conflict for adults, rather than for children.

Margaret Mitchell: Would a change in the terminology help the parents' relationship, by preventing a sense of imbalance?

Jennifer Turpie: I suspect that it would. Anything that helped to lessen the adversarial nature of the relationship would be a good thing.

Maggie Mellon: A change in terminology that reflected a change in understanding in society, or a push towards such change, could be positive. However, it would be useful to hear how children want their time with their parents to be described and explained to them. We could use language that reflected a move away from a perception of the child as the property of the parents, who is to be divided between them just as the matrimonial assets are divided, towards a perception of the child as a person in their own right, who should be nurtured in the best way possible.

Margaret Mitchell: Could the concept of family time apply to a significant adult other than a parent?

Maggie Mellon: Yes. That should be considered. Children's views about wanting to see or hear from granny and about other family matters should be taken into account.

Marlyn Glen: My next question might relate to the previous discussion. If the bill were amended to include provision for step-parent agreements, how could the views and best interests of the child be safeguarded in the non-judicial process?

Maggie Mellon: I understand that, although a parenting or step-parent agreement would not be legally binding, it is proposed that if such an agreement were not kept to and the matter went to law, the parties would have to show that there was a material difference in circumstances that meant that the agreement was not in the best interests of the child. It seems reasonable that, if there was no dramatic change in circumstances, the court should take the agreement seriously.

Marlyn Glen: Do you include step-parents in your family conferences?

Maggie Mellon: Yes. We include any adult who is significant to the child. The child's view must be taken into account, so if a child said that someone would not be welcome we would have to think about that. However, it is normal for step-parents, the wider family and anyone who is identified as significant to the child to attend. The person does not even need to know the child; they might be a relative who has not met the child but feels that there is a familial relationship and wants to attend because they might have something to offer.

Jennifer Turpie: Mechanisms are currently available that allow step-parents to have parental responsibilities and rights. Our submission does not take a strong position on the matter. The bill acknowledges that there are different configurations of families and that family structures have changed over the decades. Children can have many step-parents if their parents have had multiple relationships. We must think about that and be careful not to make it too easy for all those adults to become parents in a child's life. I advise that a cautious approach should be taken.

Marlyn Glen: So other options are currently available in law to step-parents and there is the option of registering a PRR agreement with the child's parents. Can you suggest other ways in which the situation for step-parents who play a positive role—that is to be emphasised—in their stepchildren's lives could be improved?

Jennifer Turpie: We have talked a fair bit about positive parenting and the messages that parents are getting. In the literature and campaigns that are run, positive parenting should not only be about the birth mum and dad; it should be about all the people who provide care to children in a family situation. One option is to widen the public message.

Mr McFee: You both make it clear in your submissions that you do not support an automatic right of contact for grandparents. First, will you put the reasons for your opposition to that proposal on the record? Secondly, will you give me your views on how you think the grandparents charter will work in practice and what practical effects it may or may not have? Thirdly, the Australian Government issued a discussion paper that suggests amending existing legislation to provide that the court must consider contact time with grandparents when it determines what is in the child's best interests. Is that a practical solution and a suggestion that we should consider?

Maggie Mellon: There are two good reasons for our opposition to an automatic right of contact for grandparents. One is that rights come with responsibilities. To confer automatic rights on grandparents or any other member of the extended family should mean and would mean conferring responsibilities on them. Most grandparents today would not be very happy about having responsibilities for child maintenance and support and all the other responsibilities that go with the right of contact and a right to make decisions in respect of a child's life. The other reason is that having too many people with rights over a child will lead to more conflict and would not be in the child's interests. However, we recognise that there are situations in which grandparents are, unfortunately and very sadly, cut out of their grandchildren's lives despite the

fact that they have lots to offer. It is not in the children's interests that that should happen.

It is to be hoped that matters will not get to court, but, when they do, everybody should have the best interests of the child at the forefront of their mind. Enforced contact would be difficult, but it would be helpful to get people to agree to include grandparents in some way. We have heard from grandparents and we know that often they do not demand a huge amount. They want phone calls, photographs, the right to send presents, the right to see a video of their grandchildren or just to have contact with and knowledge of the child. When that is possible, any caring parent should want to buy into it.

In some countries—New Zealand and, I think, Australia—family group conferencing is a legislative requirement and, in some European countries, it must at least be considered. Family group conferencing provides a mechanism for the wider family to be involved and for a binding family agreement to be made—it is binding on the authorities to facilitate such an agreement and the agreement is binding on the people who have made it.

11:00

Mr McFee: You say that an automatic right of contact implies rights without responsibilities, but I am not convinced that that reflects accurately what many grandparents are asking for. They are asking simply for a right to have contact with the child, as opposed to a right to determine which school they go to or to make other decisions. Is that a fair description of what is being asked for?

Maggie Mellon: It may not be what is being asked for, but then what is being asked for? Is it a right without a responsibility?

Mr McFee: We may find that out later.

Maggie Mellon: Where would responsibility lie and how would an automatic right of contact be enacted if there was no good will in the family to make it happen? It could lead only to conflict and there would not necessarily be a better resolution. As we have said before, some people have contact orders that are not enforced, so they are not necessarily the solution.

Mr McFee: I invite Jennifer Turpie to pick up on the issue if she wants to comment further.

Jennifer Turpie: I will not repeat what Maggie Mellon has said, much of which reflects our position, but I will add a couple of points. We hope that the extension of parental responsibilities and rights to unmarried fathers will help, because it will ensure that the relationship has a legal basis. We hope that the father's parents and extended family will also be recognised. We fully recognise that there is a role for grandparents in children's lives but, as with everything else that I have discussed today, it is important for that role to be handled in such a way that it does not become an area of conflict in the family.

The Convener: I have a bit of a difficulty with that. I do not disagree with what you have said or with the Executive's position, but the nature of the problem is such that we are talking about cases in which there is no good will among the adults and in which there is acrimony. That is why I am agonising over this aspect of the bill. If a child wants to see a grandparent or whoever, how could it be in the best interests of the child for the adults not to facilitate that? If one parent has practical custody of the child, they will determine whom the child gets to see.

We probably all agree that giving rights over children to parents or grandparents is not the way forward, because the welfare of the child is the important thing, not who has rights over the child. Is there another way to prevent the parent who is causing the acrimony, by preventing the child from seeing their aunt, their uncle or their grandparent, from doing whatever they like? I realise that we might come to the conclusion that nothing can be done, but I am not happy to leave the matter and say, "We can't enforce rights over children and we all agree that there is no other solution." Should we consider the rights of the child and try to do something to facilitate what the child wants, even if it is against the wishes of the parent? I am playing devil's advocate, but the issue is serious.

Jennifer Turpie: Your point is at the heart of many issues in relation to the bill. This is a difficult and complex area. At present, under section 11 of the Children (Scotland) Act 1995, there is an avenue for people who have an interest in respect of a child to get access to them. I do not want to contradict myself; I have been talking about avoiding acrimony and removing the adversarial nature of cases, but I recognise that that avenue exists.

Your point is about strengthening the role that children play in the decisions that are made about their family and it might be worth while to examine that area—what do children want? How do we strengthen the mechanisms through which their views are heard when decisions are taken about their families? I am not sure that we will have the answers today, but we should give further consideration to such questions and spend more time focusing on them.

Maggie Mellon: I agree. If there was an automatic right of contact for grandparents, such a right would have to be extended to include aunts, uncles and siblings. As we know, the fact that someone has a right does not necessarily reflect reality. People have all sorts of rights, but even

going to court to enforce those rights does not always solve the problem.

If grandparents or other family members want to apply for a contact order because they feel excluded from a child's life and think that they have a role to play, their application should perhaps trigger a process of mediation so that someone can work with the family to ascertain what contact could be established. There are many different ways of having contact with a child that do not involve physically moving the child around at the weekend; people can have contact through videos, webcams, cassettes and all sorts of other means that do not necessarily mean that information is passed to a family member against someone's wishes. Mediation might be part of a grandparents charter, which would at least give grandparents the right to explore ways of establishing contact with a child.

Mr McFee: Perhaps we can wrap up the discussion, because I think that we have reached a consensus that there are difficulties to do with conferring automatic rights of contact. However, if there is a dispute and acrimony is directed at one set of grandparents—such situations undoubtedly arise—is there an argument for requiring a court to consider the grandparents' position? In other words, rather than add on consideration of grandparents and perhaps other people after the court has determined what is in the best interests of the child, should there in extreme circumstances be a requirement for the court to consider those family members before it makes its decision? It seems that grandparents are currently excluded from the decision.

Jennifer Turpie: Yes, absolutely. We have learned that when a child enters the care system to be looked after we should first consider what the extended family can offer the child. Authorities are required to do that and I see no reason why the courts should not also consider the role that the extended family can play in pursuing the child's best interests. That is essential.

Maggie Mellon: I agree. The child's best interests should guide the court and if a court finds that contact with grandparents and other members of the extended family, or the contribution that such family members can make, has not been considered, it should have the facility to require that to be given consideration before it makes its decision. The court should not make a decision without having the widest possible view of the child's best interests. Family group conferencing can help to inform the court's decisions, by providing a forum through which the wider family can be explored and a family plan can be developed, or at least an assessment of which family members can offer something. The court should have that information before it makes an order to terminate a child's contact with their family or to give someone sole rights. It would not be in the child's best interests to make a decision without having that information.

Stewart Stevenson: The bill deals with cohabitants to varying degrees and it creates a relationship that exists at certain points in law. Where the cohabitation ends otherwise than in death, provision is made for the court to include consideration of any child of the cohabitants in assessing economic advantage or recognising the contribution that parents or a cohabitant have made to looking after a child. Conversely, for cases in which a cohabitation ends in death without a will, there is not a single reference to children.

I have two questions. First, in general terms, do you have any concerns that, in creating a legal definition of "cohabitant" and creating property rights related to that, children's rights might be adversely affected, either in situations where the cohabitation ends and the cohabitees survive or in situations where one cohabitee dies? Secondly, it is not clear to me—although it might just be me—whether the provisions apply only to children who are jointly the children of the cohabitees or whether they apply to children who have lived in a family relationship with the cohabitees but who are not necessarily the children of both cohabitees. It is quite complicated, but I would like quite a concise statement on the subject if that is possible.

Maggie Mellon: As I understand it, the proposals about cohabitants are mainly to do with a couple who have lived together as man and wife, and the provisions are designed to safeguard the position of the adults in the situation. There is other legislation that is to do with protecting the child. What we have said about the proposed new rights for cohabitants is that we hope that they will achieve a situation whereby children are not materially disadvantaged as a result of being children of an unmarried relationship as opposed to of a married relationship. The intention is that the rights of such children should be no less than the rights of children of married parents. That is based on the presumption that the child is the child of both of the cohabiting couple, and it is a move away from the position whereby illegitimate children had less of a right of inheritance than legitimate children had. We would support that and say that any child of a relationship should have equal rights of inheritance.

Stewart Stevenson: The intestacy part of the bill makes it clear that it is not meant to affect the existing legal rights and prior rights of a surviving spouse, which presumably refers to a relationship that predates the cohabitation. Do you have any concerns that the rights of the children from that

marriage, which might still exist in parallel with the cohabitation, might de facto be adversely affected by creating legal rights for cohabitees, which are in addition to the marriage that still exists in law, although it may have broken down?

Maggie Mellon: I can see that there could be adverse effects on the adults in the relationship and that, after a 25-year marriage, somebody suddenly acquiring rights might be perceived as being very unfair. However, our focus would be on the child, and we think that any child of a cohabiting relationship should be regarded as equal under the law and should not be discriminated against on the basis of whether a marital relationship existed.

Stewart Stevenson: You are talking about principles when you say that there should not be discrimination, and you are unlikely to get any difference of view on that. I am asking whether, having examined the bill, you believe that the practical effect of the provisions, as opposed to the principles underlying them, might be detrimental. If you have not come to a conclusion on that, that is fine—just say so and we will ask others. I can see that Jennifer Turpie is dying to say something.

Jennifer Turpie: Reference to children and young people's rights needs to be stronger in those sections of the bill.

Stewart Stevenson: How?

11:15

Jennifer Turpie: I have to say that I am not particularly sure. I had not considered the proposals from that perspective and to do so is useful. I am flipping to those sections now and I can see that there is less discussion in them about children and the impact that the provisions might have on them. I might want to go away and consider the matter.

As you say, the issue is complicated. What is the configuration of the couple? Are the children from different relationships? Does one member of the couple have responsibilities and rights in relation to the child? They may not; they may just have been living together. The issue is complex.

Stewart Stevenson: I do not think that the bill excludes the courts deciding that multiple cohabitation relationships might be affected. There may be one that has passed but nonetheless must be legally recognised in property terms, one that is present and, perhaps, a number of marriages that might still be continuing in law. We are asking you about children, so I am not trying to get too involved in that discussion with you, but I want to know whether you think that there are risks to the children.

Jennifer Turpie: Children should not be disadvantaged as a result of the dissolution of the relationship or a death. Where there are children, I suppose that it is for the courts to consider how the situation will impact on them. Our view is that the children should not be disadvantaged in any way; their welfare should be considered.

Stewart Stevenson: That is a principled position, but the question is: does the bill deliver?

Jennifer Turpie: That is a good question.

Stewart Stevenson: Perhaps the matter just requires further thought.

Margaret Mitchell: Section 24 covers domestic interdicts. Are the reforms to the interdicts that give protection from domestic abuse in that section satisfactory?

Maggie Mellon: We did not pay particular attention to that section in our submission. Scottish Women's Aid and other organisations that deal with how interdicts are enforced and what happens would probably be able to give you much better evidence on that than I could.

Margaret Mitchell: Is that also Jennifer Turpie's view?

Jennifer Turpie: Yes. We did not necessarily emphasise the issue, but it is about how the courts, the children's hearings system and members of the judiciary understand and manage domestic violence. Regardless of the structure of the interdicts, the issue is how such matters are managed, understood and dealt with by the courts. I am sure that we will hear later on that the way in which they are dealt with is not always sufficient.

Margaret Mitchell: Given the number of interdicts that are amended and previous acts, such as the Protection from Domestic Abuse (Scotland) Act 2001, is all of this unnecessarily complex?

Maggie Mellon: I am not sufficiently knowledgeable about or expert in this area of the law or current practice to be able to comment.

Margaret Mitchell: Children in Scotland's submission expresses some sympathy with the presumption against parental contact where domestic abuse is an issue. The submission from Children 1st goes a little further and advocates such a presumption. Have you considered an alternative to that presumption, such as a network of family centres to manage contact time?

Jennifer Turpie: Children in Scotland is a membership organisation. We represent a number of different organisations that have different views on contact and presumption. That is why we took the position that we did. As we say, we have sympathy with the point that some organisations have raised about having a presumption against

contact when domestic violence has been an issue, but alongside that it is necessary to take a balanced approach and to consider favouring the right of contact and the right of access for both parents to their children.

If there has been domestic violence, the issue is how such things should be handled, managed and understood. There could be safe visits—or whatever terminology we want to use—in family centres, but I want to take a step back and refer to what I said earlier about how courts, the children's hearings system and members of the judiciary understand and respond to families that are before them for whom domestic violence has been an issue. I am not sure that the dynamics of such situations are always fully understood and fully managed before the idea of having contact is even considered.

Maggie Mellon: The best description of our position is that if domestic violence or assault has occurred and has been proven to have occurred, the perpetrator should have to fight their way back from the position that they are in. If there has been a serious assault—which is contrary to how we want relationships to be conducted—rather than there being a presumption of a right of contact, the perpetrator should have to re-establish the right of contact with the child. There should not be a presumption that they should have that right. Similarly, if an adult seriously abuses and injures a child, there is not a presumption that they can carry on parenting that child. In such cases, child protection case conferences are convened, full assessments are carried out and the presumption is that the person is not a safe carer for the child. We say that that should be the case if there has been an assault. We are not saying that such people should never have contact with the child who is involved again, but they should have to re-establish their right to be considered as a caring and good parent in the child's life.

Margaret Mitchell: In some countries, there is a rebuttable presumption: there will be a presumption, but as a follow-on, there will be a hearing to consider whether the presumption is justified, so there will be a platform to make the case. Would you consider extending things a little further?

Is the training of people who might manage contact centres an issue? From all the evidence that we have heard, it seems that contact with both parents can be meaningful and positive for a child, and we should encourage such contact as long as the child is not used as a pawn in contact time to get at the mother.

Maggie Mellon: A reasonable way forward might be to argue for a rebuttable presumption rather than for the automatic granting of a right of contact. If there has been violence, there must be a forum for discussing the child's interests rather than simply an assumption that because violence was perpetrated against the mother, somehow the child is safe and unaffected and the perpetrator of the violence has not breached family relationships so severely that their fitness must be considered.

We would not argue that there is no role for such a person in the child's life thereafter. People can be remorseful and can change, and they can be rehabilitated. We would not want to cut a person out of a child's life, but we would want there to be absolute evidence of remorse and an understanding that the breach of the mother's trust and the child's exposure to such trauma should never be repeated. Some people are dangerous, but contact with them could still be allowed through photographs, letters or another medium that would safeguard the child's family's safety against dangerous situations. There are different ways of organising contact that might still allow the child to know something about their father and their wider extended family.

Jennifer Turpie: The bill is perhaps not the place for this, but we need to consider how we provide support services for families where there has been domestic violence. In particular, if it is the father who has perpetrated the violence, we need to ask what we are doing to help to address that adult's behaviour—indeed, it might be the mother's behaviour. It is about recognising the value of rehabilitation in supporting people in their role as parents. That could take place at a contact centre or in the family home.

The Convener: I want to address one of the issues that you raised earlier. Your position is that children of cohabitants should not be disadvantaged compared with children of a married couple or a couple in a civil partnership. There are possible implications, and the committee needs to be clear about what is meant. I will ask Ken Norrie, our adviser, to draw out the issues on that position of principle, so that the committee is clear about the issues involved.

Professor Kenneth Norrie (Adviser): There is one area in which the bill's provisions will create a direct financial disadvantage to children. As far as I understand it, the policy is deliberate. Section 22 is on a cohabitant's claim upon death. Let us suppose that a man and a woman are living together in a family with a child, and the man dies without having made a will. If the man is married to the woman, she will tend to inherit virtually the whole estate, and the child will be left with very little. Currently, it is in the child's financial interest for their parents not to be married. If the parents were not married, but the parents and child were living together when the father died, the property would go not to the mother, but to the child. The bill says that, if the man and woman are living

together in a cohabiting relationship, but are not married, the mother or cohabitant will have a claim. That has a direct financial implication for the child, who will lose out. There will be a claim on the part of the estate that would have gone to the child.

The Convener: I wanted to get that on the record because, when we come to write the stage 1 report, it will be helpful to have such clarity, particularly from our adviser. We are grateful for his comments.

We must conclude there. I thank the witnesses very much for answering some detailed questions. It has been helpful for the committee to understand your views about issues concerning children, which relate to a major part of our work.

11:28

Meeting suspended.

11:33

On resuming—

The Convener: I welcome our second panel of witnesses on the Family Law (Scotland) Bill, who are: Dr Martin Crapper, the vice-chair of Families Need Fathers; Jimmy Deuchars from Grandparents Apart self-help group; and Frank Collins, the director of Stepfamily Scotland. Thank you for coming and for your written submissions—it was helpful for the committee to be able to read them in advance. We will go straight to questions.

Mrs Mulligan: The witnesses were here during the committee's discussion about unmarried fathers; I will follow that line of questioning. Do you have a view on the Executive's proposal to make acquisition of parental responsibilities and rights available only to fathers who register their child's birth after the bill comes into force? Will the proposal cause problems for fathers who did not take up the opportunity to acquire PRRs under other legislation?

Dr Martin Crapper (Families Need Fathers): First, the proposals on the parental responsibilities and rights of unmarried fathers seem to be regarded as a panacea for unmarried fathers, but we do not think that they are. We support many people who were married but who are having trouble maintaining a relationship with their children after a family break-up, so the fact that people theoretically have parental responsibilities and rights in law does not necessarily mean that they can continue a relationship with their children. That is the bottom line, which will underlie everything that I say. The bill needs to do more to ensure that children can continue to benefit from their fathers' as well as their mothers' parenting after a separation.

We understand the legal challenges of making the provisions retrospective. If we think about the matter in another way, the arguments for not conferring automatic parental responsibilities and rights on all biological fathers come down to matters to do with safety in the minority of cases in which odd things happen; it is clear that children need to be protected from domestic violence, for example. I am sure that Scottish Women's Aid will tell the committee that in some cases parental responsibilities and rights might be abused and we quite understand that point.

The essence of being a father is a biological fact; it is not to do with what the law says. The witness from Children in Scotland made the point well that a child has a right to know who his or her father is. Our preferred position is therefore that parental responsibilities and rights should be automatic for all fathers, by virtue of their being fathers, but that there should be a proper system for removal of those rights without undue trauma in cases in which people are victims of violence, for example. That is our bottom line.

Frank Collins (Stepfamily Scotland): The provisions should not be retrospective, although that will be unfortunate for people who perhaps just miss the date. However, there could be many cases in which parental rights have already been denied by the court. The automatic granting of rights to a father in such a case would cause additional problems. The provisions should be left as they are, to prevent such situations from arising.

There will be much publicity after the bill is enacted, which might enable good fathers who just miss the boat to draw up a parental responsibilities and rights agreements with the mothers. That might resolve the issue for those fathers.

Jimmy Deuchars (Grandparents Apart Self-help Group): If the provisions are not to be retrospective, it ought to be made easier—through legal aid or whatever—for fathers who pay for their children's upkeep to acquire PRRs, if there has been no violence and there is no other reason why they should not have PRRs.

Mrs Mulligan: As we heard earlier, there is a need for more information on the matter. Currently, fathers are not always aware of their responsibilities and rights. I appreciate that the witnesses concur that there is a need for education on the matter.

Dr Crapper: There is an issue about how information is made available. For instance, information about legal matters to do with the birth of a child is often mediated through health visitors and hospital staff to women when fathers are not there, because they are at work or whatever. Consideration should be given to how publicity can

be directed at fathers more efficiently than was the meagre information about section 4 agreements under the Children (Scotland) Act 1995.

Mrs Mulligan: Do you support the more radical suggestion that was mentioned earlier, that unmarried fathers who prove their paternity by securing a declarator of paternity in the court should be able to acquire PRRs, even when the child's mother does not agree?

Dr Crapper: Yes—subject to suitable safety provisions being in place for the minority of cases in which they would be necessary.

Mrs Mulligan: What kind of safety provisions would be needed?

Dr Crapper: There should be a less challenging way of removing PRRs when they are obviously being abused by individuals who are not suitable carers for children.

Frank Collins: By definition, if a person is having to prove paternity, they are involved in court action anyway, so the court could consider whether to allow that person to become registered as the child's father. They are already in the adversarial process at that point, and everything will take care of itself.

Mrs Mulligan: Convener, do you want to take supplementaries or will I move on?

The Convener: No one has indicated that they have a supplementary.

Mrs Mulligan: There are two issues around parenting, post-separation. As a committee, we recognise that the bill deals very much with relationships between adults and the practical issues around separation. However, we feel strongly that the welfare and the best interests of the child should be at the centre of the bill. Do you accept that that should be the central tenet of our discussions, and that the child's welfare should be our focus?

Dr Crapper: Absolutely, but the bill is missing any mention of rights for children. We would like to be added to the bill the clear right of a child to maintain relationships with both parents and the wider family after separation.

Frank Collins: I agree that the bill must be centred on the interests of the child; parents may have rights, but if they are not in the child's interest they have to be overridden. It is fundamental that the interests of the child become paramount, as is already the case under the Children (Scotland) Act 1995. I fully support that idea.

Jimmy Deuchars: Grandparents Apart agrees.

Mrs Mulligan: It is nice when we are all in agreement. Other legislation is centred on the rights of the child, but there is an issue about how we can join them together to bring about the result that we all seek.

If we concentrate on the rights and the welfare of the child in the event of breakdown, for whatever reason, should there be a legal presumption in favour of parents having equal time with their child, or is it more important that we take account of how the relationship develops, instead of taking a simplistic view, which is about time and shared access?

Dr Crapper: It is true that some of the proposed solutions for complicated situations that vary from family to family are incredibly simplistic. Regardless of the intention that lay behind the current system when it was created 10 years ago, in family separation the winner takes all: one parent gets a residence order and the other gets some contact. The parent who gets the residence order gets everything, in practice—they gain full control of the situation. That results in many things: for example, it tends to promote conflict and it creates the cultural expectation that one parent is the proper parent while the other is an optional extra. We believe that that is bad for children.

Children should have the right to continuing relationships with both parents. The law must recognise that both parents are equally important. One way to achieve that would be to introduce a presumption that there should be equal parenting time, but that would not mean that in all situations or in any individual situation the children will spend exactly 50 per cent of their time with one parent and exactly 50 per cent of their time with the other. It would just be one way of saying that both parents are equally important. In each situation we would have to examine what was best for the particular family. However, that would at least be done on the basis that statute said that parents are equally important and that it is in the interest of children in almost all cases to have a good relationship with each parent, which requires each parent to have a reasonable amount of time in which to be parents.

Frank Collins: It is about quality, not quantity. It would be unusual in an intact family for a child to spend equal amounts of time with each parent. In our society, it tends to be the case that the mother is the main carer and the father is the breadwinner. In such families there is no question of equal time, but everyone recognises that that does not deny the quality of the father's input. Therefore, to jump on separation to a presumption that the parents should have equal time with the children would not reflect the reality of the family as it was before separation. That is why we should not concentrate on the quantity of time that separated parents have with their children, but on

its quality. We should encourage quality contact with the absent parent, because that is much more important.

11:45

Jimmy Deuchars: We feel that responsibility should be split 50:50 but, obviously, that cannot happen if the father is working. In that case, the parents would have to come to an arrangement through mediation.

Dr Crapper: I agree with Frank Collins's comments about quality time, but there is a minimum quantity of time at which quality time becomes possible.

Mrs Mulligan: Can you put a figure on that?

Dr Crapper: I can give a practical example of a real case. I know of a father who has been given an hour and a half of contact every month, which is ridiculous. Clearly, that amount might be justifiable in some circumstances, for example, if the father had been out of the family for a long time and was gradually being brought back in. However, that was not the case in my example; it was just an unexplained decision. That level of contact is probably worse for the children than no contact, because it is not enough to allow a proper relationship. At the least, we expect the presumption that there can be overnight stays.

Mrs Mulligan: On some occasions, after the process has been gone through and a level of contact has been agreed, contact does not take place—it is sometimes denied. How should we address such situations? In the end, would judicial intervention be needed again, or is there another way in which to deal with such cases?

Dr Crapper: At issue is the point at which we begin the process. If parents who are thinking of separating had access to a system that provided support that enabled them to focus on the children's needs and, for instance, to agree a parenting plan, that would—I hope—avoid court orders altogether. If, subsequently, the plan broke down for whatever reason and the court needed to intervene, the plan would be evidence that, at some stage, both parents were party to the notion that continued involvement of both was best for the children.

If the court makes an order, it does so because it considers that to be in the best interests of the children. Therefore, it is completely illogical for orders not to be made to happen. The existing law gives the courts only two tools to enforce orders—imprisonment and fines. Those are clearly almost never in the interests of the children and are therefore widely not used. However, a range of other measures could be introduced into statute to give the courts additional powers. Obvious examples are compulsory parenting education or community service orders, either of which could take place while the children were having parenting time with the other parent. Certain measures can be taken to enforce orders, but the main issue is to provide support to ensure that that stage is not reached. Judges need to be given tools that are more sensible than those which they have at present.

Frank Collins: I agree that the current system of using the sledgehammer of imprisonment or a fine to crack a nut does not work, because it cannot be in the interests of a child for their resident parent to be sent to jail. For that reason, the courts often back off at that point, put up their hands and say that they can do no more. There should be intervention much earlier. At the beginning of any dispute that involves children, the parties should be referred to mediation or parenting classes so that they are made aware of the need for the child to have a relationship with both parents. Often, the resident parent does not see the long-term effects of what he or she is doing by denying contact—they win the battle, but they lose the war in the long run. Sometimes, many years later, the child rears up and fights back against that parent because he or she has been denied contact with the other parent. More early education is needed about the possible effect of denying contact for no good reason.

Very often, the denial of contact has nothing to do with the interests of the child; it is about the battle between the parents. Although denial of contact may seem to be the right and just thing for a parent to do at the time, they do not see its long-term effects on the child. More information, support and education could help parents to see those effects and so to resolve such situations before they resort to the draconian measures that are now in place, which do not work in any case.

Jimmy Deuchars: We feel that family problems should be taken away from the courts altogether and that we should have family panels before which problems can be thrashed out in the presence of the whole family. However, if a parent insists on not complying with the law, he or she should be sent before the courts and dealt with appropriately. As far as I am concerned, breaking the law is breaking the law.

Mrs Mulligan: So, if someone breaks the law, the present sanctions are appropriate.

Jimmy Deuchars: Yes—they are if someone persists in breaking the law. If I had to go before a judge on a contempt of court charge, I would be sent to jail. I see no reason why a mother should not be sent to jail if she persistently flouts the law. If we had a family panel system, panels could work out how kids should be looked after. If a

parent were persistently to breach the law, panels could refer that parent to the courts.

Mrs Mulligan: And are you suggesting that family panels would be non-judicial? Would they be composed of lay people?

Jimmy Deuchars: They should be able to give a sentence of community service or something like that. If, at the end of the day, that does not work and a parent persistently flouts the law, the case should go before the sheriff.

The Convener: For the committee's benefit, I ask each organisation to clarify who you represent. How many fathers does Families Need Fathers represent, for example?

Dr Crapper: Families Need Fathers is a UK-wide charity that supports parents who are trying to maintain relationships with their children after a family separation. Although it is difficult to monitor numbers, if visits to our website and calls to our office and helpline are analysed, we reckon that we help approximately 150,000 people a year.

Most of the people who come to us are adults and many of them have more than one child. We help many people. Obviously, the figure is for the UK, rather than for Scotland only. I am afraid that I cannot give the committee a figure for Scotland as such. We are a membership organisation; currently, we have about 3,000 members across the UK.

The Convener: That is helpful to know.

Frank Collins: Stepfamily Scotland is also a charity. Although it is based in Scotland, we also help people in England and Wales. We provide a helpline service for all members of stepfamilies—parents, children and extended family members. We deal with issues that are unique to stepfamilies by providing advice, including legal advice where required. We also have a website.

The current figure that we have is that the website received 77,000 visits in the past 12 months. We take approximately 10 calls per week to the helpline, which is manned by volunteers. The reason why we take calls from England and Wales is that the National Stepfamily Association in England was subsumed into Parentline Plus. In effect, the National Stepfamily Association virtually disappeared from public knowledge. If someone searches the internet for an issue relating to stepfamilies in the UK, they find our website. We get calls from England and Wales as a result.

The Convener: It would be helpful if Mr Deuchars would clarify who Grandparents Apart represents. I ask because I have received letters from other grandparent groups that say that their group is separate from the national organisation. The situation is a wee bit confusing.

Jimmy Deuchars: We represent Grandparents Apart self-help groups. Originally, the group started in Bathgate, but we had to close that group and we moved to Glasgow. I did not know that a new group had started up again in Bathgate. We represent groups from West Lothian, Tayside, Kilmarnock and Glasgow and we have agents from here to London and people in Fraserburgh who hand out our leaflets. Although we are based in Scotland, we deal with grandparents all over the United Kingdom.

The Convener: I have a few questions for clarification for Families Need Fathers. You said that you would like the right of the child to maintain relationships with both parents to be enshrined in law. Does that mean that you want to see words to that effect in the bill? Would the effect of having that provision in the bill be that judges and sheriffs would have to look to it when making decisions about access to children?

Dr Crapper: Yes. We would like to see a change in the culture to move family law and post-separation parenting issues away from adversarial conflict between the parents and instead to focus on parenting. We believe that including in statute an explicit statement about the rights of the child—and about the equal importance of parents—would help to achieve that.

The Convener: You brought to the committee's attention a case in which a father was granted an hour and a half contact every month. Would that kind of decision be likely to change if we were to enshrine what you suggest in law?

Dr Crapper: We would hope so.

The Convener: We have talked a lot this morning about the welfare principle and the interests of the child. In your experience generally, do courts apply the welfare principle?

Dr Crapper: The trouble with the welfare principle is that it is a great principle but there is no explicit advice in statute or in any coherent form elsewhere about what "welfare" is. For example, there is no explicit statement anywhere that children do best when they have continuing parenting from both parents. We would definitely want to, if you like, expand the welfare principle to include that, among many other things. It is all very well to say that decisions are made in the best interests of the child, but a busy sheriff who deals with family law only some of the time may not be clued up as to exactly what the child's best interests are.

The Convener: So, is it hard to get behind how the courts interpret the welfare principle?

Dr Crapper: It would clearly be possible to introduce several measures, such as specialist training—of a rather more advanced nature than

currently exists—for sheriffs who deal with such cases. I am not sure whether that is a legislative issue.

The Convener: It is probably not a legislative issue.

We have heard evidence in the course of stage 1 about the contact centres that Family Mediation Scotland organises. Are contact centres important for fathers? Have they been helpful?

Dr Crapper: Contact centres are important for a number of reasons. There are clearly circumstances in which fathers and, in some cases, mothers find themselves without facilities to look after and parent their children. For example, their accommodation may not be suitable for that. Their having somewhere to go to spend parenting time would be useful and helpful. Contact centres may help in such situations.

Where there are issues of risk, but it is decided that the risk can be controlled and it is in the interests of the children to have parenting from the parent concerned, that can be done in a contact centre where there is supervision. What concerns us is that, anecdotally—we do not have statistics on the matter—we hear of cases in which supervised contact in a contact centre appears to be ordered by the courts as a way of getting out of difficult situations in which there is strong disagreement between the parties about what should happen. In such cases, there is no reason for a contact centre to be used because there is no particular risk; the use of a contact centre is ordered as a sop to one party. That has, to some extent, given contact centres a bad name in fathers movements. We would like that practice to be ended, but in general we think that contact centres are positive and should be more widely provided and better funded.

Frank Collins: I agree that contact centres are a good thing, but it is important to say that they are not the be all and end all; they must be used as a stepping stone towards normal contact. For example, use of a contact centre may be appropriate if a child has not seen his or her father for some time and feels apprehensive; if a young and inexperienced father needs, in effect, to be taught how to be a parent; or if there is a suspicion of risk and it is necessary to satisfy people that there is none. However, such centres represent an artificial atmosphere for parents to have contact in. It is important that such provision be seen as a temporary measure rather than as a long-term measure because it cannot be in the child's interests as it creates a different atmosphere for contact. Children should be allowed free time with the parent in a relaxed atmosphere without having someone watch over them. As temporary measures, such measures are good.

12:00

Jimmy Deuchars: We feel that the contact centre should be used as an education centre for the whole family. We feel that the whole family needs to be re-educated about how to be a family. Being a parent is the only job in the world in which you are thrown in at the deep end without a clue about where to go. Family education centres could help parents in that regard.

Stewart Stevenson: In the light of what you have heard about the bill introducing legal recognition for cohabitation, are there any related issues that your organisations would like to comment on?

Dr Crapper: With regard to the parenting of children and the safeguarding of children, the comments that I am about to make apply equally to the rights of people involved in divorce procedures as they do to the rights of cohabitees. We would like there to be a requirement for there to be a parenting agreement—or some evidence of an attempt to reach such an agreement and good reason shown why there cannot be one—before a divorce is granted or the rights of the cohabitees are considered.

Stewart Stevenson: Are you suggesting that, if a child of a marriage is living within a cohabiting family, account should be taken in the divorce proceedings—which might take place after the cohabitation has become established but before the marriage has ended—of the need to ensure that there is a focus on how parenting issues should be resolved? Is that what you were trying to say or have I misunderstood?

Dr Crapper: I think that you have misunderstood, but I do not understand your example. Perhaps I should explain my position again.

Before any separation of parents, we would like there to be a requirement for them to be supported in attempting to reach agreement about how the child is to be parented in the future. We would prefer it if all other issues—such as those relating to property and so on, whether they relate to marriage or a cohabiting relationship—were set aside until there had been consideration of how the child will be parented in the future.

Stewart Stevenson: In essence, paramouncy would be with the child's parents rather than with those who are in a relationship in which they exercise parental responsibilities.

Dr Crapper: Yes, but in a situation in which more than two people exercise parental responsibilities, because of long-standing cohabiting relationships or the involvement of step-parents and so on, it is clear that all the people concerned would need to be involved in

some way and, clearly, the views of the children would be significant.

Frank Collins: I think that this discussion is straying into the step-parent issue, but I will come to that later on.

I do not think that, nowadays, there should be any distinction between cohabitation and marriage as far as children are concerned. As it is quite common these days for people to live together in a cohabiting situation for many years while being perfectly good parents to their children, it is an anomaly that cohabitees are discriminated against in relation to parenting rights. It is right that the bill should include rights for them.

Jimmy Deuchars: I agree with Mr Collins. If there were a presumption that grandparents had a right of contact, that would protect the children's rights to see their parents anyway.

Margaret Mitchell: Domestic abuse has been touched on and you will be aware that a number of consultees have suggested that the bill should be amended to include a presumption in favour of no contact in situations involving domestic abuse. What are your views on that? Such a presumption could focus on domestic abuse and could be rebuttable, depending on whether it was seen to be justified. You have suggested that the risk is not taken fully into account sometimes and that the network of contact centres could be used as an easy option. Could you talk about domestic abuse in the context of ensuring that the situation pans out in the best interest of the child and that, where possible, both parents have parenting time?

Frank Collins: It is important that society understands the seriousness of domestic abuse. If we take the stereotypical man who assaults his wife, it is common for him to claim that that matters not a jot when it comes to his children, because he did not hit them. However, the children often witness the violence or at least hear the screaming and shouting that comes from the bedroom. Over the years, it has been proven that that has a detrimental effect on children's welfare. I will give an example. If I were sitting with a woman and her child in my office and, for no apparent reason, I reached across and slapped the woman in the face but did not touch the child, no one would think for a minute that that child should remain in the room with me because I would have traumatised the child as well as the mother.

I support the idea of there being a rebuttable presumption against contact in cases in which there has been domestic violence because questions must be raised about whether the perpetrator of such violence is a fit and proper person to be let loose on the children, who are well aware of the parent's behaviour. There are also issues to do with learned behaviour. If a violent parent who can behave so badly gets rewarded with contact, what does that teach the child? Perhaps that person should be made to prove that they are no longer a risk. For example, attendance at anger management classes could be a condition of contact. I certainly support the existence of a rebuttable presumption against contact.

Dr Crapper: There is a wide range of types of abuse. The scale goes from extreme violence and sexual assault down to matters that seem to receive no consideration. For example, many of the people who contact our charity have to deal with high-conflict situations in which they have deliberately been alienated from the child by the other parent. That is a form of child abuse that is not tackled in any effective way. A widely used definition of domestic abuse rightly states that if someone restricts a person's ability to see relatives, that person is committing a form of domestic abuse. In that sense, a child who is being denied contact with their parent is a victim of abuse. A range of issues need to be considered.

With extreme cases in which violence and sexual abuse have been proven, it seems eminently reasonable that there should be a presumption against contact, but given that such a wide range of situations are involved, it is clear that the merits of cases need to be considered individually. In some cases it will remain in the child's best interests to have parenting in some safe way, but in others that will not be the case. There is a danger of having blanket provisions to deal with matters that, by definition, are highly individual and depend on individual family circumstances.

Jimmy Deuchars: It has all been said. If a person has been guilty of domestic violence, they should have to prove beyond a shadow of a doubt that they will not commit such violence again before they are allowed to see their children.

Mr McFee: My question is probably aimed at Mr Deuchars, but if anyone else wants to chip in, they are free to do so. Having read your submission and seen some of your group's publicity in the past, I would like to know whether it is still your position that you support an automatic legal right of contact for grandparents.

Jimmy Deuchars: We do, but we are talking simply about grandparental rights—by which I mean visitation rights or communication rights—rather than automatic rights along the lines of PRRs. We understand that PRRs bring many responsibilities, which we do not want. We do not want to take PRRs away from mothers; we just want to be able to contact the grandchildren, to ensure that they are okay. In many circumstances, grandparents know that their grandchildren are

being abused, but they are frightened to say so because they have been excommunicated and have no rights. We support a presumption in favour of contact for grandparents.

Mr McFee: You believe that, even in situations in which either—or both—of the parents does not want such contact, the grandparents' right should supersede that wish.

Jimmy Deuchars: It depends on why the parents do not want the contact. If it is just that they do not like their mother or father, or if it is just that, for example, the new boyfriend has fallen out with the granny, that should not be a reason for refusing contact.

Mr McFee: On the second page of your submission, you say:

"A grandparent should be made a 'legal relative' of their grandchild".

What do you mean by "legal relative" and what would be the effect of your suggestion in practice?

Jimmy Deuchars: At the moment, if you approach social services to ask about your grandchildren, they will not tell you anything. They will say, "I don't have to speak to you—you're an irrelevant person." I have been in courts where grannies have been applying for contact, and I have seen them treated abominably. They are not recognised as relatives, even though their grandchildren are their own flesh and blood.

Mr McFee: Could a grandparent's right to contact actually increase the conflict in a child's life? Clearly, if the parent feels strongly against the grandparent, there will be a fair amount of friction.

Jimmy Deuchars: That is why we are asking for contact centres where grandparents can keep in contact with their grandchildren but where the parents and the grandparents do not have to meet.

Mr McFee: I presume that you are talking about extreme circumstances.

Jimmy Deuchars: Yes.

Mr McFee: You are saying that the parents would not need to be there, but you think that that would not create any more tension in the child's life.

Jimmy Deuchars: I do not think that it would create tension in the child's life but it might create tension in the parents' lives. We are talking about situations where the grandparents want to see their grandchildren and where there is a bond. If there is no bond, there is not much point in having contact. We are not talking about cases where the grandparents are hundreds of miles away and have never seen the kid; we are talking about people who have bonded with their grandchildren and then suddenly find themselves excommunicated.

Mr McFee: If that right is given to grandparents, should it be given to anybody else—brothers, sisters, aunties, uncles?

Jimmy Deuchars: Looking at it logically, I think the grandparents are the closest to the grandchildren. They are second parents. In my case, my daughter died and we had to take her children. Nobody else wanted to do it, and we were left to do it. It is not that we did not want to—we did—but the point that I am making is that we were expected to do it. We could therefore be termed "substitute parents".

Mr McFee: I accept that point for your situation and, I am sure, for many other people's situations; but do you agree that there could be situations where a brother or an aunt might want contact? Why are you singling out grandparents, but not siblings, for the right to make contact?

Jimmy Deuchars: The brothers and sisters will go their own way eventually but the grandparents are forever—their presence is continuous.

Frank Collins: I support the principle of grandparents having contact, but it is very difficult to give them a right in law. Current legislation allows anyone who has an interest to apply for parental rights, but the situation with grandparents can be fraught with difficulty if they do not conduct the contact properly.

We might all have experience of our parents telling us how to bring up our children. That can cause conflict even in an intact family. In a family in conflict, how likely is it that a grandparent will support the mother, for example, if they do not agree about how the mother is bringing up the child?

Before grandparents can be considered for contact, they should be asked to go to grandparenting classes. The role of grandparents is to be supportive; the benefit that grandparents can bring is support for the parents. In too many cases, grandparents have an undermining role. To give an example, grandparents might support their son in his fight against their daughter-in-law. To give another example, grandparents might be used by fathers who are not getting contact. The grandparents might be pushed into the arena and, if they can achieve some contact, the father would then come in the back door.

Grandparents have to be made aware of what is expected of them by way of support. If that can be done, I am all for their having contact. Grandparents should be involved in their grandchildren's lives, because those relationships are valuable. Most children love their grannies and granddads, so why should they not see them?

However, it is important that grandparents appreciate their role, which is not to be a substitute parent, but to support parents. If that works, it will work well.

12:15

Dr Crapper: We support the involvement of grandparents and think that grandparents are great and that more should be done to involve them. However, giving rights to adults in such situations is inappropriate. I return to what we said previously. A child should have a right to a continuing relationship with both parents and with the wider family, which naturally includes grandparents.

In intact families, relationships between children and grandparents are almost always mediated through the parents. If there is a post-separation situation in which the child has a reasonable amount of parenting time with each parent, that time will naturally be shared in most cases with the grandparents and wider family on the mother's and father's sides of the child's family. Therefore, we believe in ensuring that there is quality parenting time and sufficient parenting time on each side of the family.

Jimmy Deuchars: That is why we want family education centres in which people can be educated to be part of a family. Many grandparents roll up their sleeves and say, "We've been there and done it all before and you're no daein it right." We must try to educate grandparents to accept that the child does not belong to them. Many grandparents think that because their daughter or son is the mother or father of the child, the child automatically belongs to them; a lot of education is needed to show them how to be part of a family. Rather than going in in a hard-headed way, they must try to take a step back when they are not needed and to be there to help when they are needed.

Mr McFee: What do you think of the proposed grandparents charter?

Jimmy Deuchars: The proposal is very good. The charter is everything that we have asked for, except for the fact that grandparents will not have legal rights. Directives from the Executive to social services professionals, for example, would work, but at the end of the day, we still need the legislation.

Mr McFee: Last but not least, you probably heard me say that the Australian Government recently produced a discussion paper that proposes amending its legislation to require explicitly that time with grandparents be considered by the court in determining what is in the child's best interests. Would you support such a move here?

Jimmy Deuchars: I think so. That would be a step in the door. It would be better than being excluded, would it not?

Mr McFee: You gave me a wee idea earlier about enforcement, but how could that contact be enforced practically?

Jimmy Deuchars: Matters could be taken away from the courts and dealt with by panels. As I said, if something is persistently flouted, it should go to the courts. Is that what you were meaning?

Mr McFee: I wanted to find out what you mean, more than anything else.

Jimmy Deuchars: We are both confused, then.

Dr Crapper: We support the idea that the courts should be expected to consider time with grandparents.

Frank Collins: Sheriffs who are educated on such issues will consider grandparents as part of the wider picture of the child's best interests. Doing so formally, and automatically including something that relates to grandparents as part of a contact package, will be difficult in practice. Earlier, we heard about family conferences in which parents are educated about their children's best interests. Saying to parents that grandparents are a valuable additional support to them and should be used could be part of that.

Mr McFee: Do you subscribe to the view that improving the rights of fathers would improve grandparents' rights? The word "rights" is probably not great if we are talking about the child's rights and best interests, but if matters are improved for fathers, will they be improved for grandparents?

Frank Collins: Only if the father is in contact with his own parents. The more contact he has, the more likely grandparents are to see the children. If he is estranged from his parents, the position of the grandparents will not be improved at all.

Mr McFee: Sure, but improving the father's rights could potentially help and would not be a hindrance.

Dr Crapper: It would help in the vast majority of cases.

The Convener: Does that mean that you hold to the view that others have expressed that, in a high number of cases, it is grandparents on the paternal side that tend not to have access?

Dr Crapper: Yes.

Frank Collins: Yes.

Mrs Mulligan: Mr Collins, you mentioned that, at the moment, grandparents can ask for their interest to be considered. Am I right in thinking that you believe that that does not always

happen? If that is the case, why do the courts not consider the rights of grandparents more sympathetically?

Frank Collins: That does not always happen. Grandparents have a poor record of success in that regard. The situation seems to depend to a great extent on the family status of the sheriff. The older the sheriff, the more likely they are to be a grandparent and the more likely they are to be sympathetic, while a younger sheriff might be less so.

There is much more of a conflict between the mother and the parents-in-law when it comes to separation. Too often, when the lines divide, the father's parents side with him, which compounds the animosity and makes any co-operation disappear overnight. That returns us to the question of how contact can be enforced. Often, grandparents are faced with a hopeless situation in which, although it would be in the interests of the child for the grandparents to see them, the mother will not co-operate. Many sheriffs simply hold up their hands and say, "I can't do anything about this." Often, the problem is that the process is so slow that, by the time that the grandparents get to court, it might have been several years since they saw that child, who might not even know who they are. That is often a factor in the sheriff's decision that it is not in the child's interest to have contact with the grandparents.

In my experience, the frustration that grandparents feel with the system can lead them to push a little bit too much in other ways. For example, they might turn up at the door at Christmas or on the child's birthday or do other things that upset the mother, who feels that she is being invaded and becomes even more negative. The system is far too slow and the factors that I have mentioned can come together to mean that grandparents can be quite unsuccessful in their attempts to have their interest considered. A much quicker system would be helpful. However, that might be an issue for another day.

Jimmy Deuchars: There is a lot of frustration with the sheriffs. In Scotland and in England, we have been in courts in which the grandparents have been treated abominably and told to sit down and shut up and so on. Because grandparents are regarded as irrelevant, they have faded into obscurity. People have lost all respect for them and they are treated as if they are not there in the courts.

The Convener: What percentage of the people that you represent have attempted to obtain access using the Children (Scotland) Act 1995?

Jimmy Deuchars: I am sorry, I do not know.

The Convener: Do you know whether any grandparents with whom you are in touch have attempted to obtain access through the 1995 act?

Jimmy Deuchars: We know of grandparents who have been to court and have been refused access, if that is what you mean.

The Convener: One of your claims is that grandparents are not being allowed access to their grandchildren. As section 11 of the 1995 act contains a provision that they could use to try to obtain that access, I wondered whether your organisation knew of any grandparents who had attempted to use it.

Jimmy Deuchars: I am not a lawyer, so I do not know about that. I only know that grandparents who we represent have tried to gain access but have had their request refused.

The Convener: So you are talking in general terms rather than specifically about the courts.

Jimmy Deuchars: Yes.

Frank Collins: It would be fair to say that the majority of the members of the group that Mr Deuchars represents have been in court. If he were to say how many members his group has, that would give you an idea of how many people have had their request refused.

The Convener: We have asked various organisations to give us some information on the number of cases in which access to children has been granted or denied. However, we are having difficulty getting that kind of information. If any of our witnesses can come up with such information at a later date, it would be helpful if they could send it to us as it would help us to understand where the problem lies.

Do you take the view that, in cases in which grandparents or anyone with an interest in the child wishes to use section 11 of the 1995 act to argue their case in court, the considerable costs that are involved might be one of the reasons why interested persons are not applying to the courts?

Jimmy Deuchars: We did a questionnaire to see whether grandparents were getting proper information on their rights from their lawyers. Over half the people who had contacted lawyers because they were going to court said that they had not been given the proper information. They did not get contact; their case was taken so far and then dropped. We feel that they were given the wrong information in the first place.

The Convener: Has the issue of cost arisen?

Jimmy Deuchars: Yes.

Frank Collins: Cost is a factor. If you take the average grandparent, unless they have an income from a private pension, they tend to be on a fairly

low income. As it is not necessarily easy to get legal aid these days, people are often faced with extortionate costs when going to court. That can make it impossible for them to pursue a case, particularly if their opponent has legal aid.

However, cost is not the only issue. As I highlighted earlier, the enormous delay in the court system is a big problem. That is especially the case in a busy sheriff court, where a minimum of a year can pass before people get anywhere near a proof. Even then, the case can often be postponed because it is not given enough time in the court timetable. That has a knock-on effect: the longer it takes to get to proof, the longer it is since a grandparent had contact with their grandchildren, for example, and that can count against them.

Jimmy Deuchars: We have members who paid up to £20,000 for their rights. The man who is sitting behind me in the public gallery paid £13,000—all his life savings—in lawyers' fees in trying to see his grandchildren and yet he still does not have contact with them. Five years have gone by without him having seen them. Tremendous cost is involved for the grandparents, who are spending all their hard-earned money in trying to see their grandchildren.

Dr Crapper: That is equally true of parents. Cost is an issue, as are court procedures and delay. Another problem is the culture that builds up. People who are in a conflict situation and who go to a solicitor for advice may well be advised that if they were to pursue a court action, they would gain either nothing or minimum parenting time. They are confronted with that advice and it is made plain to them that to pursue court action is unlikely to be of much use. What typically happens can become a perception of what is likely to happen in all cases. That establishes the culture of one proper parent and one optional extra, which is difficult to overturn.

Jimmy Deuchars: We advocate that, as far as possible, people should not go near the courts. We say that, instead of going down the court road, they should try to resolve things by other routes, such as mediation. As Mr Collins described, the statistics showing the number of grandparents who get contact are not good.

The Convener: That is helpful. Unless any member has an issue that we have not yet covered, the next question from Marlyn Glen will be the last.

Marlyn Glen: In that case, I will put my questions as one big question—I was going to divide them up, but I will not do that now. I want to concentrate on the issue of step-parents. We have talked about the costs and delays for step-parents who use the court process under section 11 of the Children (Scotland) Act 1995. There is also the option of step-parent adoption. Will you expand on why those two options are not sufficient? If step-parent agreements were to be introduced, how should the views and best interests of a child be safeguarded in what will be a non-judicial process and should the consent of a child over the age of 12 be required? I will pile in with another couple of points. We were thinking about the complications that might arise, such as multiple individuals having PRRs; could a step-parent agreement be revoked?

12:30

Frank Collins: Having listened to earlier evidence and to your question, I should say that we might be missing something. It is important to recognise that Stepfamily Scotland does not advocate rights only in conflicts. Many people cohabit with or are married to someone who has children from a previous relationship. For example, if a man moves in with a woman who has a young child who is one or two years old, by the time that that child is nine or 10, they may regard that man as their dad. The situation that concerns step-parents would arise if something happened to the mother and the stepfather was left with nothing. That could produce conflict, because the natural father often has contact and, as the courts do not automatically remove the natural father's parental rights when giving residence to the mother, he would be the only person with parental rights. Often, such a person would say, "I'm their dad, so I'll have the kids," although the kids regard the other man as their dad. That would automatically create conflict, which we are trying to avoid.

We advocate that such step-parents should be able to have step-parent PRRs. That could be agreed in conjunction with both natural parents and with the child, depending on the child's age. As our submission says, English legislation that provides for that will come into force in December, so we have no evidence of how that will work in practice. It is anomalous that people who are 5 miles across the border in England will be able to make such agreements but people here will be unable to. The matter has been debated at length in England.

The question of adoption relates to expense. Adopting is the only way for a step-parent to obtain parental rights in a non-conflict situation. The problem is that adoption removes a natural parent's parental rights. When that is suggested, the adoption petition is often disputed, which creates another conflict. If a natural father were willing to consent to adoption, he would be equally willing to consent to a parental rights agreement, so why should we have to go as far as formal adoption, which will remove a natural parent's rights?

Some natural fathers might support rights for someone whom they respect and who is bringing up their child properly but not agree to an adoption that would mean that they lost their rights. Such people would be more likely to agree to the halfway house. That would protect children in the tragic event that their mother died, because the man who had lived with them for many years would have rights that were given to him many years before.

It is clear that potential problems of serial step-parents could arise. To avoid that, our submission proposes that a step-parent should have lived with a child in a family situation for a minimum of two years. That would show a level of commitment, so mothers could not have relationship after relationship and dish out a parental rights agreement every five minutes, which would be chaotic. A mother will not give a man a parental rights agreement after two years if she sees that a relationship is not working—she cannot be forced to do that. A mother's agreement will show the commitment. Two years is a reasonable time, but the committee may consider that the time should be a bit longer and set it at three years. Such a requirement would provide a safeguard.

English legislation provides for a child to have input, but not when an agreement is signed—the legislation allows a child to apply to court for an agreement to be revoked. We think that children should be involved when an agreement is being considered. Good parents discuss matters with their children anyway and will not sign an agreement behind their children's backs. However, the worry is that a step-parent who thinks that an agreement is right may push a child into it. In that situation, other systems that are in place should be followed. For example, if a non-parent makes a residence application, a report from a curator is compulsory and is ordered automatically. A children's panel often appoints a safeguarder to find out the children's position.

It could be made a condition of the registration of such an agreement that there is a report from an independent third party. That third party could be a solicitor who acts as a curator, the social work department or a family support organisation that has trained counsellors who can visit the child and make sure that the child properly understands what is involved and properly consents to it. If the report is not in favour of the agreement, it cannot be registered and that will be the end of it. If the report is in favour of the agreement, why should it have to go through a court process? It has been checked out independently; it is considered to be in the interests of the child and the child wants it, but at present we say that we are not going to allow it and that the child will have to go through an expensive and long-winded process of either an adoption or a residence order, which cannot happen anyway in a non-conflict situation. A residence order cannot be obtained from a court unless there is conflict.

When we had custody and access, the courts would sometimes rubber-stamp an agreement that had been reached between the couple. Nowadays, if a couple come to court and say, "We have sorted this out," the court is duty-bound not to grant a residence order. That leaves adoption as the only option, but that takes away the rights of the natural parents, which it might not be appropriate to do. That is why we are saying that we should be concentrating not on the conflict situation but on the non-conflict situation because that is what worries parents. We get regular calls to our helpline from people who want to know what their rights are. The problem is that they have none.

The Convener: I think that you have said a few times that it is not possible to get a section 11 order unless there is conflict. Is that what you meant?

Frank Collins: The test for an order is the minimum intervention principle. For example, let us say that I am a stepfather and my partner and I decide to go to court to get an order in my favour; the court will not grant one, because there is no necessity for it—I cannot envisage any court entertaining the idea of granting an order in those circumstances. The only way it could happen is if someone applies for an adoption and the sheriff takes the view that an adoption might not be the best option but decides to give a residence order instead. Someone who goes straight to the civil process to seek a residence order will not be successful because such an order has to be necessary for the child. Is it better that an order is granted than that none is granted at all? Professor Norrie might take a different view.

The Convener: I have been advised by Professor Norrie that that might not necessarily be the case. It would be useful to get a view so that the committee is clear.

Professor Norrie: It is right to say that the court will make an order only when it is necessary to do so. However, there might be circumstances when it is necessary to do so even when there is no conflict. A parent, step-parent, cohabitant or co-parent might go to court to allow the co-parent to obtain parental responsibilities and rights because the parent who already has those responsibilities and rights will not be able to exercise them for some reason in the future. Examples might be illness or having to work abroad. It would be too strong to say that a section 11 order can never be obtained unless there is a conflict.

Frank Collins: It would require an unusual set of circumstances. For example, if a mother was

terminally ill and there was a time limit to the rest of her life, a court might say that an order was necessary in anticipation of that. However, in the normal situation where my partner and I want to formalise our position because we think that it is appropriate to do so, that will not satisfy the court when it asks why we want the order. It would not be enough for us to say, "Well, we'd just like to formalise things a bit and make sure that everything's hunky-dory."

Professor Norrie: That has happened sometimes in Scottish courts. For example, there have been at least two cases in Scotland in which a same-sex couple who are bringing up a child have gone to court and the sheriff has granted parental responsibilities and rights to the co-parent, entirely without conflict from any party.

Frank Collins: Again, you identify a different situation from the one that I am talking about. Same-sex relationships have problems that step-families do not have, but step-families are unique in that they face issues that are faced by no other type of family. People often go to family mediation after things have gone wrong and they need help to sort out contact arrangements, but people come to us when they are in the midst of their difficulties and want help in making their family work. The people who come to us are much more committed to making their family work than are other parents, but the law treats them as second-class citizens. There is no logical reason why someone who has proved their commitment to a child over a number of years should not be allowed to enter into a parental responsibilities and rights agreement.

As we said, there is no reason why the situation in Scotland should be different from the one in England. I know that we like to maintain our Scottishness, but we live in the United Kingdom, so why are we treated differently in relation to the issue? English law makes provision for revocation, so a child can apply to the court at any time for an agreement to be revoked. The court must consider whether the child is old enough or mature enough to understand what they are doing. The same approach could operate in Scotland. Currently, the wishes of children who are 12 or more years old—or younger if they are mature enough—are taken into account in any issue that involves important decisions, so a child would not be stuck with an agreement. The PRR agreement would not be like a court order; people would not be stuck with it if they separated. They could follow the normal procedure of identifying that there was a problem and that the agreement was no longer appropriate, perhaps because a man had become abusive or had become an alcoholic, and they could go to court to address the issue. That principle is already in place in relation to agreements under section 4 of the Children (Scotland) Act 1995, which cannot be changed unless there is an application to the court. I think that I covered all the member's points.

Marlyn Glen: You did well and you took the opportunity to comment in detail.

The Convener: I thank the witnesses for their evidence, which was useful. The committee will contemplate the issues that you raised.

I welcome our third panel of witnesses. I am sorry that we are bringing you in so late—you are last but not least. I think that you heard some of the evidence, so you will understand why we have been delayed. Often we do not know what will be involved until we start questioning witnesses on particular matters—we are dealing with a complex area of the law.

Heather Coady is the national children's rights worker with Scottish Women's Aid and Jean McKenzie is a women's support worker with East Lothian Women's Aid. Heather Coady is substituting for Louise Johnson, who unfortunately could not make it today. I thank the witnesses for their excellent written submission, which goes into considerable detail and raises some interesting issues. We will go straight to questions.

12:45

Stewart Stevenson: I have a simple question. Section 4 of the bill, which puts a time limit on a non-occupying spouse's right to the matrimonial home, causes you some concern. How would you prefer the issue to be dealt with? Should there be an expiry of any kind or do you have a problem simply with the period of two years? If you think that the right should be indefinite, how do you justify that?

Heather Coady (Scottish Women's Aid): The biggest problem for us is that it is conceivable that women who flee domestic abuse and go into refuge will be in refuge for that length of time and then will not have access to the matrimonial home again. Our concern is that women could easily lose rights.

Jean McKenzie (Scottish Women's Aid): Our basic concern is about the time limit. Women who suffer domestic abuse often move from place to place and do not get settled. Even if they get settled in temporary accommodation, it can take two years or longer before they have enough to buy another house, so that they can deal with the home that they left initially.

Heather Coady: As we said in our written submission, we would be happy if the period were extended to five years, because that would give women time to review the situation and see what other factors are involved.

Stewart Stevenson: My understanding is that the right is not financial—financial rights are protected anyway—but simply the right to live at a particular location. Are you saying that, even after five years, we should preserve in aspic the right to live at that address, even though the person has not lived there for a significant period of time?

Heather Coady: Yes.

Jean McKenzie: Yes, because sometimes when women suffer domestic abuse and go away for their safety, it takes them a long time to decide what to do, because they have to work through everything that has happened to them and find out what stage they are at. Any more pressure will just add to the stress that women are already under. Five years seems an awfully long time, but it is not long when we are dealing with the effects of domestic abuse.

Stewart Stevenson: So you accept the principle that a time limit is reasonable.

Jean McKenzie: Yes.

Stewart Stevenson: Do you have any statistics to back up your choice of five years and rejection of two?

Heather Coady: No.

Jean McKenzie: No.

Stewart Stevenson: So that is simply a view that is informed by your experience.

Jean McKenzie: Yes.

Heather Coady: Definitely. The issue came to light when we considered the bill again. We thought that it would be a bit worrying if the provision was enforced. Women could conceivably lose out, because after two years they may not have got things together sufficiently to make a challenge.

Stewart Stevenson: Although you have no statistical evidence, do you know of cases in which people would have been disadvantaged by losing those rights after two years? Do you know women who have been out of the home for more than two years and who wish to retain the right to return to that home?

Jean McKenzie: Yes.

Stewart Stevenson: Right. Are they of sufficient number to justify your conclusion?

Jean McKenzie: Yes.

The Convener: In a moment, I will ask you to comment on the many interdicts and options that are now available, particularly under the Protection from Abuse (Scotland) Act 2001. However, I will begin by asking about your concerns about section 5 of the bill. What are your concerns about section 5, which limits occupancy rights after dealings with the property?

Heather Coady: I am sorry, but I am filling in for Louise Johnson, who is our legal issues worker, so I am pretty much working from our written submission. Would you rephrase the question?

The Convener: It is about the fact that occupancy rights can be exercised against third parties, so that the spouse or other person cannot sell the house to deny someone's right to occupancy. The Executive proposes to limit the people against whom that right can be exercised to third parties but not fourth or fifth parties, because people in the chain have to be protected. I understood that you had concerns about limiting it to third parties.

Heather Coady: I am not aware of those concerns. We could give you an answer on that later.

The Convener: That is fine.

Why is there a benefit in having an indefinite power of arrest?

Jean McKenzie: Because the abuse can go on for ever. There is no time limit on it. Even though the woman leaves and gets away from the situation, often the abuse follows her to a certain extent. She still lives in fear. The threat still exists. In my experience, the most dangerous time for women is when they have left. The abuse goes on and on. It may be a different kind of abuse. The abuse may not be physical, but there can be emotional abuse and abuse through the children. The power of arrest gives women an extra safeguard, although even that does not work sometimes. When men are arrested for assaulting their partners and breaking the power of arrest interdict, they are remanded overnight and are out the next day. The same applies when they breach their conditions of bail. I do not know what the answer is, but the power of arrest makes women feel safer, and for some men it is a deterrent.

The Convener: I accept your point that there are limitations to the effectiveness of the law on interdict. I want to ask about the Protection from Abuse (Scotland) Act 2001. You may know that it arose from a committee bill and a lot of work that was done by Scottish Women's Aid on the lack of power of arrest in the Matrimonial Homes (Family Protection) (Scotland) Act 1981. We are scrutinising the effectiveness of the 2001 act, as is the Executive. How effective do you feel it has been?

Heather Coady: It is great. It widens the scope, which is fantastic and is obviously what we hoped for. As my colleague said, there are still problems with the power of arrest, because it does not

always work properly. However, the 2001 act is fantastic, and we support it.

The Convener: Women who face domestic violence or abuse have a few options, one of which is the 2001 act. Some parties have expressed concern that the law will get confusing. Organisations such as the Law Society of Scotland have called on us to take the opportunity to simplify the law so that it is made clear how to apply for an interdict and in particular so that the police are aware of which interdicts apply and where.

Jean McKenzie: The law should be clarified. People get confused if they can apply for too many things. That applies especially to the women with whom we deal. They just want something that protects them and clearly states what it will and will not do. Even an exclusion order or an interdict is confusing to a lot of women who come to us. It would be a good idea to clarify the law so that one order can protect women and children and back up what they want.

The Convener: You commented on the use of language. You suggest that the term "domestic interdict" should not be used. I am clear about why you say that, but you might want to put it on the record.

Jean McKenzie: Basically, people see the word "domestic" and think that it is less important. They think that it is very much down the scale. That is just the way in which the language is used. We do not use it in that way, but that is how it is used.

Margaret Mitchell: I will ask about the presumption against contact in cases of domestic abuse. You have come out in favour of such a presumption and have cited various reasons in support of that position. I will go through those reasons in detail and explore them a little bit more.

In your written submission, you state that you know of cases in which mothers have been jailed or fined for breaching contact orders because of fears for their child's safety. Can you quantify how many such cases there are in Scotland?

Heather Coady: We do not have any statistics on that but we have surveys that have been done in England and Wales. A lot of what we have referred to has happened in England and Wales but, unfortunately, we do not have statistics for Scotland, although we have lots of anecdotal evidence.

Margaret Mitchell: Why do we not have any statistics? What do they do in England and Wales? In what way are we falling down such that we do not have that information?

Heather Coady: England and Wales have been a little bit further ahead of us in campaigning to make contact safe for children. In Scotland, we have been ahead of the game on domestic abuse—we have a national group and a national strategy, and we have done extremely well—but when it comes to contact, we are slightly behind. Also, the system in England is different; it has family courts, which perhaps makes it easier to collect information. Research on contact has been done in England and Wales; only recently has a small-scale study been undertaken in Scotland. That study has given us some indication of the situation, but nothing like enough.

Margaret Mitchell: Given that, as many consultees and witnesses have said, we want children to have contact with both parents in all cases in which that is possible, why should there be an automatic presumption against contact?

Heather Coady: As it stands, there is a presumption that it is in the children's best interest to have contact with both parents. That is not written into statute but comes out in case law. If somebody goes to court for a contact order, the starting point is that contact with both parents is in the children's best interest; that is how the law is interpreted. We are saying that that might be true in most cases but, in cases in which domestic abuse has occurred, such contact is probably not in the children's best interest. That certainly does not mean that there should never be contact, but it is something that should be examined.

We have come out so strongly in favour of a rebuttable presumption because the experience of the women and children with whom we work in Scotland is often that, if the case even goes to court, they are not listened to and the focus is pretty much on the presumption that contact is in the children's best interest. Therefore, to put not too fine a point on it, we need to find a way to force courts to consider all the other evidence, records and reports that are available so that they can make informed decisions that will keep children and their mothers safe. That is our reasoning.

Jean McKenzie: As a woman who works directly with women and children, it is my professional experience that it is not in the child's interest to see an abusive father, regardless of whether the abuse has been directed only at the mother or has also indirectly involved the children.

We have seen many cases in which children are really badly affected by abuse, and the effects are long term. The children's behaviour changes quite drastically. They get confused; sometimes they do not want to see their dads but the courts say that they have to and they do not understand why. We cannot tell them why because we do not understand either. They are frightened.

The children are used very much as weapons against the mothers because the right to see them

gives the men another form over control over the family. Some children really want to see their dads. They love them and think that if their dad wants to see them, their dad must love them as well. However, our experience is that they are more or less used as tools and, as soon as there is no gain to be made, the fathers drop access to them.

13:00

They also encourage the children to lie and to spy on their mothers, one another and other children. That can cause immense splits within families, between children and their siblings and mums. I wish that I could say that I have seen a lot of children benefit from contact with their dads, but I have seen the exact opposite—children have been made dreadfully upset. Some children eventually go to stay with their dads and are not happy about having done so—I know that, because I have contact with them later. However, they feel that they cannot go back to their mums and that their loyalties have been split. It is awful how families can be pulled apart by such arrangements.

We believe that, where possible, children should have two loving parents who protect them. However, in cases of domestic abuse that does not happen. A lot of women have told us that there is a risk to mothers and children, especially at handover. The women may no longer be physically abused, but they are certainly verbally abused. That happens in front of the children.

Margaret Mitchell: I want to tease out the implications of having a rebuttable presumption. Would that shift the current emphasis, so that a proper assessment of risk was made in situations in which there is domestic abuse? Is it your position that that would not necessarily be served by legislation that merely stated that domestic abuse is a factor that must be taken into account when decisions are made?

Heather Coady: At the moment, the onus is on the woman to show that there are concerns, because the court's starting point is that it is in a child's best interest to have contact with both parents. The cost is often borne by the woman, as the onus is on her to say that she has a problem with the arrangement. Women are often advised by their solicitors not to go to proof and to settle out of court. As we have heard this morning, there are good reasons for avoiding going to court, but in the circumstances that we are discussing it is probably best for cases to go to court, so that the court can take full account of what may have happened and make a judgment based on that, to ensure that both the women and their children are safe.

If a woman is not safe, it may be hard for her children to be safe. We know from a great deal of research that there is a huge crossover between domestic abuse and all forms of child abuse, so the former must be taken into account. Unfortunately, we see a lack of concern in courts. In one case, a woman went before a sheriff and a contact order was made in five minutes. No account was taken of the reports that had been prepared on the domestic abuse that she had experienced and the concerns that she had about her safety. That sort of thing happens fairly frequently. The introduction of a rebuttable presumption would not solve the problem. However, it would go some way towards making courts say that the starting point in such situations is no, but that they will consider whether contact is appropriate and can be safe.

Margaret Mitchell: Do you consider that merely mentioning in the legislation that domestic abuse must be taken into consideration is not strong enough and that we need to go a little further by introducing a rebuttable presumption?

Heather Coady: Yes.

Margaret Mitchell: Do you not have confidence that the courts will take domestic abuse into consideration? Does the provision need to be stronger?

Heather Coady: The Children (Scotland) Act 1995 is a very good piece of legislation and provides for domestic abuse to be taken into consideration. Unfortunately, that is not happening. Many women and children are being put at risk and are not safe because the 1995 act is not being interpreted in a way that takes account of other factors. The legislation would be fine, if only it were adhered to. Introducing a provision such as a rebuttable presumption would make the courts look at the situation, rather than ignoring all the other evidence that they could consider.

Margaret Mitchell: It has been suggested that, if a rebuttable presumption were introduced for domestic violence, it could also apply to other adverse forms of behaviour, such as behaviour resulting from one parent having a drug or alcohol addiction. Do you have a view on that issue?

Heather Coady: The arguments are the same. The welfare and safety of the child are paramount and are enshrined in the law, which should be interpreted accordingly. The courts may be more likely not to allow contact in situations such as those that you describe, which are quite clear cut, than in cases of domestic abuse. Often, although not always, there is a lack of awareness and understanding of the complexities of domestic abuse. There has been a lot of agreement on this

issue this morning. It is complex and difficult and we have to address it.

Margaret Mitchell: Perhaps we should extend the legislation to cover the effects on children of people's drug and alcohol addiction.

Heather Coady: I am not sure that that needs to be enshrined in the law. It is less of a problem. Drug and alcohol issues are much more likely to involve child protection agencies. Those agencies may also become involved in relation to domestic abuse, but domestic abuse is not always a clear-cut child protection issue and is not always interpreted as such. The thresholds can be different.

What definitely needs to be in the legislation is a clearly stated rebuttable presumption when there has been domestic abuse. One in four people in Britain experience domestic abuse and two women a week are killed by their partners or ex-partners. The numbers are not small. There is a case for having a specific amendment on domestic abuse and rebuttable presumption.

We have talked a little about other protective legislation, and about the way in which Scotland has led the way in prioritising domestic abuse and taking it on. Therefore, it seems completely ridiculous that, on the one hand, there is a protective measure but, on the other hand, children are handed over without any consideration by the sheriffs. I am not saying that sheriffs never give that any consideration, but there is no consistency.

Margaret Mitchell: So, because domestic abuse, domestic violence and their consequences are so complex, you are arguing that they should be treated as a special case.

Heather Coady: Yes. They are also very prevalent.

Margaret Mitchell: Yes—that makes the rebuttable presumption more necessary.

You have expressed unease about the use of contact centres in managing risk factors and have suggested that the supervision that one would expect in a contact centre is not actually there. Perhaps people should be given more training and perhaps centres should be monitored.

Jean McKenzie: I certainly know of one child who was abused in a contact centre by her father. The mother was obviously distraught. She had been led to believe that the child was being supervised but she was not. The woman's ex-husband was able to close a door so that he and the child were alone together in a room. The contact centre took no responsibility for that.

Heather Coady: A number of issues arise to do with contact centres. For a start, they do not offer supervised contact. There has been one pilot study, and the Executive's research on contact has led to confusion. There is certainly confusion in the judiciary as to what constitutes supervised contact and what constitutes supported contact.

Contact centres are clear on the issue: they offer supported contact. Contact centres are primarily run by volunteers who have not necessarily received training. No court reports come to the centres and no evaluation is made of the quality of the contact. There is therefore no way of saying whether the contact has been appropriate.

It seems that, if sheriffs are not sure whether contact is appropriate, they send families to contact centres. Contact centres' own research has shown that domestic abuse is an issue for one in four of the families that come to them. In such cases, contact centres are not necessarily appropriate places for contact to be maintained. There is an assumption that, once contact has been awarded, it will inevitably increase and take place outwith the contact centre. However, in domestic abuse cases it is not necessarily appropriate for contact to increase or for it to take place away from any other adult.

There is a lot of confusion and there are some horrific examples of sheriffs awarding contact that they seem to think will be supervised. It came out in research that one person who was asked to supervise contact was a home help. There is a lack of clarity as to what is appropriate and what contact actually means. That makes the situation very difficult.

Another problem is that there are not enough contact centres. People who live in a rural area will not necessarily have access to one.

Margaret Mitchell: Is there a case for the judiciary, solicitors and other professionals to receive more awareness-raising training to make them aware of the problems that might arise if contact centres are not properly managed and the supervision is not as it should be?

Heather Coady: The first step would be to lodge an amendment that would clearly provide for the rebuttable presumption, so that everyone was clear that domestic abuse is a crime and that that is the context in which a child's best interest is looked at.

The second stage would definitely be to make available training and awareness raising on the issues, because, day in, day out, we see that there is no awareness. We also need guidelines. Our concern is that there might be a move towards providing guidelines and that that would be it—there would be no significant change.

Guidelines were introduced in England and Wales in 2001. The Women's Aid Federation of

England, in conjunction with the National Society for the Prevention of Cruelty to Children, did a large-scale study of 178 projects to gauge how the guidelines were working out after a year. Only 3 per cent of the respondents said that they thought there was any significant difference. Our worry is that issuing guidelines will be seen as an easy option, when it really must happen along with a change in legislation.

Margaret Mitchell: There should be an emphasis on that, especially because, as Jean McKenzie said, many children are desperate to remain in contact with their fathers but, given the nature of how things work out, contact is just not possible. If contact were properly supervised, it would allow that relationship to develop properly, rather than the child being used as a pawn for ulterior motives.

Jean McKenzie: Yes, and it would quickly sift out fathers who genuinely wanted to see their child from fathers who still wanted some control over the family. That is the main point; it is also the most difficult issue. Children desperately want the love that they have not had from their dad before when, all of a sudden, he wants to see them and spend time with them. However, in my experience, that attention tends to end very quickly, which usually makes the children more upset and traumatised, and they feel that they have done something wrong.

Margaret Mitchell: Thank you. That was helpful.

The Convener: I have two brief questions. The first is about your suggestion of including a rebuttable presumption in the bill. If the committee were to support your view on that, what standard of evidence would you expect to be submitted to the court? I presume that one would have to present information, and a conviction, for example, is a straightforward fact. Do you suggest that it would not just be on conviction that evidence could be presented to the court, and that on-going abuse and even unreported crimes should be included?

Jean McKenzie: It is very difficult to get any evidence because a lot of domestic abuse happens behind closed doors, for want of a better phrase, with no witnesses. Often, women do not tell anybody for a long time, if at all. Our organisation accepts what a woman says immediately—we do not question; we do not think that she has to prove it to us. It would be difficult to put information before the court unless there was some kind of evidence and—

The Convener: I want to tease out your suggestion a bit further. You want us to support provision for a rebuttable presumption. I accept all that you said about your starting point being that you believe what a woman says when she comes to you and that you work with that. However, will you give more thought to what information needs to be presented to the court for it to accept that domestic abuse has happened so that the provision on a rebuttable presumption can be applied?

13:15

Heather Coady: In a sense, one could look at the situation on a big continuum. One could compare it to child sexual abuse, for example, although that is not to say that the burden of proof should be the same. Even if the burden of proof is beyond all reasonable doubt, one should not necessarily have to prove that domestic abuse took place because, like child sexual abuse, it is notoriously difficult to prove, given how it takes place. Getting an interdict is not easy either.

A combination of factors could be looked at, such as whether the police have been called out to an incident and a report has been made or whether a woman with visible signs of abuse has visited her general practitioner. We do not have a clear answer. The only thing that I take heart from is that change has happened elsewhere—for example, in New Zealand. I do not think that it has to be proved beyond a shadow of a doubt that domestic abuse took place. The system can work.

The Convener: Civil proceedings would be used, and the sheriffs already decide who they believe on the balance of probability. I just thought that you might want to give more thought to the matter as we will be thinking about it when we come to write up our report. It is open to you if you want to give us a few more of your thoughts later on in the process.

Heather Coady: Civil proceedings, based on family law, are followed in New Zealand, too. They have made that work so I do not think that there would have to be a big obstacle. Obviously, the threshold would have to be decided.

The Convener: We can look at the New Zealand model, as you suggest. We hope to have at least one videoconference with the Australian Parliament, which we have set up for very early in the morning. We thought that it would be useful to look at other jurisdictions, although I do not think that the Parliamentary Bureau will give us a big budget to look at other countries' systems in person. However, at least the videoconferencing facility allows us to have some direct contact with other jurisdictions.

As there are no further questions from members, I thank the witnesses for their evidence. If you have further thoughts, they will be very welcome. Thank you for waiting so long to come before us,

and thank you for your excellent submission and oral evidence.

I remind members that the next meeting of the Justice 1 Committee will be on Wednesday 25 May, when the committee will take further evidence on the Family Law (Scotland) Bill from academics, the Family Law Association and the Law Society of Scotland.

13:17

Meeting closed at 13:17.

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